



requests for discovery. Specifically, the United States produced approximately 64 pages of unclassified material, including an FBI 302, underlying agent's notes, phone directories, and press briefings and emails. The United States also produced an unclassified disk containing State Department building schematics. In total, the United States has produced approximately 15,885 pages of unclassified material in this matter. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

### **III. Classified Discovery**

Since the last Status Hearing, the United States has made two additional productions of classified material, totaling approximately 27 pages including classified FBI 302s, underlying agents' notes, and a classified audit list. In response to a specific defense request, the United States has also produced a classified disk containing the native file format of materials that were previously produced. In total, the United States has produced approximately 2,917 pages of classified discovery in this matter. The Parties note that some of the newly produced classified material was produced to the defense in response to requests set forth in the defense's most-recent discovery letter, dated October 6, 2011. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

### **IV. Meet-and-Confer Sessions**

Since the last Status Hearing, the Parties have held five meet-and-confer sessions to discuss the production of additional material in responsive to the defense's discovery requests and to narrow any issues for the Court's resolution. The Parties met on April 10, 2012, April 17, 2012, May 3, 2012, May 21, 2012, and June 6, 2012. As with prior meet-and-confer sessions,

these sessions were held in the U.S. Attorney's Office's SCIF and nearly all lasted approximately two hours. Because lead counsel for Mr. Kim was preparing for or in trial in another judicial district, Mr. Kim's other counsel were present for these sessions. Although the Parties recognize that this is a time-consuming process, the Parties continue to believe that the meet-and-confer sessions have been very productive, both in elucidating the grounds for the defense requests and affording the Parties an opportunity to resolve or narrow the discovery issues in dispute.

As described in the last Joint Status Report and at the last Status Hearing, the Parties agreed that upon completion of the meet-and-confer process the defense would provide the United States with a revised discovery letter that would supercede its October 6, 2011 letter, with the goal of memorializing the Parties' progress to date in satisfying or narrowing the defense's requests. The defense is in the process of preparing its revised discovery letter now. Lead counsel for Mr. Kim is no longer in trial and is therefore able to assess the Parties' progress from the meet-and-confer sessions that were held in his absence and review and finalize the defense's revised discovery letter. Although that letter is not final, the Parties are confident that the revised letter will reflect further resolution or narrowing of many of the approximately 100 defense requests contained in the defense's October 6th letter.

The government will provide a written response to the defense's final revised discovery letter once it is received. The government's representations in this response letter will provide the basis for any discovery motions, if necessary. Drafting the government's response will require consultation with the relevant Intelligence Community members concerning their equities that are implicated by the outstanding defense requests, and may require further follow-up requests for information. The government has already made significant progress in this consultation process based on defense representations during the meet-and-confer sessions to

date. As most of the information that the defense is seeking is classified, completing this consultation process with the Intelligence Community, potentially disclosing further information to the defense, and drafting the government's response letter will be time consuming.

Until the defense has finalized its revised discovery letter and the United States has had an opportunity to review it (along with the relevant Intelligence Community members whose equities may be implicated by any remaining requests), it is uncertain whether the outstanding discovery requests may be susceptible to resolution without the intervention of the Court, or whether a briefing schedule for discovery motions is appropriate. Therefore, the Parties request that the Court set the next Status Hearing in this matter for July 30th.

**V. Witness Issues**

a. Fact Witnesses

The Parties have no issues to report concerning fact witnesses.

b. Expert Witnesses

Neither Party has indicated a decision to use any expert witnesses nor has identified any such witnesses. Defense counsel will seek a procedure where potential expert witnesses may have access to the classified materials in the case.

**VI. Motions**

a. Dispositive Motions

In a written memorandum opinion and order, issued on August 24, 2011, the Court denied three pretrial motions filed by the defense. Pending before the Court is the defense's fourth pretrial motion, a motion to suppress statements.

b. Discovery Motions

The Parties believe that any discovery motions should follow the defense's delivery of its revised discovery letter to the United States and the government's written response to that letter.

**VII. CIPA**

Once classified discovery has been completed, the Parties can address with the Court the various CIPA procedures and schedule for addressing classified material. It is not possible to suggest a CIPA schedule until the discovery issues have been resolved.

**VIII. Trial**

Given the complexity and sensitivity of the issues likely to be raised in CIPA proceedings in this case, as well as the delays that are frequently concomitant with that process, the Parties estimate that this matter will not be ready for trial before January 2013.

Dated: June 8, 2012

Respectfully submitted,

/s/  
G. Michael Harvey (D.C. Bar No. 447465)  
Jonathan M. Malis (D.C. Bar No. 454548)  
Assistant United States Attorneys  
National Security Section  
United States Attorney's Office  
555 4th Street, N.W., 11th Floor  
Washington, D.C. 20530  
(202) 252-7810 (Telephone) (Harvey)  
(202) 252-7806 (Telephone) (Malis)  
(202) 252-7792 (Facsimile)  
[Michael.Harvey2@usdoj.gov](mailto:Michael.Harvey2@usdoj.gov)  
[Jonathan.M.Malis@usdoj.gov](mailto:Jonathan.M.Malis@usdoj.gov)

/s/  
Deborah A. Curtis (CA Bar No. 172208)  
Trial Attorney  
Counterespionage Section  
U.S. Department of Justice  
600 E Street, N.W.

Washington, D.C. 20005  
(202) 233-2113 (Telephone)  
[Deborah.Curtis@usdoj.gov](mailto:Deborah.Curtis@usdoj.gov)

*Counsel for the Government*

/s/ \_\_\_\_\_  
Abbe D. Lowell (D.C. Bar No. 358651)  
CHADBOURNE & PARKE LLP  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 974-5605 (Telephone)  
(202) 974-6705 (Facsimile)  
[ADLowell@Chadbourne.com](mailto:ADLowell@Chadbourne.com)

*Counsel for defendant Stephen Kim*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2012, I caused a true and correct copy of the foregoing be served via the Court's ECF filing system to all counsel of record in this matter.

/s/ \_\_\_\_\_  
Jonathan M. Malis  
Assistant United States Attorney