

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,
MOHAMED AHMED BEN SOUD,
OBAID ULLAH (as personal
representative of GUL RAHMAN),

Plaintiffs,

vs.

JAMES ELMER MITCHELL and
JOHN "BRUCE" JESSEN,

Defendants.

NO. 2:15-CV-286-JLQ

**DEFENDANTS' ANSWER
AND AFFIRMATIVE
DEFENSES**

ANSWER AND AFFIRMATIVE
DEFENSES

NO. 2:15-CV-286-JLQ

1 Defendants James Elmer Mitchell (“Mitchell”) and John “Bruce” Jessen
2 (“Jessen”, and collectively with Mitchell, “Defendants”) for Answer and
3 Affirmative Defenses to Plaintiffs’ Complaint (the “Complaint”), deny all
4 allegations not expressly admitted herein and aver as follows:
5

6 **DEFENDANTS’ PREAMBLE**

7 The United States has taken the position that Defendants possess
8 information that the United States considers “classified” and, in addition, are
9 bound by non-disclosure agreements which restrict Defendants’ ability to disclose
10 classified or other information. The United States has provided Defendants with
11 general guidance identifying those subject matters that the United States maintains
12 remain classified. But, despite this general guidance, a level of uncertainty
13 remains, which adversely effects Defendants’ ability to respond fully to the
14 Complaint’s allegations. This hindrance is expressly incorporated into each of
15 Defendants’ responses below. Additionally, Defendants deny that they committed
16 torture, cruel, inhuman and degrading treatment, non-consensual human
17 experimentation and/or war crimes, and will not specifically deny such allegations
18 each time that they are alleged herein. Defendants also deny that they devised,
19 administered and/or implemented a torture program, and will not specifically deny
20 such allegations each time they are alleged herein.
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I. INTRODUCTION

1
2 1. Admitted in part; denied in part. Defendants admit that they are
3 psychologists. The remaining allegations contained within this paragraph of
4 Plaintiff’s Complaint are denied.
5

6 2. Admitted in part; denied in part. Defendants admit only that the
7 United States Central Intelligence Agency (“CIA”) sought and secured appropriate
8 authorizations for what became known as the CIA’s Enhanced Interrogation
9 Technique (“EIT”) Program. The remaining allegations contained within this
10 paragraph of Plaintiffs’ Complaint are denied.
11

12
13 3. Admitted in part; denied in part. Defendants admit only, upon
14 information and belief, that Gul Rahman (“Rahman”) is deceased. Defendants are
15 unfamiliar with Plaintiffs Suleiman Abdullah Salim (“Salim”) and Mohamed
16 Ahmed Ben Soud (“Soud”), were not involved in any activities involving these
17 Plaintiffs and/or the alleged results of such activities, and therefore lack knowledge
18 concerning these Plaintiffs and deny the allegations contained within this
19 paragraph of Plaintiffs’ Complaint concerning these Plaintiffs. Defendants deny
20 the remaining allegations contained within this paragraph concerning Rahman.
21

22
23 4. Denied. The allegations contained within this paragraph of Plaintiffs’
24 Complaint constitute legal conclusions to which no response is required, and are
25

1 therefore denied. Defendants further deny that they committed torture, cruel,
2 inhuman and degrading treatment, non-consensual human experimentation and/or
3 war crimes.

4 **II. JURISDICTION AND VENUE**

5
6 5. Denied. The allegations contained within this paragraph of Plaintiffs'
7 Complaint constitute legal conclusions to which no response is required, and are
8 therefore denied.

9
10 6. Admitted in part; denied in part. Defendants admit only that Jessen
11 lives in Spokane, Washington. The remaining allegations contained within this
12 paragraph of Plaintiffs' Complaint constitute legal conclusions to which no
13 response is required, and are therefore denied.

14
15 7. Admitted in part; denied in part. Defendants admit only that at one
16 point Mitchell had business activities in Spokane, Washington. The remaining
17 allegations contained within this paragraph of Plaintiffs' Complaint constitute legal
18 conclusions to which no response is required, and are therefore denied.

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20
21 8. Denied. The allegations contained within this paragraph of Plaintiffs'
22 Complaint constitute legal conclusions to which no response is required, and are
23 therefore denied.

