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

JAMES ELMER MITCHELL and
JOHN "BRUCE" JESSEN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

NO. 16-MC-0036-JLQ

**DECLARATION OF
CHRISTOPHER W. TOMPKINS
IN SUPPORT OF PETITIONERS'
MOTION TO COMPEL**

DECLARATION OF CHRISTOPHER W.
TOMPKINS IN SUPPORT OF
PETITIONERS' MOTION TO COMPEL
NO. 16-MC-0036-JLQ

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One Convention Place
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Related Case:

SULEIMAN ABDULLAH SALIM, et al.,

NO. CV-15-0286-JLQ

Plaintiffs,

vs.

JAMES E. MITCHELL and JOHN JESSEN,

Defendants.

I, Christopher W. Tompkins, hereby certify under penalty of perjury, that the following is true and correct and within my personal knowledge:

1. I am over the age of 18, have personal knowledge of all facts contained in this declaration, and am competent to testify as a witness to those facts.

2. I am one of the attorneys representing Petitioners/Defendants, James Elmer Mitchell and John “Bruce” Jessen (collectively, “Defendants”) in this action.

3. Counsel for Defendants communicated with counsel for the Government regarding this Motion, and the Government is unwilling to take further steps to formally invoke the claimed privileges, nor will it produce un-redacted documents or permit Mr. Cotsana to answer Defendants’ proposed deposition questions. While the Government has agreed to re-review a limited set of documents and possibly provide additional information, the Government does not want to formally invoke the state secrets privilege as to any document or

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1 deposition topic. Attached at **Exhibit A** is a true and correct copy of the January
2 13, 2017 email between counsel for Defendants and Andrew Warden, counsel for
3 the Government.

4 4. On December 20, the Government provided: (1) the vast majority of
5 those 252 documents produced pursuant to the Court's directive; and (2) a
6 privilege log. Attached as **Exhibit B** is a true and correct copy of the CIA and
7 DOJ's privilege logs, dated December 20, 2016.

8 5. Attached as **Exhibit C** is a true and correct copy of the January 10,
9 2017 email from Andrew Warden, counsel for the Government to counsel for
10 Defendants, as well as the attachments to that email: **Exhibit D** is the declaration
11 of James Cotsana and **Exhibit E** is the Government's objections to the
12 Defendants' proposed deposition questions to Mr. Cotsana.

13 6. Attached as **Exhibit F** is a true and correct copy of the July 27, 2016
14 letter from counsel for Defendants to Andrew Warden, without exhibits.

15 7. Attached as **Exhibit G** are true and correct copies of two documents
16 produced by the Government: US Bates # 1081-1098 and US Bates #1865-1870.
17
18

19 *s/ Christopher W. Tompkins*
20 _____
Christopher W. Tompkins

21 Executed this 18th day of January, 2017
22 at Seattle, Washington.

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2017, 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>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>
<p>Andrew L. Warden andrew.warden@usdoj.gov Timothy A. Johnson timothy.johnson4@usdoj.gov Senior Trial Counsel 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>

By s/ Karen L. Pritchard
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