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

JAMES ELMER MITCHELL and
JOHN "BRUCE" JESSEN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

NO. 16-MC-0036-JLQ

DECLARATION OF ANN E.
QUERNS IN SUPPORT OF
DEFENDANTS' RESPONSE IN
FURTHER SUPPORT OF THIRD
AND FOURTH MOTIONS TO
COMPEL

Related Case:

SULEIMAN ABDULLAH SALIM, et
al.,

Plaintiffs,

vs.

NO. CV-15-0286-JLQ

DECLARATION IN SUPPORT OF
DEFENDANTS' RESPONSE IN
FURTHER SUPPORT OF THIRD AND
FOURTH MOTIONS TO COMPEL
NO. 16-MC-0036-JLQ

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JAMES E. MITCHELL and JOHN
JESSEN,
Defendants.

DECLARATION IN SUPPORT OF
DEFENDANTS' RESPONSE IN
FURTHER SUPPORT OF THIRD AND
FOURTH MOTIONS TO COMPEL
NO. 16-MC-0036-JLQ

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1 I, Ann E. Querns, hereby certify under penalty of perjury, that the
2 following is true and correct and within my personal knowledge:

3 1. I am over the age of 18, have personal knowledge of all facts
4 contained in this declaration, and am competent to testify as a witness to those
5 facts.

6 2. I am one of the attorneys representing Defendants James Elmer
7 Mitchell and John “Bruce” Jessen (collectively, “Defendants”) in the above-
8 captioned action.

9
10 **A. Factual Background**

11 3. Defendants have filed four Motions to Compel against the
12 Government as follows: (1) motion to compel the production of documents and
13 the deposition of, among others, James Cotsana, pursuant to subpoenas issued to
14 the CIA and DOJ (the “First Motion to Compel”) (ECF 1); (2) motion to compel
15 the production of documents in unredacted format, or to produce a
16 redaction/privilege log (the “Second Motion to Compel”) (ECF 38); (3) motion to
17 compel the production without redactions of approximately 175 documents that
18 remained in dispute with the Government (the “Third Motion to Compel”) (ECF
19 55); and (4) motion to compel the depositions of two CIA officials, Gina Haspel
20 and John/Jane Doe (the “Fourth Motion to Compel”). ECF 64.

21 4. Pursuant to the Court’s November 23, 2016 Order arising from the
22 Second Motion to Compel, on December 20, 2016, the Government produced a
23 Privilege Log identifying those documents that it had redacted or withheld in full.
24 ECF 52.
25
26

1 **B. The Government's Redaction and Production Protocol is Unreliable**

2 5. Pursuant to the Court's October 4, 2016 Order, the Government was
3 obligated to submit regular status reports detailing the progress of its document
4 accumulation, review and production efforts. ECF 36. On October 11, 2016, the
5 Government submitted the first of these reports, which report indicates that to
6 locate all documents responsive to the Court's October 4, 2016 Order, the CIA
7 had searched its RDINet database utilizing certain identified search terms
8 including, without limitation, "SERE psychologist" and "IC psychologist." ECF
9 85 at 11 (No. CV-15-286).

10
11 6. In January 2017, Defendants asked counsel for the Government,
12 Andrew Warden ("Mr. Warden") about certain documents that seemed to be
13 missing from the Government's December 20, 2016 production. In response to
14 this inquiry, on February 21, 2017, the Government produced 15 additional
15 documents. The bates range for these documents is US Bates #002340-90. Three
16 of these documents—US Bates 002366-68, US Bates 002369-71, and US Bates
17 002388-90—contain the terms "SERE PSYCHOLOGIST" and "IC
18 PSYCHOLOGIST" which, according to the Government's first status report,
19 were terms the Government specifically used when conducting its RDINet
20 database search. A true and correct copy of the documents possessing US Bates
21 002366-68, US Bates 002369-71, and US Bates 002388-90 (with search terms
22 highlighted) are attached hereto collectively as **Ex. 100**.