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III. PARTIES

1
2 9. Denied. Defendants can neither admit nor deny the allegations
3 contained within this paragraph of Plaintiffs' Complaint, and therefore deny such
4 allegations.
5

6 10. Denied. Defendants can neither admit nor deny the allegations
7 contained within this paragraph of Plaintiffs' Complaint, and therefore deny such
8 allegations.
9

10 11. Admitted in part. Defendants admit only, upon information and
11 belief, that Rahman is deceased, and that Plaintiff Obaid Ullah ("Ullah") purports
12 to be Rahman's personal representative. Defendants believe that any response to
13 the allegations contained within this paragraph of Plaintiffs' Complaint concerning
14 Rahman's capture, rendition and/or the location of the facility(ies) where Rahman
15 was detained falls within information asserted by the United States to be classified
16 and/or covered by Defendants' non-disclosure agreements with the United States,
17 and therefore neither admit nor deny such allegations. After reasonable
18 investigation, Defendants can neither admit nor deny the remaining allegations
19 contained within this paragraph of Plaintiffs' Complaint, and therefore neither
20 admit nor deny such allegations.
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1 12. Admitted in part. Defendants believe that any response to the
2 allegations contained within this paragraph of Plaintiffs' Complaint concerning the
3 entity identified within this paragraph falls within information asserted by the
4 United States to be classified and/or covered by Defendants' non-disclosure
5 agreements with the United States, and therefore neither admit nor deny such
6 allegations. The remaining allegations contained within this paragraph of
7 Plaintiffs' Complaint are admitted.
8
9

10 13. Admitted in part. Defendants believe that any response to the
11 allegations contained within this paragraph of Plaintiffs' Complaint concerning the
12 entity identified within this paragraph falls within information asserted by the
13 United States to be classified and/or covered by Defendants' non-disclosure
14 agreements with the United States, and therefore neither admit nor deny such
15 allegations. The remaining allegations contained within this paragraph of
16 Plaintiffs' Complaint are admitted.
17
18

19 **IV. LEGAL FRAMEWORK**

20
21 14. Denied. The allegations contained within this paragraph of Plaintiffs'
22 Complaint constitute legal conclusions to which no response is required, and are
23 therefore denied. To the extent that a response is required, the Alien Tort Statute,
24 28 U.S.C. § 1350 (the "ATS") speaks for itself, and the allegations contained
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1 within this paragraph of Plaintiffs' Complaint, which purport to summarize and/or
2 characterize the ATS and/or decisional law concerning the ATS are therefore
3 denied.

4
5 15. Denied. The allegations contained within this paragraph of Plaintiffs'
6 Complaint constitute legal conclusions to which no response is required, and are
7 therefore denied. To the extent that a response is required, Defendants deny that
8 any action taken by either or both of Defendants constitutes torture, cruel, inhuman
9 or degrading treatment, non-consensual human experimentation, war crimes and/or
10 is actionable under the ATS.

11
12
13 16. Denied.

14 17. Denied.

15
16 18. Admitted in part; denied in part. Defendants admit only that they are
17 United States citizens and that they live within the United States. The remaining
18 allegations contained within this paragraph of Plaintiffs' Complaint are denied.

19
20 19. Denied. The allegations contained within this paragraph of Plaintiffs'
21 Complaint constitute legal conclusions to which no response is required, and are
22 therefore denied.

V. FACTUAL ALLEGATIONS

GENERAL FACTS

20. Admitted in part; denied in part. Defendants admit that the following documents exist: (1) the CIA’s June 2013 Response to the Senate Select Committee on Intelligence’s Study on the Former Detention and Interrogation Program (the “CIA June 2013 Response”); (2) the CIA Office of Inspector General Special Review of Counterterrorism Detention and Interrogation Activities (Sept. 2001-Oct. 2003) (the “CIA OIG Report”); (3) the Senate Committee on Armed Services Inquiry into the Treatment of Detainees in U.S. Custody (the “SASC Report”); and (4) the report of the Department of Justice’s Office of Professional Responsibility Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists. The remaining allegations contained within this paragraph of Plaintiffs’ Complaint are denied.

