

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

SUHAIL NAJIM)	
ABDULLAH AL SHIMARI <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 1:08-cv-827 (LMB/JFA)
v.)	
)	
CACI PREMIER TECHNOLOGY, INC.)	
)	
Defendant.)	
)	
)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF THEIR MOTION *IN LIMINE* TO
EXCLUDE IRRELEVANT AND PREJUDICIAL EVIDENCE AND QUESTIONING**

Prior to the first trial of this case, because of Defendant CACI Premier Technology, Inc.’s (“CACI”) incessant smear campaign that Plaintiffs Suhail Najim Abdullah Al Shimari, Asa’ad Hamza Al-Zuba’e, and Salah Hasan Nsaif Al-Ejaili (“Plaintiffs”) are “terrorists,” Plaintiffs filed a motion to exclude such false, irrelevant, and inflammatory allegations, including the alleged reasons for their detention. Despite the Court’s granting of Plaintiffs’ motion and instructions that “any attempt to disparage the plaintiffs [regarding their arrests] is absolutely irrelevant” and that counsel “must be very careful to make sure that...*none of your questions...were to try to disparage the plaintiffs,*” CACI snuck in a few questions designed to paint them as “terrorists” in the jury’s mind.

In this motion, Plaintiffs ask the Court to preclude all evidence, argument, and questioning of Plaintiffs and other witnesses that directly or indirectly relate to Plaintiffs’ alleged (and indeed incorrect) association with terrorism, attacks on Coalition forces, anti-American

sentiment, and any other evidence, questioning, or comment by counsel meant to justify the detention and/or torture of Plaintiffs.

RELEVANT BACKGROUND

Prior to the first trial in this matter, Plaintiffs filed a motion *in limine* to exclude irrelevant and prejudicial evidence offered by CACI based upon its litany of allegations throughout the litigation that Plaintiffs wanted to “kill Americans” and are “terrorists.” A history of CACI’s unfounded allegations are listed in detail in that motion, *see* ECF No. 1226 at 2–4, and need not be repeated again here. While CACI represented the false allegations bore on credibility issues and explained why Plaintiffs were interrogated more than once, *see* ECF No. 6–15, the Court rejected these arguments and ruled the allegations were irrelevant:

THE COURT: I’m going to say the arrest of the plaintiffs, any problems they have in getting visas to come into the United States, or ***any attempt to disparage the plaintiffs in that respect is absolutely irrelevant to this case.*** These men could have been captured and charged with capital murder. It doesn’t make any difference. The question is whether or not, when they were in custody, anybody working on behalf of CACI aided and abetted or conspired with the military folks to abuse these people. That’s it. ***It doesn’t make any difference why they were in custody, so that’s absolutely irrelevant.*** So you all must be very careful to make sure that none of your documents or ***none of your questions*** or none of the answers of any of your witnesses ***were to try to disparage the plaintiffs*** in that respect.

ECF No. 1460 (Dec. 15, 2023 Hearing Tr.) 4:20–5:10 (emphasis added).

When CACI’s counsel pushed back on the Court’s ruling and argued “we do think it is relevant that the Army had a reasonable basis for selecting these plaintiffs” for interrogation, *see id.* at 6:7-10, the Court responded that “it still doesn’t make any difference” because even if “the Army had the best reasons in the world to take them into custody, there’s ... no proper way within the military to engage in the kind of interrogation tactics that are at issue in this case ...

So that's not relevant to this case." *See id.* at 6:11-21. The Court's instruction was clear: the purported reasons for Plaintiffs' arrests are irrelevant to this case and CACI was not in any way to disparage Plaintiffs via questioning or argument.

Unfortunately, notwithstanding the Court's clear ruling, at the prior trial, CACI tried to disparage the Plaintiffs in a manner barred by the Court. For instance, CACI questioned Plaintiff Suhail Najim Abdullah Al Shimari regarding an alleged bombing of his house that made it into "rubble." *See* ECF No. 1624 (Apr. 17, 2024 Morning Trial Tr.) 60:14-20. There was no valid reason whatsoever for this question. The Court sustained the Plaintiffs' objection to this question, but, by that time, the damage was already done. And during CACI's questioning of Plaintiff Asa'ad Hamza Al-Zuba'e, CACI emphasized that he was purportedly carrying \$20,000 U.S. dollars upon his arrest. *See* ECF No. 1623 (Apr. 16, 2024 Morning Trial Tr.) 69:13–70:18.¹ In its closing, CACI re-iterated the \$20,000 U.S. dollars Mr. Al-Zuba'e was allegedly carrying. *See* ECF No. 1626 (Apr. 22, 2024 Trial Tr.) 45:9-10, 51:17-20. The amount of money Mr. Al-Zuba'e was allegedly carrying is irrelevant to his treatment at Abu Ghraib or CACI's permitted defenses thereto. In any event, the entire line of questioning was based on a mistranslation: Mr. Al-Zuba'e was carrying 20,000 Iraqi dinar, not 20,000 U.S. dollars. Currently, 20,000 Iraqi Dinar is the equivalent of \$15.28 in U.S. dollars.²

