IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SUHAIL NAJIM ABDULLAH AL SHIMARI, *et al.*, Plaintiffs, v. CACI PREMIER TECHNOLOGY, INC., Defendant,	No. 1:08-cv-0827 LMB-JFA **PUBLIC VERSION**
CACI PREMIER TECHNOLOGY, INC., Third-Party Plaintiff, v. UNITED STATES OF AMERICA, and JOHN DOES 1-60, Third-Party Defendants.	

DEFENDANT/THIRD-PARTY PLAINTIFF CACI PREMIER TECHNOLOGY, INC.'S MEMORANDUM IN SUPPORT OF ITS SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION

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I. INTRODUCTION

CACI PT's pending motions for summary judgment and to dismiss based on the state secrets privilege detail a multitude of reasons why this case cannot proceed. After forty-two depositions and production of hundreds of thousands of documents, Plaintiffs lack evidence tying any mistreatment they allege to CACI PT. Dkt. #1035. Moreover, discovery has made clear that the United States' three assertions of the state secrets privilege, all of which have been upheld by the Court, make it impossible for CACI PT to fairly defend itself. Dkt. 1042. This motion presents an even more fundamental reason why this case cannot proceed – after full discovery,[1] it is clear that this Court has no jurisdiction to entertain Plaintiffs' claims.

First, there is no evidence that CACI PT personnel engaged in conduct in the United States violating international law. The absence of evidence of a domestic violation of international law is fatal to Plaintiffs' assertion of jurisdiction under the Alien Tort Statute ("ATS") because that statute does not apply extraterritorially. The Fourth Circuit's decision in *Al Shimari III* addressed extraterritoriality by relying on matters relevant in any way to Plaintiffs' claims. *Al Shimari v. CACI Premier Tech., Inc.*, 758 F.3d 516 (4th Cir. 2014) ("*Al Shimari III*"). Intervening Supreme Court precedent holds that the *only* domestic conduct that matters in an extraterritoriality analysis is the conduct that is the focus of the statute in question, *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016), which for the ATS is the conduct constituting a violation of international law. The Fifth and Ninth Circuits, as well as other courts, have recognized that *RJR Nabisco* precludes the holistic approach to extraterritoriality previously taken both by the Ninth Circuit and by the Fourth Circuit in *Al Shimari III*. The

[1] There is one pseudonymous interrogator – CACI Interrogator G – who has been located by the United States but not yet been deposed. The timing of his deposition is unclear. CACI PT will supplement the record as appropriate once CACI Interrogator G has been deposed.

absence of evidence of a domestic violation of international law by CACI PT thus requires dismissal of Plaintiffs' claims.

Second, this Court lacks jurisdiction because Plaintiffs' claims present nonjusticiable political questions. The Fourth Circuit remanded this case to this Court with explicit instructions to assess the applicability of the political question doctrine by considering specific factual issues regarding Plaintiffs' interrogations. In particular, the Fourth Circuit directed the Court "to examine the *evidence* regarding the *specific conduct* to which *the plaintiffs* were subjected and the source of any direction under which the acts took place." *Al Shimari v. CACI Premier Tech., Inc.*, 840 F.3d 147, 160 (4th Cir. 2016) (emphasis added) ("*Al Shimari IV*"). If the "acts committed by CACI [PT] employees . . . were not unlawful when committed and occurred under the actual control of the military or involved sensitive military judgments," the political question doctrine bars jurisdiction over Plaintiffs' claims. *Id.* at 151.

After the case returned to this Court, Plaintiffs abandoned their claims of direct abuse by CACI PT personnel, and the Court dismissed those claims. The significance of this recasting of Plaintiffs' case cannot be overstated. Plaintiffs' abandonment of allegations that CACI PT personnel directly abused them means that CACI PT has no liability to Plaintiffs, *even if Plaintiffs were in fact abused*, unless CACI PT conspired with or aided and abetted any soldiers who actually abused Plaintiffs. On remand, discovery proceeded on Plaintiffs' conspiracy and aiding and abetting claims. CACI PT took court-ordered pseudonymous depositions of the personnel who actually participated in Plaintiffs' interrogations, and sought documents from the United States detailing Plaintiffs' treatment and military approvals in connection therewith. The United States' assertion of the state secrets privilege thwarted much of the factual development dictated by the Fourth Circuit, but the discovery CACI PT was permitted to take demonstrates

that there is no evidence of conduct by CACI PT personnel in connection with these Plaintiffs that violated any international norm, and that CACI PT personnel operated at all times under the direct and plenary control of the U.S. military chain of command. These facts demonstrate the applicability of the political question doctrine under the evidence-based test dictated by the Fourth Circuit in *Al Shimari IV*.

Plaintiffs' claims also involve nonjusticiable political questions because resolving Plaintiffs' claims requires the Court to second-guess sensitive military judgments. This case arises out of the United States' conduct of war, at a war-zone interrogation facility under constant enemy attack, in a foreign country that the U.S. military invaded with Congressional authorization. The sensitive military judgments inherent in Plaintiffs' interrogations and treatment are exemplified by Secretary Mattis's assertion of the state secrets privilege to shield information about Plaintiff's treatment. Indeed, most of the mistreatment Plaintiffs allege involves conditions and interrogation techniques approved by the U.S. military and Executive Branch officials in their efforts to obtain battlefield intelligence and save American lives.

The extraterritoriality prohibition and the political question doctrine are each sufficient to deprive the Court of subject matter jurisdiction. Dismissal is therefore required.

II. LEGAL STANDARD

A challenge to the Court's subject matter jurisdiction may be brought at any time, and "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006); *United States v. Beasley*, 495 F.3d 142, 147 (4th Cir. 2007); *Green v. Sessions*, No. 1:17-cv-1365-LMB-TCB, 2018 WL 2025299, at *7 (E.D. Va. May 1, 2018). While a subject-matter jurisdiction challenge often is brought under Rule 12(b)(1), the proper vehicle once the defendant has answered the complaint is a suggestion of lack of subject-matter jurisdiction. 5B Wright &

Miller, *Federal Practice & Procedure* § 1350, at 138 (3d ed. 2004); *see also S.J. v. Hamilton County, Ohio*, 374 F.3d 416, 418 n.1 (6th Cir. 2004). To determine subject matter jurisdiction, the Court "may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326, 333 (4th Cir. 2014). The court acts as factfinder for the motion and resolves any evidentiary disputes. *Id.*; *Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995). The plaintiff has the burden of proving jurisdiction. *Demetres v. E.W. Constr., Inc.*, 776 F.3d 271, 272 (4th Cir. 2015).