23
24 7. At least one of these documents, an August 28, 2002 cable titled
25 10700, produced as US Bates 002388-90, is also cited in the SSCI Report. SSCI
26 Report at 23 n.202.

1 8. While all 15 documents produced on February 21, 2017 contain
2 redactions, none of them are referenced in Director Pompeo's declaration (ECF
3 75-16) or the Government's unclassified document summaries attached as an
4 appendix to Director Pompeo's declaration (the "Unclassified Summaries") (ECF
5 75-16 at App'x).

6 9. Additionally, in January 2017, the Government agreed to re-review
7 certain heavily redacted documents identified by Defendants. On January 31,
8 2017, Mr. Warden produced additional information regarding the documents that
9 had been "re-reviewed."

10 10. Among other things, Mr. Warden supplied a re-production of a
11 document previously produced as US Bates 001859-62. This re-production was
12 produced as US Bates 002169-72. The re-production contains the full text of four
13 paragraphs that had previously been redacted. The newly-revealed paragraphs do
14 not contain the names of US employees, information regarding foreign
15 governments, locations of black-sites, or any other sensitive information of the
16 type that the Government has previously advised it has been redacting. True and
17 correct copies of the documents possessing US Bates 001859-62 and US Bates
18 002169-72 (with newly-released information highlighted), are attached hereto as
19 **Exs. 101** and **102**, respectively.

20
21
22 11. A few days after this additional production, on February 24, 2017,
23 the Government produced an additional document that had been re-reviewed.
24 The document was originally produced as US Bates 000963-69. The re-
25 production bears the same bates marking, but the redactions on US Bates 000964
26 have been removed. The newly-released information does not contain the names

1 of US employees, information regarding foreign governments, locations of black-
 2 sites, or any other sensitive information of the type that the Government has
 3 previously advised it has been redacting. True and correct copies of the original
 4 and reprocessed documents possessing US Bates 000963-69 (with newly-released
 5 information highlighted), are attached hereto as **Exs. 103** and **104**, respectively.

6 12. The Government's demonstrated failure to (1) produce documents
 7 containing terms purportedly used to search the CIA's RDINet database, (2)
 8 produce information having no relationship to those subject matters the
 9 Government claims to have withheld; and (3) provide a Privilege Log that
 10 accurately reflects the categories of information redacted, does not comply with
 11 the Court's October 4, 2016 Order (ECF 31).
 12

13 **C. Specific Documents for which Defendants Challenge the Government's**
 14 **Privilege Assertions**

15 13. Defendants challenge the Government's assertion of the following
 16 privileges as the bases for the withholding or redaction of documents: (1) the
 17 CIA Act; (2) the State Secrets Privilege; (3) the Deliberative Process Privilege;
 18 (4) the National Security Act; (5) the Attorney-Client Privilege; and (6) the Work
 19 Product Doctrine. A chart summarizing the withheld and redacted documents for
 20 which the Government's privilege assertions are being challenged is attached
 21 hereto as **Ex. 105**.
 22

23 14. With specific regard to the Government's deliberative process
 24 privilege assertion, many of the Unclassified Summaries provide insufficient
 25 information to determine whether the withheld information is predecisional and
 26 deliberative. *See e.g.*, ECF 75-16 at App'x ¶48, Doc. #117 ("discussion between

1 CIA officers in the field and CIA headquarters regarding possible contingency
 2 planning and future operations”); ¶54, Doc. #123 (“communication from CIA
 3 officers in the field to CIA headquarters requesting clarification and a decision
 4 from CIA Headquarters”); ¶129, Doc. #206 (information about a documents with
 5 no indication of who the communication was to/from or when it occurred)).

