	Case 2:16-mc-00036-JLQ	Document 62	Filed 02/06/17		
1 2 3 4	BETTS, PATTERSON & MINES P. Christopher W. Tompkins (WSBA #11 <u>CTompkins@bpmlaw.com</u> 701 Pike Street, Suite 1400 Seattle, WA 98101-3927				
5 6 7 8	BLANK ROME LLP Henry F. Schuelke III (admitted <i>pro ha</i> <u>HSchuelke@blankrome.com</u> 600 New Hampshire Ave NW Washington, DC 20037	nc vice)			
9 10 11 12 13	James T. Smith (admitted <i>pro hac vice</i>) <u>Smith-jt@blankrome.com</u> Brian S. Paszamant (admitted <i>pro hac vice</i>) <u>Paszamant@blankrome.com</u> One Logan Square, 130 N. 18th Street Philadelphia, PA 19103				
14 15	UNITED STATES DISTRICT COURT				
16	FOR THE EASTERN DISTRICT OF WASHINGTON				
17	AT SPOKANE				
18		I			
19 20	JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN,	NO. 16-MC	C-0036-JLQ		
21	Petitioners,		ATION OF BRIAN S.		
22 23	VS.	DEFENDA	ANT IN SUPPORT OF ANTS' MOTION TO		
23 24	UNITED STATES OF AMEDICA	COMPEL			
25	UNITED STATES OF AMERICA,				
26	Respondent.	NO. 2:15-	CV-286-JLQ		
	REPLY IN SUPPORT OF MOTION TO COMPEL NO. 16-MC-0036-JLQ	- 1 -	Betts Patterson Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988		

	Case 2:16-mc-00036-JLQ Document 62 Filed 02/06/17				
1 2 3 4 5 6 7 8 9 10	Related Case: SULEIMAN ABDULLAH SALIM, et al. Plaintiffs, vs. JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN,				
 11 12 13 14 15 16 17 18 19 	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 declaration, and am competent to testify as a witness to those facts. 2. I am one of the attorneys representing Defendants James Elmer Mitchell and John "Bruce" Jessen (collectively, "Defendants") in the above-				
 20 21 22 23 24 25 26 	ned action. 3. In June 2016, I communicated with Andrew Warden, attorney for the tment of Justice ("US") regarding the discovery that Defendants anticipated and from the US. During these communications, Mr. Warden indicated that ic information was still considered classified. In response, I specifically fied what types of classified information Defendants anticipated being Y IN SUPPORT OF MOTION TO PEL $-2-$ Betts Potterson Mines Potterson Mines State 1400 Seattle, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988				

critical to their defense, and what types of information was immaterial and therefore need not be supplied. A true and correct copy of my June 3, 2016 email to Mr. Warden, with attachment, is attached hereto as **Ex. AA**.

4. In or around August 2016, after the US sent formal objections to the *Touhy* Requests that Defendants had served upon the Central Intelligence Agency ("CIA") and the Department of Justice ("DOJ"), Defendants expressed the need to file a motion to compel the US to respond to the *Touhy* Requests. The US continued to indicate that it thought the filing of such a motion to compel would be premature, as it wished to instead continue a dialogue.

5. On January 7, 2017, Defendants provided the US with a list of 35 documents that they had identified as likely containing information material to one of Defendants' defenses. The US agreed to "re-review" these documents to determine if additional information within these documents could be provided to Defendants. A true and correct copy of the January 7, 2017 email Chris Tompkins, Esquire sent to Mr. Warden, with attachments, is attached hereto as **Ex. BB**.

6. On January 31, 2017, Mr. Warden responded to Defendants with additional information concerning the documents that had been "re-reviewed". Specifically, the US provided Defendants with summaries of the information that had purportedly been redacted from these documents. The summaries indicate that information concerning Drs. Mitchell and Jessen is withheld pursuant to almost all of the redactions. A true and correct copy of Mr. Warden's January 31, 2017 response, with the attached summaries, is attached hereto as **Ex. BB**.

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7. Mr. Warden's January 31, 2017 email also attached a re-production of a document previously produced as US Bates 001859-62. The re-production is produced as US Bates 002169-72. The re-production contains the full text of four paragraphs that had previously been redacted. The new information released does not contain the names of US employees, information regarding foreign governments, locations of black-sites, or any other sensitive information the US has previously advised it has been redacting. True and correct copies of the documents possessing US Bates 001859-62 and US Bates 002169-72 (with newly-released information highlighted), are attached hereto as **Exs. CC** and **DD**, respectively.

8. Currently, many documents contain significant redactions and other
documents have been entirely withheld. For instance, Defendants still have no
information about document number 217 on the CIA's Privilege Log, entitled:
"Communications between CIA officers discussing interrogation program." *See* **Ex. BB**, Unclassified Summaries of Selected Documents at page 9.

9. Of the many documents that contain significant redactions,
Defendants have gathered a small sampling to show the extent of redactions being made by the US. A true and correct copy of documents produced by the US marked US Bates 001779-87 and US Bates 001839-40 are attached collectively as Ex. EE.

/s Brian S. Paszamant

Brian S. Paszamant

Executed this 6th day of February, 2017
at Philadelphia, PA.

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1	CERTIFICATE OF SERVICE				
2	I hereby certify that on the 6th day of February, 2017, I electronically filed				
3	the foregoing document with the Clerk of Court using the CM/ECF system which				
4	will send notification of such filing to the following:				
5 6	Andrew L. Warden <u>Andrew.Warden@usdoj.gov</u> United States Department of Justice	Kate E. Janu kjanukowicz	ıkowicz z@gibbonslaw.com		
7 8	20 Massachusetts Ave NW Washington, D.C. 20530	Lawrence S <u>llustberg@g</u>	. Lustberg sibbonslaw.com		
9 10		Gibbons PC One Gatewa	ay Center		
11	Emily Chiang echiang@aclu-wa.org	Newark, NJ Dror Ladin, dladin@ach	admitted pro hac vice		
12 13	ACLU of Washington Foundation 901 Fifth Ave, Suite 630	Hina Shamsi			
14	Seattle, WA 98164	hshamsi@aclu.org			
15		Steven Wat			
16		<u>swatt@aclu</u>	<u>.org</u>		
17	ACLU Foundation 125 Broad Street, 18th Floor				
18	New York, NY 10007				
19 20					
20	By <u>s/Ann Querns</u> Ann Querns				
22	aquerns@blankrome.com Blank Rome LLP				
23					
24					
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