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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF WASHINGTON

17 JAMES E. MITCHELL and
18 JOHN JESSEN,
19
20 Petitioners,
v.
21 UNITED STATES OF AMERICA,
22
23 Respondent.

No. 16-MC-0036-JLQ

UNITED STATES' RESPONSE TO
DEFENDANTS' MOTION TO
COMPEL DEPOSITIONS OF CIA
WITNESSES GINA HASPEL AND
"JOHN/JANE DOE"

Motion Hearing:
To Be Scheduled At Court's Discretion

Related Case:

SULEIMAN ABDULLAH SALIM, *et al.*,

Plaintiffs,

v.

No. 15-CV-286-JLQ

JAMES E. MITCHELL and
JOHN JESSEN,

Defendants.

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1 Petitioners' (Defendants in related case No. CV-15-0286-JLQ) fourth motion to
2 compel seeks the testimony of two purported CIA witnesses – Gina Haspel and
3 John/Jane Doe – that Defendants allege held senior operational positions in the CIA's
4 former detention and interrogation program. *See* ECF No. 64. The Government,
5 however, has never officially acknowledged whether either witness had any role in the
6 former detention and interrogation program. To confirm or deny that fact would itself
7 disclose classified information. *See, e.g., Hunt v. CIA*, 981 F.2d 1116, 1118-19 (9th
8 Cir. 1992). Accordingly, the Government anticipates asserting the state secrets
9 privilege in opposition to Defendants' motion.
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12 The legal issues raised by Defendants' fourth motion to compel are the same as
13 those raised by Defendants' third motion to compel (ECF No. 54), which also seeks
14 deposition testimony of another purported CIA witness (James Cotsana) who
15 Defendants allege, but the Government has never confirmed or denied, held a senior
16 position in former detention and interrogation program. The Court has ordered that the
17 Government's formal assertion of privilege with respect to Defendants' third motion be
18 due on March 8, 2017. *See* Order (ECF No. 70).
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22 Because Defendants' third and fourth motions to compel raise the same issues of
23 privilege with respect to the discovery in this case, the Government seeks leave to
24 address and formally assert all of its privileges, including the state secrets privilege as
25 appropriate, in response to both motions on March 8, 2017, in a single consolidated
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1 response. Undersigned counsel for the Government has conferred with counsel for
2 Defendants regarding this proposed briefing schedule, and Defendants do not object.

3 Litigating the privilege issues in a consolidated fashion will be the most efficient
4 way for the parties and the Court to obtain expeditious resolution of these issues. The
5 Government's submission on March 8 will address all of the outstanding disputed
6 privilege issues in this case, including with respect to the Government's document
7 productions and Defendants' requests to depose alleged Government witnesses. A
8 single, consolidated brief addressing all of the privilege issues will promote the Court's
9 efficient resolution of these issues in a single decision because the all of the relevant
10 legal argument will be presented in one submission addressing issues common to both
11 of Defendants' motions to compel, as opposed to multiple briefs on various issues
12 presented over the course of a staggered, and perhaps more lengthy, schedule. Indeed,
13 given the March 8 deadline for responding to Defendants' third motion to compel,
14 consolidating the responses to both motions on that date will not delay resolution of this
15 case.
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17 As represented in the Government's opposition to Defendants' third motion to
18 compel (ECF No. 59), and during the telephonic hearing on February 14, 2016, the
19 Government has initiated the internal process to obtain the requisite authorization to
20 assert the state secrets privilege in opposition to Mr. Cotsana's deposition as well as in
21 Defendants' request for unredacted copies of CIA documents. The Government has
22 also recently taken steps to expand the authorization process to include the two
23 additional depositions that Defendants' seek in their fourth motion to compel. The
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1 Government is expediting the necessary preparation and review process for assertion of
2 the state secrets privilege as much as possible, consistent with the with the care and
3 coordinated review at senior levels of government that policy and law require. *See*
4 *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1080 (9th Cir. 2010) (en banc)
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6 (emphasizing the importance of the Government following its rigorous internal policies
7 and procedures regarding assertion of the state secrets privilege). Accordingly, and in
8 light of the Government's ongoing diligent efforts to fulfill its responsibilities regarding
9 a potential assertion of the state secrets privilege in this case, the Government
10 respectfully requests that it be permitted to file its consolidated response to Defendants'
11 third and fourth motions to compel on March 8, 2017.
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1 Dated: February 22, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2017, 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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