6 15. Further, in reliance upon this privilege the Government has redacted
 7 from many documents information directly related to a central issue in this case:
 8 the process of developing interrogation techniques. *See e.g.*, ECF 75-16 at
 9 App’x:
 10

- 11 • ¶37, Doc. #103 (“recommendations and an ‘initial draft plan’”);
- 12 • ¶45, Doc. #114 (recommendations on “use of certain interrogation
 13 techniques”);
- 14 • ¶48, Doc. #117 (discussion regarding interrogation contingency
 15 planning);
- 16 • ¶61, Doc. #133 (explaining “the future proposes strategy for the
 17 isolation phase of Abu Zubaydah”);
- 18 • ¶63, Doc. #135 (April 2002 cable redacting “various recommended
 19 strategies for interrogating Zubaydah);
- 20 • ¶77, Doc. #149 (discussions “regarding proposed interrogation
 21 strategies”);
- 22 • ¶85, Doc. #157 (“field officers’ recommended course of action based
 23 [sic] their analysis of Abu Zubaydah’s current status and a discussion
 24 of various options for CIA headquarters to consider in making a
 25 decision on the next phase of Abu Zubaydah’s interrogation”);
- 26 • ¶86, Doc. #158 (discussions among the Zubaydah interrogation team
 regarding various “issues for CIA headquarters to consider in
 making decisions on the next phase” of Zubaydah’s interrogation);

- 1 • ¶87, Doc. #159 (summary of a meeting “concerning the next phase
2 of the Abu Zubaydah interrogations”);
- 3 • ¶93, Doc. #167 (“communications from CIA headquarters to the Abu
4 Zubaydah interrogation team discussion a variety of issues related to
5 the next phase of Abu Zubaydah’s interrogations.”);
- 6 • ¶146, Doc. #223 (proposes “several specific options regarding the
7 future course of Abu Zubaydah’s interrogations”);
- 8 • ¶148, Doc. #225 (“discussions “regarding proposed interrogation
9 strategies and methods to use in future interrogation of Abu
10 Zubaydah”);
- 11 • ¶149, Doc. #226 (“recommended plan of action” for Zubaydah
12 interrogation); and
- 13 • ¶ 168, Doc. 246 (redacting discussions “regarding efforts to collect
14 specific information about interrogation techniques used in the
15 Department of Defense SERE program for potential use in the future
16 CIA detention and interrogation program”).

15 16. Yet, information about the implementation of interrogation
16 techniques on Zubaydah has been released in multiple public sources, including
17 the SSCI Report and documents produced in this case. A true and correct copy of
18 the document possessing US Bates 001850-58 related to Zubaydah’s interrogation
19 is attached hereto as **Ex. 106**.

20 17. Next, although the Government has produced many redacted
21 documents to Defendants during the course of this litigation, the content of the
22 following documents is specifically referenced within Defendants’ accompanying
23 Response.

24 18. Document 37 is a June 16, 2003 Email with subject “RDG Tasking
25 for IC Psychologists Jessen and Mitchell” that was produced by the Government
26

1 as US Bates 001102-08. A true and correct copy of the document possessing US
2 Bates 001102-08 is attached hereto as **Ex. 107**.

3 19. Document 114 is a June 2002 cable with subject “EYES ONLY –
4 THE NEXT PHASE OF THE ABU ZUBAYDAH INTERROGATIONS” that
5 was produced as US Bates 001641-47. It is a communication from CIA
6 Headquarters to the black-site that specifically states “HQS/ALEC guidance on
7 the next phase of the Abu Zubaydah interrogation.” A true and correct copy of
8 the document possessing US Bates 001641-47 is attached hereto as **Ex. 108**.

9
10 20. Document 120 is a July 2002 email with subject “EYES ONLY –
11 INCREASED PRESSURE IN THE NEXT PHASE OF THE ABU ZUBAYDAH
12 INTERROGATIONS” that was produced by the Government as US Bates
13 001656-62. A true and correct copy of the document possessing US Bates
14 001656-62 is attached hereto as **Ex. 109**.

15 21. Document 123 is an August 4, 2002 cable with subject “EYES
16 ONLY – DETAILS RE INITIAL CYCLE OF INTERROGATIONS OF”
17 discussing the interrogation of Zubaydah, that was produced as US Bates 001755-
18 59. A true and correct copy of the document possessing US Bates 001755-59 is
19 attached hereto as **Ex. 110**.