III. ANALYSIS

A. This Court Lacks Subject Matter Jurisdiction Due to the Absence of Evidence of Domestic Conduct Comprising the International Law Violations

In *Al Shimari III*, the Fourth Circuit held that under a test derived from *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), the claims in this action sufficiently "touched and concerned" United States territory to provide subject matter jurisdiction. *Al Shimari III*, however, is no longer good law. In a subsequent decision, the Supreme Court rejected the Fourth Circuit's test and established a dramatically different test. Specifically, the Supreme Court held that in determining ATS jurisdiction, a court does not review claims, but examines only a statute's focus – the conduct the statute seeks to regulate. The Supreme Court also held that if there is insufficient *domestic* conduct comprising the statutory violation, a federal court has no jurisdiction. Application of the focus test here shows that jurisdiction is lacking because, on the evidentiary record, there is ***no*** evidence that any conduct comprising international law violations occurred in the United States. For these reasons, this Court should dismiss this case for lack of subject matter jurisdiction.

1. The ATS, *Kiobel*, and *Al Shimari III*

The ATS provides that the "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. The statute allows federal courts to "recognize private claims under federal common law" for a "modest number of international law violations." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724, 732 (2004). In *Kiobel*, the Supreme Court addressed whether a claim brought pursuant to the ATS "may reach conduct occurring in the territory of a foreign sovereign." 569 U.S. at 115. The Supreme Court reviewed the history of the ATS and held that the statute does not apply extraterritorially and therefore courts lack jurisdiction over claims for violations of the law of nations occurring outside the United States. *Id.* at 124 (citing *Morrison v. Nat'l Austrl. Bank, Ltd.*, 561 U.S. 247, 264 (2010)). In *Kiobel*, "all of the relevant conduct took place outside the United States," and thus the plaintiffs' claims were barred. *Id*.

In a cryptic statement at the end of the decision, the Court recognized that claims could be actionable under the ATS where they "touch and concern the territory of the United States . . . with sufficient force to displace the presumption against extraterritorial application." *Id*. at 124-25. The Court did not provide guidance on the application of the "touch and concern" standard, leaving its interpretation uncertain, though it noted that "[c]orporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices." *Id*. at 125.[2]

Unsurprisingly, lower courts took disparate approaches in applying *Kiobel*, disagreeing on the factors relevant to whether a case involved an impermissible extraterritorial application of

[2] The Supreme Court subsequently determined that "foreign corporations may not be defendants in suits brought under the ATS." *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1407 (2018). The Court held that the question of corporate liability under ATS is for Congress, not the courts, to decide. *Id.* at 1403. This Court's approach to the issue violates that admonition.

the ATS.[3] Applying *Kiobel*, this Court dismissed this action. *Al Shimari v. CACI Prem. Tech., Inc.*, 933 F. Supp. 2d 793 (E.D. Va. 2013). The Fourth Circuit vacated that decision and remanded the case. *Al Shimari III*, 758 F.3d 516 (4th Cir. 2014). The Court of Appeals focused on Plaintiffs' claims in finding that the case sufficiently touched and concerned the United States territory to provide jurisdiction. The Court of Appeals concluded that a "claim[] covered all the facts relevant to the lawsuit, including the parties' identities and their relationship to the causes of action," not just the particular acts that may have violated international law. *Id.* at 527. In other words, the Fourth Circuit distinguished *matters* relevant to a *plaintiff's claim* from *conduct* relevant to a *statute's focus* and adopted a test for ATS jurisdiction centered on the former.

On a limited record, the Fourth Circuit attached significance to numerous factors: (1) CACI PT was a U.S. corporation; (2) CACI PT hired U.S. citizens with security clearances granted by the United States to provide intelligence support services, and who allegedly perpetrated torture in Iraq; (3) CACI PT received payments in the U.S. based on contracts issued by the U.S. government; (4) Congress intended to provide access to the U.S. federal courts by adopting statutes such as the Torture Victims Protection Act; (5) important American foreign policy interests were implicated by the nature of the allegations against CACI PT; and (6) CACI PT's managers in the United States allegedly gave approval to the acts of torture, encouraged the misconduct, and attempted to cover up misconduct when it was discovered. 758 F.3d at 530-31. The court characterized these facts and allegations, cumulatively, as "extensive 'relevant conduct' in United States territory" sufficient to establish jurisdiction. *Id.* at 528.[4]

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[3] *See, e.g.*, *Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir. 2014); *Mastafa v. Chevron Corp.*, 770 F.3d 170 (2d Cir. 2014); *Cardona v. Chiquita Brands Int'l, Inc.*, 760 F.3d 1185 (11th Cir. 2014); *Al Shimari III*, 758 F.3d at 516.

[4] The Fourth Circuit reiterated this approach in another case that predated *RJR Nabisco*, *Warfaa v. Ali*, 811 F.3d 653, 660 (4th Cir. 2016), stating that an ATS jurisdiction exists "when

The Fourth Circuit thus took an expansive approach in *Al Shimari III* in evaluating the Plaintiffs' claims. The Fourth Circuit conspicuously did not confine its analysis to the conduct that the ATS seeks to regulate, *i.e.*, the torts committed in violation of international law. Since *Al Shimari III* was issued, however, two significant developments have occurred. *First*, the Supreme Court held that in assessing extraterritorial application of a statute, such as ATS, a court does not review all facts relevant to the claims. Rather, a court examines *only* the conduct that the statute seeks to regulate, *i.e.*, the conduct comprising the violations of international law, and the parties it seeks to protect. This examination, excluding as it does almost all the factors on which the Fourth Circuit relied, is dramatically narrower than the holistic analysis conducted in *Al Shimari III*. It is this examination which this Court must now undertake because, on remand, a district court must apply intervening Supreme Court law that has altered controlling principles. *United States v. Robinson*, 390 F.3d 833, 837 (4th Cir. 2004).

