

Logistic Support of Joint Operations (2000)) (not admitted at trial), and PTX 227 (Army Regulation 715-9, Contractors Accompanying the Force (1999)) (not admitted at trial). Dkt. #1749 at 2-3. CACI continues to object to use of these exhibits at trial as they are (1) irrelevant to the borrowed servant doctrine analysis, *see* Dkt. #1745 at 6-8,³ (2) confusing to the jury, *see* Dkt. #1617-7 at 22 (jury note identifying the field manual as a source of confusion), and (3) would require a rebuttal that would further distract the jury from the appropriate inquiry, Dkt. #1745 at 8-13.

Plaintiffs accuse CACI of trying to “artificially manufacture chaos” by stating its intention to introduce at the upcoming trial the exact type of evidence Plaintiffs were permitted to introduce at the first trial and seek to admit again: legal and policy statements regarding military supervision of contractors. Plaintiffs are correct that CACI did not seek to rebut their policy argument at the first trial. That is because Plaintiffs did not disclose their intention to use *any* of these documents until they disclosed the field manual on March 15, 2024, Dkt. #1513. That was when Plaintiffs attempted to raise the field manual during Col. Pappas’ *de bene esse* deposition and the Court, correctly, disallowed it. Dkt. #1745-5. This exhibit was only admitted on the second-to-last day of testimony. Dkt. #1625 at 62:2-3. Plaintiffs did not disclose Army Regulation 715-9 until the fifth day of trial and the Court, correctly, disallowed it. Dkt. #1634 at 50:6-51:6 (“You’re somewhat beating a dead horse. It has been said a million times in this case,

³ The two cases Plaintiffs cite in which regulations were considered as part of the borrowed servant doctrine analysis, Dkt. #1749 at 12, are inapposite. In both cases, the regulations reflected the facts on the ground. Plaintiffs’ citation to *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326 (4th Cir. 2014), is misplaced, as it does not address borrowed servant doctrine in the first place. *See* Dkt. #1748 at 5 (political question inquiry entirely different).

the military controls what they do Let's move on to a new topic.”). CACI had no need to launch a full-throated rebuttal to a few sentences from a non-binding guidance document.⁴

Plaintiffs, however, clearly intend to feature both the field manual and the regulation at the upcoming trial. If they are allowed to do so, CACI is entitled to defend itself by demonstrating that (1) there are circumstances in which law and policy permit and even require military personnel to supervise contractor personnel, (2) Congress has prioritized military supervision of contractor personnel in intelligence and interrogation operations, and (3) there are regulations that expressly prohibit contractor personnel from supervising military personnel (*i.e.*, if Plaintiffs' theory that Army policy regarding who supervises whom trumps the facts of the case, then Plaintiffs' theory that CACI interrogators took charge of military police is a logical nullity). CACI contends that all of this evidence is irrelevant and confusing, and misleads the jury as to the proper inquiry for the borrowed servant doctrine. But if this legal and policy evidence is admitted at all, it must be allowed equally for both sides. To that end, CACI would seek to introduce: (1) Federal Acquisition Regulations governing personal services contracts; (2) legislation specifically facilitating the use of personal services contracts for intelligence operations and for using and supervising contractors as interrogators; (3) Federal Acquisition Regulations governing contractor supervision of military personnel; and (4) Department of Defense regulations and instructions regarding procedures for using contract interrogators.

With respect to CACI's contract, CACI does not contend that its delivery orders with the government are irrelevant and should be excluded. Rather, CACI seeks to make clear that contractual provisions, while potentially relevant, are not dispositive in the borrowed servant

⁴ Plaintiffs' references to discovery depositions and a pretrial declaration are irrelevant to this inquiry. Dkt. #1749 at 5. CACI would object to any attempt to introduce such materials at trial.

analysis, but instead are overcome by the realities of the contract's performance. CACI also seeks to prevent Plaintiffs from using the delivery orders to introduce irrelevant and misleading evidence regarding military policy.

CONCLUSION

For the foregoing reasons, the Court should exclude all evidence and argument that law or policy precludes application of the borrowed servant doctrine in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2024, 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 counsel:

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