

EXHIBIT AA

Paszamant, Brian

From: Paszamant, Brian
Sent: Friday, June 3, 2016 8:38 AM
To: Warden, Andrew (CIV)
Cc: Schuelke III, Henry F.; Chris Tompkins
Subject: Salim/Mitchell (Classified Subject Matters of Which Defendants Desire Discovery)
Attachments: Subjects of Designated Classified Information Needed.DOCX

Andrew,

I hope that you had a nice long weekend. Following our discussion last week, my colleagues and I have spent some time considering what discovery, if any, we currently anticipate needing with regard to the subject matters that you have identified as remaining classified.

Attached for your consideration is a document listing those subject matters and briefly articulating the reason(s) behind the anticipated need. As you will see, in an effort to streamline the process, we have grafted such subject matters immediately below your formulation of those subject matters that the U.S. considers classified. Please note that our list of necessary subject matters may be supplemented as we continue to analyze our defense.

We look forward to hearing from you in terms of those subject matters that we have identified in the attached.

Brian

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CLASSIFIED INFORMATION NEEDED FOR DEFENSE

Defendants are alleged to be liable to Plaintiffs for (1) Defendants' alleged role in the design, implementation and operation of the CIA's detention and interrogation program (the "Program") generally; (2) Defendants involvement with Plaintiffs in connection with the Program; and (3) those actions or inactions to which Plaintiffs were subjected in connection with the Program. As such, Defendants currently envision requiring access to information concerning these subject matters, as well as whether Defendants' actions/inactions were within the scope of legally and validly conferred authority, to properly defend against the claims advanced against them. For the avoidance of doubt, Defendants envision securing this information from themselves as well as through discovery secured from Plaintiffs and the United States. They envision that such information will be contained within cable traffic as well as potentially many additional means of communication.

Against this backdrop, we have replicated verbatim below those subject matters that the United States has identified remain classified. Then, below these superior bullets we have identified information within those categories that we currently believe we need and (within parentheses) a brief explanation as to why. Additionally, we identify information encompassed by these categories that we currently do not believe that we need.

- Information regarding CIA personnel or contractors involved in the Program, including names, pseudonyms, physical descriptions, names of companies, or any other identifying information.
 - Information conveyed verbally or in writing to one or both Defendants concerning (1) the role each was requested to play with respect to the design, implementation and operation of the Program; (2) the scope and/or limits of his/their authority; (3) the legality and/or approval of his/their actions and/or contemplated actions; or (4) one or both Defendants' ability to refuse to comply with any action requested of him/them. (These items lie at the heart of Plaintiffs claims as explained above)
 - Identities (pseudonyms might suffice)/titles/duties of those to whom Defendants reported or who controlled, requested and/or directed Defendants' activities (These items are critical to enable Defendants to demonstrate their role in the Program's framework and implementation)
 - Identities (pseudonyms might suffice)/titles/duties of those who formally approved the Program and the basis for approval(s). (This information is necessary to enable Defendants to establish that their actions/inactions were within the scope of legally and validly conferred authority)
 - Identities/titles/duties of those in the chain of command who approved the Program and Defendants' role in the Program, e.g. CIA Director Tenet, CIA

Counterterrorism Chief, Jose Rodriguez etc. (This information is necessary to enable Defendants to establish that their actions/inactions were within the scope of legally and validly conferred authority)