21. Admitted in part; denied in part. Defendants admit that the Executive Summary of the Senate Select Committee on Intelligence Study of the CIA’s Detention and Interrogation Program (the “SSCI Report”) exists and was publicly released on or about December 9, 2014, and that the Report refers to Plaintiffs Salim and Soud, and Rahman. The remaining allegations contained within this

1 paragraph of Plaintiffs' Complaint constitute legal conclusions to which no
2 response is required, and are therefore denied. Moreover, the SSCI Report is a
3 written document, and the allegations contained within this paragraph of Plaintiffs'
4 Complaint, which purport to summarize and/or characterize the SSCI Report, are
5 therefore denied.
6

7 **The Contention that Defendants Devised a Torture Program for the**
8 **CIA.**
9

10 22. Admitted in part; denied in part. Defendants admit only that there
11 exists a document referred to as the Manchester Manual, and that Defendants have
12 seen the Manchester Manual. Defendants believe that any response to the
13 allegations contained within this paragraph of Plaintiffs' Complaint concerning
14 how the Manchester Manual was found and/or by whom, or Defendants' alleged
15 review of the Manchester Manual, falls within information asserted by the United
16 States to be classified and/or covered by Defendants' non-disclosure agreements
17 with the United States, and therefore neither admit nor deny such allegations. The
18 remaining allegations contained within this paragraph of Plaintiffs' Complaint
19 constitute legal conclusions to which no response is required, and are therefore
20 denied. By way of further response, Defendants have no knowledge concerning
21 what the CIA believed the Manchester Manual to represent.
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Betts
Patterson
Mines
701 Pike Street, Suite 1400
Seattle, Washington 98101-3927
(206) 292-9988

1 23. Admitted in part; denied in part. Defendants admit that the CIA
2 requested that Mitchell review the Manchester Manual and that Jessen assisted
3 with that review. The remaining allegations contained within this paragraph of
4 Plaintiffs' Complaint are denied. By way of further response, Defendants have no
5 knowledge concerning what the CIA believed or did.
6

7 24. Admitted in part. Defendants admit that they produced a document
8 for the CIA entitled "Recognizing and Developing Countermeasures to Al-Qa'ida
9 Resistance to Interrogation Techniques: A Resistance Training Perspective."
10 Defendants believe that any response to the remaining allegations contained within
11 this paragraph of Plaintiffs' Complaint falls within information asserted by the
12 United States to be classified and/or covered by Defendants' non-disclosure
13 agreements with the United States, and therefore neither admit nor deny such
14 allegations.
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18 25. Defendants interpret the allegations contained within this paragraph of
19 Plaintiffs' Complaint to refer to the document referenced in paragraph 24 of
20 Plaintiffs' Complaint. As such, Defendants believe that any response to the
21 allegations contained within this paragraph of Plaintiffs' Complaint falls within
22 information asserted by the United States to be classified and/or covered by
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1 Defendants' non-disclosure agreements with the United States, and therefore
2 neither admit nor deny such allegations.

3 26. Defendants interpret the allegations contained within this paragraph of
4 Plaintiffs' Complaint to refer to the document referenced in paragraph 24 of
5 Plaintiffs' Complaint. As such, Defendants believe that any response to the
6 allegations contained within this paragraph of Plaintiffs' Complaint falls within
7 information asserted by the United States to be classified and/or covered by
8 Defendants' non-disclosure agreements with the United States, and therefore
9 neither admit nor deny such allegations.
10

11 27. Admitted in part; denied in part. Defendants admit that Jessen has
12 been an instructor in the Survival, Evasion, Resistance and Escape ("SERE")
13 programs and that the SERE programs help train military personnel to resist
14 interrogation. They also admit that Mitchell has provided specialized SERE
15 instruction. The remaining allegations contained within this paragraph of
16 Plaintiffs' Complaint are denied.
17

18 28. Admitted in part; denied in part. Defendants admit, upon information
19 and belief, that a declassified version of the SERE training manual contains
20 phraseology similar, if not identical, to that contained in this paragraph of
21

1 Plaintiffs' Complaint. The remaining allegations contained within this paragraph
2 of Plaintiffs' Complaint are denied.

3 29. Denied.

