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

SULEIMAN ABDULLAH SALIM, MOHAMED AHMED BEN SOUD, OBAID ULLAH (as personal representative of GUL RAHMAN), Plaintiffs, vs. JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN, Defendants.	NO. 2:15-CV-286-JLQ **AFFIDAVIT OF BRIAN S. PASZAMANT**

AFFIDAVIT OF BRIAN S. PASZAMANT

I, Brian S. Paszamant, 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 affidavit and am competent to testify as a witness to those facts.

2. I am an attorney admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey. I am a partner with the law firm of Blank Rome LLP.

3. I am one of the attorneys representing Defendants, Dr. James Mitchell and Dr. John "Bruce" Jessen (collectively, the "Defendants") in connection with the above-captioned action. I have been admitted *pro hac vice* to the United States District Court for the Eastern District of Washington for the purpose of representing Defendants in this litigation.

4. This action has been brought by three foreign nationals (the "Plaintiffs") who allege that they were detained by the United States government in connection with the United States' War on Terror in the aftermath of the September 11th attacks. Plaintiffs are seeking damages related to their alleged treatment in the Central Intelligence Agency's (the "CIA") former detention and interrogation program. Plaintiffs allege that Defendants worked as contractors for the CIA and, in that capacity, designed, implemented, and participated in the detention and interrogation program. Plaintiffs raise multiple claims for claimed violations of international law pursuant to the Alien Tort Statute and seek compensatory, punitive and exemplary damages.

5. Neither the United States nor the CIA is a party to this action.

6. While Defendants believe that this action is without merit, the action is proceeding through discovery. The United States has submitted a Statement of Interest, pursuant to 28 U.S.C. § 517, to advise the Court of the United States' interest in such discovery (the "Statement of Interest"). A copy of the Statement of Interest is attached hereto as **Exhibit 1.**

7. The Statement of Interest specifically provides that "because the United States is not a party to this case, the first step to either party in this case seeking information from the United States is for the requesting litigant to submit a so-called *Touhy* (*United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)) request under the relevant agencies' governing regulations, describing the information sought so that the agency can properly consider the request." Statement of Interest at 15.

8. On May 23, 2016, the parties to the action and the United States jointly filed a "Joint Stipulation re: Discovery" in connection with the action (the "Joint Stipulation"). A copy of the Joint Stipulation is attached hereto as **Exhibit 2.**

9. The Joint Stipulation—the product of extensive negotiations between the Parties and the United States—includes a brief factual and procedural background, outlines generally the subject matters of information potentially relevant to this action which remain classified or have been declassified, and establishes certain procedures to enable the United States to protect

information that it contends remain classified. *Id.* For instance, the Joint Stipulation recognizes the Parties' and the United States' acknowledgement that discovery in this action will focus on Defendants' roles and authority in designing, promoting and implementing the methods alleged in Plaintiffs' Complaint, as well as Plaintiffs' rendition, interrogation and alleged resulting injuries, *id.* ¶ 1, that a primary source of this information will be the United States, *id.* ¶ 6, and that discovery from the United States will be secured through so-called *Touhy* requests served upon counsel for the United States, Andrew Warden. *Id.*

10. In an effort to defend themselves, Defendants have served a subpoena on the CIA to produce documents that Defendants believe will show that Plaintiffs' allegations are meritless. A copy of the subpoena is attached hereto as **Exhibit 3.**

11. The information that is requested pursuant to the enclosed subpoena is critical to the defense of Plaintiffs' allegations because, among other things, it will enable Defendants to demonstrate the following:

a. Defendants' role in the CIA's detention and interrogation program, framework and implementation.

b. That Defendants' actions/inactions were within the scope of legally and validly conferred authority.

c. That even assuming, *arguendo*, that Defendants' 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.

d. That whatever improper actions/inactions, if any, were taken (or not taken) vis-à-vis one or more Plaintiffs is not capable of being attributable to Defendants' direct involvement.

e. That Defendants were not present for any interrogation of two of the three Plaintiffs and had only minor involvement with regard to Gul Rahman, whose executor is the third Plaintiff.

f. That Defendants' actions/inactions did not cause, directly or indirectly, Plaintiffs' alleged injuries.

12. I present this affidavit and the accompanying subpoena in accordance with *Touhy* and the regulations promulgated thereunder for submitting a request for information to the CIA, 36 CFR 1012.5, as well as the pursuant to the procedure contemplated by the Joint Stipulation.

13. To the extent responsive information is considered by the United States to be privileged or classified, appropriate redactions, or document-handling protocols, can protect the United States and the CIA while at the same time affording Defendants information essential to mount their defense to Plaintiffs' allegations.

Brian S. Paszamant

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

On June 28 2016 before me, Brian S. Paszamant, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within Affidavit and acknowledged to me that he/she executed the same in his/her authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.

I certify under PENALTY OF PERJURY under the law of the Commonwealth of Pennsylvania that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public (Notary Seal)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
DREW KARLBERG, Notary Public
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My Commission Expires April 3, 2017

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SULEIMAN ABDULLAH SALIM, *et al.*, Plaintiffs, v. JAMES E. MITCHELL and JOHN JESSEN, Defendants.	No. 2:15-CV-286-JLQ STATEMENT OF INTEREST OF THE UNITED STATES Motion Hearing: April 22, 2016 at 9:00 a.m. Spokane, Washington

INTRODUCTION

Pursuant to 28 U.S.C. § 517,[1] the United States of America submits this Statement of Interest to advise the Court of the United States' interest in the discovery issues presented in this case.

BACKGROUND

This case involves an action brought by three former detainees seeking damages related to their alleged treatment in the Central Intelligence Agency's ("CIA") former detention and interrogation program. Neither the United States Government nor the CIA is a defendant in this case. Instead, Plaintiffs have brought this action against two individual psychologists, whom Plaintiffs allege worked as contractors for the CIA and, in that capacity, designed, implemented, and participated in the detention and interrogation program. *See* Complaint, ECF No. 1 at ¶¶ 1-4, 12-13. Plaintiffs

[1] Section 517 provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517. A submission by the United States pursuant to this provision does not constitute intervention under Rule 24 of the Federal Rules of Civil Procedure.

raise multiple claims for violations of international law under the Alien Tort Statute and seek compensatory and punitive damages. *See id.* at ¶¶ 168-185.

On December 15, 2015, Plaintiffs and Defendants filed a joint motion to establish a briefing schedule for Defendants' motion to dismiss and to stay initial discovery pending a decision on Defendants' motion. *See* ECF No. 15. With respect to discovery in the case, Defendants represented that they believe discovery will be "complex and costly, likely involving issues relating to classified materials and state secrets." *Id.* at 2. Defendants also stated that they "anticipate seeking discovery involving classified information and documents in the possession of the CIA, other United States government agencies and/or foreign governments." *Id.* at 4. For their part, Plaintiffs stated that they "believe all the information required to adjudicate this matter is available on the public record and disagree that discovery of classified information and/or state secrets will be required." *Id.* at 5. Notwithstanding the parties' disagreement over the need for and scope of any discovery, which the parties acknowledged "will be disputed and require resolution through motion practice," the parties agreed to stay discovery during the pendency of the motion to dismiss. *Id.* at 4, 7.