Second, discovery has completed the record with respect to the facts relevant to jurisdiction: conduct comprising the alleged international law violations. Facts matter, and the record establishes that there is no evidence of domestic conduct by CACI PT comprising international law violations. Since the ATS does not apply extraterritorially, there is no subject matter jurisdiction for this action.

2. Intervening Supreme Court Precedent Has Rejected the Analytical Approach Used in *Al Shimari III* for Determining Subject Matter Jurisdiction and Established the Analysis Courts Must Perform

Subsequent to *Al Shimari III*, the Supreme Court's decision in *RJR Nabisco*, 136 S. Ct. at 2101, established a two-step framework for applying the presumption against extraterritoriality, a

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extensive United States contacts are present and the alleged conduct bears . . . a strong and direct connection to the United States." The Fourth Circuit's decision in *Warfaa* predated the Supreme Court's decision in *RJR Nabisco*, which issued later the same year.

framework that does not allow consideration of the mélange of factors on which *Al Shimari III* was based. Under *RJR Nabisco*, a court first "ask[s] whether the presumption against extraterritoriality has been rebutted – that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially." *Id.* If there is no such indication, the court proceeds to the second step, which "determine[s] whether the case involves a *domestic* application of the statute." *Id.* at 2101 (emphasis added). To do so, it "look[s] to the statute's 'focus'" and determines if there is sufficient conduct relevant to that focus that occurred in United States territory. *Id.* As the Court explained:

> If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but ***if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory***.

Id. (emphasis added). The Supreme Court confirmed the application of the focus test in *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), applying *RJR Nabisco*'s two-step framework in deciding questions of extraterritoriality to a claim under the Patent Act.[5]

RJR Nabisco was recognized as intervening Supreme Court precedent for extraterritorial application of the ATS by the Ninth Circuit in *Doe II v. Nestle*, 906 F.3d 1120 (9th Cir. 2018). In 2014, shortly after *Kiobel* was decided, the Ninth Circuit held that *Kiobel* had not adopted the focus test for extraterritoriality under ATS, concluding that the Supreme Court in *Kiobel* "chose to use the phrase 'touch and concern' rather than the term 'focus' when articulating the legal standard it did adopt." *Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1028 (9th Cir. 2014). The case was remanded to the district court to allow the plaintiffs to amend their complaint to show whether "some of the activity underlying their ATS claims took place in the United States." *Id.*

[5] *WesternGeco* only reinforces that courts must use the focus test. *See In re Apple, Inc. Device Performance Litig.*, No. 18-md-2827, 2018 WL 4772311, at *7 (N.D. Cal. Oct. 1, 2018).

On remand, the district court found the Ninth Circuit's conclusion that the focus test did not apply to ATS claims to be "in irreconcilable conflict" with the intervening decision in *RJR Nabisco*. *Doe v. Nestle*, No. CV 05-5133, 2017 WL 6059134, at *2 (C.D. Cal. Mar. 2, 2017). The court then applied the focus test that *RJR Nabisco* was "extremely clear" in requiring. *Id.* Finding that the focus of the ATS is the "conduct that violates international law, which the ATS 'seeks to "regulate"' by giving federal courts jurisdiction over such claims," the court found the relevant conduct had occurred outside the United States and dismissed the case. *Id.* at *3-7. On appeal, the Ninth Circuit agreed with the district court that *RJR Nabisco* required application of the focus test. *Doe II*, 906 F.3d at 1125.[6] As in *Nestle*, the Fourth Circuit's analysis in *Al Shimari III* is in irreconcilable conflict with the focus test required by *RJR Nabisco*.

3. The *RJR Nabisco*/*WesternGeco* Analysis Requires this Court to Determine Whether There is Sufficient Domestic Conduct Comprising the Alleged International Law Violation

Because *Kiobel* established that the ATS does not apply extraterritorially, this Court need only conduct the second step of the analysis, *i.e.*, reviewing the ATS's focus and determining whether sufficient conduct relevant to that focus occurred in the United States. The focus of a statute is the object of its solicitude, which includes the conduct it seeks to regulate and the parties it seeks to protect. *WesternGeco*, 138 S. Ct. at 2137-38; *Morrison*, 561 U.S. at 266-67. Significantly, the Supreme Court has always identified a statute's "focus" as something explicitly mentioned in the statute's text. *See WesternGeco*, 138 S. Ct. at 2137-38 (holding that the "focus" of the Patent Act's damages provision is the underlying infringement); *RJR Nabisco*, 136 S. Ct. at 2106, 2111 (holding that the "focus" of RICO's civil suit provision is the plaintiff's

[6] Similarly, in *Adhikari v. Kellogg, Brown & Root, Inc.*, 845 F.3d 184, 199-200 (5th Cir. 2017), the Fifth Circuit held that, in light of *RJR Nabisco*, the extraterritoriality analysis in *Al Shimari III* is "not the test" because *Morrison* and *RJR Nabisco* "require[] analysis of the conduct relevant to the statute's 'focus.'" *Id.* at 199-200.

injury); *Morrison*, 561 U.S. at 266-67 (holding that the "focus" of §10(b) of the Securities & Exchange Act is the securities transaction); *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991) (holding that Title VII's "focus" is the worker's employment).[7]

The ATS's focus is unquestionably the tort committed in violation of the law of nations or a treaty of the United States. *Doe II*, 906 F.3d at 1125; *Adhikari*, 845 F.3d at 197; *Mastafa v. Chevron Corp.*, 770 F.3d 170, 185 (2d Cir. 2014); *Ratha* v. *Phatthana Seafood Co., Ltd.*, No. CV-16-4271, 2016 WL 11020222, at *8 (C.D. Cal. Nov. 9, 2016). Torts committed in violation of international law are what the ATS seeks to regulate, and aliens are indisputably the parties the statute seeks to protect. The *only* relevant conduct for purposes of ATS jurisdiction is the conduct comprising the alleged international law violations.