4
5 30. Defendants believe that any response to the allegations contained
6 within this paragraph of Plaintiffs' Complaint falls within information asserted by
7 the United States to be classified and/or covered by Defendants' non-disclosure
8 agreements with the United States, and therefore neither admit nor deny such
9 allegations.
10

11 **The Contention that Defendants test, apply, and refine torture.**

12
13 31. Denied. Defendants believe that any response to the allegations
14 contained within this paragraph of Plaintiffs' Complaint concerning how Abu
15 Zubaydah ("Zubaydah") was captured or rendered, or the involvement, if any, of
16 any foreign government operatives falls within information asserted by the United
17 States to be classified and/or covered by Defendants' non-disclosure agreements
18 with the United States, and therefore neither admit nor deny such allegations. By
19 way of further response, Defendants lack knowledge of the remaining allegations
20 contained within this paragraph of Plaintiffs' Complaint, and therefore deny them.
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23 32. Admitted in part; denied in part. Defendants admit that on or about
24 April 1, 2002, the CIA contracted with Mitchell to provide real-time
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1 recommendations to overcome Zubaydah's resistance to interrogation. The
2 remaining allegations contained within this paragraph of Plaintiffs' Complaint are
3 denied.

4
5 33. Admitted in part; denied in part. Defendants admit, upon information
6 and belief, that FBI agents interrogated Zubaydah while he was hospitalized, that
7 Zubaydah confirmed his identity to the FBI agents and that Zubaydah advised the
8 FBI agents that he wanted to cooperate. Defendants lack knowledge as to the
9 medical care, if any, FBI agents provided Zubaydah and/or those FBI agent's
10 proximity to Zubaydah while he was hospitalized, and therefore deny these
11 allegations contained within this paragraph of Plaintiffs' Complaint. The
12 remaining allegations contained within this paragraph of Plaintiffs' Complaint are
13 denied.
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16
17 34. Admitted in part; denied in part. Defendants admit that Mitchell was
18 advised that Zubaydah was withholding information, and that Mitchell
19 recommended that Zubaydah not be provided with any amenities, his sleep be
20 disrupted and that noise be fed into Zubaydah's cell. They also admit that in early
21 April 2002, CIA Headquarters sent Mitchell to Green to consult with regard to the
22 psychological aspects of Zubaydah's interrogation. The remaining allegations
23 contained within this paragraph of Plaintiffs' Complaint are denied.
24
25

1 35. Admitted in part; denied in part. Defendants admit only that the
2 White House transferred full responsibility of Zubaydah's interrogation to the CIA.
3 Defendants lack knowledge concerning the message attributed to an FBI special
4 agent within this paragraph of Plaintiffs' Complaint, and therefore deny such
5 allegation. The remaining allegations contained within this paragraph of Plaintiffs'
6 Complaint are denied.
7

8 36. Denied.
9

10 *Phase I: Claimed "Setting the conditions" for "learned helplessness"*
11

12 37. Denied.
13

14 38. Admitted in part; denied in part. Defendants admit that Zubaydah was
15 stripped naked, confined and that his cell was lit by halogen lamps 24 hours/day
16 for a period of time. They admit that Zubaydah's cell was subjected to rock music
17 or other noise that was also present outside his cell. They also admit that
18 Zubaydah was repeatedly interrogated for a period of time. Defendants do not
19 believe that they have any knowledge of the source document purportedly quoted
20 within this paragraph of Plaintiffs' Complaint, and therefore deny such allegations.
21 The remaining allegations contained within this paragraph of Plaintiffs' Complaint
22 are denied.
23
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1 39. Denied. Defendants lack knowledge as to why the CIA did what it
2 did, and therefore deny such allegations contained within this paragraph of
3 Plaintiffs' Complaint. The remaining allegations contained within this paragraph
4 of Plaintiffs' Complaint are denied.
5

6 40. Denied.

7 *Phase II: Claimed "Aggressive Phase" of torture and cruel, inhuman, and*
8 *degrading treatment.*
9

10 41. Admitted in part; denied in part. Defendants admit that in July 2002
11 Mitchell and the CIA assessed Zubaydah as uncooperative. The remaining
12 allegations contained within this paragraph of Plaintiffs' Complaint are denied.
13

14 42. Admitted in part; denied in part. Defendants admit that in July 2002
15 the CIA contracted with Jessen based upon Mitchell's recommendation. The
16 remaining allegations contained within this paragraph of Plaintiffs' Complaint are
17 denied.
18

19 43. Admitted in part; denied in part. Defendants admit that those items
20 delineated by (1)-(9) within this paragraph of Plaintiffs' Complaint were contained
21 within a list provided by Defendants to the CIA. Defendants lack knowledge as to
22 what the CIA agreed to propose, and therefore deny these allegations contained
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1 within this paragraph of Plaintiffs' Complaint. The remaining allegations
2 contained within this paragraph of Plaintiffs' Complaint are denied.

