

BETTS, PATTERSON & MINES P.S.
Christopher W. Tompkins (WSBA #11686)
CTompkins@bpmlaw.com
701 Pike Street, Suite 1400
Seattle, WA 98101-3927

BLANK ROME LLP
Henry F. Schuelke III (admitted *pro hac vice*)
HSchuelke@blankrome.com
600 New Hampshire Ave NW
Washington, DC 20037

James T. Smith (admitted *pro hac vice*)
Smith-jt@blankrome.com
Brian S. Paszamant (admitted *pro hac vice*)
Paszamant@blankrome.com
One Logan Square, 130 N. 18th Street
Philadelphia, PA 19103

Attorneys for Defendants Mitchell and Jessen

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

SULEIMAN ABDULLAH SALIM,
et al.,

Plaintiffs,

vs.

JAMES E. MITCHELL and JOHN
JESSEN,

Defendants.

NO. 2:15-cv-286-JLQ

DEFENDANTS' WITNESS LIST

**DEFENDANTS' WITNESS LIST
NO. 15-CV-286-JLQ**

1 Defendants Dr. James Elmer Mitchell and Dr. John “Bruce” Jessen
2 (collectively, “Defendants”), by and through their undersigned counsel, hereby
3 serve this witness list pursuant to the Court’s July 8, 2016, *Scheduling Order* (the
4 “Scheduling Order”) (ECF. No. 59), as further discussed in the Court’s October 20,
5 2016, *Order Setting Document Production Deadline* (the “Document Production
6 Order”) (ECF. No. 91).¹

7
8 Discovery is still ongoing. To date, Defendants have not obtained the
9 complete production of documents from the Government and/or a privilege log—
10 both of which are due December 20, 2016. (ECF Nos. 80, 91, 108). Defendants
11 have also not deposed the Government witness(es) identified below, or any
12 heretofore unknown Government witness(es) whose identities could be revealed by
13 the Government’s aforementioned production. Nor have Defendants deposed the
14 Plaintiffs. As a result, Defendants respectfully reserve the right to supplement or
15 otherwise amend this list, including the right to withdraw any witness, upon
16 appropriate application to the Court under the terms of the Scheduling Order
17 and/or the Document Production Order, if required.

18 By identifying the summary topics upon which Plaintiffs may testify,
19 Defendants do not concede the relevance and/or admissibility of such testimony or
20

21
22 ¹ In relevant part, the Document Production Order states that: “[i]f Defendants
23 determine some of the documents produced by the Government necessitate an
24 amendment to their lay or expert witness lists, they may file a motion to amend the
25 witness list(s) if a demonstration of good cause for the amendment is shown.”

DEFENDANTS’ WITNESS LIST
NO. 15-CV-286-JLQ

Page| 1
139114.00602/104221321v.1

Betts Patterson Mines
One Convention Place
701 Pike Street, Suite 1400
Seattle, Washington 98101-3927
(206) 292-9988

1 waive any objections thereto. On the contrary, Defendants hereby reserve their
 2 objections and the right to challenge the admissibility of such testimony.
 3 Defendants further reserve the right to call, live or by deposition, any witnesses
 4 identified in Plaintiffs' Witness List. (ECF No. 107). Defendants also reserve the
 5 right to call, live or by deposition, and again upon appropriate application to the
 6 Court, if required, witnesses not listed below for the purpose of authenticating
 7 exhibits, to the extent the parties are unable to reach agreement regarding such
 8 issues.

9
 10 Should any witness whose testimony Defendants anticipate presenting live
 11 be unavailable for trial for any reason, Defendants reserve the right to present such
 12 witness by deposition testimony.