20
21 22. Document 136 is a September 22, 2002 email with subject “Re:
22 Setting up for Interrogations” that was produced by the Government as US Bates
23 001788-92. A true and correct copy of the document possessing US Bates
24 001788-92 is attached hereto as **Ex. 111**.

25 23. Document 157 is a July 26, 2002, cable titled 10568 with subject
26 “EYES ONLY – NEXT PHASE OF ABU ZUBAYDAH INTERROGATIONS”

1 that the SSCI Report cites for the proposition that Defendants described the
2 waterboard as an “absolutely convincing technique.” SSCI at 36 n.159. This
3 document was produced heavily redacted as US Bates 001839-40 with very little
4 additional information. A true and correct copy of the document possessing US
5 Bates 001839-40 is attached hereto as **Ex. 112**.

6 24. Document 158 is a July 15, 2003 cable titled 10536 with subject
7 “EYES ONLY – ADDITIONAL OPERATIONAL AND SECURITY
8 CONSIDERATIONS FOR THE NEXT PHASE OF ABU ZUBAYDAH
9 INTERROGATION” that the SSCI Report cites for the proposition that “only the
10 DETENTION SITE GREEN chief of Base would be allowed to interrupt or stop
11 an interrogation in process, and that the chief of Base would be the final decision-
12 making authority as to whether the CIA’s interrogation techniques applied to Abu
13 Zubaydah would be discontinued.” SSCI Report at 34 n.150. This information
14 does not appear in the heavily redacted version of the document produced as US
15 Bates 001841-45. A true and correct copy of the document possessing US Bates
16 001841-45 is attached hereto as **Ex. 113**.

17 25. Document 167 is a July 18, 2002 cable with subject “EYES ONLY –
18 HQS FEEDBACK ON ISSUES PENDING FOR INTERROGATIONS OF ABU
19 ZUBAYDAH” that was produced as US Bates 001871-74. It is a communication
20 from CIA Headquarters to the black-site that specifically sets out who has
21 decision making authority regarding the Zubaydah interrogation. A true and
22 correct copy of the documents possessing US Bates 001871-74 is attached hereto
23 as **Ex. 114**.

1 26. Document 225 is a May 2002 cable with subject “EYES ONLY –
2 PLANS TO INCREASE PRESSURE ON ABU ZUBAYDAH” that was
3 produced as US Bates 002015-18. It is a communication from CIA Headquarters
4 to the black-site that specifically states “this cable specifically authorizes the use
5 of this techniques mentioned below”. A true and correct copy of the document
6 possessing US Bates 002015-18 is attached hereto as **Ex. 115**.

7 27. Document 226 is an August 20, 2002 cable titled 10644 with subject
8 “EYES ONLY – STATUS OF INTERROGATION PHASE” that the SSCI
9 Report cites to for multiple propositions. *See, e.g.*, SSCI Report at 41-43, n.187,
10 190, 191, 203. The Government produced this document as US Bates 002019-23
11 without much of this information redacted. A true and correct copy of the
12 document possessing US Bates 002019-23 is attached hereto as **Ex. 116**.

13
14 **D. Haspel and Cotsana’s Roles Have Been Widely Publicized**

15 28. On February 2, 2017, the CIA publicly announced that Gina Haspel
16 (“Haspel”) has been selected as the Deputy Director of the CIA. A true and
17 correct copy of the CIA’s February 2, 2017, Press Release is attached hereto as
18 **Ex. 117**.

19 29. Haspel is also referenced in Jose Rodriguez’s book, *Hard Measures*,
20 which specifically states in the early pages that “This material has been reviewed
21 by the CIA to prevent the disclosure of classified information.” The excerpt
22 relevant to Haspel appears at page 37, which states,
23

24 Another superstar whom I recruited was "Jane," who had served
25 extensive time overseas and was working in an Agency organization
26 that provided surveillance support. I stole her away and had her head
one of our earliest "black sites," where terrorists were interrogated.
Later she became my right arm as chief of staff when I led the

1 clandestine service. Both Sara and Jane went on to very high-ranking
2 positions within the Agency, positions that they still serve in today.

