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**STATEMENT OF ATTORNEY ABBE LOWELL
REGARDING STEPHEN KIM ESPIONAGE CASE**

"Today, we filed motions in court that demonstrate that the prosecution of Mr. Kim—and other cases this Administration is bringing under the Espionage Act—raise serious issues about, and are not consistent with, the First Amendment and due process rights we hold so highly in our country. This particular prosecution is unique in its own right in that the distinction between the purpose of the Espionage Act (to prevent spying) and its application to stop commonplace leaking is undefined. Finally, the government should not bring additional charges after creating an atmosphere where the target of an investigation is lulled into making statements the government wants to hear. Mr. Kim looks forward to addressing all of these issues in the upcoming proceedings."

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Included below is a summary of the motions filed on behalf of Mr. Kim in this case. In addition, four key legal documents in this case are available at the Stephen Kim legal defense trust website at www.stephenkim.org.

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United States v. Stephen Kim
United States District Court for the District of Columbia
Case No. 1:10-CR-225

Jan. 31, 2011: This is a summary of the motions filed on behalf of Stephen Kim in the United States District Court for the District of Columbia.

- **Motion To Dismiss Count One On Due Process And First Amendment Grounds:** In Count One of the indictment, the government has charged Mr. Kim under the Espionage Act, 18 U.S.C. § 793(d), with unlawfully disclosing “national defense information” with a reason to believe it would harm the United States.

In recent years, the government has used this statute to prosecute alleged “leakers” to the press, even though the Espionage Act was intended as a tool to prosecute real spies. In Mr. Kim’s case, the government has gone one step further, prosecuting Mr. Kim for what would include oral conversations with a member of the press, without any proof that Mr. Kim handed over any document, stole any tangible report, or received any compensation or reward. Instead, the government seeks to make illegal mere oral conversations between a government official and a member of the press. In his motion to dismiss, Mr. Kim claims that this Count violates the Constitution for two reasons:

First, the charge is so vague, undefined, and broad that it does not provide Mr. Kim with a reasonable basis to know what conduct violates the law and what does not. Indeed, because the government grossly over-classifies information, the government could be prosecuting Mr. Kim for discussing publicly available information with a member of the media. Such a charge violates the Due Process Clause of the Fifth Amendment.

Second, any attempt to criminalize such conduct violates the First Amendment. The success of our democracy requires a free flow and exchange of information between government officials and the media. When the government seeks to prosecute those who engage in this open discourse, it runs afoul of the First Amendment’s protection for free speech.

- **Motion To Dismiss Count One Under The Treason Clause:** The Founders knew first-hand how the government could abuse its power and prosecute political opponents for so-called “offenses” against the State. Accordingly, when the Founders drafted and ratified the Constitution, they included Article III, Section 3—the Treason Clause—in an effort to limit the kinds of offenses that the government could charge against those that it deemed “harmful” to the State.

In this case, the government alleges that Mr. Kim acted with reason to believe that the information he provided to a news reporter could injure the United States and aid a foreign nation. By passing the Treason Clause, the Founders made charges like this— based on discussions or what was then known as “political speech” rather than real spying —unconstitutional. When an individual takes extreme measures against the State, the government can charge him with treason. For offenses far less significant, and more in line with the ordinary and common discourse between the government and the media, however, the Founders mandated that this conduct should go uncharged. The survival of a free, democratic society required nothing less.

- **Motion To Dismiss Count Two And Request For A Hearing:** In Count Two, the government claims that Mr. Kim made a false statement to investigators during a September 24, 2009, interview. Mr. Kim has moved to dismiss that Count for several reasons. First, the government’s

conduct on September 24th was what the law calls a “perjury trap”: government agents asked questions to which they already knew the answer merely to set a trap for Mr. Kim, so they could later charge him with making a false statement. Second, whatever government agents claim Mr. Kim told them on September 24th, Mr. Kim nonetheless provided them with accurate information long before they ever charged this case. It is fundamentally unfair to allege that Mr. Kim made a false statement, when the evidence will show that he corrected that statement before any charges were filed. On these grounds, Mr. Kim has asked the Court to hold a hearing into the government’s unlawful conduct and to dismiss Count Two of the indictment.

- **Motion To Suppress Statements And Request For A Hearing:** During its investigation in this case, the government spoke to Mr. Kim on at least two occasions: on September 24, 2009, and March 29, 2010. Neither time did the government tell Mr. Kim that he was a target of an investigation. Neither time did it tell him that he had a right to remain silent or a right to counsel. And both times, it interrogated Mr. Kim and left him with the feeling that he was not free to leave. This government conduct violated *Miranda v. Arizona*, 384 U.S. 436 (1966). Mr. Kim has asked for the Court to hold a hearing into this unlawful conduct and to prevent the government from using any of Mr. Kim’s statements at trial.