13 I. FACT WITNESSES.

14 Defendants hereby identify and incorporate the descriptions regarding the
 15 individuals listed as Fact Witnesses on Plaintiffs' Witness List. (ECF No. 107). In
 16 addition, Defendants hereby identify the following Fact Witnesses, whose
 17 testimony may be elicited live and/or by deposition²:

| 18 PLAINTIFFS | | | |
|---------------|-------------------------|----------------------------------|---|
| 19 No. | <u>Name</u> | <u>Address</u> | <u>Expected Testimony</u> |
| 20 1. | Suleiman Abdullah Salim | Bet Ras Zanzibar, Tanzania | 21 Subject to his deposition, 22 which has not yet occurred, 23 Plaintiff Salim may testify 24 to his rendition, detention |

25 ² The subject matters identified herein are stated to the best of Defendants' current ability.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|----|-------------------------------|--|---|
| | | | <p>and the alleged treatment he experienced while in CIA custody. He may testify to the effects of what he endured while in CIA detention on his physical and mental health, as well as his pre-existing conditions and/or injuries. He may testify to his involvement with known terrorist groups prior to his detention by the CIA, and his designation by the CIA as an enemy combatant or similar designation. He may also testify about facts relevant to any affirmative defense Defendants raise at trial, such as the statute of limitations.</p> |
| 2. | <p>Mohamed Ahmed Ben Soud</p> | <p>Mahallat Shate'e Al-Nakhil Misrata, Libya</p> | <p>Subject to his deposition, which has not yet occurred, Plaintiff Ben Soud may testify to his rendition, detention and the alleged treatment he experienced while in CIA custody. He may testify to the effects of what he endured while in CIA detention on his physical and mental health, as well as his pre-existing conditions and/or injuries. He may testify to his involvement with known terrorist groups prior to his detention by the CIA, and his designation by the CIA</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|-----------|--|--|---|
| | | | <p>as an enemy combatant or similar designation. He may also testify about facts relevant to any affirmative defense Defendants raise at trial, such as the statute of limitations.</p> |
| <p>3.</p> | <p>ObaidUllah (as personal representative of Gul Rahman)</p> | <p>Deputy Ministry of Tvet Karte 4 Dehboori Kabul, Afghanistan</p> | <p>Subject to his deposition, which has not yet occurred, Plaintiff ObaidUllah may testify as to his uncle, Gul Rahman's, rendition, detention and the alleged treatment he experienced while in CIA custody. He may testify to the effects of what Gul Rahman endured while in CIA custody on his physical and mental health, as well as his pre-existing conditions and/or injuries. He may testify to Gul Rahman involvement with known terrorist groups prior to his detention by the CIA, and his designation by the CIA as an enemy combatant or similar designation. He may also testify about his status as personal representative to Gul Rahman. He may also testify about facts relevant to any affirmative defense Defendants raise at trial, such as the statute of limitations.</p> |

GOVERNMENT

| No. | <u>Name</u> | <u>Address</u> | <u>Expected Testimony</u> |
|------------|--------------------|--|--|
| 1. | Gina "Doe" | Contactable through Andrew Warden U.S. Department of Justice Civil Division Federal Programs Bench 20 Massachusetts Avenue, N.W. Washington, D.C. 20530 | Subject to her deposition, which has not yet occurred, Gina "Doe" may testify to her role as former Chief of Staff to Jose Rodriguez when he served as the Chief of the CIA's Clandestine Service and former Deputy to Jose Rodriguez when he served as the Director of the CIA's Counterterrorism Center ("CTC"). She may also testify to the scope and structure of the CIA's rendition, detention and interrogation program (or similar but separate program for medium-value or low-value detainees), Defendants' alleged role and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the training and instruction provided to interrogators, the CIA's control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|----|--------------------|--|--|
| | | | regarding detainee interrogations to the CIA, and any other matter that may be developed at deposition. |
| 2. | John/Jane "Doe" | Contactable through Andrew Warden U.S. Department of Justice Civil Division Federal Programs Bench 20 Massachusetts Avenue, N.W. Washington, D.C. 20530 | Subject to his/her deposition, which has not yet occurred, John/Jane "Doe" may testify to his/her role as former Chief of Special Missions for the CIA's CTC and immediate successor to James Cotsana in that position, who also served as the Chief of the CIA's CTC Renditions Group. He/She may also testify to the scope and structure of the CIA's rendition, detention and interrogation program (or similar but separate program for medium-value or low-value detainees), Defendants' alleged role and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the training and instruction provided to interrogators, the CIA's control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations regarding detainee interrogations to the CIA, and any other matter that |