¹ As an initial matter, the statement is not Mr. Al Zuba'e's, has no indicia of reliability, and is inadmissible. To facilitate the smooth presentation of evidence at trial, Plaintiffs agreed to waive authenticity and hearsay objections to Plaintiffs' detainee files. However, this statement from Mr. Al Zuba'e's file should be carved out of that waiver. First, Mr. Al Zuba'e does not read or write. The handwritten statement that contains the reference to \$20,000 is not his and we do not know the circumstances under which it was transcribed, who transcribed it, whether that person spoke the same dialect at Mr. Al Zuba'e, what questions he asked Mr. Al Zuba'e, what answer he gave, and whether the transcription is true and accurate. *See* ECF No. 1624 (Apr. 17, 2024 Morning Trial Tr.) 68:4-11 (introducing DX-30 and referring to page 23). Furthermore, what was put before the jury is an uncertified translation of the handwritten statement, which raises additional questions about the reliability of it. This is an additional reason to foreclose questioning regarding this statement.

² According to the U.S. Treasury, \$1.00 U.S. dollar is the equivalent of $\text{ع.د. } 1,309$ Iraqi Dinar. *See Treasury Reporting Rates of Exchange*, FiscalData, <https://fiscaldata.treasury.gov/datasets/treasury-reporting-rates-of-exchange/treasury-reporting-rates-of-exchange> (last visited Sept. 6, 2024).

Plaintiffs cannot predict every way that CACI may attempt to disparage Plaintiffs at the upcoming trial, but the preceding examples highlight the need for another express admonition—and preclusion—by the Court.

ARGUMENT

As this Court has repeatedly held, this case is about “whether or not, when [Plaintiffs] were in custody, anybody working on behalf of CACI aided and abetted or conspired with the military folks to abuse [Plaintiffs.]” ECF No. 1460 (Dec. 15, 2023 Hr’g Tr.) 5:2-4; *see also* ECF No. 1453 (Dec. 1, 2023 Hr’g Tr.) 11:14-17 (“The issue for this defendant is whether or not any of the defendants’ employees were part of [the torture of Plaintiffs], and if they weren’t, that ends it.”); ECF No. 1494 (Mar. 1, 2024 Hr’g Tr.) 35:21-25 (“[T]he core issue [is] whether or not CACI, our defendant in this case, is complicit in the injuries that occurred to the three particular plaintiffs who are in this case. All right. That’s the issue.”). As the Court found during the first trial, even if one of CACI’s false allegations regarding reasons for Plaintiffs’ arrests or feelings towards America were true, they are irrelevant to Plaintiffs’ torture and cruel, inhuman, or degrading treatment claims as all persons are entitled to humane treatment. *See* ECF No. 1460 (Dec. 15, 2023 Hr’g Tr.) 4:20–5:5; *see also Rasul v. Bush*, 542 U.S. 466, 484 (2004) (asserted enemy combatant status of ATS petitioners did not foreclose for them the “privilege of litigation” in U.S. courts); *Hamdan v. Rumsfeld*, 548 U.S. 557, 629-30 (2006) (holding Geneva Conventions’ protections applied to alleged member of al Qaeda).

Despite making the boundaries of relevance clear prior to trial, and asking for CACI’s counsel’s acknowledgment at the pretrial hearing that they would not attempt to disparage Plaintiffs, *see* ECF No. 1460 (Dec. 15, 2023 Hr’g Tr.) 5:17-21 (“THE COURT: So I hope that’s

as clear as it can be. All right. CACI COUNSEL: Your Honor, I hear the Court's ruling."), CACI sidestepped the Court's ruling. Through its questioning, CACI sought to inject into the jury's minds CACI's theme that the Plaintiffs somehow deserved the treatment they suffered. For instance, there was no valid reason in questioning one of the Plaintiffs whether his house was blown up by Coalition forces (other than to establish that he had done something wrong because why else would his house be bombed), or emphasizing during their closing and questioning of another that he was carrying \$20,000 U.S. dollars at the time of his arrest (other than to establish that there were valid reasons for his arrest because how else could an uneducated taxi driver possess that much cash).

The probative value, if any (and there is none), of the evidence that CACI attempted to put forward is also substantially outweighed by a danger of unfair prejudice and must be excluded under Rule 403. *See United States v. Simpson*, 910 F.2d 154, 158 (4th Cir. 1990) (explaining relevant evidence is unfairly prejudicial under Rule 403 and must be excluded if there is "the possibility that the evidence will excite the jury to make a decision on the basis of a factor unrelated to the issues properly before it." (citation omitted)).

For these reasons, Plaintiffs respectfully submit that the Court should preclude CACI from arguing, questioning, and presenting evidence related to the disparaging of Plaintiffs, including by trying to establish that they were associated with terrorism, had anti-American sentiment, that their houses were bombed, or that they had a certain amount of cash on them upon the time of their arrest.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion *in limine* to exclude irrelevant and prejudicial evidence and questioning should be granted.

Respectfully submitted,

/s/ Charles B. Molster, III

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendants.

/s/ Charles B. Molster, III
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