

**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.	)	Redacted Version
	)	
CACI PREMIER TECHNOLOGY, INC.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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

In this litigation, Defendant CACI Premier Technology, Inc. (“CACI”) has referred to Plaintiffs as “terrorists” or a threat to Americans and to United States security in no less than seven separate filings. *See* ECF No. 1226 at 2–4. Based on these false allegations, CACI has analogized Plaintiffs to a “[REDACTED].” ECF No. 267 at 10. Ignoring that Plaintiffs’ motion seeks to preclude CACI from raising any of its oft-repeated and false allegations that would bias the jury against Plaintiffs, its opposition focuses on only two examples that Plaintiffs cited in their opening brief from the first trial that are emblematic of CACI’s desire to inject into this case that Plaintiffs are “terrorists” undeserving of compensation. CACI continues to disingenuously claim that certain evidence—such as the bombing of Mr. Al Shimari’s house and Mr. Al Zuba’e’s purported claim for \$20,000—bear on Plaintiffs’ credibility in the most attenuated of ways, but this smokescreen should be rejected by the Court—once again. CACI’s true intentions in

seeking to admit this evidence is revealed by the attenuation of such evidence to Plaintiffs' credibility on the one hand, and on the others CACI's persistent and repeated attempts throughout this case to cast Plaintiffs as terrorists who may well have gotten what they deserved.

Critically, CACI fails to completely address Plaintiffs' argument that any probative value—based on a thinly conjured connection between such evidence and Plaintiffs' credibility or bias—of the evidence that CACI seeks to introduce at issue in this motion (and CACI's parallel motion) is substantially outweighed by the danger of unfair prejudice. While CACI continues to claim that it does not intend to paint Plaintiffs as “bad persons” deserving of the abuse that they suffered, *see* ECF No. 1700 at 2, CACI fails to acknowledge that the false allegations that it seeks to introduce, regardless of its supposedly innocent intentions, will do exactly that. To the extent that CACI's evidence, argument, and questioning relates to Plaintiffs' alleged association with terrorism (there was none), attacks on Coalition forces, or anti-American sentiment, all such efforts by CACI must be excluded under Rule 403 because any probative value (and there is none) of such evidence is substantially outweighed by the danger of unfair prejudice and confusing the jury.

### **ARGUMENT**

CACI's opposition focuses on the purported relevance of Mr. Al Zuba'e's claim of \$20,000 in cash and the bombing of Mr. Al Shimari's home. It bears emphasizing again that Mr. Al Zuba'e was carrying 20,000 Iraqi dinar, not 20,000 U.S. dollars, which is the equivalent of \$15.28. *See* ECF No. 1680-1 at 3. Regarding Mr. Al Zuba'e's claim for compensation, CACI argues that this evidence “demonstrates that he knows how to make a claim against the United

States<sup>[1]</sup> and raises the probability that he, in fact, exaggerated the amount of his claim.” ECF No. 1700 at 6. This altered reasoning is contrary to CACI’s prior suggestion—in its motion regarding Plaintiffs’ apprehension—where CACI makes no mention of credibility; instead, CACI seeks to insinuate that he possessed \$20,000 (which *in reality*, were dinars in the equivalent of \$15) for an illicit purpose:

Mr. Al Zuba’e has never explained why a taxi driver might have occasion to carry around \$20,000 in cash, or what expenses might require such liquidity. Coalition forces determined that Mr. Al Zuba’e had been offering money to men who were willing to participate in an attack on the CPA. Ex. 3. The jury should be allowed to evaluate Mr. Al Zuba’e’s testimony regarding the small fortune he carried on his person in light of the U.S. government’s conclusions.

ECF No. 1685 at 5–6. Thus, CACI’s true intentions are clear: it intends to ask the jury “why a taxi driver might have occasion to carry around \$20,000 in cash.” ECF No. 1685 at 5. If CACI had its way, it would also answer that question with the false allegation that Mr. Al Zuba’e was “offering money to men who were willing to participate in an attack on the [Coalition Provision Authority.]” *Id.* With or without CACI’s proffered answer, the effect is the same: the jury is left wondering why an uneducated taxi driver had that much money, whether it is related to his detention, and whether he is deserving of compensation. To the extent Mr. Al Zuba’e’s claim against the U.S. Government has any probative value at all (it does not), CACI failed to explain why the evidence should not be excluded under Rule 403 for the unfair prejudice that it would cause.

