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

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

PLAINTIFFS' OPPOSITION TO DEFENDANT CACI PREMIER TECHNOLOGY, INC'S MOTION *IN LIMINE* REGARDING THE RELEVANCE OF PLAINTIFFS' APPREHENSION

Defendant CACI Premier Technology, Inc. ("CACI") again seeks permission to disparage Plaintiffs Suhail Najim Abdullah Al Shimari, Asa'ad Hamza Al-Zuba'e, and Salah Hasan Nsaif Al-Ejaili ("Plaintiffs") by casting them as terrorists intent on harming U.S. troops. Ignoring that the Court has repeatedly foiled these previous attempts, CACI feigns that it does not intend on introducing evidence that Plaintiffs "possessed a large cache of military-grade weapons," "planned [an] attack on the Coalition Provision Authority (CPA) compound," and [REDACTED] to show Plaintiffs' abuse was justified or to bias the jury against them. Rather, they imagine such sensational (and unsupported) charges—largely rejected by the Fourth Circuit—is only relevant to their credibility. Because it cannot help itself, CACI barely hides its true intentions in its

briefing, posing rhetorical questions such as "why a taxi drive might have occasion to carry around $20,000 in cash"[1] and whether "[redacted]" are "critical to middle school administration" as somehow being relevant to Plaintiffs' credibility. CACI's outlandish reasoning for introducing this evidence is also belied by CACI's actions at the first trial where, despite the Court's admonition that "any attempt to disparage the plaintiffs [regarding their arrests] is absolutely irrelevant," CACI nonetheless did so through its presentation and questioning. This prompted Plaintiffs' motion *in limine* to exclude this exact line of questioning and argument from occurring at the second trial. *See* ECF No. 1680.

Aside from being irrelevant and inflammatory, introducing such evidence would result in mini-trials regarding the truth of CACI's allegations given they are demonstrably false. But even if they were true and relevant to Plaintiffs' credibility (they are not, as the Court held during the first trial), this evidence's probative value is substantially outweighed by a danger of unfair prejudice and should be excluded under Rule 403. For these reasons, the Court should decline CACI's motion and grant Plaintiffs' parallel motion, *see* ECF No. 1680, to exclude the exact type of evidence CACI wishes to introduce via this motion.

RELEVANT BACKGROUND

Plaintiffs recently filed a parallel motion *in limine* 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,

[1] As noted in Plaintiffs' motion *in limine* to exclude irrelevant and prejudicial evidence and questioning, Mr. Al Zuba'e was carrying 20,000 Iraqi dinar, not 20,000 U.S. dollars. This is the equivalent of $15.28. *See* ECF No. 1680-1 at 3.

anti-American sentiment, and any other evidence, questioning, or comment by counsel meant to disparage or justify the detention and/or torture of Plaintiffs. *See* ECF No. 1680. Plaintiffs' briefing on that motion lays out much of the relevant background regarding the Court's granting of Plaintiffs' motion *in limine* during the first trial to exclude evidence of this kind and CACI's efforts to skirt that order, which is incorporated by reference herein. *See* ECF No. 1680-1 at 2–4. In short, CACI made the same arguments it is making now prior to the first trial that the false allegations it repeats in its briefing were relevant to Plaintiffs' credibility and the reliability of the United States' records, *see* ECF No. 1264, but the Court expressly rejected these arguments and held "any attempt to disparage the plaintiffs [regarding their arrests or inability to obtain visas] is absolutely irrelevant to this case…It doesn't make any difference why they were in custody, so that's absolutely irrelevant." ECF No. 1460 (Dec. 15, 2023 Hr'g Tr.) 4:20–5:10.

At the April 5, 2024 hearing, Plaintiffs sought clarification that they could introduce evidence "about [Plaintiffs'] occupations…I think it's relevant for just humanizing the plaintiffs, some background knowledge, and we want to make sure that we'll be able to solicit that basic information without a suggestion that we've opened the door to the ultimate reason for their detention." ECF No. 1561 (Apr. 5, 2024 Hr'g Tr.) 32:24–33:6. CACI responded that occupations, such as Plaintiff Al Shimari's occupation of being a math teacher, was irrelevant and should only be allowed in if CACI could present evidence he also "had a cache of IEDs and rocket launchers." *See id.* at 34:8-16; 34:18–35:7. The Court disagreed:

> THE COURT: Well, I don't agree with you on that. I mean, a very brief amount of humanizing the plaintiffs is fine. You can't dehumanize—even if they were—even if they were terrorists, it

> doesn't excuse the conduct that's alleged here. So it doesn't help you one bit to get into any of that. And, in fact, I think it will come back to haunt you. So, no, I'm going to allow a little bit of background, okay, just a little bit, and I'm not changing my view that you don't go into that area. Thank you.

