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15 UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF WASHINGTON
17 AT SPOKANE

18 JAMES ELMER MITCHELL and
19 JOHN "BRUCE" JESSEN,

20 Petitioners,

21 vs.

22 UNITED STATES OF AMERICA,

23 Respondent.

NO. 16-MC-0036-JLQ

DEFENDANTS' MOTION TO
EXPEDITE CONSIDERATION OF
PENDING MOTION TO COMPEL

Without Oral Argument
February 21, 2017

24 Related Case:

25 SULEIMAN ABDULLAH SALIM, et
al.,

Plaintiffs,

vs.

NO. CV-15-0286-JLQ

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

1 JAMES E. MITCHELL and JOHN
2 JESSEN,
3 Defendants.

4 **I. INTRODUCTION AND RELIEF REQUESTED**

5 Pursuant to Local Rule 7.1(h)(2)(C), Defendants James E. Mitchell and John
6 Jessen (collectively, “Defendants”) request that the Court expedite consideration of
7 their pending Motion to Compel CIA Depositions (the “Motion to Compel”). ECF
8 No. 64. Defendants request that the Court set the pending Motion to Compel for
9 hearing with oral argument as soon as the Court’s schedule allows.

10 Good cause exists to expedite consideration of the pending Motion to
11 Compel because an expedited decision may allow for a limited extension of the
12 discovery deadlines in this case in order to permit Defendants to obtain crucially
13 important testimony from Gina Haspel and John/Jane Doe sufficiently in advance
14 of the deadline for filing motions for summary judgment. Given the deadlines
15 applicable to this action, Defendants are compelled to seek relief following the
16 Government’s two-month delay in responding and failure to object to Defendants’
17 *Touhy* request.

18 **II. Factual background**

19 On December 1, 2016, Defendants issued subpoenas, via a *Touhy* request to
20 the CIA (the “*Touhy* Request”), for testimony from its employee, “Gina Doe,
21 former Chief of Staff to Jose Rodriguez when he served as the Chief of the CIA’s
22 Clandestine Service and former Deputy to Jose Rodriguez when he served as the
23 Director of the CIA’s Counterterrorism Center.” (*See* Decl. of Brian S. Paszaman,
24

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1 hereinafter “Paszamant Decl.” ¶ 3.) Defendants simultaneously sought testimony
2 from CIA employee, John/Jane Doe, former Chief of Special Missions for the
3 CIA’s CTC and immediate successor to Jim Cotsana in that position and who also
4 served as the Chief of the CIA’s CTC Renditions Group. (*Id.* at 4.)

5 The *Touhy* Request set January 4, 2017, as the proposed deposition date for
6 Gina “Doe,” and January 5, 2017, for John/Jane “Doe”; it also identified counsel’s
7 Washington, D.C. office as the proposed location. (*Id.*) On December 14, Mr.
8 Warden responded to the email as follows:

9 I am in receipt of your Touhy request and attendant subpoenas for
10 depositions of Gina Doe and John/Jane Doe. ***In accordance with***
11 ***paragraph 6 of the discovery stipulation, I accept service of the Touhy***
12 ***request on behalf of the CIA and I have passed the request on to the***
13 ***appropriate officials at CIA for a decision.*** I am not authorized to
14 accept service of the subpoena on behalf of the two Doe witnesses at
15 this time and will not be authorized to do so, at a minimum, while the
16 Touhy request remains under consideration with the CIA. ***I will advise***
17 ***you once the CIA has made a decision on your Touhy request.***

18 (*Id.* at 5.)

19 Having heard nothing for another two weeks, defense counsel again reached
20 out to Mr. Warden via email on January 2, 2017—*i.e.*, two days before the first
21 proposed deposition was to occur—to inquire about “any movement” from the
22 CIA. Defense counsel received no response. (*Id.* at 6.)

23 On February 8, counsel emailed Mr. Warden yet again to say they were
24 “following up on the [*Touhy* Request]. As you can see, it has been quite some time
25 since service of the Touhy requests. Of course, we would like to avoid

1 unnecessary motion practice if possible. Please advise.” (*Id.* at 7.) Finally, on
2 February 13, Mr. Warden said the CIA will “not authorize” the depositions. (*Id.*)

3 Defendants therefore filed the instant Motion and the Motion to Compel to
4 obtain an Order as quickly as possible. Counsel for Defendants communicated
5 with counsel for the Government regarding this Motion, and the Government
6 opposes Defendants’ Motion to Expedite. *Id.* at ¶ 8. Counsel for Defendants
7 notified chambers of this motion on February 14, 2017. *Id.* at ¶ 9.

8 Pursuant to the Court’s Scheduling Order the discovery cutoff is February
9 17, 2017, and the cutoff for filing motions for summary judgment is March 31,
10 2017. ECF No. 59. On several occasions the Court has made it clear that it will
11 make itself available to quickly resolve discovery issues in order to allow the case
12 to move forward in a timely manner. *See* ECF No. 59 at ¶3; ECF No. 60 at 22:9-
13 16.

14 **III. ARGUMENT**

15 Local Rule 7.1(h) (2)(C) allows parties to seek expedited hearing on a time-
16 sensitive matter for good cause shown. Given the deadlines applicable to this
17 action, Defendants are compelled to seek relief following the Government’s two-
18 month delay in responding and failure to object to Defendants’ *Touhy* request.

19 Good cause exists to expedite consideration of the pending Motion to
20 Compel because an expedited decision may allow for a limited extension of the
21 discovery deadlines in this case in order to permit Defendants to obtain crucially
22 important testimony from Gina Haspel and John/Jane Doe sufficiently in advance
23 of the deadline for filing motions for summary judgment.
24

1 **IV. Conclusion**

2 For the reasons set forth above, Defendants request that the Court set the
3 pending Motion to Compel for hearing with oral argument as soon as the Court's
4 schedule allows.

5 A proposed order is submitted herewith.

6 DATED this 14th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 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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