On December 21, 2015, the Court granted the parties' motion to stay discovery. *See* Order Setting Briefing Schedule, ECF No. 22. In doing so, the Court noted that it would "revisit whether a stay of discovery is appropriate after the Motion to Dismiss is filed." *Id.* at 2-3.

On March 2, 2016, the parties completed briefing on the motion to dismiss. *See* ECF Nos. 27-29. The next day, on March 3, 2016, the Court issued an order partially lifting the stay of discovery, concluding that "this matter should not be unduly delayed" during the pendency of the motion to dismiss. *See* Order Directing Filing of Discovery Plan and Proposed Schedule, ECF No. 30 at 1-2. The Court directed the parties to meet and confer on a joint discovery and scheduling plan by March 25, 2015, and then file a joint plan, or competing plans in the event of a disagreement, by April 8, 2016. *See id.* at 2. Among other things, the Court directed the parties to address the need for any "special procedures" that would govern discovery in the case. *Id.* The Court also scheduled a two-hour hearing on April 22, 2016, to address both the motion to dismiss and the proposed discovery plan and schedule. *See id.* In the meantime, the Court ordered that the "stay of discovery shall remain in effect as to written discovery and depositions." *Id.* However, the Court stated the "parties may begin exchange of initial disclosures pursuant to Rule 26(a)(1), but if the parties are still in agreement as to withholding such disclosures, they may withhold such disclosures pending the April 22, 2016 hearing." *Id.*

DISCUSSION

The United States respectfully requests that that the Court consider the interests of the United States when formulating a discovery plan and schedule in this case. This case presents a complex situation in which Defendants likely have in their knowledge or possession information that is classified, or which could tend to reveal

classified information, and that may be called for in discovery but which, as discussed below, the Defendants are prohibited from disclosing, including in this litigation.

Discovery in this case will center around the CIA's former detention and interrogation program, a covert action program authorized by the President of the United States in 2001, as well as Defendants' role in that program. Over time, certain information about the detention and interrogation program has been officially declassified by the United States and released to the public. Most recently, on December 9, 2014, the Senate Select Committee on Intelligence ("SSCI") publicly released a redacted version of the Findings and Conclusions and Executive Summary of the Committee's Study of the CIA's Detention and Interrogation Program ("Executive Summary"), at http://www.intelligence.senate.gov/press/committee-releases-study-cias-detention-and-interrogation-program. The President determined that the Executive Summary should be declassified with the appropriate redactions necessary to protect national security. The Director of National Intelligence and the CIA, in consultation with other Executive Branch agencies, conducted a declassification review of the Executive Summary and transmitted a redacted, unclassified version of it to the SSCI. Public release of the Executive Summary by the SSCI – along with a separate redacted report from minority committee members and the CIA's response to the Executive Summary – had the effect of disclosing a significant amount of information concerning the detention and interrogation program that the Executive Branch had declassified. For example, some general information

concerning the interrogation techniques and conditions of confinement applied to detainees in the detention and interrogation program, including Plaintiffs, is no longer classified.

Although certain categories of information about the detention and interrogation program have been declassified by the Executive Branch, other categories of information about the program remain classified and were redacted from the Executive Summary due to the damage to national security that reasonably could be expected to result from the disclosure of that information. *See* Executive Order 13526, Classified National Security Information, 75 Fed. Reg. 707 (Dec. 29, 2009). In connection with the ongoing military commission prosecution against the five former CIA detainees accused of committing the attacks on September 11, 2001, the Government has explained that these categories include, but are not limited to: names, identities, and physical descriptions of any persons involved with the capture, transfer, detention, or interrogation of detainees or specific dates regarding the same; the locations of detention sites (including the name of any country in which the detention site was allegedly located); any foreign intelligence service's involvement in the detainees' capture, transfer, detention, or interrogation; and information that would reveal details surrounding the capture of detainees other than the location and date. *See* Government's Mot. to Amend Protective Order, *United States v. Mohammed et al.*, Dkt No. AE 013RRR (U.S. Mil. Comm. Jan. 30, 2015), at www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE013RRR(Gov)).pdf

The discovery requests in this case are likely to center on the operational details and internal workings of the detention and interrogation program. While the United States possesses classified information about the program, this case also presents an additional complicating factor from a discovery perspective because Defendants, by virtue of their role as CIA contractors in the program, also likely have in their knowledge and possession information belonging to the United States that is classified, or which could tend to reveal classified information, that they are prohibited from disclosing.[2] Defendants signed nondisclosure agreements with the United States that prohibit them from disclosing classified information without authorization from the United States. *See Am. Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 155 (1989) (per curiam) ("As a condition of obtaining access to classified information, employees in the Executive Branch are required to sign 'nondislosure agreements' that detail the employees' obligation of confidentiality and provide for penalties in the event of unauthorized disclosure."); *Snepp v. United States*, 444 U.S. 507, 509 n.3 (1980) (per curiam) (stating that the CIA's non-disclosure agreement is an "entirely appropriate exercise of the CIA Director's statutory mandate to protect intelligence sources and methods from unauthorized disclosure") (internal quotations omitted). Further, various federal regulations and laws prohibit unauthorized disclosure of classified information. *See, e.g.*, 18 U.S.C. §§ 793-94; 18 U.S.C. § 798;

[2] The fact that Defendants served as CIA contractors in the detention and interrogation program is unclassified.

50 U.S.C. § 3121; Executive Order 13526. Nonetheless, this information could be the subject of discovery requests from Plaintiffs or otherwise may be called for pursuant to Fed. R. Civ. P. 26(a)(1)(A) (initial disclosures), or be relevant to certain defenses Defendants may affirmatively raise. *See, e.g.*, Detainee Treatment Act of 2005, 10 U.S.C. § 801, stat. note § 1004 (establishing a defense in any civil action for Government agents engaged in interrogation or detention practices that were officially authorized and determined to be lawful at the time they were conducted). Further, Defendants' view of whether the information they may have in their knowledge or possession is now declassified, following public release of the Executive Summary, may not be accurate or consistent with determinations made by the Executive Branch with regard to such information, and as a result, a risk exists that classified information could inadvertently be disclosed by Defendants in this litigation.

