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

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 08-cv-0827 GBL-JFA
CACI INTERNATIONAL, INC., *et. al*.,	)	
Defendants	)	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' SUPPLEMENTAL MEMORANDUM REGARDING CHOICE OF LAW

George Brent Mickum IV (VA Bar # 24385)
Law Firm of George Brent Mickum IV
5800 Wiltshire Drive
Bethesda, MD 20816
Telephone: (202) 281-8662
gbmickum@gmail.com

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

Robert P. LoBue, *Admitted pro hac vice*
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036

Of counsel: Matthew Funk

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

Attorneys for Plaintiffs

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INTRODUCTION

For the third time in this litigation, Defendants CACI International, Inc. and CACI Premier Technology, Inc. (collectively "CACI") have submitted a brief arguing that the law of the forum in which this action was originally filed, Ohio, does not apply to the claims of the three plaintiffs added in the Amended Complaint. In each instance, CACI has repeated the same flawed arguments: 1) that the Supreme Court's holding in *Van Dusen v. Barrack*, 376 U.S. 612 (1964), which requires district courts to which cases are transferred pursuant to a defendant's 28 U.S.C. § 1404(a) motion to apply the law of the transferor court to state law issues, does not apply; and 2) that even if the *Van Dusen* rule does apply, using Ohio law in this case would violate the due process concerns expressed by the Court in *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985). CACI misapplies the *Van Dusen* rule on the first point and ignores or misconstrues later Supreme Court holdings on the second.

Because this case was transferred to this district from the Southern District of Ohio by CACI's § 1404(a) motion, *Van Dusen* calls for this Court to act as if were an Ohio court. A § 1404(a) transfer results only in a change of courtroom, not a change in the law to be applied to the case. It is therefore immaterial under the *Van Dusen* rule that additional plaintiffs joined the case post-transfer. CACI relies on one narrow part of the Court's decision in *Ferens v. John Deere Co.*, 494 U.S. 516, 526 (1990) to suggest, formalistically, that the three additional plaintiffs first would have to touch base in Ohio in order for that forum's law to apply to their claims in the same way that Ohio law applies to Mr. Al Shimari's claims. The particular language in *Ferens* that CACI repeatedly cites–"Plaintiffs *in the position of the Ferenses* must go to the distant forum"–has no bearing on this case because the three plaintiffs here are *not* in the position of the Ferenses. 494 U.S. at 532 (emphasis added). *Ferens*, which actually *expanded* the *Van Dusen* rule, dealt with the choice-of-law impact of § 1404(a) transfers as requested by

plaintiffs in the first instance, and ultimately permitted the application of the transferor forum's law. By contrast, here the defendants requested the transfer and additional plaintiffs subsequently joined a pending case in which the transfer had already been accomplished—a fact pattern not addressed by *Ferens*. Application of Ohio choice-of-law principles on these facts is consistent with the policies discussed in *Van Dusen* and *Ferens*, and results in the application of Ohio's cross-jurisdictional statute-of-limitations tolling rules.

Shutts, which dealt with a state's attempt to apply its substantive law, also does not preclude application of Ohio's statute of limitations in this case. As the Court later held in *Sun Oil Company v. Wortman*, 486 U.S. 717 (1988), there is no due process violation when a forum applies its own procedural laws–specifically, its statute of limitations. As the history of the *Ferens* litigation that CACI ignores in its brief demonstrates, a § 1404(a) transfer does not alter that analysis, because the transferee court is acting as if it were the transferor forum and can constitutionally apply the statutes of limitations from the original forum.

While the Plaintiffs continue to believe that this action should be found timely under Virginia law as it existed when this Court rendered its summary judgment opinion, the Court can find in the alternative that, under the *Van Dusen* rule, Ohio choice-of-law rules apply to these claims. As Ohio's choice-of-law principles would have an Ohio court apply its own statute of limitations, Ohio's cross-jurisdictional equitable tolling for all members of a purported class would apply to all four Plaintiffs.[1] Either way, the Court should find that the state law claims of all Plaintiffs in this action are timely.

