

1 BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

3 MICHAEL C. ORMSBY  
United States Attorney

5 TERRY M. HENRY  
Assistant Branch Director

7 ANDREW I. WARDEN (IN Bar No. 23840-49)  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, D.C. 20530  
Tel: (202) 616-5084  
Fax: (202) 616-8470  
andrew.warden@usdoj.gov

13 Attorneys for the United States of America

15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF WASHINGTON

17 JAMES E. MITCHELL and  
18 JOHN "BRUCE" JESSEN

19 Petitioners,

20 v.

21 UNITED STATES OF AMERICA,  
22

23 Respondent.

No. 16-MC-0036-JLQ

UNITED STATES' STATUS  
REPORT ADDRESSING  
DOCUMENT PRODUCTION BY  
THE CENTRAL INTELLIGENCE  
AGENCY

Related Case: No. CV-15-0286-JLQ

1 In accordance with the Court's October 4, 2016 Order (ECF No. 31), the  
2 United States of America ("Government") respectfully submits this status report  
3 addressing the production of documents in response to Defendants' subpoena to  
4 the Central Intelligence Agency ("CIA").

5 As reported in the Government's prior status report, filed on October 11,  
6 2016 (ECF No. 85 in No. CV-15-0286-JLQ) ("October Status Report"), the  
7 Government has prioritized review and production of CIA documents potentially  
8 bearing on the enemy combatant jurisdictional defense, 28 U.S.C. § 2241(e)(2),  
9 consistent with the Court's direction during the September 29, 2016 telephonic  
10 hearing. *See* October Status Report at 10. With respect to Plaintiff Gul Rahman,  
11 the Government has provided Defendants with CIA documents that describe Gul  
12 Rahman as an enemy combatant and explain the factual basis for his capture and  
13 detention. *See id.* On October 31, 2016, the Government produced ten CIA  
14 documents relevant to the enemy combatant issue with respect to Plaintiffs Salim  
15 and Ben Soud. These documents contain information regarding the authorization  
16 to detain the Plaintiffs as well as the factual basis for their detention. The  
17 Government has completed its production of information on this topic.

18 The Government has also made significant progress in its efforts to review  
19 the three categories of CIA documents required to be produced pursuant to the  
20 Court's October 4 Order. *See id.* at 10-11. As explained in the October Status  
21 Report, the CIA conducted a search of the RDINet database for documents  
22 referencing Defendants Mitchell and Jessen, resulting in the collection of  
23 approximately 36,000 documents. *See id.* at 11. The October Status Report also  
24 explained that in order to expedite review of the documents by a larger group of  
25 security-cleared personnel, the documents needed to be transferred, one document  
26 at a time, from the decentralized and compartmented RDINet computer system to a

1 separate classified CIA computer system that is accessible by more security-  
2 cleared personnel and that is equipped to facilitate review of the documents for  
3 litigation purposes. *See id.* at 12. The CIA has advised that during the transfer  
4 process it was able to eliminate duplicate documents containing identical electronic  
5 file names, such that only one copy of a document (as opposed to multiple copies  
6 of the same document) was transferred to the separate classified computer network  
7 for review. This de-duplication process resulted in the elimination of  
8 approximately 12,000 duplicate documents. In the end, approximately 24,000  
9 documents were transferred from RDINet to the separate classified CIA computer  
10 system for review.

11 With respect to the search terms utilized to search RDINet, the Government  
12 brings to the Court's attention an inadvertent error contained in the October Status  
13 Report. Based on information provided by the CIA, the October Status Report  
14 listed search terms that were used by CIA personnel in the query of RDINet for  
15 documents containing references to Defendants. *See* October Status Report at 11.  
16 In preparation for this status report, the CIA reported to the Department of Justice  
17 that several of the search terms listed in the October Status Report were incorrect.  
18 Specifically, the CIA reported that the personnel charged with searching RDINet  
19 searched for documents containing the following terms: "Jessen"; "Mitchell"; "IC  
20 psychologist"; and the classified CIA codenames for Defendants Mitchell and  
21 Jessen. The October Status Report incorrectly reported that the terms "Jim";  
22 "Bruce"; and "SERE psychologist" had been searched. This inadvertent error was  
23 the result of miscommunication. The Government apologizes to the Court and  
24 parties for this inadvertent error and will take steps designed to avoid such errors in  
25 the future.

1 In all events the Government has worked in good faith to conduct  
2 appropriate searches utilizing search terms that are reasonably calculated to lead to  
3 the discovery of documents responsive to the Court's October 4 Order. The  
4 reasonableness of the Government's efforts is supported by the fact that the  
5 searches in this case resulted in the collection of a significant volume of potentially  
6 responsive documents (approximately 24,000) consisting of a wide variety of  
7 materials, including emails, CIA reports, and intelligence cables, referencing  
8 Defendants, either by name, codename, or description.