3 44. Denied. Defendants have no knowledge of the verbal approvals
4 identified within this paragraph of Plaintiffs' Complaint, and therefore deny these
5 allegations. The remaining allegations contained within this paragraph of
6 Plaintiffs' Complaint are denied.
7

8 45. Denied. The August 1, 2002 OLC Memorandum speaks for itself, and
9 Plaintiffs' characterization of that document within this paragraph of Plaintiffs'
10 Complaint is denied. The remaining allegations contained within this paragraph of
11 Plaintiffs' Complaint are denied.
12

13 46. Denied.
14

15 47. Admitted in part; denied in part. Defendants admit that on an occasion
16 security personnel entered Zubaydah's cell and shackled and hooded him. They
17 also admit that Jessen placed a rolled up towel behind Zubaydah's neck and
18 "walled" him three or four times. The remaining allegations contained within this
19 paragraph of Plaintiffs' Complaint are denied.
20

21 48. Admitted in part; denied in part. Defendants admit that they placed
22 Zubaydah in boxes of the variety described in this paragraph of Plaintiffs'
23

1 Complaint. The remaining allegations contained within this paragraph of
2 Plaintiffs' Complaint are denied.

3 49. Admitted in part; denied in part. The first two sentences of this
4 paragraph of Plaintiffs' Complaint are admitted, except that the referenced action
5 is referred to as "walling". Defendants also admit that they used facial slaps,
6 abdominal slaps and facial grabs on Zubaydah in connection with asking Zubaydah
7 about information about terrorist operations planned against the United States. The
8 remaining allegations contained within this paragraph of Plaintiffs' Complaint are
9 denied.

10 50. Admitted in part; denied in part. Defendants admit that they
11 administered the waterboard to Zubaydah, but do not recall specifically when this
12 technique was first administered. The remaining allegations contained within this
13 paragraph of Plaintiffs' Complaint are denied.

14 51. Admitted in part; denied in part. Defendants admit that over a period
15 of time, they administered to Zubaydah walling, facial and abdominal slaps, facial
16 holds, sleep deprivation and waterboarding, and placed Zubaydah in cramped
17 confinement. The remaining allegations contained within this paragraph of
18 Plaintiffs' Complaint are denied.

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1 52. Admitted in part; denied in part. Defendants admit that Zubaydah
2 cried, and that as time progressed Zubaydah became compliant. They also admit
3 that on at least one occasion Zubaydah walked to the water table and sat down
4 when one of the interrogators raised an eyebrow. The remaining allegations
5 contained within this paragraph of Plaintiffs' Complaint are denied.
6

7 53. Denied.
8

9 54. Admitted in part; denied in part. Defendants admit that some of the
10 interrogation team were affected by the interrogation and the techniques used
11 therein. They also admit, upon information and belief, that the CIA destroyed the
12 videotapes of the interrogations. Defendants lack knowledge of the mindset of the
13 CIA observers as alleged in this paragraph of Plaintiffs' Complaint, and therefore
14 deny such allegations. The remaining allegations contained within this paragraph
15 of Plaintiffs' Complaint are denied.
16
17

18 55. Denied. Defendants have no access to the document purportedly
19 quoted within this Paragraph of Plaintiffs' Complaint, and therefore deny such
20 allegations for lack of knowledge. The remaining allegations contained within this
21 paragraph of Plaintiffs' Complaint are denied.
22

23 56. Denied. Defendants have no access to the source document
24 purportedly quoted within this Paragraph of Plaintiffs' Complaint, and therefore
25

1 deny such allegations for lack of knowledge. The remaining allegations contained
2 within this paragraph of Plaintiffs' Complaint are denied.

3 57. Denied.

4
5 58. Denied.

6 59. Denied. Defendants believe that any response to the allegations
7 contained within this paragraph of Plaintiffs' Complaint falls within information
8 asserted by the United States to be classified and/or covered by Defendants' non-
9 disclosure agreements with the United States, and therefore neither admit nor deny
10 such allegations. By way of further response, the December 30, 2004,
11 Memorandum referenced within this paragraph of Plaintiffs' Complaint is a written
12 document, and Plaintiffs' characterization of this document within their Complaint
13 is denied.
14
15

16
17 60. Denied. Defendants lack sufficient knowledge to respond to the
18 allegations contained within this paragraph of Plaintiffs' Complaint, and therefore
19 such allegations are denied.
20

21 61. Denied.

