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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON

16
17 No. 17-CV-171-JLQ

18 IN RE APPLICATION OF ZAYN AL-
19 ABIDIN MUHAMMAD HUSAYN
(ABU ZUBAYDAH) and JOSEPH
20 MARGULIES

21
22 UNITED STATES' NOTICE OF
POTENTIAL PARTICIPATION

23 The United States of America, by and through undersigned counsel, hereby
24 respectfully advises the Court that the United States is considering participating in this
25 case as allowed by 28 U.S.C. § 517. That statute authorizes the Attorney General of the
26 United States to send any officer of the Department of Justice "to attend to the interests
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1 of the United States in a suit pending in a court of the United States, or in a court of a
2 State, or to attend to any other interest of the United States.” 28 U.S.C. § 517.

3 As this Court is aware, the United States has been an active participant in two
4 pending cases in this District related to the discovery of information concerning the
5 Central Intelligence Agency’s (CIA) former detention and interrogation program. *See*
6 *Salim v. Mitchell*, Case No. 15-CV-286 (JLQ); *Mitchell v. United States*, 16-MC-36
7 (JLQ). The above-captioned case is another action that seeks the disclosure of
8
9 information about the former CIA program. Here, Abu Zubaydah, a former detainee in
10 that program, has filed an *ex parte* application pursuant to 28 U.S.C. § 1782 seeking the
11 Court’s authorization to serve deposition and document subpoenas on Dr. James
12 Mitchell and Dr. John “Bruce” Jessen, two psychologists who worked as independent
13 contractors for the CIA in connection with the program. *See* Application (ECF No. 1).
14 Zubaydah seeks various categories of information from Dr. Mitchell and Dr. Jessen
15 about alleged CIA detention and interrogation activities in Poland, as well as
16 information about Poland’s alleged participation in those alleged activities. *See id.*, Ex.
17 1-4. Zubaydah asserts that the purpose of his subpoenas is to provide the requested
18 information to prosecutors in Poland for use in a criminal investigation regarding the
19 CIA’s alleged detention activities in Poland. *See id.* at 7-10.
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25 The proposed subpoenas and categories of information sought in this action raise
26 important and complex questions regarding the United States’ national security and
27 foreign policy interests. For this reason, the United States is actively considering
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1 whether to file a Statement of Interest with the Court.¹ The process for deciding
2 whether to file a Statement of Interest involves coordination among multiple
3 government agencies and the approval of the Department of Justice through the
4 Assistant Attorney General for the Civil Division. Given the national security subject
5 matter of the subpoenas as well as the potential overlap with criminal proceedings in
6 Poland, the coordination in this case is likely to be extensive and will require
7 consultations with multiple components within the Department of Justice, as well as the
8 CIA and the Department of State.

11 The United States currently expects to complete its consideration within 30 days,
12 and on or before June 30, 2017, the United States will either file a Statement of Interest
13 pursuant to 28 U.S.C. § 517, or advise the Court that it will not participate in this case.
14 The United States respectfully requests that the Court defer action on Petitioner's
15 Application until that time. Undersigned counsel for the United States has conferred
16 with counsel for Petitioner about this proposed schedule, and Petitioner does not
17 oppose.

18 The United States appreciates the Court's consideration of its potential interest in
19 this matter.

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25 ¹ The fact that the United States is considering filing a Statement of Interest is not
26 intended, and should not be construed, as a confirmation or denial of any of Petitioner's
27 allegations.

1 Dated: May 31, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 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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