

# **EXHIBIT 3**

If you are willing to reconsider your position on these more limited categories of documents (production of which likely does not impact the universe of documents you will need to review, but only the sub-universe which you are required to produce), please advise. And, if you have different suggestions as to procedure, we will be pleased to consider them. Finally, please advise if you are agreeable to an expedited determination without argument.

We intend to file as promptly as possible, so would appreciate your response as soon as possible.

**Christopher W. Tompkins**  
Shareholder

Betts, Patterson & Mines, P.S.

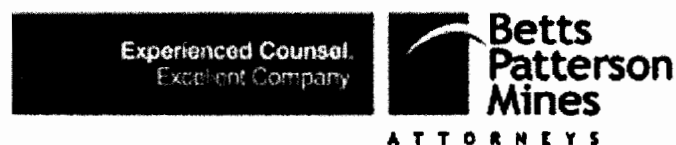
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**From:** Warden, Andrew (CIV) [<mailto:Andrew.Warden@usdoj.gov>]  
**Sent:** Tuesday, October 11, 2016 5:05 PM  
**To:** Chris Tompkins <[ctompkins@bpmlaw.com](mailto:ctompkins@bpmlaw.com)>  
**Cc:** [paszaman@blankrome.com](mailto:paszaman@blankrome.com); Shane Kangas <[skangas@bpmlaw.com](mailto:skangas@bpmlaw.com)>  
**Subject:** RE: Document Production following 10/4 Order

Chris:

I've highlighted in yellow below the Government's position on the three topics raised in your email from Sunday. Our view is that the Court has resolved each of these issues. The Government also stands by its position that any contracts after 2004 are outside the period of Plaintiffs' detention and, therefore, irrelevant to the issues in the case.

Going forward, I'm happy to discuss the most efficient way to raise these issues with the Court. Given Judge Quackenbush's offer during the telephone conference that he would make himself available in the event of discovery disputes, I would suggest we email the courtroom deputy, briefly explain the issues, and ask how the Court would like us to proceed (e.g., written motions, telephone conference, etc.).

Best,  
Andrew

Andrew I. Warden  
U.S. Department of Justice  
Civil Division, Federal Programs Branch

Tel: (202) 616-5084

**From:** Warden, Andrew (CIV)  
**Sent:** Monday, October 10, 2016 11:42 AM  
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**Cc:** Paszamant, Brian <[Paszamant@BlankRome.com](mailto:Paszamant@BlankRome.com)>; Shane Kangas <[skangas@bpmlaw.com](mailto:skangas@bpmlaw.com)>  
**Subject:** RE: Document Production following 10/4 Order

Chris:

Thanks very much for clarifying your position. I'll confer with CIA and get back to you.

Best,  
Andrew

Andrew I. Warden  
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**From:** Chris Tompkins [<mailto:ctompkins@bpmlaw.com>]  
**Sent:** Sunday, October 09, 2016 4:24 PM  
**To:** Warden, Andrew (CIV) <[AWarden@CIV.USDOJ.GOV](mailto:AWarden@CIV.USDOJ.GOV)>  
**Cc:** Paszamant, Brian <[Paszamant@BlankRome.com](mailto:Paszamant@BlankRome.com)>; Chris Tompkins <[ctompkins@bpmlaw.com](mailto:ctompkins@bpmlaw.com)>; Shane Kangas <[skangas@bpmlaw.com](mailto:skangas@bpmlaw.com)>  
**Subject:** Re: Document Production following 10/4 Order

Andrew,

Thanks for your response, below. We wanted to give you our follow-on thinking after further consultation among our team. I'll use the same numbering as below so that you can follow easily:

1. We continue to believe that documents which discuss or shed light on our clients' involvement in the design or implementation/use of the EIT program, **and** which are unconnected to any specific detainee (i.e., a report or investigation recapping the development or implementation of the program, etc.), must be produced up to the present. We discussed one example, which you have already produced, which contains such a discussion – we believe that similar documents are within the Court's order. Note that this applies only to documents not connected with any individual detainee, and so does not require you to search for, or produce, documents related to detainees other than Plaintiffs.
  - The Government disagrees that the Court ordered production of design documents up to the present time. We agree that the Government must search for documents that reference or describe the role Defendants played in the design and development of the former detention and interrogation program, not limited to references to the Plaintiffs or Abu Zubaydah, but the Court

was clear that the timeframe for those documents would be 9/11/01 to 8/1/04. *See* Transcript at 48:19-20 (“I am ruling that the design search is limited to, from 9-11 to 8-1-04.”)