22 62. Denied.

23 63. Denied.
24
25

1 64. Admitted in part; denied in part. Defendants admit that they received
2 taxable compensation of \$1,800/day from the CIA. The June 2013 CIA Response
3 referenced within this paragraph of Plaintiffs' Complaint is a written document,
4 and Plaintiffs' characterization of this document within their Complaint is denied.
5 The remaining allegations contained within this paragraph of Plaintiffs' Complaint
6 are denied.
7

8 65. Admitted in part; denied in part. It is admitted that, to Defendants'
9 knowledge, an independent researcher was never hired. The remaining allegations
10 contained within this paragraph of Plaintiffs' Complaint are denied.
11

12 66. Admitted in part; denied in part. It is admitted that Defendants
13 received taxable compensation of \$1,800/day from the CIA. The remaining
14 allegations contained within this paragraph of Plaintiffs' Complaint are denied.
15

16 67. Admitted in part. Defendants admit, upon information and belief, that
17 the number of detainees in CIA custody increased for a period of time. Defendants
18 believe that any response to the remaining allegations contained within this
19 paragraph of Plaintiffs' Complaint falls within information asserted by the United
20 States to be classified and/or covered by Defendants' non-disclosure agreements
21 with the United States, and therefore neither admit nor deny such allegations.
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1 68. Admitted in part. Defendants admit, upon information and belief, that
2 through 2010 an entity owned, in part, by Defendants was paid approximately \$81
3 million by the CIA. Defendants believe that any response to the remaining
4 allegations contained within this paragraph of Plaintiffs' Complaint falls within
5 information asserted by the United States to be classified and/or covered by
6 Defendants' non-disclosure agreements with the United States, and therefore
7 neither admit nor deny such allegations.
8
9

10 69. Denied. Defendants lack knowledge concerning the number of
11 individuals interrogated by the CIA, and therefore deny such allegations contained
12 within this paragraph of Plaintiffs' Complaint. The remaining allegations
13 contained within this paragraph of Plaintiffs' Complaint are denied.
14

15 70. Admitted in part; denied in part. Defendants admit that Rahman was
16 interrogated by the CIA. Defendants possess no knowledge concerning Salim or
17 Soud, and therefore deny the allegations contained within this paragraph of
18 Plaintiffs' Complaint concerning these individuals. The remaining allegations
19 contained within this paragraph of Plaintiffs' Complaint are denied.
20
21

22 **SPECIFIC ALLEGATIONS BY PLAINTIFFS**

23 **Suleiman Abdullah Salim**

24 71.-116. Denied. Defendants have no knowledge of, and played no role
25

1 in any interrogation of Salim, and therefore deny the allegations of paragraphs 71-
2 116 of Plaintiffs' Complaint for lack of knowledge.

3 **Mohamed Ahmed Ben Soud (formerly Mohamed Shoroeyia, Abd al-**
4 **Karim)**

5
6 117.-154. Denied. Defendants have no knowledge of, and played no role
7 in any interrogation of Soud, and therefore deny the allegations of paragraphs 117-
8 154 of Plaintiffs' Complaint for lack of knowledge.
9

10 **Gul Rahman**

11 155. Denied. Defendants lack knowledge concerning the allegations
12 contained within this paragraph of Plaintiffs' Complaint, and therefore deny such
13 allegations.
14

15 156. Denied. Defendants lack knowledge concerning the allegations
16 contained within this paragraph of Plaintiffs' Complaint, and therefore deny such
17 allegations.
18

19 157. Defendants believe that any response to the allegations contained
20 within this paragraph of Plaintiffs' Complaint concerning Rahman's capture,
21 rendition, the involvement of foreign governments, if any, in Rahman's capture
22 and/or rendition, and/or the location of the facility(ies) where Rahman was
23 detained falls within information asserted by the United States to be classified
24
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1 and/or covered by Defendants' non-disclosure agreements with the United States,
2 and therefore neither admit nor deny such allegations.