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<sup>1</sup> As Plaintiffs explain in their motion *in limine* to exclude the 2004 Memorandum by Donald Rumsfeld concerning the processing of claims by Iraqi detainees, Plaintiffs’ ability or inability to file claims against the U.S. government is irrelevant to this matter. *See* ECF No. 1683-1.

As to the bombing of Mr. Al Shimari's home, CACI argues that it is relevant as a potential contributing cause to Mr. Al Shimari's psychological conditions. *See* ECF No. 1700 at 5, 8–9. CACI argues that foreclosing its ability to question Mr. Al Shimari about this incident violates CACI's due process right to cross-examine Mr. Al Shimari. *See id.* at 10–11. CACI is free to cross-examine Mr. Al Shimari within the limits prescribed by the rules of evidence. Tellingly, in its opposition, CACI argues that “there are other obvious contributing causes of Al Shimari's alleged psychological conditions,” including facing “combat as an Iraqi soldier,” witnessing “his friends and subordinates die,” and being “nearly killed himself when a bomb exploded nearby causing a piece of shrapnel to enter his abdomen.” *Id.* at 8. CACI cites to its cross-examination of Mr. Al Shimari on these subjects from the first trial, to which Plaintiffs' counsel did not object. *See* ECF No. 1624 (Apr. 17, 2024 Morning Trial Tr.) 31:5–32:24. Indeed, Plaintiffs' counsel will not object to this line of questioning at the upcoming trial. Although it is based on inaccurate premises, CACI may advance such arguments. But what Plaintiffs object to is CACI's request that it must also be able to cross-examine Mr. Al Shimari about a bombing where he was not even present. At best, this evidence is cumulative and designed to mislead the jury, and CACI's argument as to its relevance is a guise to smear Mr. Al Shimari. Smearing witnesses with supposed facts that have no evidentiary value is not allowed by the Rules.

At the first trial, the Court quickly shut down this line of questioning, *see id.* at 60:14–20, recognizing that any probative value that this line of questioning may offer (there is none) is substantially outweighed by the risk of unfairly prejudicing the jury against Mr. Al Shimari. CACI failed to argue otherwise. If raised again, the jury would be left wondering who bombed Mr. Al Shimari's home, why was it bombed, whether it was related to his detention, and

ultimately, whether Mr. Al Shimari is someone they should award money to. Any speculation by CACI that this may be an additional source of trauma and relevant to Mr. Al Shimari's claims is substantially outweighed by this risk of unfair prejudice, and must be excluded under Rule 403.

Lastly, in the latter part of its opposition, CACI decries Plaintiffs' motion as antithetical to CACI's "constitutional, due process right to cross-examine the Plaintiffs." ECF No. 1700 at 10. For all of its rhetoric, CACI simultaneously listed all of the different ways that it crossed Plaintiffs regarding their service in the Army, the arrest and detention of family members, the alleged abuse at other military bases, and whether soldiers or civilians abused Plaintiffs. *See id.* at 5 and 9. According to CACI, this resulted in Plaintiffs possessing "dubious credibility." *Id.* at 10. Again, Plaintiffs are not asking the Court to prevent CACI from cross-examining Plaintiffs, but instead Plaintiffs merely seek an order preventing CACI from introducing at trial irrelevant evidence that leads the jury into making a decision based on impermissible factors. While CACI may claim that it disavows Plaintiffs' abuse and that it will not offer evidence with no probative value as the merits of Plaintiffs' claims, its actions in this case strongly suggest otherwise.

### CONCLUSION

For the reasons stated above and in Plaintiffs' opening brief, Plaintiffs' 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](mailto: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 30, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendant.

*/s/ Charles B. Molster, III*

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