Id. at 35:8-16. When CACI argued "if they open the door, we will revisit that with the Court," the Court again flatly denied CACI's request: "**Well, no you won't, because I ruled on i**t. Please don't make me have to say in front of the jury, **Mr. O'Connor, you've already raised this issue, and I'm denying it**." *Id.* at 35:17-23 (emphasis added).

At the first trial, Plaintiffs elicited exactly what they previewed they would: Plaintiffs' occupation and other basic background information. Each Plaintiffs' testimony began with limited testimony regarding their background, such as their previous and current occupations, residence, and family. *See* ECF No. 1631 (Apr. 15, 2024 Afternoon Trial Tr.) 31:17–33:25; ECF No. 1623 (Apr. 16, 2024 Morning Trial Tr.) 7:7–8:2; ECF No. 1624 (Apr. 17, 2024 Morning Trial Tr.) 11:14–13:2. Nowhere in Plaintiffs' closing or opening did Plaintiffs argue they were wrongly arrested or held. Rather, Plaintiffs referred to their occupations and provided context similar to the Court's opening description of the case. *Compare* ECF No. 1622 (Apr. 15, 2024 Morning Trial Tr.) 15:3-8 (THE COURT: "In 2003, a multinational coalition led by the United States invaded Iraq, and those forces were attacked, and to gather intelligence to assist the coalition, many Iraqis who were believed to have information that could help the coalition forces were detained at the Abu Ghraib facility for questioning."), *with* ECF No. 1631 (Apr. 15, 2024 Afternoon Trial Tr.) 9:12-17 (PLAINTIFFS' COUNSEL: "First, I want to take you back to 2003, as Judge Brinkema briefly did. You may remember a U.S.-led coalition

invaded Iraq and toppled the dictatorship of Saddam Hussein. Chaos eventually ensued, and the U.S. wound up sweeping up thousands of Iraqi citizens and detaining them.").

Whether Plaintiffs were a "Ba'ath Party member," "possessed a large cache of military-grade weapons" including " a high-capacity Kalashnikov machine gun with ammunition, six rocket-propelled grenade launchers, multiple explosive devices, and other bomb-making components," were planning an "attack on the Coalition Provision Authority ('CPA') compound," possessed "$20,000 in cash," or [REDACTED] [REDACTED], these allegations—which Plaintiffs deny and are untrue—do not make the fact of Plaintiffs' occupations and detainment among thousands of others at Abu Ghraib false, as CACI argues. *See* ECF No. 1685 at 4–6.

Moreover, the same files CACI relies upon in making these wildly prejudicial assertions also contradict CACI's allegations. These files provide that none of the allegations or suspicions of Plaintiffs' hostile activity was corroborated, that the Plaintiffs were not enemy combatants, and that they were released from detention without any charges being filed. For example, CACI only included an excerpt of Plaintiff Al Shimari's file in its filing about the alleged weapons he possessed but a separate portion of his file—which CACI did not excerpt—provides there was: "no connection between detainee and truck where weapons were found." *See* Exhibit A at DoD-00438. The same file contains a formal finding that Mr. Al Shimari is not a "terrorist" or "enemy combatant," *id.* at DoD-00345, [REDACTED]

[REDACTED] *Id.* at DoD-00392. The Court of Appeals agrees with Plaintiffs:

> The record does not contain any evidence that the plaintiffs were designated "enemy combatants" by the United States government. In fact, Defense Department documents in the record state that plaintiff Al Shimari "is not an Enemy Combatant in the Global War on Terror."

Al Shimari v. CACI, 758 F.3d 516, 521 n.2 (4th Cir. 2014) (emphasis in original). Despite the exhaustive record that CACI's allegations are false and irrelevant, CACI continues to bring them up at every turn and no doubt would make it a central part of its presentation if allowed.

ARGUMENT

I. The Alleged Reasons for Plaintiffs' Apprehension are Irrelevant

The Court has repeatedly rejected CACI's relevance arguments and has referred CACI back to this matter's core question: "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 these people." ECF No. 1460 (Dec. 15, 2023 Hr'g Tr.) 5:2-4. The Court has repeatedly emphasized this as the core inquiry in this case. *See* ECF No. 1680-1 at 4. No matter how CACI repackages its arguments, the simple truth remains: why Plaintiffs were at Abu Ghraib is irrelevant to whether CACI is liable in this case.