3 158. Defendants believe that any response to the allegations contained
4 within this paragraph of Plaintiffs' Complaint falls within information asserted by
5 the United States to be classified and/or covered by Defendants' non-disclosure
6 agreements with the United States, and therefore neither admit nor deny such
7 allegations.
8
9

10 159. Denied. The allegations contained within this paragraph of Plaintiffs'
11 Complaint constitute legal conclusions to which no response is required. To the
12 extent that a response is required, the allegations contained within this paragraph of
13 Plaintiffs' Complaint are denied.
14

15 160. Admitted in part; denied in part. Defendants admit that in November
16 2002 Jessen was asked to evaluate Rahman, that Jessen administered a facial slap
17 to Rahman and that Jessen determined that he was resistant. The remaining
18 allegations contained within this paragraph of Plaintiffs' Complaint constitute legal
19 conclusions to which no response is required. To the extent that a response is
20 required, the remaining allegations contained within this paragraph of Plaintiffs'
21 Complaint are denied.
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1 161. Admitted in part; denied in part. Defendants admit that Jessen
2 observed Rahman being dragged down a hallway on one occasion and that such
3 dragging appeared to result in abrasions to Rahman's legs. It is also believed that
4 Jessen may have described the rough takedown that he observed as planned and
5 rehearsed, and may have suggested that an interrogator speak with a detainee after
6 a rough takedown is performed. Defendants have no access to the source
7 documents cited within this paragraph of Plaintiffs' Complaint. The remaining
8 allegations contained within this paragraph of Plaintiffs' Complaint constitute legal
9 conclusions to which no response is required. To the extent that a response is
10 required, the remaining allegations contained within this paragraph of Plaintiffs'
11 Complaint are denied.

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14
15 162. Denied. The allegations contained within this paragraph of Plaintiffs'
16 Complaint constitute legal conclusions to which no response is required. To the
17 extent that a response is required, Defendants lack knowledge as to what occurred
18 vis-à-vis Rahman after Jessen's departure, and therefore deny such allegations
19 contained in this paragraph of Plaintiffs' Complaint. The remaining allegations
20 contained within this paragraph of Plaintiffs' Complaint are denied.

21
22
23 163. Denied. Defendants lack knowledge as to what occurred vis-à-vis
24 Rahman after Jessen ceased to have any involvement with Rahman, and therefore
25

1 deny such allegations contained in this paragraph of Plaintiffs' Complaint. The
2 remaining allegations contained within this paragraph of Plaintiffs' Complaint are
3 denied.

4
5 164. Admitted in part; denied in part. Defendants admit, upon information
6 and belief, that Rahman is dead. Defendants lack knowledge as to what occurred
7 vis-à-vis Rahman after Jessen ceased to have any involvement with Rahman, and
8 therefore deny such allegations contained in this paragraph of Plaintiffs'
9 Complaint. The remaining allegations contained within this paragraph of
10 Plaintiffs' Complaint are denied.

11
12
13 165. Denied. Defendants have no knowledge concerning the allegations
14 contained in this paragraph of Plaintiffs' Complaint which purport to summarize
15 written reports, the contents of which speak for themselves and, as such, are
16 denied. Further, to the extent that the allegations contained within this paragraph
17 of Plaintiffs' Complaint constitute legal conclusions, no response is required and,
18 in any event, such allegations are denied.

19
20
21 166. Denied. Defendants lack knowledge concerning the allegations
22 contained within this paragraph of Plaintiffs' Complaint, and such allegations are
23 therefore denied.

24
25
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1 167. Denied. Defendants lack knowledge concerning the allegations
2 contained within this paragraph of Plaintiffs' Complaint, and such allegations are
3 therefore denied.

4
5 **VI. CAUSES OF ACTION**

6 **First Claim for Relief**

7 **Alien Tort Statute: Torture and Other Cruel, Inhuman, and Degrading**
8 **Treatment**

9
10 168.-173. Denied.

11 **Second Claim for Relief**

12 **Alien Tort Statute: Non-Consensual Human Experimentation**

13
14 174.-179. Denied.

15 **Third Claim for Relief**

16 **Alien Tort Statute: War Crimes**

17
18 180.-185. Denied.