In the event discovery proceeds through this complicated landscape, including in the form of party discovery or disclosures from Defendants, important interests of the United States would be implicated. The United States has a strong interest, of course, in protecting its classified, sensitive, or privileged information from disclosure. *See* Fed. R. Civ. P. 45(d)(3)(A)(iii); *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 780 (9th Cir. 1994). Indeed, the CIA has "sweeping" and "broad power to protect the secrecy and integrity of the intelligence process" in furtherance of the national security. *CIA v. Sims*, 471 U.S. 159, 169-170 (1985); *see Berman v. CIA*, 501 F.3d 1136, 1140 (9th Cir. 2007); *see also* 50 U.S.C. § 3024(i)(1)

("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Given the subject matter at issue in this case, the Government has a particularized interest in preventing unauthorized disclosures that would harm national security interests or compromise or impose undue burdens on intelligence and military operations. *See Dep't of Navy v. Egan*, 484 U.S. 518, 527, (1988) ("This Court has recognized the Government's 'compelling interest' in withholding national security information from unauthorized persons in the course of executive business.") (citing cases).

Further, any decision by the Government to consider the release of intelligence information requires careful scrutiny, sometimes by multiple Government agencies. This is especially so where the significance of one item of information frequently depends upon knowledge of other items of information, the value of which cannot be appropriately considered without knowledge of the entire landscape. As the Supreme Court explained in *Sims*, "what may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context." 471 U.S. at 178 (internal citations and quotations omitted). Accordingly, the process by which the Government evaluates and responds to requests for disclosure of information related to the detention and interrogation program is highly exacting and is essential in order to deny hostile adversaries the ability to piece together bits of information that may reveal

information that remains classified. This process is certainly not typical for discovery in an ordinary civil matter.

In the event a party is dissatisfied with the Government's decisions regarding the disclosure of privileged or classified information and moves to compel access to or disclosure of such information, the Government would need sufficient time to consider whether invocation of privilege, including the state secrets privilege, would be appropriate to prevent the disclosure of the requested information. *See Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1077-84 (9th Cir. 2010) (en banc). The Supreme Court has long recognized the Government's ability to protect state secrets from disclosure in the context of civil discovery. *United States v. Reynolds*, 345 U.S. 1 (1953); *Gen. Dynamics Corp. v. United States*, 131 S. Ct. 1900 (2011). The privilege allows the Government to prevent the disclosure of national security information that would otherwise be discoverable in civil litigation, where there is a "reasonable danger that compulsion of the evidence will expose [state secrets] which, in the interest of national security, should not be divulged." *Reynolds*, 345 U.S. at 10.[3] Any decision concerning whether, when, or to what extent this privilege should

[3] The privilege, where it applies, is absolute and cannot be overcome by the perceived need of a litigant to access or use the information at issue. *See Kasza v. Browner*, 133 F.3d 1159, 1166 (9th Cir. 1998) ("Once the privilege is properly invoked, and the court is satisfied as to the danger of divulging state secrets, the privilege is

be invoked in litigation in order to protect national security is no ordinary or simple occurrence; rather, it requires a searching review at the very highest levels of Government.

In addition to the judicial authority recognizing the significance of the state secrets privilege and the need for the Executive to invoke it with prudence, *Reynolds*, 345 U.S. at 7 (the state secrets privilege is "not to be lightly invoked"), the Executive Branch's own internal procedure provides for a rigorous, layered, and careful process for review of any potential state secrets privilege assertion, including personal approval from the head of the agency asserting the privilege as well as from the Attorney General. *See* Memorandum from the Attorney General to the Heads of Executive Departments and Agencies on Policies and Procedures Governing Invocation of the State Secrets Privilege (Sept. 23, 2009) ("State Secrets Guidance"), at http://www.justice.gov/opa/documents/state-secret-privileges.pdf; *see also Mohamed*, 614 F.3d at 1077, 1090 (citing Guidance). Under this process, the U.S. Department of Justice will defend an assertion of the state secrets privilege in litigation only when "necessary to protect against the risk of significant harm to national security." *See* State Secrets Guidance at 1. The Attorney General also has established detailed procedures for review of a proposed assertion of the state secrets privilege in a civil case. Those procedures require submissions by the relevant

~~absolute[.]"). Rather, when the privilege is successfully invoked, the evidence subject to the privilege is "completely removed from the case." *Id.*~~

government departments or agencies specifying "(i) the nature of the information that must be protected from unauthorized disclosure; (ii) the significant harm to national security that disclosure can reasonably be expected to cause; [and] (iii) the reason why unauthorized disclosure is reasonably likely to cause such harm." *Id.* at 2. The Department of Justice will only defend an assertion of the privilege in court with the personal approval of the Attorney General following review and recommendations from a committee of senior Department of Justice officials. *Id.* at 3. The Court of Appeals has emphasized the importance of this guidance. *See Mohamed*, 614 F.3d at 1080 ("Although *Reynolds* does not require review and approval by the Attorney General when a different agency head has control of the matter, such additional review by the executive branch's chief lawyer is appropriate and to be encouraged."). Given the highly significant determinations that must be made in deciding whether to assert the state secrets privilege, the Government has a strong interest in ensuring that adequate time is provided so that senior Executive Branch officials can carefully consider whether the privilege should be asserted without rushing to a hasty or inaccurate decision.

In light of these unique circumstances, this case is likely to require special procedures to protect against the disclosure of classified or privileged information belonging to the United States during party discovery, and for litigating any disputes over whether such information may be disclosed. Consequently, the United States recommends that any discovery plan entered in this case include certain special

procedures that would enable the Government to have the opportunity to review any proposed disclosure of information by Defendants during party discovery for classified or privileged information and, if necessary, to take steps to protect against disclosure. Absent such procedures, there exists a risk of unauthorized disclosure of the United States' classified or privileged information.[4]

In an effort to reach consensus on this issue, undersigned counsel for the United States has initiated discussions with the attorneys for both Plaintiffs and Defendants regarding proposed protective measures for inclusion in the discovery plan. Among the protective measures under consideration and discussion are identifying those subject areas related to the detention and interrogation program that have been declassified and those that have not, thereby enabling the parties to tailor the litigation and discovery in this case, if appropriate, to information that has been declassified and would not implicate the United States' national security interests; permitting attorneys from the Department of Justice to attend depositions and assert objections where

[4] In describing these special procedures the United States does not waive any privileges, arguments, or defenses that it may assert to prevent disclosure of privileged information. Rather, the goal of these procedures is to provide a mechanism for the United States to assert any appropriate objections to prevent the unauthorized disclosure of privileged information and to streamline, or make as efficient as possible, any contested litigation over access to such information.

appropriate to prevent improper disclosures; and permitting the United States to review any anticipated discovery disclosures by Defendants related to the detention and interrogation program in order to guard against the unauthorized disclosure of classified information. At this point in the discussions, the Government is optimistic that an agreement can be reached on at least some, though perhaps not all, of the Government's proposed procedures. Consequently, the Government respectfully requests that the Court permit the Government to continue to work with the parties to reach consensus on these special procedures prior to the Court establishing a discovery plan in this case. In order to be of assistance to the Court, undersigned counsel for the United States intends to attend the upcoming hearing set for April 22 to address this matter and any questions the Court may have of the Government. In the event the parties and the Government cannot reach agreement on certain procedures, the Government will be prepared to discuss options to promote the efficiency of any contested litigation over classified or privileged Government information in party discovery to which the Government may object to disclosure.