3 A true and correct copy of the relevant pages of Hard Measures is attached hereto
4 as **Ex. 118**.

5 30. After Haspel was named as the Deputy Director of the CIA, Senators
6 Ron Wyden and Martin Heinrich sent letters to President Trump expressing their
7 concern that she was “unsuitable for the position” and noting that in February
8 2017, “two former senior CIA officials have made public statements about Ms.
9 Haspel’s background.” The letter goes on, “Former Acting Director Michael
10 Morell has written that Ms. Haspel drafted a cable directing that CIA
11 interrogation videos be destroyed, and former Director of the National
12 Clandestine Service John Bennett has spoken about her role in the CIA’s
13 Detention and Interrogation Program.” True and correct copies of the letters from
14 Senators Wyden and Heinrich to President Trump, dated February 2, 2017 and
15 February 23, 2017 are attached hereto as **Ex. 119** and **120** respectively.

17 31. Haspel’s involvement in the Program has also been widely and well
18 documented in publicly available news reports. For instance, in a February 2,
19 2017, New York Times article titled “New C.I.A. Deputy Director, Gina Haspel,
20 Had Leading Role in Torture,” Haspel is described as having: “played a direct
21 role in the C.I.A.’s ‘extraordinary rendition program,’” “run” the C.I.A.’s first
22 overseas detention site in Thailand and “over[seen] the ... interrogations of two
23 detainees, Abu Zubaydah and Abd al-Rahim al-Nashiri.” Matthew Rosenberg,
24 *New C.I.A. Deputy Director, Gina Haspel, Had Leading Role in Torture*, N.Y.
25 Times (Feb. 2, 2017), <https://www.nytimes.com/2017/02/02/us/politics/cia->
26

1 deputy-director-gina-haspel-torture-thailand.html; *see also* Dexter Filkins, *The*
2 *New C.I.A. Deputy Chief's Black-Site Past*, *The New Yorker* (Feb. 3, 2017),
3 [http://www.newyorker.com/news/news-desk/the-new-c-i-a-deputy-chiefs-black-](http://www.newyorker.com/news/news-desk/the-new-c-i-a-deputy-chiefs-black-site-past)
4 [site-past](http://www.newyorker.com/news/news-desk/the-new-c-i-a-deputy-chiefs-black-site-past); Mary Louise Kelly, *New CIA Deputy Director's Past Intertwined With*
5 *CIA's History of Waterboarding*, *National Public Radio* (Feb. 14, 2017),
6 [http://www.npr.org/2017/02/14/515205098/new-cia-deputy-director-past-s-](http://www.npr.org/2017/02/14/515205098/new-cia-deputy-director-past-s-intertwined-with-cia-s-history-of-waterboarding)
7 [intertwined-with-cia-s-history-of-waterboarding](http://www.npr.org/2017/02/14/515205098/new-cia-deputy-director-past-s-intertwined-with-cia-s-history-of-waterboarding); Greg Miller, *CIA selects new*
8 *head of clandestine service, passing over female officer*, *Wash. Post*, (May 7,
9 2013), [https://www.washingtonpost.com/world/national-security/cia-selects-new-](https://www.washingtonpost.com/world/national-security/cia-selects-new-head-of-clandestine-service-passing-over-female-officer-tied-to-interrogation-program/2013/05/07/c43e5f94-b727-11e2-92f3-f291801936b8_story.html?utm_term=.258de33eaccd)
10 [head-of-clandestine-service-passing-over-female-officer-tied-to-interrogation-](https://www.washingtonpost.com/world/national-security/cia-selects-new-head-of-clandestine-service-passing-over-female-officer-tied-to-interrogation-program/2013/05/07/c43e5f94-b727-11e2-92f3-f291801936b8_story.html?utm_term=.258de33eaccd)
11 [program/2013/05/07/c43e5f94-b727-11e2-92f3-](https://www.washingtonpost.com/world/national-security/cia-selects-new-head-of-clandestine-service-passing-over-female-officer-tied-to-interrogation-program/2013/05/07/c43e5f94-b727-11e2-92f3-f291801936b8_story.html?utm_term=.258de33eaccd)
12 [f291801936b8_story.html?utm_term=.258de33eaccd](https://www.washingtonpost.com/world/national-security/cia-selects-new-head-of-clandestine-service-passing-over-female-officer-tied-to-interrogation-program/2013/05/07/c43e5f94-b727-11e2-92f3-f291801936b8_story.html?utm_term=.258de33eaccd). True and correct copies of
13 articles that Defendants have collected describing Haspel's role in the Program
14 are attached collectively hereto as **Ex. 121**.