[1] The impact of using Ohio's choice-of-law rules is discussed in detail in Plaintiffs' Brief in Opposition to Defendants' Motion for Reconsideration. *See* Dkt. No. 172, II.B. Briefly, an Ohio court would apply its own statute-of-limitations rules, one of which is cross-jurisdictional equitable tolling for all members of a purported class, *Vaccariello v. Smith & Nephew Richards, Inc.*, 763 N.E.2d 160, 163 (2002). Because of a class action brought by Iraqi citizens imprisoned

PROCEDURAL BACKGROUND

The relevant procedural history is discussed in detail in Plaintiffs' Opposition To Defendants' Motion For Reconsideration (Dkt. No. 172). Relevant to the instant motion, Plaintiff Suhail Najim Abdullah Al Shimari–whose claims CACI does not seek to dismiss as untimely–commenced this action against CACI in the Southern District of Ohio on June 30, 2008. In August 2008, upon CACI's motion, Mr. Al Shimari's action was transferred to this Court under §1404(a) without objection. On September 15, 2008, Mr. Al Shimari filed an Amended Complaint, Dkt. No. 28, in which the three plaintiffs who are the subject of CACI's dismissal motion–Taha Yaseen Arraq Rashid, Sa'ad Hamza Hantoosh Al-Zuba'e, and Salah Hasan Nusaif Jasim Al-Ejaili (collectively, the "Rashid Plaintiffs")–joined. Defendants do not contest that the claims of the Rashid Plaintiffs are substantially similar to those of Mr. Al Shimari, and were properly included in the amended complaint.

Shortly thereafter, on Oct. 10, 2008, CACI sought dismissal of the state law claims asserted by the Rashid Plaintiffs based on statute of limitations grounds in a summary judgment motion. (Dkt. No. 45). In litigating that motion, CACI assumed that Virginia law governed, and Plaintiffs did not contest that assumption because they had a complete answer under Virginia law.[2] By Order issued November 25, 2008, the Court agreed with the Rashid

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in U.S.-run facilities in Iraq, including Abu Ghraib, *Saleh v. Titan Corp.*, No. 04-cv-1143 (S.D. Cal. June 9, 2004), the claims of the Rashid Plaintiffs were tolled under Ohio law and so are timely. In the three briefs CACI has now filed discussing Ohio law, it has never disputed that the claims are timely if Ohio law applies.

[2] Plaintiffs never "agreed" in 2008 that Virginia law governed the Rashid Plaintiffs state law claims–they responded to CACI's argument that the claims were allegedly barred under Virginia law by arguing that, under then existing Virginia law, the claims were timely. Indeed, Plaintiffs pointed out the ultimate futility of CACI's motion because, if CACI succeeded in having the claims dismissed, the Rashid Plaintiffs could timely re-file in Ohio, at which point CACI would likely move under §1404(a) to have the case transferred back again to Virginia. Dkt. No. 59 at 4 n.2.

Plaintiffs and declined to dismiss those three plaintiffs' state law claims. Mem. Order Nov. 25, 2008 (Dkt No. 76).

On November 9, 2012, almost four years after the initial ruling,[3] CACI moved to reconsider the Court's statute of limitations ruling, relying on a recent Virginia Supreme Court decision, *Casey v. Merck & Co.*, 722 S.E.2d 842 (Va. 2012), to argue that the Court had misapplied Virginia law. (Dkt. No. 162). In response, the Rashid Plaintiffs argued both that *Casey* represented a change in law that should not be applied retroactively to this case and that, in the alternative, the original ruling should stand because the state law claims are governed by, and timely under, Ohio's statute of limitations (and its corresponding equitable tolling rules) because the case was originally filed in Ohio. (Dkt. No. 172). By the Order dated December 14, 2012 (Dkt. No. 175), the Court called for additional briefing on 1) whether Ohio law governs the Rashid Plaintiffs' claims and 2) whether *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985), precludes application of Ohio law to these claims.