In addition to party discovery, this case is also likely to involve a substantial volume of third-party discovery requests directed to the CIA and perhaps other United States agencies related to the detention and interrogation program.[5] At this initial

[5] The foreword to Executive Summary states that Senate committee staffers reviewed over 6 million pages of CIA documents during a nearly four-year period while

stage of proceedings, when the Government has not yet been served with any discovery requests, and no contested litigation is imminent, the Government does not know precisely how the discovery process against the United States will unfold, although each of the various interests discussed above would be implicated in such discovery. Where it is not a party to a suit, the United States has a strong interest in avoiding the unreasonable diversion of the Government's national security resources to satisfy the discovery demands of the parties. *See Exxon Shipping Co.*, 34 F.3d at 779 ("We acknowledge the government's serious and legitimate concern that its employee resources not be commandeered into service by private litigants to the detriment of the smooth functioning of government operations."). In all events, the Government has a significant interest in ensuring that any third-party discovery proceeds in an efficient manner without the litigation itself imposing undue burdens on any agency carrying out a national security mission. To that end, because the United States is not a party to this case, the first step to either party in this case seeking information from the United States is for the requesting litigant to submit a so-called *Touhy* (*United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)) request under the relevant agencies' governing regulations, describing the information sought so that the agency can properly consider the request. *See, e.g.*, 32 C.F.R. § 1905.4(c)-(d) (CIA); *see also In re Boeh*, 25 F.3d 761, 763-64 (9th Cir. 1994); *Exxon Shipping*

compiling their report about the detention and interrogation program. *See* Executive Summary Foreword at 4.

Co., 34 F.3d at 780 n. 11 ("Because [5 U.S.C.] § 301 provides authority for agency heads to issue rules of procedure in dealing with requests for information and testimony, an agency head will still be making the decisions on whether to comply with such requests in the first instance [prior to court review]."). As explained above, given the potential volume and complex nature of the information that is likely to be sought in this case, the Government likely will need a substantial amount of time to identify any responsive information and then determine whether and to what extent that information can be provided or whether it must object to disclosure and, if necessary, assert privilege in response to a demand for the information. In the event a decision is made to produce responsive material, the production process is likely to require additional time because the intelligence information at issue here would be required to undergo a careful review, perhaps by multiple agencies, to ensure only unclassified and non-privileged information is released.

Finally, given the Government's compelling interest in protecting classified and other sensitive or privileged information from unauthorized disclosure, the Government opposes any suggestion to create special procedures that would permit the parties or their counsel to access classified information, such as by granting private attorneys security clearances and establishing secure facilities for the exchange, storage, and review of classified information by the parties. As the Court of Appeals has recognized, "[t]he decision to grant or revoke a security clearance is committed to the discretion of the President by law." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th

Cir. 1990). There is no statutory authority that would permit or require such access in this context. For example, the Classified Information Procedures Act, 18 U.S.C. app. 3 ("CIPA"), is inapplicable in civil cases. *See* CIPA, Pub. L. No. 96-456, 94 Stat. 2025 (1980) ("An act to provide certain pretrial, trial and appellate procedures for criminal cases involving classified information."); *see also id.* § 3 ("Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States."). Indeed, the application of CIPA to civil litigation would be an impermissible construction of that statute, distorting both its language and legislative rationale and ignoring the distinction between criminal and civil litigation. Unlike criminal prosecutions, where a prosecutor can choose to cease prosecution rather than disclose classified information to a criminal defendant, in civil litigation like this when a litigant seeks classified information, the Government has no ultimate control over the continuation of the case. *See Reynolds*, 345 U.S. at 12. Accordingly, it would be inappropriate in this case to attempt to devise CIPA-like procedures that would require the Government to provide private parties with access to classified or otherwise protected national security information in the context of a civil damages action, particularly one in which the Government is not a party. *See Mohamed*, 614 F.3d at 1089 (upholding privilege assertion over classified information "no matter what protective procedures the district court might employ"); *Al-Haramain Islamic Found., Inc. v. Bush*, 507 F.3d 1190, 1204 (9th Cir. 2007) (holding that the

district court erred in crafting procedures that attempted to "thread the needle" to enable a private party to use classified information in a civil action where a valid privilege assertion by the Government had been upheld); *Sterling*, 416 F.3d at 348 (rejecting request for "special procedures" to allow party access to classified information, noting that "[s]uch procedures, whatever they might be, still entail considerable risk" of "leaked information" and "inadvertent disclosure" that would place "covert agents and intelligence sources alike at grave personal risk").

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider the interests of the United States as it formulates the discovery plan in this case.

Dated: April 8, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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EXHIBIT 2

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

SULEIMAN ABDULLAH SALIM, MOHAMED AHMED BEN SOUD, OBAID ULLAH (as personal representative of GUL RAHMAN), Plaintiffs, vs. JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN, Defendants.	NO. 2:15-CV-286-JLQ STIPULATION RE DISCOVERY

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The Court has ordered the parties to propose a plan "concerning both the procedure for discovery and scope." ECF No. 40 at 18. In response to that order, Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and Obaid Ullah (as personal representative of Gul Rahman) ("Plaintiffs"), Defendants James Elmer Mitchell and John "Bruce" Jessen ("Defendants"), and the United States (collectively "the Parties"), through their respective counsel of record, stipulate:

Procedural Background

1. This case involves allegations of torture and abuse by three former detainees in the Central Intelligence Agency's ("CIA") former detention and interrogation program. The plaintiffs allege that the two defendants in the case (James Mitchell and John "Bruce" Jessen) were contractors for the CIA and, in that capacity, designed, implemented, and participated in the detention and interrogation program.

2. The United States has filed a Statement of Interest with respect to its interest in the potential for disclosure of information which implicates privileged or classified information or may otherwise impact national security.

3. Defendants moved to dismiss Plaintiffs' complaint *inter alia* for lack of subject-matter jurisdiction based on the political question doctrine and for derivative sovereign immunity ("Defendants' Motion"). Defendants' Motion was argued on April 22, 2016.

4. The Court denied Defendants' Motion. The Court instructed the Parties to propose a plan "concerning both the procedure for discovery and scope" by May 23, 2016. ECF No. 40 at 18–19.

