



Security Officer and has served executed originals of those documents upon the United States. Mr. Coyle will do the same as soon as his security clearance is reinstated.

## **II. Unclassified Discovery**

Since the last Status Hearing, the United States has made an additional production of unclassified material to the defense pursuant to its disclosure obligations and the defense's requests for discovery. Specifically, the United States produced four disks containing unclassified emails from the defendant's Department of State Open Net workstation. These disks were produced because they contain some non-duplicative emails from a prior production of such material on October 29, 2010. The United States also produced a print-out of two pages of emails sent by the defendant in July 2005.

## **III. Classified Discovery**

Since the last Status Hearing, the United States has made three additional productions of classified material. 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.

**Classified FBI 302s/Agents' Notes:** The United States has produced an additional 217 pages of FBI 302s and underlying agents' notes of interviews conducted during the investigation, and related material. The United States anticipates making additional such productions on a rolling basis.

**Classified Audit Material:** The United States has produced 12 pages of documents concerning the classified database on which the defendant accessed the intelligence report at issue in this case: specifically, the defendant's use agreement for access to the database; the log-in banner for access to the database; and a spreadsheet reflecting the defendant's use of the

database during the relevant time period. The United States has also produced close to 500 pages of underlying audit materials concerning individuals whom the government has reason to believe may have accessed the classified national defense information at issue prior to the unauthorized disclosure charged in the Indictment, along with a 7-page spreadsheet that summarizes this audit material. To assist the defense further in its review of this material, the United States has also provided a two-page spreadsheet listing the substitutions used in the underlying audit material.

**Classified Electronic Media Material:** As described more fully in a prior Joint Status Report and discussed at prior Status Hearings, the Parties reached a written agreement concerning the review for discoverability and classification of voluminous electronic media collected in this case (e.g., copies of the defendant's SECRET and TOP SECRET hard drives and email). Pursuant to that agreement, the defense submitted search terms to an Intelligence Community filter team to run against the classified electronic media. The filter team completed its review of all of the classified electronic media and made the results of that review available to the prosecution team on March 31, 2011.

The defense search terms generated hits in over 6,000 electronic items. Most of the over 6,000 electronic items are clearly-marked classified. Many are SECRET and TOP SECRET intelligence reports. Many of the 6,000 electronic items are multi-page documents, some of which are system files (e.g., Microsoft Windows operating system log, registry, and event files, etc.). The prosecution team recently completed the time-consuming process of reviewing this large volume of data.

Based on its review, the prosecution team has provided to multiple members of the Intelligence Community a sub-set of the over 6,000 electronic items in order to obtain their

authorization to produce this sub-set in classified discovery. It is difficult to predict how long the Intelligence Community's collective review of this material will take. Based on its preliminary review, it appears that it will take at least several weeks for the Intelligence Community to complete its collective review, if not longer. Once the Intelligence Community's collective review is completed and any production issues are resolved (e.g., substitutions or redactions), the prosecution team will work expeditiously to produce this material in classified discovery. Following the production of this material to the defense, the Parties expect to meet and confer about any outstanding discovery requests of the defense in order to narrow any issues for the Court's resolution. Accordingly, the Parties request that this Court set the next status date in this matter in 60 days.

The Parties believe that the scheduling of discovery motions, CIPA proceedings, and expert designations, should follow the production of material from the defense-generated search of the defendant's classified electronic media and the Parties' meet-and-confer session.

#### **IV. Witness Issues**

##### a. Fact Witnesses

Defense counsel has begun interviewing former government colleagues of Mr. Kim.

##### 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.

#### **V. Motions**

##### a. Dispositive Motions

Pending before the Court are four pretrial motions filed by the defense on January 31, 2011.

b. Discovery Motions

The Parties believe that any discovery motions should follow completion of classified discovery in this case.

**VI. CIPA**

Once the United States has completed classified discovery, the Parties can address with the Court the various CIPA procedures and schedule for addressing classified material.

Dated: July 12, 2011

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2011, 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