9 The Government has assembled a team of attorneys with the appropriate Top  
10 Secret security clearances and access to the CIA's classified computer system to  
11 review these 24,000 documents under Department of Justice supervision. To  
12 facilitate review of the documents as quickly as possible, this team was able to  
13 secure appropriate authorizations to utilize litigation document management and  
14 search software on the CIA's computer network. Using this software, the team has  
15 been working diligently to review this large collection of documents and, as of the  
16 date of this filing, the Government estimates that approximately two-thirds of the  
17 24,000 documents have been reviewed for responsiveness by this team.<sup>1</sup>

18 As documents are identified as responsive, the Department of Justice  
19 attorneys have been submitting documents to the CIA on a rolling basis for  
20 classification and privilege review and, if appropriate, redaction. To date, several  
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22 <sup>1</sup> The review of even a single document can take a significant period of time due to  
23 its length and complexity. For example, it is not uncommon to encounter what  
24 appears to be a single document at first glance, but is actually a collection of  
25 multiple documents totaling hundreds of pages saved and collected into a single  
26 electronic (.pdf) file.

1 hundred pages of documents have been submitted to the CIA for review. The  
2 overwhelming majority of these documents relate to Defendants' role in the  
3 interrogations of Abu Zubaydah and the design of the enhanced interrogation  
4 techniques utilized in the former detention and interrogation program. The  
5 Government has not identified any documents indicating that Defendants were  
6 involved in the capture, detention, or interrogation of Plaintiffs Salim or Ben Soud.  
7 Additionally, the Government has identified only a small number of non-  
8 duplicative documents regarding Defendants' involvement in the interrogation of  
9 Plaintiff Gul Rahman.

10 In addition to reviewing CIA documents responsive to the Court's October 4  
11 Order, the CIA has also been actively working to review documents in Defendants'  
12 possession that Defendants have submitted for classification review. The  
13 Discovery Stipulation filed jointly by the parties on May 23, 2016, includes a  
14 process for Defendants to submit proposed filings and discovery responses to the  
15 Government for review and redaction, where appropriate, prior to disclosure to  
16 ensure that they do not contain classified, protected, or privileged information. *See*  
17 ECF No. 47 ¶¶ 16-17 (Case No. 2:15-CV-286-JLQ). Plaintiffs have served  
18 Defendants with document requests pursuant to Federal Rule of Civil Procedure  
19 34, and the Government understands Defendants have identified documents in their  
20 possession responsive to Plaintiffs discovery requests, but which Defendants have  
21 reason to believe may contain classified information. In accordance with the  
22 discovery stipulation, over the course of the past several weeks, Defendants have  
23 submitted these documents to the Government for classification review on a rolling  
24 basis. Specifically, Defendant Mitchell has submitted multiple batches of  
25 documents, totaling approximately 750 pages, related to his communications and  
26 dealings with the CIA's pre-publication review office concerning his book

1 manuscript and other writings. *See, e.g., Wilson v. C.I.A.*, 586 F.3d 171, 178–79  
2 (2d Cir. 2009) (explaining role of the CIA’s pre-publication review board).  
3 Additionally, CIA officers traveled to Defendants’ homes in Washington and  
4 Florida during the month of October to retrieve and log additional documents that  
5 Defendants believe are responsive to Plaintiffs’ requests and that Defendants  
6 reasonably believe may contain classified information. These trips resulted in the  
7 collection of approximately 1,000 pages of hard copy documents and several items  
8 of electronic storage media (*e.g.*, CD, thumb drive).

9       The CIA has completed its classification review of approximately 50 pages  
10 of documents related to Defendant Mitchell’s communications with the CIA’s pre-  
11 publication review board about writings other than his book manuscript. These  
12 documents were provided to Defendants on October 21, 2016. The CIA’s next  
13 priority is to complete review of the approximately 700 pages of documents related  
14 Defendant Mitchell’s book manuscript. The CIA currently estimates that it will  
15 complete its review of these documents on November 4, 2016.

1 Dated: November 1, 2016

Respectfully submitted,  
2 BENJAMIN C. MIZER  
3 Principal Deputy Assistant Attorney General

4 MICHAEL C. ORMSBY  
5 United States Attorney

6 TERRY M. HENRY  
7 Assistant Branch Director

8 *s/ Andrew I. Warden*  
9 ANDREW I. WARDEN  
10 Senior Trial Counsel  
11 United States Department of Justice  
12 Civil Division, Federal Programs Branch  
13 20 Massachusetts Avenue NW  
14 Washington, D.C. 20530  
15 Tel: (202) 616-5084  
16 Fax: (202) 616-8470  
17 andrew.warden@usdoj.gov

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Attorneys for the United States of America

**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Dror Ladin:  
Dladin@aclu.Org

Brian Paszamant:  
Paszamant@blankrome.Com

Hina Shamsi:  
Hshamsi@aclu.Org

Henry Schuelke, III:  
Hschuelke@blankrome.Com

Paul L Hoffman:  
Hoffpaul@aol.Com

James Smith:  
Smith-Jt@blankrome.Com

Steven Watt:  
Swatt@aclu.Org

Christopher Tompkins:  
Ctompkins@bpmlaw.Com

*Attorneys for Plaintiffs*

*Attorneys for Defendants*

/s/ Andrew I. Warden

ANDREW I. WARDEN  
Indiana Bar No. 23840-49  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW  
Washington, D.C. 20530  
Tel: (202) 616-5084  
Fax: (202) 616-8470

Attorney for the United States of America