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Discovery

5. Discovery shall focus on (1) the roles of Defendants and others in designing, promoting, and implementing the methods alleged in the Complaint, as related to Plaintiffs, including whether Defendants "merely acted at the direction of the Government, within the scope of their authority, and that such authority was legally and validly conferred," ECF No. 40 at 14; and (2) Plaintiffs' detention, rendition, interrogation and alleged resulting injuries.

6. A primary source for this Discovery will be the United States. Such information shall be requested from the United States through *Touhy* (*United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951)) requests or such other procedure as the Parties may agree. *Touhy* requests directed to the Central Intelligence Agency and Department of Justice shall be served on counsel for the United States, who will communicate the requests to the appropriate agency contacts. In the event a party intends to submit a *Touhy* request to an agency of the United States other than the Central Intelligence Agency or Department of Justice, the party shall notify counsel for the United States, who will confer with the agency and inform the requesting party whether counsel for the United States will accept service on behalf of the agency. Upon request from a party, counsel for the United States will confer with the appropriate agency contacts and provide the requesting party with information regarding the status of any pending *Touhy* requests.

Classified Information and National Security

7. The United States asserts that Defendants possess information which is considered classified by the United States. In addition, the United States asserts that Defendants are subject to non-disclosure agreements related to their

consulting work in connection with the former detention and interrogation program. Defendants assert that they must be able to share all information and fully confer with their counsel about their consulting work in connection with the former detention and interrogation program, including all aspects of their involvement and participation, and have a Constitutional right to do so.

8. Defendants assert that the United States must take action necessary to permit Defendants to share all information and fully confer with their counsel about their consulting work in connection with the former detention and interrogation program, which may include providing security clearances to Defendants' counsel or other actions which will enable Defendants to confer fully with their counsel. The United States has provided Defendants with classification guidance regarding the categories of information Defendants may share with their attorneys consistent with Defendants' non-disclosure agreements. The guidance explains, among other things, the categories of unclassified information concerning the CIA's former detention and interrogation program that Defendants may share with their attorneys. One of Defendants' attorneys has previously been granted a Top Secret security clearance to assist the Defendants in other matters, and the United States will consider requests by Defendants' attorneys for additional security clearances upon request, including an explanation why additional attorneys require security clearances and access to classified information.

9. The United States asserts that, although various categories of information related to the former detention and interrogation program have been declassified, other categories of information or documents that may or may not be relevant to the claims and defenses of the parties to this litigation are currently and

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properly classified pursuant to Executive Order 13526, Classified National Security Information, 75 Fed. Reg. 707 (Dec. 29, 2009), and otherwise protected from disclosure. The United States further asserts that the disclosure of such information or documents reasonably could be expected to cause serious and in some cases exceptionally grave damage to the national security of the United States. The United States therefore reserves its right to object or to seek appropriate protections to prevent the disclosure of such information in the event it is sought by Plaintiff or Defendants in this case.

10. The following is a list of categories of information that the United States asserts is classified national security information related to the former detention and interrogation program, and therefore may not be the subject of discovery in this matter:

a. Identities of current or former CIA employees or contractors involved in the detention and interrogation program (*e.g.*, names, pseudonyms, physical descriptions, or other identifying information), with the exception of any current or former CIA employee or contractor whom the United States has officially acknowledged as associated with the detention and interrogation program.

b. The locations of CIA Stations and Bases, including facilities or detention sites used by the CIA as part of the detention and interrogation program, including the name of any country or city in which the detention site was located or information about the operation of the facility that would tend to reveal its location.

c. Identities of any foreign intelligence service, including its personnel or agents, involved in the detention and interrogation program or the

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capture, rendition, detention, or interrogation of detainees in the detention and interrogation program.

d. Identities of human intelligence sources who assisted the CIA in executing or administering the detention and interrogation program (*e.g.*, names, pseudonyms, physical descriptions, or other identifying information).

e. The content and source of information provided to detainees in the detention and interrogation program during the course of interrogations, debriefings, and interviews.

f. Names, code words, or other identifiers used in the detention and interrogation program to refer to individuals, detainees, CIA stations or bases, or CIA detention facilities.

g. Information regarding the questions posed to detainees in CIA or foreign liaison debriefing or interrogation sessions and the answers the detainees provided, including the intelligence requirements or gaps that the CIA or foreign liaison services sought to fill by questioning the detainees.

h. Information regarding the capture of detainees in the detention and interrogation program, including any involvement by a foreign liaison services.

i. Information regarding the transfer or rendition of a detainee to the extent that information would reveal a foreign liaison service's involvement in the operation or the location of the operation, including the length of any trips and the arrival, departure, layover, and final destination locations involved in the transfer.

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j. Dissemination-control information, including routing and administrative information, contained within documents that the CIA uses to track and control information.

k. Information regarding the nature of any alleged classified work performed by defendants as part of non-detention and interrogation related contracts with the CIA.

11. The United States acknowledges that the following categories of detention and interrogation program information are not classified and may be the subject of discovery, subject to appropriate objection:

a. The fact that the detention and interrogation program was a covert action program authorized by the President of the United States, and that the detention and interrogation program was authorized by a Memorandum of Notification issued by the President on September 17, 2001.

b. The names and descriptions of authorized enhanced interrogation techniques that were used in connection with the detention and interrogation program, and the specified parameters within which the interrogation techniques could be applied.

c. The authorized enhanced interrogation techniques as applied to the 119 individuals, including Plaintiffs, as described in Appendix 2 of the Executive Summary officially acknowledged to have been in CIA custody.

d. Information regarding the conditions of confinement as applied to the 119 individuals, including Plaintiffs, mentioned in

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Appendix 2 of the Executive Summary officially acknowledged to have been in CIA custody.

e. Information regarding the treatment of the 119 individuals, including Plaintiffs, mentioned in Appendix 2 of the Executive Summary officially acknowledged to have been in CIA custody, including the application of authorized enhanced interrogation techniques on the individuals.

f. Information regarding the conditions of confinement or treatment during the transfer or rendition of the 119 individuals, including Plaintiffs, mentioned in Appendix of the Executive Summary officially acknowledged to have been in CIA custody.

g. Allegations of torture, abuse, or mistreatment by the 119 individuals, including Plaintiffs, mentioned in Appendix 2 of the Executive Summary officially acknowledged to have been in CIA custody.

12. Defendants recognize the national security concerns and non-disclosure concerns expressed by the United States, and agree to explore ways in which information relevant to the claims or defenses asserted can be provided subject to the limitations expressed by the United States, including redaction of documents, the use of pseudonyms, or other methods. However, Defendants reserve the right to seek production of documents and information which the United States asserts are classified or subject to Defendants' non-disclosure agreements should Defendants and the United States not be able to reach agreement on ways in which discoverable information can be provided subject to the limitations expressed by the United States. The United States reserves its

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right to object or to seek appropriate protections to prevent the disclosure of classified, protected, or privileged information, or information subject to Defendants' non-disclosure agreements, in the event it is sought by Plaintiffs or Defendants in this case.