Indeed, this Court followed the approach mandated by *RJR Nabisco* and *WesternGeco* in a case that predated both of those decisions. In *Warfaa v. Ali*, 33 F. Supp. 3d 653 (E.D. Va. 2014), *aff'd*, 811 F.3d 653 (4th Cir. 2016), the Court recognized that "a cognizable ATS claim may not reach conduct occurring in the territory of a foreign sovereign," and dismissed the plaintiff's ATS claims because "[a]ll the relevant conduct alleged in the Amended Complaint occurred in Somalia." *Id.* at 658-59 (internal quotations omitted). The Court distinguished the case from *Al Shimari III* in large part on the grounds that *Al Shimari III* involved "conduct allegedly sanctioned on American soil" by CACI PT. *Id.* at 658 n.1. The present case, in its current posture, also is dramatically different from the status of the case at the time of *Al Shimari III*. The claims of direct abuse by CACI PT personnel have been abandoned by Plaintiffs and

[7] *See also U.S. ex rel. Wilson v. Graham Cty. Soil & Water Cons. Dist.*, 777 F.3d 691, 698 n.4 (4th Cir. 2015) (finding that the "focus" of the jurisdiction stripping provision of the False Claim Act is stated by its "plain language"); *Spanski Enter., Inc. v. Telewizja Polska, S.A.*, 883 F.3d 904, 913-14 (D.C. Cir. 2018) (holding that the "focus" of the Copyright Act, for purposes of extraterritorial application, is infringement).

dismissed by the Court. Discovery on the conspiracy and aiding and abetting claims, cabined as it was by the state secrets privilege, has concluded. The evidentiary record contains *nothing* showing that CACI PT personnel in the United States sanctioned, participated in, or otherwise facilitated any conduct comprising an international law violation.

The other factors on which the Court of Appeals relied in *Al Shimari III* – factors that comprised the vast majority of what the Court labeled "extensive relevant conduct in United States territory" – are simply not considered in assessing jurisdiction under ATS. CACI PT's citizenship, its U.S. contracts and employees, and the U.S. interests are all immaterial. Here, the alleged violations of international law – conspiracy and aiding and abetting – all occurred outside the United States. No conduct relevant to the focus of the ATS occurred in the United States.

4. The Record is Devoid of Evidence of Any Domestic Conduct Comprising the International Law Violations

Another significant development since the Fourth Circuit ruled in *Al Shimari III* is that discovery has completed the record with respect to the facts relevant to jurisdiction: the conduct comprising the alleged international law violations. The factual record establishes that there is no evidence of unlawful domestic conduct by CACI PT and, therefore, this case fails the second step of the *RJR Nabisco* test. *Kiobel* previously established the ATS does not apply extraterritorially, and, therefore, this case fails the first step of the *RJR Nabisco* analysis. Having failed both *RJR Nabisco* steps, there is no subject matter jurisdiction for this action.

This motion raises a factual challenge to jurisdiction, showing that there is no evidence of domestic conduct by CACI PT violating international law. In a factual challenge, no presumption of truthfulness attaches to the allegations. *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017). The Court applies the standard applicable to a motion for summary judgment, under which the Plaintiffs must set forth specific facts beyond the pleadings to show that a

genuine issue of material facts exists, except that the Court resolves factual disputes bearing on jurisdiction. *Id.* To demonstrate jurisdiction here, Plaintiffs must provide evidence of conduct comprising international law violations *that occurred in the United States*.[8] This they cannot do, for no such evidence exists in the record.

Where discovery reveals insufficient domestic conduct involving the alleged international law violations, dismissal is required for lack of jurisdiction. *See, e.g.*, *Sexual Minorities Uganda v. Lively*, 254 F. Supp.3d 262, 270 (D. Mass. 2017) (dismissing ATS action after discovery revealed that the only activity the defendant had engaged in within the U.S. was to send sporadic emails offering encouragement, guidance and advice to a cohort of Ugandans prosecuting a campaign of repression against the LGBTI community in their country), *aff'd in part, dismissed in part*, 899 F.3d 24, 30 (1st Cir. 2018). Dismissal is similarly required here, as discovery has adduced no evidence of unlawful domestic conduct.

The dearth of evidence of unlawful domestic conduct is not surprising. Even the Third Amended Complaint ("TAC") is devoid of such allegations. The TAC's allegations of conspiracy, ¶¶ 78-142, do not contain a single allegation of domestic conduct. All the conspiratorial conduct allegedly occurred in Iraq. The TAC's "Summary of Reasons for Believing the Conspiracy was Plausible," ¶ 158, also fails to allege any domestic conduct.

The TAC's allegations of aiding and abetting are little different. The TAC makes generic allegations of negligent hiring, training and oversight, alleges that CACI PT's site lead was in daily contact with CACI PT in the United States, that a CACI PT executive travelled to Iraq to

[8] Admittedly, conduct in the United States that aids and abets a violation of the law of nations in a foreign country might amount to sufficient domestic conduct to sustain jurisdiction. *See Doe II*, 2018 WL 5260852, at *5; *Mastafa*, 770 F.3d at 185. A claim of aiding and abetting an ATS violation requires proof that the defendant "provide[d] substantial assistance with the purpose of facilitating the alleged violation." *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 401 (4th Cir. 2011).

assess CACI PT's contract performance, and that CACI executives in the U.S. regularly reviewed reports "to assess the company's overall worldwide business situation." TAC ¶¶ 159-170. None of these allegations, even if they had evidentiary support, reflects domestic conduct comprising conspiracy or aiding and abetting violations of international law in Iraq. Finally, there is an allegation that "CACI PT implicitly, if not expressly, encouraged such misconduct," *i.e.*, detainee abuse. TAC ¶ 157. How, when, where and by whom are all left to the imagination. Even considered cumulatively, these allegations do not describe "substantial assistance with the purpose of facilitating the alleged violation" as required by *Aziz*, 658 F.3d at 401.