- Identities (pseudonyms might suffice)/titles/duties of those who knew of and/or approved the activities of one or both Defendants. (This information is necessary to enable Defendants to establish that even *assuming* arguendo their actions/inactions somehow fell outside the scope of legally and validly conferred authority, their actions/inactions were nevertheless known to and approved by individuals possessing higher authority)
- Information regarding the handling or treatment of any Plaintiff by an individual other than one or both Defendants. (This information is necessary to enable Defendants to assess what improper actions/inactions, if any, were taken (or not taken) vis-à-vis one or more Plaintiffs not capable of being attributable to Defendants' direct involvement)
- Defendants are not seeking access to information concerning any individuals and/or entities having no involvement with Plaintiffs' participation in the Program.
- Information about the operation or location of any overseas detention facilities, including the name of any country in which the detention facility was located. No countries have been acknowledged as a part of the Program.
 - Information concerning the operation of the facility(ies) where any Plaintiff or Defendant was located to the extent that it discloses: (1) the chain of command within the facility(ies) to the extent that such chain of command impacted (a) any Plaintiff's handling, treatment and/or detention, or (b) impacted what was or was not done to or for any Plaintiff by any Defendant; (2) what was or was not done to any Plaintiff during his time at any such facility(ies); (3) what any Defendant was (or was not) permitted to do vis-à-vis any Plaintiff and why. (This information is necessary to enable Defendants to establish where they fit within the chain of command in terms of what was (or was not) done to/for any Plaintiff. It is also necessary to enable Defendants to establish what they specifically did or did not do in connection with any Plaintiff, or sought to do or not do in connection with any Plaintiff. Moreover, this information is necessary for Defendants to understand what was (or was not) done to any Plaintiff by someone other than a Defendant that may have caused any Plaintiff injury)
 - Information concerning the location of the facility(ies) to the extent that it discloses the extent to which any Defendant was present at such facility(ies) when any Plaintiff was in such facility(ies) or when any Plaintiff was subjected

to interrogation. (Defendants believe that they were not present for any interrogation of 2 of the 3 plaintiffs, and believe that they had only minor involvement with regard to the 3rd plaintiff. This information is critical to enable Defendants to substantiate their recollection and thereby demonstrate their limited direct involvement with Plaintiffs)

- Information regarding any foreign government's cooperation with the CIA in administering or hosting any aspect of the Program.
- Information regarding CIA sources, including names, physical descriptions, or any other identifying information.
- Information regarding the capture of individual detainees, including a foreign government's involvement in any operation.
 - Information concerning the means of each Plaintiff's capture and rendition, including physical and/or emotional techniques used and any injuries (physical and/or emotional) sustained (or thought to have been sustained) during such capture and/or rendition. (This information is critical to enabling Defendants to understand the source(s) or likely source of Plaintiffs' injuries or claimed injuries).
 - Information concerning any Defendant's involvement, if any, in any Plaintiff's capture or rendition. (This information lies at the heart of Plaintiffs' claims that Defendants' actions directly caused them injury or alleged injury)
 - Defendants are not seeking access to information concerning a foreign government's involvement in any such operation unless it informs any injury sustained by any capture (and then only to the extent that it discloses that someone other than Defendants caused the injury or potential injury).
- Information regarding the transfer ("rendition") of detainees.
 - Same as immediately above.
- Information about CIA's intelligence operations.
 - Defendants do not currently seek information within this category except to the extent that it may impact items identified above for which Defendants seek information
- Information regarding debriefing or interrogation sessions with detainees, to include questions asked and the answers.

- Information concerning what was done, physically or emotionally, to any Plaintiff during any debriefing and/or interrogation session and the roles played by Defendants and by others in such activities. (This information lies at the heart of Plaintiffs' claims that Defendants' actions directly caused them injury or alleged injury)
- Information concerning one or both Defendants refusal to continue with Zubayda's interrogation when thought to be excessive absent approval from CIA headquarters and only after on-site attendance of headquarters officials. (This information is critical to establishing Defendants insistence on use of only approved EITs)
- Information concerning Defendants' alert to the Chief of Base of Rahman's condition as well as Defendants' communications to CIA headquarters which, if implemented, may have led to an altogether different outcome for Plaintiff Rahman. (This information is critical to establishing Defendants insistence on use of only approved EITs, and only then in situations considered appropriate)
- The content and source of information provided to detainees during the course of interrogations, debriefings, and interviews.