I. THE COURT SHOULD APPLY THE SAME LAW OF LIMITATIONS THAT THE TRANSFEROR COURT WOULD HAVE APPLIED–THE LAW OF OHIO

Under the rule established by the Supreme Court in *Van Dusen v. Barrack*, 376 U.S. 612 (1964), and expanded in *Ferens v. John Deere Co.*, 494 U.S. 516, 526 (1990), when a case is transferred pursuant to 28 U.S.C. § 1404(a), the law of the transferor forum continues to apply to the case, including to matters that arise after transfer. The transfer should result merely in a change in courtroom, not a change in law. *Van Dusen*, 376 U.S. at 639. The application of transferor forum law is not limited to the case as it existed at the time of transfer, as the Court

[3] A three-and-a-half year delay in the litigation was caused by CACI filing a purported appeal, without appellate jurisdiction, of the Court's denial of CACI's motion to dismiss Plaintiffs' state law claims based on certain affirmative defenses. *See Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205 (4th Cir. 2012) (*en banc*) (holding that the court lacked jurisdiction over CACI's premature appeal).

made clear in the *Van Dusen* decision. There, the Court approvingly cited *H.L. Green Co. v MacMahon*, 312 F.2d 650 (2d Cir. 1962), in which the Court of Appeals approved a transfer from the Southern District of New York to the Southern District of Alabama, noting that "[t]he case should remain as it was in all respects but location." 376 U.S. at 633 (quoting *H.L. Green Co.*, 312 F.2d at 652-53). The plaintiffs argued that they wished to add a common law claim to the complaint, and resisted transfer for fear that less favorable law in the transferee court would govern the amendment. The Supreme Court agreed with the Second Circuit that this concern was no impediment to transfer because the transferee court would apply New York law even to matters added by amendment after transfer:

> The Court [of Appeals] made the import of this rule plain by expressly declaring first that the transferee court sitting in Alabama should apply New York law in ruling on the motion to add to the complaint and, secondly, that if the complaint were thus amended, the transferee court "will apply New York law (including any relevant New York choice-of-law rules)."

Id. at 633 (quoting *H.L. Green Co.*, 312 F.2d at 654). *See also Ferens*, 494 U.S. at 526 (calling § 1404(a) "a housekeeping measure that should not alter the state law governing *a case*," rather than an individual party in the case (emphasis added)). Thus, under the *Van Dusen* rule, Ohio law relating to the tolling of the statute of limitations governs the Rashid Plaintiffs claims, in the same way that it governs Mr. Al Shimari's claims.

Applying the *Van Dusen* rule to the Rashid Plaintiffs is consistent with the Supreme Court's later opinion in *Ferens*. CACI presents, at best, an incomplete picture of the *Ferens* decision. The rule of *Van Dusen*, which considered a transfer requested by defendants, was expanded in *Ferens* to include a case in which *plaintiffs* moved for a transfer from the district in which they had filed the action to a more convenient district: "Foresight and judicial economy now seem to favor the simple rule that the law does not change following a transfer of

venue under § 1404(a)." *Id*. at 530. The Court observed that a rule applying transferee law in some instances

> would produce undesirable complications. The rule would leave unclear which law should apply when both a defendant and a plaintiff move for a transfer of venue or when the court transfers venue on its own motion . . . *or when only one of several plaintiffs requests the transfer*, or when circumstances change through no fault of the plaintiff making a once convenient forum inconvenient.

Id. at 530-31(emphasis added) (citation omitted). The Court rejected the argument that "no *per se* rule requiring a court to apply either the transferor law or the transferee law will seem appropriate in all circumstances" and, therefore, a more sophisticated rule was required: "[W]e believe that applying the law of the transferor forum effects the appropriate balance between fairness and simplicity." *Id.* at 532.

