

1 Christopher W. Tompkins, WSBA #11686  
2 [ctompkins@bpmlaw.com](mailto:ctompkins@bpmlaw.com)  
3 Betts Patterson & Mines, P.S.  
4 One Convention Place, Suite 1400  
5 701 Pike Street  
6 Seattle, Washington 98101-3927

7 James T. Smith (admitted *pro hac vice*)  
8 [smith-jt@blankrome.com](mailto:smith-jt@blankrome.com)  
9 Brian S. Paszamant (admitted *pro hac vice*)  
10 [paszamant@blankrome.com](mailto:paszamant@blankrome.com)  
11 Blank Rome LLP  
12 One Logan Square, 130 N. 18th Street  
13 Philadelphia, PA 19103

14 Attorneys for Petitioners Mitchell and Jessen

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

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

20 Petitioners,

21 vs.

22 UNITED STATES OF AMERICA,

23 Respondent.

NO. 16-MC-0036-JLQ

DECLARATION OF BRIAN S.  
PASZAMANT IN SUPPORT OF  
DEFENDANTS' MOTION TO  
COMPEL CIA DEPOSITIONS

March 16, 2017  
Oral Argument Requested

24 Related Case:

25 SULEIMAN ABDULLAH SALIM, et  
26 al.,

Plaintiffs,

NO. CV-15-0286-JLQ

DECLARATION OF BRIAN S.  
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DEFENDANTS' MOTION TO COMPEL  
NO. 16-MC-0036-JLQ

Betts  
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Mines  
One Convention Place  
Suite 1400  
701 Pike Street  
Seattle, Washington 98101-3927  
(206) 292-9988

1 vs.

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

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

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

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

13 3. On or about November 29, 2016, I executed an affidavit and the  
14 accompanying subpoenas in accordance with *Touhy* and the regulations  
15 promulgated thereunder for submitting a request for information to the Central  
16 Intelligence Agency (“CIA”), as well as pursuant to the procedures established by  
17 the parties (the “Touhy Request”). The *Touhy Request* sought testimony from CIA  
18 employee “Gina Doe, former Chief of Staff to Jose Rodriguez when he served as  
19 the Chief of the CIA’s Clandestine Service and former Deputy to Jose Rodriguez  
20 when he served as the Director of the CIA’s Counterterrorism Center,” and from  
21 CIA employee “John/Jane Doe, former Chief of Special Missions for the CIA’s  
22 CTC and immediate successor to Jim Cotsana in that position and who also served  
23 as the Chief of the CIA’s CTC Renditions Group.” A true and correct copy of the  
24 *Touhy Request* is attached hereto as **Ex. A**.

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1           4.       On December 1, 2016, I served a copy of the *Touhy* Request on the  
2 CIA by transmitting it to Mr. Andrew Warden via email and regular mail. A true  
3 and correct copy of my December 1, 2016, email to Mr. Warden is attached hereto  
4 as **Ex. B.**

5  
6           5.       On December 14, Mr. Warden responded to my December 1, 2016,  
7 email by accepting service of the *Touhy* Request “on behalf of the CIA.” Mr.  
8 Warden also stated that he “passed the request on to the appropriate officials at  
9 CIA for a decision,” and said that he would “advise me once the CIA has made a  
10 decision on [the] *Touhy* request.”

11           6.       Having heard nothing from Mr. Warden or the CIA for two weeks, I  
12 again reached out to Mr. Warden via email on January 2, 2017, to inquire about  
13 “any movement” from the CIA.

14           7.       On February 8, 2017, I emailed Mr. Warden yet again to “follow[]  
15 up on the [*Touhy* Request]. As you can see, it has been quite some time since  
16 service of the *Touhy* requests. Of course, we would like to avoid unnecessary  
17 motion practice if possible. Please advise.”

18           8.       Finally, on February 13, 2017, Mr. Warden responded to my  
19 December 1, 2016, email and said the CIA will “not authorize” the requested  
20 depositions of Gina “Doe” and/or John/Jane “Doe.”

21           9.       The date of compliance for the Gina “Doe” deposition was January  
22 4, 2017; the date of compliance for the John/Jane “Doe” deposition was January 5,  
23 2017. Both depositions were to occur at defense counsel’s Washington, D.C.  
24 offices.  
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1           10.     Prior to Mr. Warden’s February 13, 2017, email, and despite having  
2 the *Touhy* Request since December 1, 2016, the CIA never objected to the  
3 subpoenas to Gina “Doe and/or John/Jane “Doe.” Nor has it attempted to identify  
4 and/or narrow the proposed topics for deposition (as was done with other CIA  
5 deponents).

6  
7           11.     On April 22, 2016, the Court heard from the parties with respect to  
8 Defendants’ motion to dismiss and preliminary discovery issues. (ECF No. 38.)  
9 Mr. Warden appeared at the hearing. Throughout the hearing, the Court advised  
10 that the action would be proceeding into discovery and informed the parties and  
11 Mr. Warden it expected the Government would cooperate in discovery. The Court  
12 also made clear the parties should bring discovery issues to its attention: “[i]f you,  
13 whether it be a party or the Department of Justice, that you represent, the United  
14 States, want to object, then present the objections and I’ll rule upon it.” A true and  
15 correct copy of select portions from the April 22, 2016, hearing is attached as **Ex.**  
16 **C.**

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18           12.     On July 8, 2016, the Court held a telephonic scheduling conference.  
19 (ECF No. 58.)