15
16 32. Cotsana's affiliation with the CIA and involvement in the Program is
17 also publicly known. For example, his online biography as a writer for a
18 publication titled "Hear Us Roar 60Plus Magazine," notes that his "day job for 26
19 years was as an operations officer and senior manager with the Central
20 Intelligence Agency's Directorate of Operations and the Directorate of Science
21 and Technology." *Hear Us Roar*, go60.us, (March 21, 2017, 6:35 PM),
22 <http://go60.us/meet-jim-cotsana>. In addition, on the website for the Maine
23 Association of Former Intelligence Officers a post dated August 28, 2012,
24 announces Cotsana as the featured speaker at the association's October 2012
25 meeting. *Oct. 20 Meeting The Truth Behind the CIA's Detention and Interrogation*
26

1 Program, Maine Association of Former Intelligence Officers (Mar. 21, 2017, 6:35
2 PM), <http://www.afiomaine.org/2012/08/28/120>. The announcement indicates that
3 Cotsana would speak on the CIA's Detention and Interrogation Program and that
4 "[a]s a department chief at the Counterintelligence Center he established and
5 oversaw a highly successful program focused on identifying and disrupting terrorist
6 plans and plots while identifying methods of operation." *Id.*; see also James
7 Cotsana, Jr., Artemus Consulting Group (Mar. 21, 7:50 PM),
8 <http://artemuscg.com/index.php/associates/82-james-cotsana-jr>. True and correct
9 copies of website pages Defendants have collected describing Cotsana's affiliation
10 with the CIA and his role in the Program are attached collectively hereto as **Ex.**
11 **122.**

12
13
14 
Ann E. Querns

15 Executed this 22th day of March, 2017
16 at Philadelphia, PA.

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March, 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:

<p>Emily Chiang echiang@aclu-wa.org ACLU of Washington Foundation 901 Fifth Ave, Suite 630 Seattle, WA 98164</p>	<p>Paul Hoffman hoffpaul@aol.com Schonbrun Seplow Harris & Hoffman, LLP 723 Ocean Front Walk, Suite 100 Venice, CA 90291</p>
<p>Andrew L. Warden Andrew.Warden@usdoj.gov Senior Trial Counsel Timothy A. Johnson Timothy.Johnson4@usdoj.gov Trial Attorney United States Department of Justice Civil Division, Federal Programs Branch 20 Massachusetts Ave NW Washington, DC 20530</p>	<p>Steven M. Watt, admitted <i>pro hac vice</i> swatt@aclu.org Dror Ladin, admitted <i>pro hac vice</i> dladin@aclu.org Hina Shamsi, admitted <i>pro hac vice</i> hshamsi@aclu.org ACLU Foundation 125 Broad Street, 18th Floor New York, NY 10007</p>
<p>Avram D. Frey, admitted <i>pro hac vice</i> afrey@gibbonslaw.com Daniel J. McGrady, admitted <i>pro hac vice</i> dmcgrady@gibbonslaw.com Kate E. Janukowicz, admitted <i>pro hac vice</i> kjanukowicz@gibbonslaw.com Lawrence S. Lustberg, admitted <i>pro hac vice</i> llustberg@gibbonslaw.com Gibbons PC One Gateway Center Newark, NJ 07102</p>	

By s/ Shane Kangas
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