CACI's argument that the evidence it seeks to parade before the jury bears on Plaintiffs' bias against CACI is transparently absurd: given that Plaintiffs are accusing CACI of playing a role in their *torture* and mistreatment, the jury surely understands Plaintiffs' interests are misaligned with CACI's. Nor does CACI's argument the Plaintiffs alleged intelligence value

makes it more likely that the United States kept complete and accurate records of their interrogations make any sense. Plaintiffs do not dispute the records exist, nor did they object to admitting into evidence redacted versions of their complete files. Rather, Plaintiffs argued those files do not tell the full story of Plaintiffs' experiences—redacted or unredacted. What Plaintiffs did and still do object to is CACI introducing selective passages containing uncorroborated and inflammatory allegations under the guise of a credibility argument to inflame the jury against Plaintiffs.

Lastly, the evidence that CACI seeks to introduce is nothing more than evidence of an arrest, which, by itself, does not have any probative value. "It is a general rule that arrest without more does not impeach the integrity nor impair the credibility of a witness because '(i)t happens to the innocent as well as the guilty." *United States v. Ling*, 581 F.2d 1118, 1121 (4th Cir. 1978) (citation omitted). Again, each Plaintiff was released without charge.

The Court should uphold its ruling from the first trial and find the evidence at issue in this motion is irrelevant.

II. The Alleged Reasons for Plaintiffs' Arrests Would Unfairly Prejudice Plaintiffs and Create Trials Within the Trial that Would Confuse the Issues

Even if there were any probative value of the evidence CACI wants to introduce (there is none), it is 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)).

The Court should also exclude the alleged reasons for Plaintiffs' apprehension because it would confuse the issues by creating a trial as to each Plaintiffs' innocence. *See Moskos v. Hardee*, 24 F.4th 289, 297 (4th Cir. 2022). Courts are justified in excluding evidence that would create a trial within a trial. *See, e.g.*, *id.* ("The court here was well justified in concluding that a trial-within-a-trial of the prison grievance system would have only produced more heat than light."); *United States v. Walton*, 602 F.2d 1176, 1180 (4th Cir. 1979) ("The district court properly declined to conduct a trial within a trial, and refused to admit the evidence" regarding prior alleged criminal acts.)

If CACI is permitted to introduce any evidence of Plaintiffs' apprehension, Plaintiffs would be compelled to marshal evidence of their innocence. This would be a waste of time, confuse the issues, and result in the jury not only making determinations as to Plaintiffs' actual claims, but also as to each Plaintiff's innocence—which is irrelevant. This is a result the Court should avoid.

III. CACI's Complaints of "Unfairness" Are Untenable

CACI complains it was "unfair" at the first trial that (1) Plaintiffs testified in Arabic, (2) two of the Plaintiffs testified remotely, and (3) the state secrets privilege purportedly hampered CACI's ability to refute Plaintiffs' allegations of abuse. But there is no prejudice from a witness testifying in a foreign language; that is why the parties used interpreters. By CACI's logic, a person brutalized by torture cannot hold her or his abuser liable in court because they

cannot testify in English, nor in their view might a criminal defendant or asylum seeker be permitted to undertake high stakes testimony under oath in their native tongue. Likewise, there was no prejudice from remote testimony as CACI had the ability to conduct a thorough and as long of a cross-examination it wanted. CACI's complaint is particularly hollow given that CACI's own lead witness (Dan Porvaznik) testified remotely, and strange in light of the thousands of legal proceedings held remotely during the Covid-19 pandemic. Lastly, CACI fails to acknowledge that Plaintiffs, too, were equally, if not more, prejudiced by the Government's invocation of the state secrets privilege. *See* ECF No. 1693-1 (CACI Mot. in Lim. Br. re: State Secrets Priv.). CACI fails to identify any authority as to why its claims of "unfairness" permit it to parade its litany of false and inflammatory allegations to the jury.

CONCLUSION

For the foregoing reasons, CACI's motion *in limine* regarding the relevance of Plaintiffs' apprehension should be denied, and Plaintiffs' parallel motion *in limine* to exclude irrelevant and prejudicial evidence and questioning should be granted.

Respectfully submitted,

/s/ Charles B. Molster, III

Charles B. Molster, III, VA. Bar No. 23613
Law Offices of Charles B. Molster, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
(703) 346-1505
cmolster@molsterlaw.com

Muhammad U. Faridi, *Admitted pro hac vice*
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036

Baher Azmy, *Admitted pro hac vice*
Katherine Gallagher, *Admitted pro hac vice*
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor New
York, NY 10012

Shereef Hadi Akeel, *Admitted pro hac vice*
AKEEL & VALENTINE, P.C.
888 West Big Beaver Road
Troy, MI 48084-4736

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendant.

/s/ Charles B. Molster, III
Charles B. Molster, III