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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

**PETITIONERS' MOTION TO
EXPEDITE CONSIDERATION OF
PENDING MOTION**

January 27, 2017
Without Oral Argument

PETITIONERS' MOTION TO EXPEDITE
CONSIDERATION OF PENDING
MOTION
NO. 16-MC-0036-JLQ

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Related Case:

<p>SULEIMAN ABDULLAH SALIM, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>JAMES E. MITCHELL and JOHN JESSEN,</p> <p style="text-align: center;">Defendants.</p>	<p>NO. CV-15-0286-JLQ</p>
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I. INTRODUCTION AND RELIEF REQUESTED

Pursuant to Local Rule 7.1(h)(2)(C), Petitioners/Defendants Drs. James Mitchell and John “Bruce” Jessen (“Petitioners”) request that the Court expedite consideration of Petitioners’ pending Motion to Compel (the “Motion”). ECF No. 54. Petitioners request that the Court set the pending Motion for hearing with oral argument on February 7, 2017, or as soon as the Court’s schedule allows.

Good cause exists to expedite consideration of the pending Motion because an expedited decision may allow the Government to comply with any order issued by this Court on the redaction and privilege assertion issues before the discovery cutoff or, at a minimum, before the deadline for filing motions for summary judgment. Petitioners and the Government have been discussing and briefing these issues for months and there is no reason to further delay resolution. Without an expedited determination the discovery cutoff may need to be extended in order to allow the Government to re-produce documents and schedule additional depositions in accordance with the Court’s determination.

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II. FACTUAL BACKGROUND

Following a disagreement about the scope of discovery, Petitioners moved to compel the Government's compliance with subpoenas served upon the United States Central Intelligence Agency ("CIA") and the United States Department of Justice. ECF No. 1. The Court held oral argument with respect to that motion to compel on September 29, 2016, resulting in the Court's October 4, 2016 Order re: Motion to Compel. ECF No. 31. Pursuant to that Order, on October 11, 2016, the Government filed a statement in the related action, *Salim, et al. v. Mitchell, et al.*, 15-cv-286-JLQ identifying the rules/guidelines it has employed in redacting documents. No. CV-15-0286-JLQ, ECF No. 85. Following the Government's filing, Petitioners filed a subsequent Motion to Compel on these issues. ECF No. 38.

The Court's prior rulings did not address the propriety of the Government's redactions of information, but required the Government to "produce a privilege log asserting the privilege or other basis for redaction" by no later than December 20 (ECF No. 52 at 5), while noting that "Defendants and the US agree the issue of redactions/privilege will need to be addressed." *Id.* at 4. Moreover, although the Government has acknowledged since April 2016 that it: (1) understands the procedure for asserting the state secrets privilege; and (2) may be required to assert that privilege in this case, No. CV-15-cv-286-JLQ, ECF No. 33 at 7-8, the Government has continued to produce documents as if it has asserted this and other privileges in connection with this action, when it has done no such thing. *See* Motion, ECF No. 54.

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1 Pursuant to the Court's Scheduling Order in the related action the
2 discovery cutoff is February 17, 2017, and the cutoff for filing motions for
3 summary judgment is March 31, 2017. No. CV-15-0286-JLQ, ECF No. 59. On
4 several occasions the Court has made it clear that it will make itself available to
5 quickly resolve discovery issues in order to allow the case to move forward in a
6 timely manner. *See* No. CV-15-0286-JLQ, ECF No. 59 at ¶3; ECF No. 60 at
7 22:9-16.

8 Petitioners and the Government could not reach an agreement on the
9 redaction and privilege assertion issues, issues over which Petitioners have raised
10 concerns for months. In fact, prior to the production of the Government's
11 privilege log on December 20, 2016 (the last day afforded the Government by the
12 Court), Petitioners had no knowledge as to specifically why the Government felt
13 that it was entitled to redact the information that it was redacting. *See* Declaration
14 of Brian Paszamant ("Paszamant Decl.") ¶3, submitted in connection with this
15 motion. Then, as set forth in the Motion, Petitioners were told in early January
16 that the Government was relying upon these same claimed basis to prevent
17 Petitioners from securing any pertinent testimony from James Cotsana, a retired
18 CIA Officer whom Defendants reported to while working for the CIA. *See*
19 Motion, ECF No. 54. Ultimately, Petitioners were left with no choice but to file
20 their Motion on January 18, 2017—the last day possible to note the Motion for
21 hearing by February 17, 2017, the discovery cutoff. *Id.*

22 Counsel for Petitioners communicated with counsel for the Government
23 regarding this Motion, and the Government opposes Petitioners' Motion to
24

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1 Expedite. Paszaman Decl. at ¶ 4. Counsel for Petitioners notified chambers of
2 this motion on January 20, 2017. *Id.* at ¶ 4.

3 **III. ARGUMENT**

4 Local Rule 7.1(h) (2)(C) allows parties to seek expedited hearing on a time
5 sensitive matter for good cause shown. Good cause exists to expedite
6 consideration of the pending Motion because an expedited decision may allow the
7 Government to comply with any order issued by this Court on the redaction and
8 privilege assertion issues before the discovery cutoff or, at a minimum, prior to
9 the impending summary judgment deadline. Petitioners and the Government
10 have been discussing and briefing these issues for months and there is no reason
11 to further delay resolution. Without an expedited determination the discovery
12 cutoff may need to be extended in order to allow the Government to re-produce
13 documents and schedule additional depositions in accordance with the Court's
14 determination.

15 Petitioners' propose that the pending Motion be noted for hearing on
16 February 7, with the Government's response due on January 31—only one day
17 earlier than its response would otherwise be due according to the local rules—and
18 Petitioner's reply brief due on February 6.

19 **IV. CONCLUSION**

20 For the reasons set forth above, Petitioners request that the Court set the
21 pending Motion for hearing with oral argument on February 7, 2017, or as soon
22 as the Court's schedule allows.

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1 A proposed order is submitted herewith.

2 DATED this 20th day of January, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th 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:

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