13. Plaintiffs assert that this litigation may proceed without the categories of information identified by the government in paragraph 10, none of which, Plaintiffs assert, is necessary to resolution of this lawsuit. Plaintiffs do not agree with the United States that all such information is properly classified. Plaintiffs specifically disagree that their own thoughts, memories, and experiences, which arise from their personal and involuntary subjection to the CIA's detention and interrogation program, may be lawfully classified or suppressed. Because Plaintiffs assert the categories of information identified by the government in paragraph 10 are unnecessary to this litigation, Plaintiffs agree to the government's restriction on using or seeking those categories of information as part of this lawsuit. Should Plaintiffs' assessment of the need in this litigation for information identified in paragraph 10 change, Plaintiffs will seek modification of this stipulation in accordance with the procedures set forth in paragraph 18.

14. Plaintiffs and Defendants agree to serve the United States with a copy of all notices of deposition and to inform the attorneys for the United States regarding the scheduling of any depositions. Attorneys for the United States and representatives from appropriate Government agencies may attend all depositions and proceedings in this case and may make objections they deem necessary to prevent the unauthorized disclosure of privileged or classified information. If an attorney for the United States asserts an

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objection to prevent the disclosure of classified, protected, or privileged information, or information subject to Defendants' non-closure agreements, the witness shall be precluded from responding to any question to which objection is made pending further order of the Court.

15. In the event the United States asserts an objection during a deposition or proceeding based on privilege or classification that precludes a witness from responding to a question, the United States and the party requesting the information shall meet and confer after the deposition or proceeding to discuss whether the requesting party intends to pursue access to the information and, if so, whether the information can be provided in an alternative form that would resolve the United States' privilege or classification objection. In the event the United States and requesting party are unable to reach an agreement on providing the requested information in an alternative form, the proper procedural vehicle for the requesting party to seek judicial relief is a motion to compel pursuant to Federal Rule of Civil Procedure 37.

16. Defendants acknowledge that they possess information which the United States contends is classified and/or subject to non-disclosure agreements with the CIA. If Defendants intend to file any pleading or serve any discovery response which contains information they reasonably believe the United States would contend is classified and/or subject to a non-disclosure obligation, Defendants shall provide the pleading or discovery response to the United States for review prior to service or filing. Defendants' disclosure of information to the United States pursuant to this review procedure shall not be deemed to waive any claim Defendants may have that the information submitted is subject to the work product protection or

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attorney-client privilege, or estop Defendants from designating the information submitted as subject to the work product protection or attorney-client privilege at a later date. The United States agrees to review the information submitted by Defendants in a reasonable period of time, recognizing that the time required for review will vary depending a variety of factors, including the volume and complexity of the information submitted as well as any upcoming litigation deadlines. In the event the United States has not completed its review within ten (10) business days, the United States shall provide Defendants with an estimated time for completion.

17. In the event information submitted by the Defendants to the United States for review is necessary for a filing or discovery response imposed by this Court or the Federal Rules of Civil Procedure, and such information is undergoing review by the United States at the time Defendants' filing or discovery response is due, Defendants' filing or discovery obligation shall be tolled during the period of time while the United States reviews Defendants' submission.

18. Any Party may seek modification of any aspect of this Stipulation by agreement of all parties, or, failing agreement, by motion to the Court.

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DATED this 23rd day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2016, 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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By *s/ Karen Pritchard*
Karen Pritchard

EXHIBIT 3

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

Suleiman Abdulah Salim, et. al.
Plaintiff
v.
James Elmer Mitchell and John "Bruce" Jessen
Defendant

Civil Action No. 2:15-CV-286-JLQ

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Central Intelligence Agency

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment 1.

Place:	Date and Time:
Blank Rome LLP 600 New Hampshire Ave, NW Washington, D.C. 20037	08/01/2016 10:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 06/28/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Defendants James Elmer Mitchell and John "Bruce" Jesssen, who issues or requests this subpoena, are:

Brian Paszamant
1 Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6998
Telephone: (215) 569-5791 Email: Paszamant@blankrome.com

Civil Action No. 2:15-CV-286-JLQ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT 1

DEFINITIONS AND INSTRUCTIONS

1. "The Defendants" refers to Dr. James Elmer Mitchell and Dr. John "Bruce" Jessen.

2. "You" and "Your" refer to the Central Intelligence Agency and each and every parent or affiliated organization subsidiary organization, agency, or unit; directors, officers, employees, attorneys, agents, servants, consultants to, contractors to, or representatives thereof.

3. "CIA" refers to the Central Intelligence Agency.

4. "Named Plaintiffs" shall mean any and all persons identified as plaintiffs in the Complaint, including:

Suleiman Abdullah Salim
Mohamed Ahmed Ben Soud (also formerly known as Mohamed Shoroeiya, Abd al-Karim)
Gul Rahman
Obaid Ullah (or "Ullah") as the personal representative of Gul Rahman's Estate

5. "Zubaydah" refers to Zayn al-Abidin Muhammad Husayn, also known as Abu Zubaydah

6. "Program" shall mean the CIA's detention and interrogation program in connection with the detention and interrogation of foreign nationals in the aftermath of September 11, 2001.

7. "Detainee" means any foreign national taken into custody by Coalition Forces, the United States, or any agency thereof, in connection with the United States' War on Terror following the attacks on September 11, 2001.

8. "CTC" refers to the CIA's Counterterrorism Center.

9. CIA's CTC Renditions Group refers to the CIA's Counterterrorism Center's Renditions Group. It is also known as the "Renditions Group," the "Renditions and Detainees Group," the "Renditions, Detentions and Interrogations Group," and by the initials, "RDI" and "RDG."

10. "SSCI Report" refers to the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program.

11. The singular shall be construed to include the plural, and vice versa, to make the request inclusive rather than exclusive.

12. The use of any verb tense shall be considered to include within its meaning all other tenses of the verb so used to make the request inclusive rather than exclusive.

13. The term "interrogation" means any process of interviewing or questioning of a detainee for the purpose of obtaining information.

14. The terms "any," "all," and "each" shall be interchangeable as necessary to call for the broadest possible response.

15. The conjunctions "and" and "or" shall be individually interpreted in every instance to mean "and/or" and shall not be interpreted disjunctively to exclude any document otherwise within the scope of any request.

16. A document that "refers" or "relates" to a specified subject matter shall include any document that constitutes, embodies, reflects, identifies, refers to, comments on, responds to, describes, analyzes, or contains information concerning, or is in any way pertinent to that subject matter.

17. Each specification with respect to production of documents should be construed independently and not by reference to any other request herein for purposes of limitation.