20           13.     During the conference, the Court set a February 17, 2017, discovery  
21 deadline. (ECF No. 59 ¶ 7). A true and correct copy of the Court’s *Scheduling*  
22 *Order* is attached as **Ex. D.**

23           14.     During the July 8, 2016, conference, the Court specifically asked Mr.  
24 Warden if the Government had any issues with the dates proposed, and the  
25 Government said, “[t]he dates you’ve set, your Honor, are acceptable to the  
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1 Government.” The Court then reiterated that any discovery issues should be  
 2 promptly brought to its attention because it is “not going to delay this case at the  
 3 instance of the Government.” Defendants also specifically asked if the Court  
 4 would potentially order the Government to respond to *Touhy* requests within a  
 5 certain timeframe and the Court responded:  
 6

7 Well, the case is assigned to me. I’ll decide the issues . . . as they  
 8 arise. And, if there’s an issue, get it timely noted in a motion or  
 9 other filing; and I’ll give the Government a reasonable period of  
 10 time. I’m not going to let the Government delay this case, and I’m  
 11 not going to let defendants delay this case because they say, well,  
 12 there’s classified information that . . . issue[] need[s] to be resolved.

13 A true and correct copy of select portions of the transcript from the July 8, 2016,  
 14 hearing is attached as **Ex. E**.

15 15. The CIA only recently officially acknowledged Gina “Doe’s”  
 16 identity as Gina Haspel on February 2, 2017, when she was selected to serve as  
 17 Deputy Director of the CIA. A true and correct copy of the posting from the CIA’s  
 18 website (*available at [https://www.cia.gov/news-information/press-releases-](https://www.cia.gov/news-information/press-releases-statements/2017-press-releases-statements/gina-haspel-selected-to-be-deputy-director-of-cia.html#)*  
 19 *[statements/2017-press-releases-statements/gina-haspel-selected-to-be-deputy-](https://www.cia.gov/news-information/press-releases-statements/2017-press-releases-statements/gina-haspel-selected-to-be-deputy-director-of-cia.html#)*  
 20 *[director-of-cia.html#](https://www.cia.gov/news-information/press-releases-statements/2017-press-releases-statements/gina-haspel-selected-to-be-deputy-director-of-cia.html#)*) is attached as **Ex. F**.

21 16. On the same day the CIA acknowledged Gina “Doe’s” identity as  
 22 Gina Haspel, the New York Times published an article titled “*New C.I.A. Deputy*  
 23 *Director, Gina Haspel, Had Leading Role in Torture.*” This article discussed Ms.  
 24 Haspel having played a “direct role in the C.I.A.’s ‘extraordinary rendition  
 25 program’”; that she “oversaw” the interrogation of terrorism suspects; and that the  
 26 CIA’s first overseas detention site in Thailand was “run by Ms. Haspel, who

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1 oversaw the . . . interrogations of [Zubaydah] and [al-Nishiri]” (*available at*  
2 [https://www.nytimes.com/2017/02/02/us/politics/cia-deputy-director-gina-haspel-](https://www.nytimes.com/2017/02/02/us/politics/cia-deputy-director-gina-haspel-torture-thailand.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&r=0)  
3 [torture-thailand.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&r=0](https://www.nytimes.com/2017/02/02/us/politics/cia-deputy-director-gina-haspel-torture-thailand.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&r=0)).  
4

5 A true and correct copy of the New York Times article is attached as **Ex. G**.

6  
7 */s Brian S. Paszamant*

8 Brian S. Paszamant

9 Executed this 14th day of February, 2017  
10 at Philadelphia, PA.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of February, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

<p>Emily Chiang  <a href="mailto:echiang@aclu-wa.org">echiang@aclu-wa.org</a>          ACLU of Washington Foundation          901 Fifth Ave, Suite 630          Seattle, WA 98164</p>	<p>Paul Hoffman  <a href="mailto:hoffpaul@aol.com">hoffpaul@aol.com</a>          Schonbrun Seplow Harris &amp; Hoffman, LLP          723 Ocean Front Walk, Suite 100          Venice, CA 90291</p>
<p>Andrew L. Warden  <a href="mailto:Andrew.Warden@usdoj.gov">Andrew.Warden@usdoj.gov</a>          Senior Trial Counsel          Timothy A. Johnson  <a href="mailto:Timothy.Johnson4@usdoj.gov">Timothy.Johnson4@usdoj.gov</a>          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>  <a href="mailto:swatt@aclu.org">swatt@aclu.org</a>          Dror Ladin, admitted <i>pro hac vice</i>  <a href="mailto:dladin@aclu.org">dladin@aclu.org</a>          Hina Shamsi, admitted <i>pro hac vice</i>  <a href="mailto:hshamsi@aclu.org">hshamsi@aclu.org</a>          ACLU Foundation          125 Broad Street, 18th Floor          New York, NY 10007</p>
<p>Avram D. Frey, admitted <i>pro hac vice</i>  <a href="mailto:afrey@gibbonslaw.com">afrey@gibbonslaw.com</a>          Daniel J. McGrady, admitted <i>pro hac vice</i>  <a href="mailto:dmcgrady@gibbonslaw.com">dmcgrady@gibbonslaw.com</a>          Kate E. Janukowicz, admitted <i>pro hac vice</i>  <a href="mailto:kjanukowicz@gibbonslaw.com">kjanukowicz@gibbonslaw.com</a>          Lawrence S. Lustberg, admitted <i>pro hac vice</i>  <a href="mailto:llustberg@gibbonslaw.com">llustberg@gibbonslaw.com</a>          Gibbons PC          One Gateway Center          Newark, NJ 07102</p>	

By           s/ Shane Kangas            
Shane Kangas  
[skangas@bpmlaw.com](mailto:skangas@bpmlaw.com)  
Betts, Patterson & Mines, P.S.

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