Application of this "simple rule"–that the law governing the case does not change after a § 1404(a) transfer–was what the Court called for in *Ferens*, and not the type of hairsplitting that CACI is now asking the Court to undertake. Avoidance of the needless complications and arbitrary results discussed in *Ferens* is likewise an important consideration here, one that counsels the Court to apply the single body of law of the transferor court to this case in its entirety after transfer, rather than to individual plaintiffs based on when they joined the case. Doing so will properly result in all four Plaintiffs, who have substantially identical claims, having an equal chance to seek redress on the merits, and will promote judicial economy.

Beyond judicial economy, other rationales discussed in *Van Dusen* and *Ferens* also support application of the transferor forum law. First, applying Virginia law to bar their claims would deprive the Rashid Plaintiffs of their choice of state law. The Rashid Plaintiffs did not simply file a new action in the Eastern District of Virginia. Rather, they chose to join this

action and so filed in a court that, as a result of CACI's § 1404(a) transfer, is sitting as an Ohio court. Applying Virginia law would therefore deprive them of the benefits of their decision to join Mr. Al Shimari and have the same law applied to them. Second, CACI's proposed rule, that parties added post-transfer are governed by the law of the transferee court, promotes the very forum shopping by defendants that the *Van Dusen* rule is intended to discourage. *See Ferens*, 494 U.S. at 523. Adding additional parties in an amended complaint is hardly uncommon in litigation, and CACI's proposed rule would give defendants an incentive to transfer cases in the hopes of limiting the application of transferor law to only the parties and claims named in the original complaint–the very action that CACI is taking now–as opposed to serving the broader, intended purpose of § 1404(a) transfers. *See* 28 U.S.C. § 1404(a) ("[f]or the convenience of parties and witnesses, in the interest of justice ...").

Nor is the dicta in *Ferens* that CACI so often quotes applicable to this case. In addressing the objection that there was no reason to make the Ferenses file in a distant forum to obtain the benefit of that forum's choice of law rules, the Court stated:

> Although our rule may invoke certain formality, one must remember that § 1404(a) does not provide for an automatic transfer of venue. The section, instead, permits a transfer only when convenient and "in the interest of justice." ***Plaintiffs in the position of the Ferenses*** must go to the distant forum because they have no guarantee, until the court there examines the facts, that they may obtain a transfer.

494 U.S. at 532 (emphasis added). In other words, the Ferenses needed to file in the distant forum because the court may not have approved the plaintiff's transfer of the case under §1404(a). The Rashid Plaintiffs, however, are not plaintiffs "in the position of the Ferenses." Here, unlike *Ferens*, a case was already pending. The issue whether a transfer of this case from the Southern District of Ohio is appropriate for the convenience of the parties and in the interest

of justice had already been raised by CACI in Ohio, and the case was transferred to this Court. Nothing about the addition to the complaint of the Rashid Plaintiffs, whose claims are substantially identical to Mr. Al Shimari's claims, undermines that ruling. Here, the Rashid Plaintiffs took the sensible step of directly joining the Al Shimari case, one already governed by Ohio law under *Van Dusen*.

Thus, CACI's incomplete reading of *Ferens* does not support its contention that the Rashid Plaintiffs would have had to touch base in Ohio first in order for that forum's law to apply to their claims. Indeed, lower court decisions applying the *Van Dusen* rule make apparent that the rule extends to post-transfer changes to the complaint, including the addition of parties. In *Pappion v. Dow Chemical Co.*, 627 F. Supp. 1576, 1582 (W.D. La. 1986), for example, the court applied the statute of limitations that the transferor court would have used to decide whether plaintiffs added to the amended complaint after the transfer were time-barred.[4] In *Riddle v. Shell Oil Co.*, the court also applied the choice-of-law rules of the transferor court to a new defendant that was added to the case in a post-transfer amended complaint. 764 F. Supp. 418, 420-22 (W.D. Va. 1990) (applying Mississippi law). The court rejected the new defendant's argument that the plaintiff would have to go back and file suit against it in the transferor forum to obtain Mississippi law: "Such an argument not only contravenes the policy of judicial economy, but also ignores the fact that this court is sitting as a Mississippi court. Although served in Virginia, defendant [] was made party to an action governed by the law of