18. Unless otherwise indicated, the time period covered by these requests is September 11, 2001 to the present.

19. If any document requested was formerly in your possession, custody, or control and has been lost or destroyed, or has ceased to be within your control, submit in lieu of each such document a written statement which (a) describes in detail the nature of the document and its contents, (b) identifies the person who prepared or authorized the document, and if applicable, the person(s) to whom the document was sent, and (c) specifies the date on which the document was lost or destroyed, and if destroyed, the contents and the identity of the person requesting and performing the destruction.

20. Each document requested herein shall be deemed to call for the production of the original document or documents. If the original is not available, then a copy shall be produced. In addition, any copy of a document shall be produced if it differs in any respect from the original.

21. To the extent that you consider any of the following document requests objectionable, respond to each part thereof as is not objectionable in your view, and separately identify that part of the request that you find objectionable and state the grounds for each such objection.

22. Any privilege objection which you raise should be confined to that portion of the document request for which you make such a claim and shall not excuse you from otherwise responding to the request to the fullest extent possible consistent with preserving your claim of privilege.

23. If you object to any document request on grounds of privilege, identify each document with respect to which privilege is claimed, and provide the reason for withholding; a statement of facts constituting the basis for any claim of privilege or other ground of non-production; and a brief description of the document, including:

(a) the date of the document;

(b) the name of its author, authors, or individual preparing and identification by employment and title of each such person;

(c) the name of each person who was sent or has had access to, or custody of the document, together with an identification of each such person;

(d) the numbered request to which the document relates; and

(e) in the case of any document relating in any way to a meeting or conversation, identification of such meeting or conversation.

24. Documents are to be produced for inspection and copying as they are kept in the usual course of business, or organized and labeled to correspond with the categories in this request, but all documents shall be produced in accordance with a single approach.

25. In seeking information to respond to this request, you are required to examine all possible forms of storing verbal or numerical information, and your examination may not be limited to paper or other forms of "hard copy" records. In searching for non-paper sources of information, you are required to search computer or other electronic or optical forms of information storage formats.

26. "Document" is defined in the broadest terms permitted by the Federal Rules of Civil Procedure, and means, without limitation, any writings, drawings, graphs, charts, photographs, audio or phono records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form, including all drafts and non-identical copies of documents in the possession, custody, or control of Plaintiffs or their agents, employees, attorneys, investigators, or consultants.

27. The term "identity" with respect to any person means that person's full name, any alias(es), current address, phone number(s), and email address, and current work assignment and location.

28. The term "thing" is defined in the broadest terms permitted by the Federal Rules of Civil Procedure and means, without limitation, any prototype, model, specimen, commercially manufactured item or other tangible thing.

29. "Communication" means any written or oral statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, including, but not limited to, communications and statements that are face-to-face and those that are transmitted by writing or by media such as intercoms, telephones, including cellular phones,

computers, television and/or radio. "Communication" includes all transfer of information by and between any natural persons or business, corporate, governmental, or other organizational entities, or by and between representatives, employees, agents, brokers, and/or servants of any natural person or business, corporate, governmental, or other organizational entity.

30. "Person" means any natural person, any business entity (including but not limited to any partnership, firm, sole proprietorship, joint venture, association (including unincorporated associations), cooperative, trust, or corporation), or any governmental entity or department, agency, bureau, or political subdivision thereof.

31. "Privilege" as used in this document request is defined as incorporating the attorney-client privilege, any other statutory or non-statutory privileges.

REQUESTS

1. All documents relating to any contract or employment agreement entered into between one or both Defendants and the CIA related to the Program.

2. All documents relating to the design of the Program and/or the Program's intended or actual scope, including the identity of the persons who formally approved the Program's design and the basis for approval(s).

3. All documents identifying those involved in any way in the Program's design and/or the roles played by such individuals.

4. All documents relating to the structure of the Program, including the identity of the persons who formally approved the Program's structure and the basis for approval(s).

5. All documents identifying or describing those individuals for whom the Program was designed and/or intended.

6. All communications between one or both Defendants and the CIA concerning the Program.

7. All documents identifying or describing the location of a facility(ies) where any Plaintiff was detained and/or interrogated 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.

8. All documents relating to:

(a) the role that one or both Defendants was requested to play, or did play, with respect to the design, promotion, implementation and/or operation of the Program;

(b) what Defendants were told concerning the role that one or both Defendants was requested to play, or did play, with respect to the design, promotion, implementation and/or operation of the Program;

(c) the scope and/or limits of one or both Defendants' authority in connection with designing, promoting, implementing and/or operating the Program;

(d) what Defendants were told concerning the scope and/or limits of his/their authority in connection with designing, promoting, implementing and/or operating the Program;

(e) the legality and/or approval of one or both Defendants' actions, contemplated actions and/or inactions in connection with the Program;

(f) what Defendants were told concerning the legality and/or approval of his/their actions, contemplated actions and/or inactions in connection with the Program;

(g) one or both Defendants' ability to refuse to comply with any action requested of him/them; and

(h) what Defendants were told concerning his/their ability to refuse to comply with any action requested of him/them.

9. All documents relating to the persons to whom Defendants reported or who controlled, requested and/or directed Defendants' activities, including the persons' names, titles and duties.

10. All documents relating to the persons in the chain of command who approved the Program and Defendants' role in the Program, including the persons' names, titles and duties.

11. All documents relating to the persons who knew of and/or approved the activities of one or both Defendants, including the persons' names, titles and duties.

12. All documents relating to the handling or treatment of any Plaintiff by one or both Defendants.

13. All documents relating to the handling or treatment of any Plaintiff by an individual other than one or both Defendants.

14. All documents relating to the operation of the facility(ies) where any Plaintiff or Defendant was located to the extent that they disclose: (1) information concerning what was or was not done to or for any Plaintiff by any Defendant; (2) what any Defendant was (or was not) permitted to do vis-à-vis any Plaintiff and why; and/or (3) what was done to any Plaintiff and why.

15. All documents relating to any Defendant's involvement, if any, in any Plaintiff's capture or rendition.

16. All documents relating to the involvement of any individual(s) other than one or both Defendants involvement in any Plaintiff's capture or rendition.

17. All documents 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.

18. All documents relating to what was done, physically or emotionally, to any Plaintiff during any debriefing and/or interrogation session and the roles played by Defendants and/or others in such activities.

19. All documents relating to any written or verbal assessments or evaluations conducted by Defendants of detainee interrogations performed within the Program.

20. All documents relating to any unauthorized interrogation techniques conducted, applied or approved by Defendants during or in connection with a detainee interrogation.

21. All documents relating to one or both Defendants' involvement, if any, in Zubaydah's capture, rendition and/or interrogation.

22. All documents relating to one or both Defendants' involvement, if any, in Ridha al-Najjar's capture, rendition and/or interrogation.