| | | | |
|---|-------------------------------------|--|---|
| | | | may be developed at deposition. |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | 3. James Cotsana | Contactable through Andrew Warden U.S. Department of Justice Civil Division Federal Programs Bench 20 Massachusetts Avenue, N.W. Washington, D.C. 20530 | Subject to his deposition, which has not yet occurred, Cotsana may testify to his position as Chief of the CIA's CTC Renditions Group. He may also testify to the scope and structure of the CIA's rendition, detention and interrogation program (or similar but separate program for medium-value or low-value detainees), Defendants' alleged role and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the training and instruction provided to interrogators, the CIA's control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations regarding detainee interrogations to the CIA, and any other matter that may be developed at deposition. |
| 23 24 25 | 4. Jose A. Rodriguez, Jr. | Contactable through Andrew Warden U.S. Department of Justice Civil | Subject to his deposition, which has not yet occurred, Rodriguez may testify to his role as Chief of the CIA's Clandestine Service and the Director of the CIA's CTC. He may also |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|-----------|--------------------------------|---|---|
| | | <p>Division Federal Programs Bench 20 Massachusetts Avenue, N.W. Washington, D.C. 20530</p> <p>Robert Bennett, Esq. c/o Hogan Lovells LLP</p> | <p>testify to the scope and structure of the CIA’s rendition, detention and interrogation program (or similar but separate program for medium-value or low-value detainees), Defendants’ alleged role and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the training and instruction provided to interrogators, the CIA’s control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations regarding detainee interrogations to the CIA, and any other matter that may be developed at deposition.</p> |
| <p>5.</p> | <p>John A. Rizzo, Esq.</p> | <p>Contactable through Andrew Warden U.S. Department of Justice Civil Division Federal Programs Bench 20 Massachusetts</p> | <p>Subject to his deposition, which has not yet occurred, Rizzo may testify to his role as Acting General Counsel to the CIA and CIA Senior Deputy General Counsel. He may also testify to the scope and structure of the CIA’s rendition, detention and interrogation program (or similar but separate program for medium-value or low-</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|----|-----------------------|---|---|
| | | <p>Avenue, N.W. Washington, D.C. 20530</p> <p>Robert Bennett, Esq. c/o Hogan Lovells LLP</p> | <p>value detainees), Defendants' alleged role and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the CIA's control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations regarding detainee interrogations to the CIA, and any other matter that may be developed at deposition.</p> |
| 6. | John Fredman, Esq. | <p>Contactable through Andrew Warden U.S. Department of Justice Civil Division Federal Programs Bench 20 Massachusetts Avenue, N.W. Washington, D.C. 20530</p> <p>Steven J.</p> | <p>Subject to his deposition, which has not yet occurred, Fredman may testify to his role as Chief Counsel to CTC, Senior Attorney, CIA Office of General Counsel, Assistant Deputy Director of National Intelligence for Special Programs, and Special Assistant to the Director of CIA. He may also testify to the scope and structure of the CIA's rendition, detention and interrogation program (or similar but separate program for medium-value or low-value detainees), Defendants' alleged role</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|--|--|---|--|
| | | <p>McCool, Esq. c/o Mallon & McCool</p> | <p>and involvement therein, the alleged use of Enhanced Interrogation Techniques (or other interrogation techniques) on detainees, the CIA's control over the rendition and interrogation program, the review and approval of the rendition and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, communications with the White House and the Executive Branch regarding the rendition, detention, and interrogation program (or similar but separate program for medium-value or low-value detainees) and/or the use of Enhanced Interrogation Techniques on detainees, and the authority granted to Defendants to make recommendations regarding detainee interrogations to the CIA, and any other matter that may be developed at deposition.</p> |
|--|--|---|--|