The allegations of the TAC are alone sufficient to warrant dismissal, as they are bereft of domestic conduct comprising conspiracy or aiding and abetting. But there is more, much more. The record evidence confirms the wholesale absence of domestic conduct with respect to the alleged violations. Specifically:

- There is no evidence that any of the allegedly tortious conduct was ***planned*** in the United States.
- There is no evidence that any CACI PT executive or employee in the United States ***conspired*** with anyone in Iraq to abuse detainees.
- There is no evidence that any CACI PT executive or employee in the United States ***participated*** in the allegedly tortious conduct.
- There is no evidence that any CACI PT executive or employee in the United States ever ***encouraged, directed or condoned*** the allegedly tortious conduct.
- There is no evidence that any CACI PT executive or employee in the United States ***made any decisions*** to further the allegedly tortious conduct.
- There is no evidence that any CACI PT executive or employee in the United States was even ***aware*** of the allegedly tortious conduct at the time it supposedly occurred.

[redacted] Ex. 27, ¶ 18; Ex. 34 at 27; Ex. 35 at 36-37, 60; Ex. 36 at 28-29; Ex. 37 at 111-13. Adducing evidence sufficient to establish jurisdiction is Plaintiffs' burden; CACI PT has no

obligation to prove the absence of jurisdictional facts. *Demetres*, 776 F.3d at; *United States ex rel. Vuyyuru v. Jadhev*, 555 F.3d 337, 347-48 (4th Cir. 2009). Plaintiffs' inability to marshal facts showing domestic conduct by CACI PT in violation of international law makes this case an impermissible extraterritorial application of the ATS and requires dismissal.

B. The Political Question Doctrine Precludes Judicial Review

"Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803); *see also In re KBR, Inc. Burn Pit Litig.*, 893 F.3d 241, 259 (4th Cir. 2018) (political questions must be resolved within "'the halls of Congress or the confines of the Executive Branch,' not on the steps of a federal courthouse") (citing *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986)). No federal power is more clearly committed to the political branches than the warmaking power. *Lebron v. Rumsfeld*, 670 F.3d 540, 548-49 (4th Cir. 2011); *United States v. Moussaoui*, 382 F.3d 453, 469-70 (4th Cir. 2004). "There is nothing timid or half-hearted about this constitutional allocation of authority." *Thomasson v. Perry*, 80 F.3d 915, 924 (4th Cir. 1996) (en banc). "The strategy and tactics employed on the battlefield are clearly not subject to judicial review." *Tiffany v. United States*, 931 F.2d 271, 277 (4th Cir. 1991).

Under some circumstances, this strict prohibition against reviewing military judgments extends to government contractors. *Taylor v. Kellogg Brown & Root Servs.*, 658 F.3d 402, 411 (4th Cir. 2011) (if the contractor "was under the military's control" or "national defense interests were closely intertwined with the military's decisions governing [the contractor's] conduct"). Without explanation, the Fourth Circuit expanded the *Taylor* test for this case and held that "acts committed by CACI [PT] employees are shielded from judicial review under the political question doctrine if they were not unlawful when committed and occurred under the actual control of the military or involved sensitive military judgments." *Al Shimari IV*, 840 F.3d at

151.[9] To determine whether judicial review is barred by the political question doctrine, the Fourth Circuit directed the Court "to examine the *evidence* regarding the *specific conduct* to which *the plaintiffs* were subjected and the source of any direction under which the acts took place." *Id.* at 160 (emphasis added).

Thus, the Court must now examine the record developed with respect to jurisdiction in this case. *United States v. Bell*, 5 F.3d 64, 66 (4th Cir. 1993) ("the mandate of a higher court is 'controlling as to matters within its compass.'") (quoting *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 168 (1939)). To "implement both the letter and the spirit" of the Fourth Circuit's mandate, *id.* at 67, this "discriminating analysis" must consider *the evidence* bearing on (1) the lawfulness of CACI PT personnel's conduct, (2) the tangible and pervasive control exercised by the military over CACI PT personnel's actions, and (3) the "military expertise and judgment" that governed CACI PT personnel's job duties and performance, *Al Shimari IV*, 840 F.3d at 160-61. *See United States v. Susi*, 674 F.3d 278, 283 (4th Cir. 2012); *Doe v. Chao*, 511 F.3d 461, 464-65 (4th Cir. 2007) (the mandate must be "scrupulously and fully carried out"). Plaintiffs' unsupported allegations no longer suffice. *Al Shimari IV*, 840 F.3d at 160-61.

The facts, however, are not seriously in dispute. There is no direct or indirect connection between CACI PT personnel and the unlawful treatment alleged by Plaintiffs. Moreover, there is no real dispute as to whether the military had actual control over CACI PT personnel. The evidence demonstrates that the military maintained plenary control over the contractors both on paper and on the ground. Last, there is no question that the lawful techniques and conditions of

[9] CACI PT acknowledges that, absent intervening Supreme Court precedent, this Court is bound to follow the remand instructions of the Fourth Circuit. However, as the D.C. Circuit observed in *bin Ali Jaber v. United States*, 861 F.3d 241, 247 n.1 (D.C. Cir. 2017), in rejecting *Al Shimari IV*, the Fourth Circuit's analysis "hinging on whether the conduct of defendants was 'lawful' or 'unlawful' – puts the cart before the horse, requiring the district court to first decide the merits of a claim and, only thereafter, determine whether that claim was justiciable."

confinement approved by the military at Abu Ghraib involved sensitive military judgments beyond the scope of this Court's review. Accordingly, Plaintiffs cannot shoulder their burden of proving subject matter jurisdiction and this case must be dismissed.

1. There Is No Evidence CACI PT Personnel Committed, Assisted, or Conspired to Commit Unlawful Acts Against These Plaintiffs

Under *Al Shimari IV*, the threshold question is whether CACI PT committed unlawful acts against the Plaintiffs as such acts are "justiciable, irrespective whether that conduct occurred under the actual control of the military" or involved sensitive military judgments. 840 F.3d at 151. The Fourth Circuit did not provide guidance as to how this Court should, in the context of this civil action, determine whether conduct was unlawful. Given that elements of an ATS claim are determined by specific, obligatory and universally-accepted international norms, a determination of lawfulness requires an international law standard proven by Plaintiffs. *Aziz*, 658 F.3d at 398. That requires the Court to use international law in passing judgment on the lawfulness of interrogation techniques conceived, formulated, and authorized by the highest levels of the U.S. government. To describe that exercise as unprecedented is an understatement.

