CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NY 10005-1702

FLOYD ABRAMS
L. HOWARD ADAMS
ROBERT A. ALESSI
HELENE R. BANKS
ANIRUDH BANSAL
LANDIS C. BEST
SUSAN BUCKLEY
KEVIN J. BURKE
JAMES J. CLARK
BENJAMIN J. COHEN
STUART G. DOWNING
ADAM M. DWORKIN
JENNIFER B. EZRING
JOAN MURTAGH FRANKEL
JONATHAN J. FRANKEL
BART FRIEDMAN
CIRO A. GAMBONI
WILLIAM B. GANNETT

CHARLES A. GILMAN
STEPHEN A. GREENE
JASON M. HALL
WILLIAM M. HARTNETT
CRAIG M. HOROWITZ
DOUGLAS S. HOROWITZ
TIMOTHY B. HOWELL
DAVID G. JANUSZEWSKI
ELAI KATZ
THOMAS J. KAVALER
BRIAN S. KELLEHER
DAVID N. KELLEY
CHÉRIE R. KISER*
EDWARD P. KRUGMAN
JOEL KURTZBERG
ALIZA R. LEVINE
JOEL H. LEVITIN
GEOFFREY E. LIEBMANN

TELEPHONE: (212) 701-3000
FACSIMILE: (212) 269-5420

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900
FAX: (202) 862-8958

AUGUSTINE HOUSE
6A AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

WRITER'S DIRECT NUMBER
(212) 701-3050

ANN S. MAKICH
JONATHAN I. MARK
BRIAN T. MARKLEY
WILLIAM J. MILLER
NOAH B. NEWITZ
MICHAEL J. OHLER
ATHY A. O'KEEFFE
DAVID R. OWEN
JOHN PAPACHRISTOS
LUIS R. PENALVER
DEAN RINGEL
JAMES ROBINSON
THORN ROSENTHAL
TAMMY L. ROY
JONATHAN A. SCHAFFZIN
JOHN SCHUSTER
MICHAEL A. SHERMAN
DARREN SILVER

HOWARD G. SLOANE
JOSIAH M. SLOTNICK
RICHARD A. STIEGLITZ JR.
SUSANNA M. SUH
ANTHONY K. TAMA
JONATHAN D. THIER
JOHN A. TRIPODORO
GLENN J. WALDRIP, JR.
HERBERT S. WASHER
MICHAEL B. WEISS
S. PENNY WINDLE
COREY WRIGHT
DANIEL J. ZUBKOFF
ADAM ZUROFSKY

*ADMITTED IN DC ONLY

July 25, 2013

Re: Subpoena to James Risen in *United States of America* v. *Jeffrey Alexander Sterling*, No. 11-5028 (4th Cir.)

Dear Attorney General Holder:

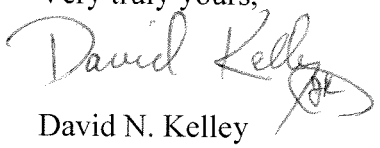
I write on behalf of my client, James Risen, to urge the Department of Justice ("DOJ") to reconsider its stance in this case and withdraw the subpoena directed at Mr. Risen for testimony concerning the identity of his confidential source(s) in connection with Chapter 9 of his book, *State of War: The Secret History of the CIA and the Bush Administration*. To that end, we request a meeting with you to discuss the DOJ's next steps in this case.

The same week that the Court of Appeals for the Fourth Circuit rendered its recent ruling in this matter, there was a significant change in DOJ policy that we believe should lead to a major change in DOJ's position. In its revision of its Guidelines regarding the issuance of subpoenas to journalists, the DOJ sought to "strengthen protections for members of the news media." *DOJ Report on Review of News Media Policies*, July 12, 2013 (the "Report"), at 1. Under those new internal Guidelines, the DOJ makes clear that, in order to strike the appropriate balance between law enforcement needs and freedom of the press, subpoenas seeking evidence from members of the news media must be treated as "extraordinary measure[s]" that should only be used "as a last resort, after all reasonable alternative investigative steps have been taken, and when the information sought is essential to a successful investigation or prosecution." Report at 1. The newly-revised Guidelines also provide additional protections to reporters that did not exist under the old DOJ Guidelines. For example, reporters must be given advance notice and an opportunity to object before their credit card records can be subpoenaed for use in a criminal proceeding — a process that was not employed in Mr. Risen's case. The DOJ also urges Congress to pass a federal shield law that would ensure that reporters would be allowed to assert a qualified privilege in federal courts that would be subject to judicial review. Report at 1.

We urge you to apply those principles to this case. In particular, we urge that the "last resort" and "essentiality" requirements of the DOJ's new Guidelines cannot possibly be said to have been met in this case. We are, of course, well aware that the Department of Justice has previously urged on the Court of Appeals (as summarized by it) that "no circumstantial evidence, or combination thereof is as probative as [a reporter's] testimony or as certain to foreclose the possibility of reasonable doubt" because "[a reporter] is the only eyewitness to the crime." (Slip Op. at 50, citing Government's Br. at 14) That position was persuasive, as a matter of law, to two of the three members of the Court. But it rests with you and the DOJ to determine what approach to take as a matter of ongoing policy. You may follow the route set forth in your new Guidelines, a route which would not always lead to you to insist on the "most probative" testimony but only to require journalist's testimony when it was absolutely "essential" to do so. Such an approach would, we think, inevitably lead you abandon the effort to require Mr. Risen to testify. Or you may seek to proceed apace, in a manner utterly inconsistent with the Guidelines, to require Mr. Risen's testimony on the ground that, since he was the "only eyewitness" to the alleged crime of speaking with him, he must breech his promise of confidentiality.

One thing is clear. Reporters are invariably the "only eyewitness" to the "crime" of speaking with them. If the DOJ takes this approach, the new Guidelines will be a quickly forgotten promise. We respectfully request the DOJ to reconsider its decision to press on with its efforts to require Mr. Risen's testimony. In that respect, we request a meeting with you at your earliest convenience.

Very truly yours,



David N. Kelley

Eric H. Holder, Jr., Esq.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

cc: Robert Parker, Esq. (By Federal Express only)
Joel Kurtzberg, Esq.

By Email and Federal Express