

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

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 BRIAN S.
PASZAMANT IN SUPPORT OF
DEFENDANTS' MOTION TO
COMPEL**

NO. 2:15-CV-286-JLQ

REPLY IN SUPPORT OF MOTION TO
COMPEL
NO. 16-MC-0036-JLQ

1
2 **Related Case:**

3
4 SULEIMAN ABDULLAH SALIM, *et*
5 *al.*

6 Plaintiffs,

7 vs.

8 JAMES ELMER MITCHELL and
9 JOHN "BRUCE" JESSEN,

10 Defendants.
11

12 I, Brian S. Paszamant, hereby certify under penalty of perjury, that the
13 following is true and correct and within my personal knowledge:

14 1. I am over the age of 18, have personal knowledge of all facts
15 contained in this declaration, and am competent to testify as a witness to those
16 facts.
17

18 2. I am one of the attorneys representing Defendants James Elmer
19 Mitchell and John "Bruce" Jessen (collectively, "Defendants") in the above-
20 captioned action.

21 3. In June 2016, I communicated with Andrew Warden, attorney for the
22 Department of Justice ("US") regarding the discovery that Defendants anticipated
23 needing from the US. During these communications, Mr. Warden indicated that
24 specific information was still considered classified. In response, I specifically
25 identified what types of classified information Defendants anticipated being
26

1 critical to their defense, and what types of information was immaterial and
2 therefore need not be supplied. A true and correct copy of my June 3, 2016 email
3 to Mr. Warden, with attachment, is attached hereto as **Ex. AA**.

4 4. In or around August 2016, after the US sent formal objections to the
5 *Touhy* Requests that Defendants had served upon the Central Intelligence Agency
6 (“CIA”) and the Department of Justice (“DOJ”), Defendants expressed the need
7 to file a motion to compel the US to respond to the *Touhy* Requests. The US
8 continued to indicate that it thought the filing of such a motion to compel would
9 be premature, as it wished to instead continue a dialogue.

10 5. On January 7, 2017, Defendants provided the US with a list of 35
11 documents that they had identified as likely containing information material to
12 one of Defendants’ defenses. The US agreed to “re-review” these documents to
13 determine if additional information within these documents could be provided to
14 Defendants. A true and correct copy of the January 7, 2017 email Chris
15 Tompkins, Esquire sent to Mr. Warden, with attachments, is attached hereto as
16 **Ex. BB**.

17 6. On January 31, 2017, Mr. Warden responded to Defendants with
18 additional information concerning the documents that had been “re-reviewed”.
19 Specifically, the US provided Defendants with summaries of the information that
20 had purportedly been redacted from these documents. The summaries indicate
21 that information concerning Drs. Mitchell and Jessen is withheld pursuant to
22 almost all of the redactions. A true and correct copy of Mr. Warden’s January 31,
23 2017 response, with the attached summaries, is attached hereto as **Ex. BB**.