CACI PT believes, however, that the Court will never need to reach that issue because there is no evidence to support a finding that CACI PT personnel either directly or tangentially committed unlawful acts against Plaintiffs. After extensive discovery – sought nearly exclusively by CACI PT and conducted in a manner prejudicial to CACI PT – Plaintiffs remain unable to support their allegations that CACI PT personnel acted unlawfully towards them.

Plaintiffs admit they cannot identify any CACI PT personnel with whom they interacted and concede that CACI PT interrogators never "laid a hand on them." *See* 9/2/17 Tr. at 15; Dkt. #639 at 31 n.30; *see also Al Shimari v. CACI Premier Tech., Inc.*, 324 F. Supp. 3d 668, 693 (E.D.

Va. 2018) (dismissing direct liability claims).[10] No documents produced in this case suggest that any CACI PT interrogator mistreated a Plaintiff. CACI PT took pseudonymous depositions of every interrogator the United States could locate who participated in an interrogation of Plaintiffs. None of them witnessed CACI PT personnel mistreat any of these Plaintiffs.

According to government records, Plaintiff Rashid was interrogated only once and never by a CACI PT interrogator. Ex. 11 at 7. Plaintiff Al-Ejaili was assigned an Army interrogator but there is no record of an intelligence interrogation. CACI PT deposed Sergeant Beachner, Al-Ejaili's assigned interrogator, who learned that Steve Stefanowicz was questioning Al-Ejaili during the IP Roundup and asked him to stop. Stefanowicz complied without incident. According to Beachner, nothing about Stefanowicz's questioning of Al-Ejaili violated the applicable interrogation rules of engagement. Ex. 14 at 16; [redacted] CACI Interrogator A and Army Interrogator B conducted the only interrogation of Al Shimari identified by the United States. Ex. 14 at 4-5. [redacted] both separately testified that the types of abuses alleged by Al Shimari did not occur during any interrogation in which they participated, Ex. 1 at 93-106; Ex. 2 at 55-56, 58-62. Army Interrogator B never saw any abuse of a detainee. Ex. 2 at 85. CACI Interrogator G and Army Interrogator B conducted one of Al-Zuba'e's three interrogations. Ex. 14 at 5. Army Interrogator B did not recall Al-Zuba'e's interrogation, but did not see any abuse of detainees while at Abu Ghraib. Ex. 2 at 85. Thus, all available evidence refutes any claim that Plaintiffs were abused in the context of interrogations with CACI PT interrogators.

[10] In their interrogatory responses and depositions, Plaintiffs could not provide facts regarding any unlawful interaction between themselves and any CACI PT employee. Ex. 9 at 7; Ex. 10 at 148-49; Ex. 12 at 6; Ex. 13 at 9-10, 66, 73, 194-96, 216; Ex. 16 at 7-8; Ex. 18 at 7; Ex. 19 at 30-31, 33, 36, 44-45, 56-58, 64, 65, 81.

Plaintiffs also lack proof that any CACI PT interrogator aided or abetted the mistreatment of any Plaintiff. To show unlawful aiding and abetting, Plaintiffs must show CACI PT "'provide[d] substantial assistance with the purpose of facilitating'" violations of international law. *See Aziz*, 658 F.3d at 401. No such evidence exists.

Likewise, Plaintiffs have no proof that CACI PT conspired with anyone to mistreat them. If a conspiracy claim is permitted under ATS, CACI has shown in its summary judgment motion that there is no accepted international law standard for either *Pinkerton* liability or double vicarious liability. The only conspiracy claim available in an ATS case requires proof that (1) CACI PT and U.S. government personnel agreed to commit a recognized international law violation against these Plaintiffs; (2) CACI PT personnel joined the agreement with the purpose or intent to facilitate the commission of the violation; and (3) conspiring U.S. government personnel committed the violation. Dkt. #1035 at § IV.B.1 (stating appropriate standard for ATS conspiracy claims). After extensive discovery, Plaintiffs simply cannot meet this burden. The record refutes any conclusion that CACI PT personnel had any role with respect to detainees they were not assigned to interrogate, and there is no evidence that CACI PT personnel acted unlawfully in the two instances they were assigned to interrogate one of these Plaintiffs.

The MPs who were prosecuted for abusing detainees testified that both military and civilian interrogators sometimes gave MPs instructions concerning detainee treatment, but that those instructions pertained only to detainees assigned to that interrogator. Ex. 28 at 208-09, 226-27; [redacted]. The personnel who participated in interrogations of Plaintiffs affirmed that (1) they did not enter into nor were they aware of any conspiracies with CACI PT interrogators and (2) CACI PT personnel had no influence over interrogations of, or detention conditions for, detainees to whom they were not personally assigned. *See, e.g.*, Ex. 1 at [redacted]

111-12; Ex. 3 at 41-43; Ex. 4 at 49-52, 61-62, 69-71, 184-85; Ex. 6 at 92-93; Ex. 7 at 98-100; Ex. 38 at 106-09; Ex. 39 at 66, 77; [redacted].

As described *supra*, only two CACI PT interrogators were assigned to interrogate a Plaintiff – CACI Interrogator A once interrogated Al Shimari and CACI Interrogator G once interrogated Al-Zuba'e. CACI Interrogator A flatly denied ever abusing a detainee, directing or assisting someone to abuse a detainee, or entering an agreement or conspiracy to abuse detainees. *Id.* at 111. No witness has testified to the contrary. [redacted][11] Army Interrogator B testified that no abuse occurred during the interrogation he and CACI Interrogator G conducted of Al-Zuba'e. Ex. 2 at 85.

