



requests for discovery. Specifically, the United States produced approximately 100 pages of unclassified FBI 302s, FBI chain of custody forms, emails to or from Mr. Kim, Mr. Kim's passport application, badge and telephone records, and open source materials.

### **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 256 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 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.). Based on its review, the prosecution team 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. Upon obtaining such authorization, the prosecution team produced this sub-set to the defense, which consists of 37 electronic items totaling 628 pages of classified material.

As described in the last Joint Status Report and discussed at the last Status Hearing, the Parties now expect to meet and confer about any outstanding discovery requests of the defense in order to narrow any issues for the Court's resolution. The Parties are tentatively scheduled to meet on Tuesday, October 4, 2011.

Until the Parties have had their meet-and-confer session, it is uncertain how narrow or broad the outstanding discovery requests may be. Moreover, until such time, it is also 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. The Parties will endeavor to narrow the issues as much as possible prior to the next scheduled Status Hearing on Tuesday, October 11, 2011, and provide the Court at that time with either a proposed briefing schedule or with a realistic expectation of how much additional time may be needed to resolve any outstanding discovery issues.

#### **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

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 completion of classified discovery in this case, as described above.

**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.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 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