23. All documents relating to Defendants' communications with the Chief of Base concerning Plaintiff Rahman including, but not limited to, communications concerning Plaintiff Rahman's treatment and condition.

24. All documents relating to Defendants' communications with any persons at CIA headquarters concerning Plaintiff Rahman including, but not limited to, communications concerning Plaintiff Rahman's treatment and condition.

25. All documents relating to Defendants' communications with CIA's inspector general, director of operations or any internal board or committee concerning Plaintiff Rahman including, but not limited to, communications concerning Plaintiff Rahman's treatment and condition.

26. Any reports prepared by the CIA's inspector general, director of operations or any internal board or committee in connection with a review of the circumstances of Plaintiff Rahman's death, including, but not limited to, the CIA's inspector general's report titled "Special Review of Counterterrorism Detention and Interrogation Activities."

27. All documents related to Defendants' role or participation in any CIA interrogator training courses conducted by the CIA's CTC Renditions Group.

28. The identities of the persons who led CIA interrogator training courses beginning in August 2002 through February 2011.

29. The following documents or papers referenced in the SSCI Report [where applicable, the location of the reference to the document in the SSCI Report is included in brackets]:

a. An undated paper authored by Defendants titled "*Recognizing and Developing Countermeasures to Al-Qa'ida Resistance to Interrogation Techniques: A Resistance Training Perspective*"

b. [FN 125 in SSCI Report] April 30, 2002 @ 12:02:47 PM email exchange with subject "Turning Up the Heat in the AZ Interrogations"

c. [FN 136 in SSCI Report] July 8, 2002 @ 4:15:15 PM email from __ to __ with subject: "Description of Physical Pressure"

d. [FNs 140-142 in SSCI Report] July 8, 2002 email from __ to __ subject: EYES ONLY-DRAFT

e. [FN 162 in SSCI Report] July 26, 2002 email from __ to Jose Rodriguez with subject: "EYES ONLY – Where we stand re: Abu Zubaydah"

f. [FN 137 in SSCI Report]: ALEC ____ (051724Z JUL 02)

g. [FN 250 in SSCI Report]: ALEC ___ (162135Z JUL 02)

h. [FN 257 in SSCI Report]: ____ 25107 (260903Z JUL 02)

i. [FN 2578 in SSCI Report]: _____ 10604 (091624Z AUG 02); _____ 10607 (100335Z AUG 02); August 21, 2002 email from ____ re: "[SWIGERT and DUNBAR]

j. [FN 2332 in SSCI Report]: ____ (251609Z AUG 02)1

k. [FN 326 in SSCI Report]: DIRECTOR _____ (301835Z JAN 03)

l. All cables and documents listed in FN 612 of SSCI Report

m. [FN 596 in SSCI Report]: January 28, 2003 Memorandum for Deputy Director of Operations, subject: "Death Investigation – Gul Rahman"

n. [FN 2676 in SSCI Report]: 37121 (221703Z APR 03), 37152 (231424Z APR 03)

o. [FN 2677 in SSCI Report]: 37202 (250948Z APR 03), 37508 (021305Z MAY 03)

p. [FN 659 in SSCI Report]: 38262 (150541Z MAY 03), 38161 (131326Z MAY 03)

q. [FN 664 in SSCI Report]: 38365 (170652Z MAY 03)

r. [FN 583 of SSCI Report]: _____ 39042 (_____ MAY 03); ___ 38596 (201220Z MAY 03); _____ 39582 (041743Z JUN 03); _____ 38557 (191641Z MAY 03); _____ 38597 (201225Z MAY 03); _____ 39101 _____ MAY 03)

s. All cables and documents listed in FNs 596, 603 and 607 of SSCI Report

t. [FNs 323 and 328 in SSCI Report]: June 16, 2003 emails to __ from __ re: "RDG Tasking for IC Psychologists DUNBAR and SWIGERT"

u. [FN 631 of the SSCI Report]: ____ 1271____ AUG 03; ____1267 ____ AUG 03

v. [FN 738 in SSCI Report]: May 12, 2004, Memorandum for Deputy Director for Operations from _____, Chief, Information Operations Center, and Henry Crumpton, Chief, National Resources Division via Associate Director of Operations, with the subject line "Operational Review of CIA Detainee Program"

w. [FN 609 of SSCI Report]: April 7, 2005, Briefing for Blue Ribbon Panel, CIA Rendition, Detention, and Interrogation Programs

x. [FN 2711 in SSCI Report]: April 27, 2005 CIA Inspector General, Report of Investigation, Death of Detainee (2003-7402-IG)

y. [FN 1028 in SSCI Report]: Name: Author Letter to __, attn.: DUNBAR and SWIGERT from __, Contracting Officer, re: "Confirmation of Verbal Authorization to Proceed Not to Exceed (ATP/NTE)"

z. [FN 1028 in SSCI Report]: Name: Author: March 2, 2005 email from __ to __ subject: "Next Contractual Steps with SWIGERT and DUNBAR"

aa. [FN 1028 in SSCI Report]: Name: Author: March 18, 2005 Letter from __, Chief, to __ re: "Letter Contract ___

bb. [FN 1029 in SSCI Report]: Name: Author: June 17, 2005 @ 11:08:22 email from __ to __ subject: "PCS CTC officer to __"

cc. [FN 1029 in SSCI Report]: Name: Author: July 12, 2005 @ 10:25:48 am email re: "Justification Date: 28 February 2006, Justification for other than Full and Open Competition, Contractor"

dd. [FN 1032 in SSCI Report]: March 15, 2006 "DO/CTC__/RDG Projected Staff & Contractors"

ee. [FN 994 in SSCI Report]: June 22, 2007 email to Jose Rodriguez and John Rizzo re: EIT Briefing for SecState"

ff. [FN 227 in SSCI Report]: "Memorandum for Executive Director from ___, from Deputy Director of Science and Technology re: Report and Recommendations of the Special Accountability Board Regarding the Death of Afghan Detainee Gul Rahman"

gg. [FN 37 in SSCI Report]: February 10, 2006, Memorandum for ___ CIA OFFICER, CounterTerrorist Center, National Clandestine Service, from Executive Director re: Accountability Decision

hh. [FN 873 in SSCI Report]: Report of Audit, CIA-controlled Detention Facilities Operated Under the 17 September 2001 Memorandum of Notification, Report No. 2005-0017-AS (6/14/06)

ii. Cables referenced in FNs 269 and 270 of the SSCI Report

jj. [FN 981 in SSCI Report]: CIA Comments on the February 2007 ICRC Report on Treatment of Fourteen "High Value Detainees" in CIA Custody

kk. Detainee Review for Suleiman Abdullah

ll. [FN 612 in SSCI Report]: ____ 387821, 38583