Unable to muster proof of unlawful or conspiratorial conduct by CACI PT, Plaintiffs urge that by their mere presence in the Hard Site, CACI PT interrogators must have been party to a conspiracy against detainees, including Plaintiffs. *See* Ex. 13 at 194; *see also* TAC ¶ 21. But allegations are irrelevant, and the testimony in this case refutes Plaintiffs' unsupported, catch-all theory of liability. Captain Carolyn Wood never witnessed nor received a report that a CACI PT interrogator acted inappropriately with a detainee. Ex. 22 at 37. She was unaware of serious abuses that later surfaced. *Id.* at [redacted] 82-84. Multiple interrogation personnel testified that they were unaware of the abuses occurring at the Hard Site during their tenure there and were unaware of the so-called code words Plaintiffs claim were in common usage in the alleged

[11] That CACI Interrogator A only requested confinement conditions for one detainee is not surprising. Sergeant Cathcart rarely interacted with interrogators because "interrogators weren't involved with the tiers with the inmates." Ex. 41 at 34. The only conditions of confinement he recalled being implemented were loud music and stress positions. *Id.* at 40.

conspiracy. *See, e.g.*, Ex. 2 at 85; Ex. 3 at 64 ("It is also my belief that the vast majority of folks working at that time had no sort of agreement or any sort of agreement to abuse detainees."); Ex. 4 at 186; Ex. 5 at 83, 94-96, 102-14 (denied hearing of abuse prior to leaving Abu Ghraib); Ex. 6 at 92-93; Ex. 38 at 136-54 (same); Ex. 39 at 74-75, [redacted].[12] Thus, Plaintiffs' theory of "mere presence in the Hard Site supports an inference of unlawful and conspiratorial conduct" is unsupported by evidence and refuted by the multitude of eyewitnesses who testified that they served regularly at the Hard Site but were unaware of the abuses later uncovered.

2. CACI PT Personnel Operated Under the Military's Actual Control

The Fourth Circuit directed the Court to consider "whether the military actually controlled the CACI interrogators' job performance, including any activities that occurred outside the formal interrogation process." *Al Shimari IV*, 840 F.3d at 157. Actual control "encompasses not only the requirements that were set in place in advance of the interrogations, but also what actually occurred in practice during those interrogations and related activities." *Id.*

As a threshold matter, the Court's rulings upholding the state secrets privilege has severely prejudiced CACI PT in its efforts to develop the complete record on military control over Plaintiffs' interrogations. As CACI PT explained in moving to dismiss the case on state secrets grounds, the Court's state secrets rulings have deprived CACI PT of evidence regarding the specific interrogation techniques and approaches approved by the U.S. military for these Plaintiffs' interrogations and contemporaneous documents detailing the events occurring during Plaintiff's interrogations. Dkt. #1042 at 25-26; *see also* Ex. 30 at ¶¶ 19-21 (Mattis Decl.). Depriving CACI PT of this crucial evidence requires dismissal on state secrets grounds. Nevertheless, to the extent CACI PT has been permitted to develop a record on actual control,

[12] There were MPs who worked directly with inmates on the Hard Site who were also unaware of the abuses occurring. *See, e.g.*, Ex. 41 at 91-93.

the evidence adduced in this case demonstrates that the military had actual and unequivocal control over both CACI PT interrogators and the treatment of detainees.

First, CACI PT's contracts expressly provided that CACI PT interrogators would (1) be integrated into the military's interrogation teams (Ex. 20 at ¶ 4), (2) conduct and report interrogations in accordance with military rules and direction, *id.* at ¶ 6 (emphasis added), (3) perform under the direction and control of the military intelligence chain of command, (Ex. 21 at ¶ 3), and (4) "be managed by the Senior [Counter-Intelligence] Agent," a member of the U.S. military, *id.* at ¶ 4.d. These contractual requirements were scrupulously followed on the ground.

Moreover, "CACI PT interrogators were fully integrated into the Military Intelligence mission and [were] operationally indistinguishable from their military counterparts." Ex. 25 at ¶¶ 8, 9 (Pappas). Both military and civilian personnel reported to the military intelligence chain of command for all operational matters. Ex. 22 at 27-28 (Holmes); [redacted] The military chain of command controlled all aspects of a CACI PT interrogator's performance of the interrogation mission and treated CACI PT interrogators for operational purposes exactly the same as Army interrogators. Ex. 22 at 26, 28-29, 36 (Holmes Dep.); Ex. 24 at ¶¶ 4-5 (Brady); Ex. 25 at ¶ 9 (Pappas); *see also* [redacted]

The military controlled all aspects of detainee treatment at Abu Ghraib. The Army decided detainees' conditions of confinement, if they were interrogated, who interrogated them, which interrogation plans and techniques could be used, and what rules of engagement applied in interrogations. Ex. 25 at ¶ 10 (Pappas); Ex. 27 at ¶ 13 (Porvaznik); [redacted] Ex. 1 at 58-79. [redacted]

[redacted] Army interrogators similarly testified that the Army chain of command, and not CACI PT personnel, dictated the permissible interrogation techniques and conditions of confinement at Abu Ghraib. Ex. 3 at 64-67; Ex. 4 at 62-69, 184-85; Ex. 5 at 44-45, 54, [redacted] Ex. 7 at 60-62, 74.

In addition to establishing the ground rules for each and every intelligence interrogation at Abu Ghraib, the military monitored interrogations on an *ad hoc* and unscheduled basis. "[T]he interrogation booths were built specifically to allow monitoring." Ex. 22 at 35 (Holmes). The booths were designed with one-sided glass and plywood walls that permitted military leadership to see and hear what was taking place inside any interrogation booth from an administrative hallway. *Id.* at 35-36. Military leadership observed interrogations while unseen by booth occupants. *Id.* "[A]t any given time, anybody could be observed." *Id.* at 36.

Given the military's formal control over CACI PT personnel, the extensive evidence that CACI PT personnel operated within that structure, and the military's ability to monitor interrogations unseen, it is clear the military exercised actual control over CACI PT contractors.

3. CACI PT Personnel's Conduct Involved Sensitive Military Judgments

The events at Abu Ghraib occurred in the context of the Iraq War, and the prison was located in the midst of the war zone and under regular attack. Ex. 41 at 90. Plaintiffs challenge the interrogation of detainees in an effort to extract actionable intelligence. CACI PT interrogators were integrated into the military intelligence operation at Abu Ghraib and supervised by military officers. CACI PT interrogators used the same interrogation techniques and followed the same rules as their military counterparts. *See* Section III.B.2, *supra*.

