

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
)
) Case No. CR-10-225 (CKK)
v.)
)
STEPHEN JIN-WOO KIM,)
)
Defendant.)

JOINT STATUS REPORT

Defendant Stephen Jin-Woo Kim and the United States of America (collectively, the “Parties”), through their undersigned counsel, submit this Joint Status Report pursuant to the Court’s October 13, 2010 Order.

I. Security Issues

A. Clearances

Counsel for Mr. Kim, Abbe D. Lowell and Scott W. Coyle of Chadbourne & Parke LLP, both have current security clearances for purposes of this case. The defense is in the process of seeking a security clearance for one legal assistant.

B. Protective Orders/MoUs

On October 13, 2010, the Court entered the first CIPA Protective Order pursuant to the Government’s Unopposed Motion for Protective Orders. Counsel for Mr. Kim has filed all the necessary Memoranda of Understanding with the Court and with the Classified Information Security Officer and has served executed originals of those documents upon the United States.

II. Unclassified Discovery

The Parties note that since the last Status Hearing, in order to inform the Court more explicitly about the progress of unclassified and classified discovery in this case, the United

States filed a Notice of Filing attaching all of the Parties' discovery correspondence to date **[Document 58]**. The attached letters set forth in greater detail the government's discovery productions and the defense's requests. The unclassified correspondence is on the public record. The classified correspondence is on file under seal with the Classified Information Security Officer.

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 approximately 289 pages of unclassified FBI 302s and underlying agents' notes of interviews conducted during the investigation, emails to or from Mr. Kim, telephone records, search warrant materials, and open source materials. 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 an additional production of classified material, totaling approximately 45 pages. The Parties note that some of the newly produced material described in this Section and Section II. above 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.

Classified FBI 302s/Agents' Notes: The United States has produced an additional 19 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 Emails: The United States has produced four pages of emails to or from Mr. Kim.

Classified Interview Material: The United States has produced two documents shown to Mr. Kim during his second interview with the FBI.

IV. Meet-and-Confer Sessions

The Parties are engaged in a series of meet-and-confer sessions to discuss the outstanding discovery requests of the defense in order to narrow any issues for the Court's resolution. The Parties met briefly on October 20, 2011, met for several hours on October 28, 2011, and are scheduled to meet for several hours tomorrow, November 16, 2011. Thus far, the Parties have found the meet-and-confer sessions to be productive, both in elucidating the grounds for the defense requests and affording the Parties an opportunity to narrow the issues for the Court's resolution. For example, the Parties anticipate that as a result of these face-to-face meetings the defense will refine some of its discovery requests. In the process of refining and narrowing the issues in dispute, the United States must engage with the relevant Intelligence Community members concerning their equities that are implicated by the defense requests. Indeed, the United States has made follow-up requests to the Intelligence Community based on the defense's most-recent discovery letter and the meet-and-confer sessions. This, too, is a time-consuming endeavor.

The Parties respectfully suggest that the process described herein is an appropriate and orderly manner to address these discovery issues. The Parties further suggest that this process ultimately should serve to preserve judicial resources by sharpening the remaining issues for

judicial resolution. Until the Parties have completed this process, 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. The Parties will endeavor to narrow the issues as much as possible prior to the next scheduled Status Hearing. However, because this is a time-consuming process, the Parties request an additional 60 days from the date of next week's Status Hearing.

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

VII. 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: November 15, 2011

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
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

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

Counsel for defendant Stephen Kim

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 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