19 **VII. REQUEST FOR RELIEF**

20 WHEREFORE, Defendants respectfully request that the Court dismiss
21 Plaintiffs' Complaint in its entirety and enter judgment in Defendants' favor,
22 award Defendants their costs incurred in connection with this action, and grant
23 Defendants all such other and further relief as the Court deems appropriate.
24
25

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AFFIRMATIVE DEFENSES

1
2 1. Plaintiffs' claims are barred, in whole or in part, by application of the
3 Political Question Doctrine.

4
5 2. Plaintiffs' claims are barred, in whole or in part, by application of
6 Derivative Sovereign Immunity, the doctrine of justification and/or the doctrine of
7 privilege.

8
9 3. Plaintiffs' claims are barred, in whole or in part, as they do not satisfy
10 one or more of the elements of the ATS.

11 4. Plaintiffs' have failed to state a claim upon which relief may be
12 granted.

13
14 5. Plaintiffs' claims are barred, in whole or in part, by application of the
15 Detainee Treatment Act.

16
17 6. Plaintiffs' claims are barred, in whole or in part, because all of the
18 actions taken by Defendants were legal and authorized.

19
20 7. Plaintiffs' claims are barred, in whole or in part, because all of the
21 actions taken by Defendants were believed by Defendants to be legal and
22 authorized.

23
24 8. Plaintiffs' claims are barred, in whole or in part, by the applicable
25 statute of limitations.

1 9. Plaintiffs' claims are barred, in whole or in part, because the United
2 States is an indispensable party to this action.

3 10. Plaintiffs' claims are barred, in whole or in part, by virtue of the
4 United States' classification of certain information and/or documentation as
5 classified, and Defendants' resulting inability to secure such information and/or
6 documentation for purposes of mounting a defense.
7

8 11. Plaintiffs' injuries and damages, if any, were caused by parties other
9 than Defendants, over whom Defendants had no control.
10

11 12. Plaintiffs' claims are barred, in whole or in part, because Defendants'
12 actions were not the proximate cause of any damage to Plaintiffs.
13

14 13. The conduct complained of by Plaintiffs is not susceptible to an award
15 of punitive damages and/or is otherwise limited based upon constitutional
16 protections impacting the award of such damages.
17

18 14. If discovery should disclose that Plaintiffs have failed to mitigate
19 damages in any way, Defendants reserve the right to advance this failure as an
20 affirmative defense.
21

1 DATED this 21st day of June, 2016.

2 BETTS, PATTERSON & MINES P.S.

3
4 By: s/ Christopher W. Tompkins
5 Christopher W. Tompkins, WSBA #11686
6 ctompkins@bpmlaw.com
7 Betts, Patterson & Mines, P.S.
8 701 Pike Street, Suite 1400
9 Seattle WA 98101-3927

10 Henry F. Schuelke III, admitted *pro hac vice*
11 hschuelke@blankrome.com
12 Blank Rome LLP
13 600 New Hampshire Ave NW
14 Washington, DC 20037

15 James T. Smith, admitted *pro hac vice*
16 smith-jt@blankrome.com
17 Brian S. Paszamant, admitted *pro hac vice*
18 paszamant@blankrome.com
19 Blank Rome LLP
20 One Logan Square, 130 N 18th Street
21 Philadelphia, PA 19103
22 Attorneys for Defendants Mitchell and Jessen
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 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:

Emily Chiang
echiang@aclu-wa.org
ACLU of Washington Foundation
901 Fifth Ave, Suite 630
Seattle, WA 98164

Steven M. Watt, admitted *pro hac vice*

swatt@aclu.org

Dror Ladin, admitted *pro hac vice*

dladin@aclu.org

Hina Shamsi, admitted *pro hac vice*

hshamsi@aclu.org

Jameel Jaffer, admitted *pro hac vice*

jjaffer@aclu.org

ACLU Foundation

125 Broad Street, 18th Floor

New York, NY 10007

Paul Hoffman

hoffpaul@aol.com

Schonbrun Seplow Harris & Hoffman, LLP

723 Ocean Front Walk, Suite 100

Venice, CA 90291

1 Andrew L. Warden
2 andrew.warden@usdoj.gov
3 Senior Trial Counsel
4 United States Department of Justice
5 Civil Division, Federal Programs Branch
6 20 Massachusetts Ave NW
7 Washington, DC 20530

8 By s/ Karen Langridge
9 Karen Langridge
10 klangridge@bpmlaw.com
11 Betts, Patterson & Mines, P.S.

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ANSWER AND AFFIRMATIVE
DEFENSES