| DEFENDANTS | | | |
|-------------------|--------------------|---|--|
| No. | <u>Name</u> | <u>Address</u> | <u>Expected Testimony</u> |
| 1. | John Bruce Jessen | Spokane, Washington c/o Blank Rome LLP | Defendant Jessen will testify to the design, development, and implementation, and safeguards included in the CIA's rendition, detention and interrogation program for Abu Zubaydah and other high-value detainees, Defendants' alleged role and involvement therein, the scope and structure of the CIA's program, Defendants' contractual obligations to the CIA to provide |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | | | |
|----|----------------------|---|---|
| | | | <p>recommendations with respect to the interrogation of detainees that were then carried out by CIA employees, the CIA’s control over the rendition and interrogation program, the review and approval of the rendition, detention and interrogation program and/or the use of Enhanced Interrogation Techniques on detainees by the Department of Justice and/or other Government entities, Defendants’ alleged involvement in the interrogations of Gul Rahman, the methodology applied in providing recommendations to the CIA with respect to detainee interrogations and the inapplicability of the “learned helplessness” theory, as well as testimony relevant to affirmative defenses Defendants intend to raise at trial. Defendant Jessen is a PhD. psychologist with significant practical experience, and the testimony of Defendant Jessen may include testimony based on his knowledge, skill, experience, training or education.</p> |
| 2. | James Elmer Mitchell | Land O Lakes, Florida c/o Blank Rome LLP | <p>Defendant Mitchell will testify to the design, development, implementation, and safeguards included in the CIA’s rendition, detention and interrogation program for Abu Zubaydah and other high-value detainees, Defendants’ alleged role and involvement therein, the scope and structure of the CIA’s program, Defendants’ contractual obligations to the CIA to provide recommendations with respect to the interrogation of detainees that were then carried out by CIA employees,</p> |

1 the CIA's control over the rendition
 2 and interrogation program, the review
 3 and approval of the rendition,
 4 detention and interrogation program
 5 and/or the use of Enhanced
 6 Interrogation Techniques on detainees
 7 by the Department of Justice and/or
 8 other Government entities,
 9 Defendants' alleged involvement in
 10 the interrogations of Gul Rahman, the
 11 methodology applied in providing
 12 recommendations to the CIA with
 13 respect to detainee interrogations and
 14 the inapplicability of the "learned
 15 helplessness" theory, as well as
 16 testimony relevant to affirmative
 17 defenses Defendants intend to raise at
 18 trial. Defendant Mitchell is a PhD.
 19 psychologist with significant practical
 20 experience, and the testimony of
 21 Defendant Mitchell may include
 22 testimony based on his knowledge,
 23 skill, experience, training or
 24 education.

16 II. EXPERT WITNESSES.

17 Defendants hereby identify and incorporate the descriptions regarding the
 18 individuals listed as Expert Witnesses on Plaintiffs' Witness List. (ECF No. 107).

19 In addition, Defendants hereby identify the following Expert Witnesses:

| No. | <u>Name</u> | <u>Address</u> | <u>Expected Testimony</u> |
|-----|---------------------------|---|---|
| 1. | Professor Julian G. Ku | Hofstra University, Maurice A. Deane School of Law c/o Blank Rome LLP | Professor Julian G. Ku may testify to the matters set forth in his expert report, submitted on December 12, 2016. |
| 2. | Roger Pitman, M.D. | Massachusetts General Hospital | Roger Pitman, M.D. may respond to the matters set |

25 DEFENDANTS' WITNESS LIST
 NO. 15-CV-286-JLQ

Page | 12

139114.00602/104221321v.1

Beets Patterson Mines
 One Convention Place
 701 Pike Street, Suite 1400
 Seattle, Washington 98101-3927
 (206) 292-9988

| | | | |
|----|----|--|---|
| 1 | | c/o Blank Rome LLP | forth in Plaintiffs' expert reports. He may also testify to the matters set forth in his own expert report once he has had an opportunity to personally examine the Plaintiffs Salim and Ben Soud, which has not yet occurred. |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | 3. | Joseph D. Zuckerman, M.D. NYU Hospital for Joint Diseases c/o Blank Rome LLP | Joseph D. Zuckerman, M.D. may respond to the matters set forth in Plaintiffs' expert reports. He may also testify to the matters set forth in his own expert report once he has had an opportunity to personally examine the Plaintiffs Salim and Ben Soud, which has not yet occurred. |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 13 | 4. | Joseph J. Carter, M.D., M.B.A. Bellevue Hospital Center c/o Blank Rome LLP | Joseph Carter, M.D. may respond to the matters set forth in Plaintiffs' expert reports. He may also testify to the matters set forth in his own expert report once he has had an opportunity to personally examine the Plaintiffs Salim and Ben Soud, which has not yet occurred. |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |

III. Reservations.

1. Defendants reserve the right to supplement this list of witnesses to identify additional fact and/or expert witnesses, to be named at a later date, as discovery is continuing in this matter.

1 2. Defendants reserve the right to call any fact or expert witness
2 identified by plaintiff, or revealed in pretrial discovery.

3 3. Defendants reserve the right to elicit, in pretrial discovery or through
4 direct or cross-examination at trial, expert testimony from any qualified witness
5 and/or from experts identified by other parties to this action.

6 4. Defendants reserve the right to call records custodians, or other
7 qualified witnesses, as necessary to lay a sufficient foundation for the
8 authentication and admission of documentary evidence at trial.

9 5. Defendants reserve the right to supplement this list to include
10 witnesses to rebut the testimony of any witness whom any of the parties
11 subsequently discloses.

12 6. Defendants reserve the right to call any fact witness listed above as an
13 expert witness, as appropriate, to the extent permitted by applicable Rules of
14 Evidence.

15 DATED this 12th day of December, 2016.

16 BETTS, PATTERSON & MINES, P.S.

17 By: s/ Christopher W. Tompkins
18 Christopher W. Tompkins, WSBA #11686
19 ctompkins@bpmlaw.com
20 701 Pike St, Suite 1400
Seattle, WA 98101

21 James T. Smith, admitted *pro hac vice*
22 smith-jt@blankrome.com
23 Brian S. Paszamant, admitted *pro hac vice*
24 paszamant@blankrome.com
25 Blank Rome LLP
130 N 18th Street
Philadelphia, PA 19103

1 Henry F. Schuelke III, admitted *pro hac vice*
2 hschuelke@blankrome.com
3 Blank Rome LLP
4 600 New Hampshire Ave NW
5 Washington, DC 20037

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25 Attorneys for Defendants Mitchell and Jessen

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

| | |
|---|---|
| <p>Emily Chiang echiang@aclu-wa.org ACLU of Washington Foundation 901 Fifth Ave, Suite 630 Seattle, WA 98164</p> | <p>Paul Hoffman hoffpaul@aol.com Schonbrun Seplow Harris & Hoffman, LLP 723 Ocean Front Walk, Suite 100 Venice, CA 90291</p> |
| <p>Andrew I. Warden Andrew.Warden@usdoj.gov Senior Trial Counsel Timothy A. Johnson Timothy.Johnson4@usdoj.gov Trial Attorney United States Department of Justice Civil Division, Federal Programs Branch 20 Massachusetts Ave NW Washington, DC 20530</p> | <p>Steven M. Watt, admitted <i>pro hac vice</i> swatt@aclu.org Dror Ladin, admitted <i>pro hac vice</i> dladin@aclu.org Hina Shamsi, admitted <i>pro hac vice</i> hshamsi@aclu.org ACLU Foundation 125 Broad Street, 18th Floor New York, NY 10007</p> |
| <p>Avram D. Frey, admitted <i>pro hac vice</i> afrey@gibbonslaw.com Daniel J. McGrady, admitted <i>pro hac vice</i> dmcgrady@gibbonslaw.com Kate E. Janukowicz, admitted <i>pro hac vice</i> kjanukowicz@gibbonslaw.com Lawrence S. Lustberg, admitted <i>pro hac vice</i> llustberg@gibbonslaw.com Gibbons PC One Gateway Center Newark, NJ 07102</p> | |

By s/ Shane Kangas
Shane Kangas
skangas@bpmlaw.com
Betts, Patterson & Mines, P.S.