2. We also cannot accept your limitation to producing only documents regarding plaintiffs' rendition and detention or interrogation which also reference Mitchell or Jessen. Plaintiffs' “detention, rendition, ..., and alleged resulting injuries” were included as topics discovery should focus on in our discovery stipulation and the resulting order, which Judge Quackenbush confirmed remains in full effect. Such information is critically important to Plaintiffs' damages claims, given their focus on the entirety of their detention. For example, Salim contends that he was gang-raped during the rendition process – something that our clients would have no involvement in, but which is included in his medico-legal report discussing his alleged psychological damages.

Essentially, we understand the Court to have required production of *all* documents regarding the detention, rendition and interrogation of the individual plaintiffs. We believe that there is, or should be, a “folder” (physical or electronic) containing such information as to each plaintiff, and that those “folders” must be produced. However, we do not seek the intelligence results of interrogations or debriefings – that substantive information is outside of our requests.

- The Government disagrees that the Court required production of documents that reference one of Plaintiffs, but do not reference one of the Defendants. *See* Transcript at 37:13-15 (ordering production of “any and all documents pertaining to the two defendants and either of the three plaintiffs”); 43:19-44:4 (confirming the discovery order is limited to “defendants' involvement with the plaintiffs' detention from 9-11 to the present”); 46:11-19 (“I only will require the government to conduct the search as it relates to the development of the enhanced interrogation program and anything that relates to the defendants' involvement with the three plaintiffs.”). The Government intends to search for documents that reference one or both of the Defendants *and* at least one of the Plaintiffs. Additionally, you are incorrect that there is a single “folder” located at the CIA containing all relevant documents about each (or any) of the Plaintiffs. As we've explained, various documents about the CIA program have been collected in the RDINet database and we intend to search that database for documents responsive to your request.

3. As to Zubaydah, we believe Judge Quackenbush required the CIA to produce all documents which describe or discuss the decision to use EITs or the development of the EIT program, even if those documents do not reference our clients. For instance, a document from prior to Mitchell or Jessen's involvement which contains a determination to use enhanced techniques on Zubaydah would be important to our



defense. However, as we discussed, if we can reach agreement on these other issues, we are prepared to limit the production of documents after the use of EITs ended.

- The Government disagrees that the Court required production of Documents about Abu Zubaydah that do not reference Defendants. The Court was clear that the documents must reference one or both of the Defendants *and* Abu Zubaydah. See Transcript at 34:8-10 (“I’m not ordering the complete furnishing of any and all Zubaydah documents, it’s only anything that relates to Zubaydah and these two defendants.”); 34:23-25 (“My ruling is that any reports as they relate to these two defendants dealings with Zubaydah, between March of 2002 and August of 2004, are included in the subpoena.”); 43:19-44:4 (confirming the “focus of the subpoena will be on defendants’ relationship with Mr. Zubaydah”).
- The Court also ordered that the date range for documents in this category is September 11, 2001 to August 1, 2004. See Order at 5. (“As to documents referencing Abu Zubaydah, the relevant time period is September 11, 2001 to August 1, 2004.”). However, as you and I discussed on Friday, the application of enhanced interrogation techniques on Mr. Zubaydah ended on August 30, 2002. See SSCI Executive Summary Report at 42 n.190. Therefore, in our view, interrogation reports of Mr. Zubaydah after this date are unlikely to say anything substantive about Defendants’ role in the application of the enhanced interrogation techniques. Searching, reviewing, and processing documents after August 30, 2002 is likely to be burdensome. Indeed, the 2004 CIA Inspector General Report notes that Mr. Zubaydah was the source of over 200 intelligence reports after the enhanced interrogation techniques ended. See U.S. Bates # 1429. Further, even if we were to produce documents after August 30, 2000, the documents are unlikely to be of assistance to you in this litigation, as the documents will likely be heavily redacted as containing classified intelligence information about questions posed to Mr. Zubaydah and the answers he provided. Accordingly, we believe the CIA’s resources could be better spent focusing on other more material categories of records responsive to your requests.

Please let us know if our positions are unclear, or if further discussion would be useful. In addition, please let us know if we are not in agreement, so that we can discuss how best to present these issues to the Court. As discussed, we will need to do so promptly.

**Christopher W. Tompkins**

**Shareholder**

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