[redacted] In asserting the state secrets privilege, Secretary Mattis emphasized the sensitive, subjective military decisions involved in deciding which interrogation techniques to approve and use for particular interrogations. Ex. 30 at ¶¶ 15-22. Thus, litigating this case requires a "reexamination" of "sensitive judgments" to hire contractor interrogators, on which detainees to use contractors, with what supervision, and using which interrogation techniques, notwithstanding that these decisions are "entrusted to the military in a time of war." *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1281 (11th Cir. 2009) (relied upon by the Fourth Circuit in *Taylor*, 658 F.3d at 411).

In addition to those sensitive military judgments, there is the issue of responsibility for the interrogation techniques of which Plaintiffs complain. The interrogation techniques used at Abu Ghraib were developed and approved at the highest levels of the U.S. government. The Senate Armed Services Committee's report, *Inquiry into the Treatment of Detainees in U.S. Custody*, chronicles the development of interrogation techniques. Ex. 45.[14] As the report explains, in Spring 2002, the CIA proposed a program of enhanced interrogation techniques for suspected al-Qaeda terrorists that received personal attention from the National Security Advisor, the CIA Director, principals of the National Security Council, the Attorney General, and the

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[13] [redacted] Thus, the U.S. military made the very decisions that Plaintiffs now assert constituted torture.

[14] The Senate Report traces the migration of these techniques to Iraq, and the influence of the Secretary of Defense's approval of them. S. Armed Serv. Comm., 110th Cong., *Inquiry into the Treatment of Detainees in U.S. Custody* (Comm. Print 2008) at 153-58, 166-70, 195-97, 201.

Secretary of Defense. *Id.* at xvii. Then-Vice President Cheney said of the CIA's 2002 proposed program, the techniques from which later migrated to Iraq, "We all approved it."[15]

In October 2002, the Secretary of Defense approved aggressive interrogation techniques for use at the military detention center at Guantanamo Bay (GTMO). The techniques included "stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, [and] deprivation of light and sound." *Id.* at xvii, xix. The Secretary of Defense later established a Working Group to review interrogation techniques. *Id.* at xxi. Relying on advice from the Department of Justice's Office of Legal Counsel, the Working Group recommended interrogation techniques including "[r]emoval of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, [exploiting fear of] dogs, and face and stomach slaps." *Id.* at xxii. The Secretary of Defense approved 24 techniques including "dietary manipulation, environmental manipulation, and sleep adjustment." *Id.* Concomitantly, senior Department of Justice personnel issued memoranda on the legality of interrogation techniques that influenced the Working Group. These memos included the Bybee memo and the Yoo memo, which were in effect during the time of the actions complained of here. *Id.* at xxi-xxii.[16]

The Senate Report traces how techniques authorized for GTMO made their way to Afghanistan and then to Iraq. *Id.* at xxii-xxiv, xxviii-xxix. In September 2003 (the month CACI PT began furnishing interrogators), the Coalition Joint Task Force-7 ("CJTF-7") Commander issued an order that "authorized interrogators in Iraq to use stress positions, environmental manipulation, sleep management, and military working dogs in interrogations." *Id.* at xxiv; [redacted]

[15] Paul Kane & Joby Warrick, "Cheney Led Briefings of Lawmakers To Defend Interrogation Techniques," *The Washington Post*, A1, A4 (June 3, 2009).

[16] The Bybee memo concluded that 18 U.S.C. §§ 2340-2340A "proscribes acts inflicting, and those specifically intended to inflict, severe pain or suffering, whether mental or physical." The memo stated that for the acts to be unlawful torture, they must be "of an extreme nature."

[redacted]. The CJTF-7 Commander issued a revised policy the next month that eliminated some techniques. [redacted] Ex. 45 at xxiv. "The new policy, however, contained ambiguities with respect to certain techniques, such as the use of dogs in interrogations, and led to confusion about which techniques were permitted." Ex. 45 at xxiv.

Plaintiffs contend that these techniques constituted torture and thus were unlawful. In ruling on the lawfulness of these techniques, the Court will necessarily pass judgment – based on international law – on the actions of the Executive Branch in approving the techniques to be used in prosecuting the war in Iraq. CACI PT respectfully submits the impropriety of that exercise is self-evident.

Deciding whether to approve these interrogation techniques and then to apply them to specific detainees required the application of military judgment and expertise. Ex. 30 at ¶¶ 15-22 (Mattis Decl.). The military made sensitive judgments regarding the proper balance between respect for detainees and the military imperative of intelligence gathering during an ongoing war. *See Carmichael*, 572 F.3d at 1282 (political question doctrine applies where the military must "calibrate the risks" and perform a "delicate balancing of considerations"). [redacted] There is no evidence that CACI PT personnel ever had any role in implementing or requesting approval for enhanced interrogation techniques to be used on any of these Plaintiffs. To the extent Plaintiffs can be credited with respect to their allegations regarding their interrogations and conditions of confinement, none of which involves misconduct by CACI PT personnel, the fact remains that the decisions underlying Plaintiffs' treatment involved sensitive military judgments.

Three particular features of the present litigation make it unavoidable that a decision on the merits would require the Court "to question actual, sensitive judgments made by the military." *Al Shimari IV*, 840 F.3d at 158. First, military interrogators used the exact same techniques as CACI PT interrogators pursuant to the same set of rules and orders. *See* Section III.B.2, *supra*; *see also* Ex. 22 at 26, 28-29, 35. Thus, any decision on CACI PT interrogation techniques would, in effect, constitute a ruling on the propriety of the identical techniques used by military personnel. Second, military officers reviewed, approved, and even witnessed interrogations by CACI PT interrogators. *See* Section III.B.2, *supra*. Finally, CACI PT interrogators had the identical operational chain of command as military interrogators. Ex. 22 at 28. As a result, any attack on the interrogation techniques used by CACI PT interrogators necessarily implicates command decisions by their military superiors.

The type of inquiry necessary to adjudicate Plaintiffs' claims already has and will necessarily continue to call into question sensitive military judgments. Accordingly, Plaintiffs' claims are nonjusticiable under the political question doctrine.

IV. CONCLUSION

The Court should dismiss this case for lack of subject matter jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2019, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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