[4] CACI tries to distinguish *Pappion* on the grounds that it predates *Ferens* and that *Ferens* purportedly established a rule that plaintiffs must first "go to the distant forum." Def. Mem. (Dkt. No. 187) at 5. As discussed above, *Ferens* created no such rule for plaintiffs such as the Rashid Plaintiffs, or those new plaintiffs in *Pappion*, that are added to a case post-transfer.

Mississippi." *Id*. at 423.[5] *See also In re Ski Train Fire in Kaprun, Aus.*, 257 F. Supp. 2d 717, 724 (S.D.N.Y. 2003) (applying transferor forum law and holding "the fact that the Complaint in this action was amended to name additional defendants after the case was transferred by the MDL Panel does not affect the choice of law to be applied.").

Courts have likewise applied transferor forum law to other post-transfer changes. *See Brown v. Hearst Corp.*, 54 F. 3d 21, 24 (1st Cir. 1995) (applying the choice-of-law rules of the transferor court to determine the substantive law that applied despite the fact that the plaintiff had subsequently filed an amended complaint with the transferee court); *Merlo v. United Way of Am.*, 43 F.3d 96, 102 (4th Cir. 1994) (same); *DePuy Inc. v. Biomedical Eng'g Trust*, 216 F. Supp. 2d 358, 382 (D.N.J. 2001) (transferor law applied to counterclaims later filed with the transferee court). Like *Ferens*, these cases indicate that a straightforward application of transferor law to this case, including the amended complaint and Rashid Plaintiffs, is what is called for under the *Van Dusen* rule.

For these reasons, the Court should apply the same statute of limitations that the transferor court, the Southern District of Ohio, would have applied had CACI not successfully moved to transfer the action here.

[5] CACI's emphasis on the plaintiffs in *Riddle* having filed in the distant forum ignores the holding in *Riddle*–that transferor forum law applies to the action, not just to particular parties to the action. CACI's attempt to paint *Riddle* as an "outlier," despite Plaintiffs' citation to the similar result in *Pappion*, is unconvincing. *Lombard v. Economic Dev. Admin*., No. 04 Civ. 1050, 1995 U.S. Dist. LEXIS 10518, at *5.n.1 (S.D.N.Y. July 26, 1995), merely mentions in a footnote that there may raise choice-of-law issues caused by adding parties post-transfer, but did not decide the question. *Z-Rock Communs. Corp. v. William A. Exline, Inc*., No. C 03-02436, 2004 U.S. Dist. LEXIS 15807, at *19 (N.D. Cal. Aug. 6, 2004), cites only *Lombard* for the notion that the plaintiffs would have to go back to the distant forum to sue additional defendants in order for the same law to apply to those new defendants. *Ormond v. Anthem, Inc.*, No. 1:05-cv-1908, 2009 U.S. Dist. LEXIS 1919, at *13-14 (S.D. Ind. Jan. 12, 2009), in turn, cites only *Z-Rock* and *Lombard*.

II. APPLICATION OF OHIO CHOICE OF LAW RULES DOES NOT VIOLATE DUE PROCESS

There is no due process violation in applying Ohio choice-of-law rules to the Rashid Plaintiffs. Plaintiffs do not dispute the basic proposition that the choice of state law by a court must comport with due process. *Phillips Petroleum v. Shutts*, 472 U.S. 797, 816 (1985). The Supreme Court held in *Sun Oil Co. v. Wortman*, however, that a forum applying its own statute of limitations does not violate due process. 486 U.S. 717, 729-30 (1988). The *Ferens* litigation made clear that a § 1404(a) transfer does not change the analysis–a transferee forum may constitutionally apply the statute of limitations from the distant forum even though the case no longer has a significant connection to that forum (if it ever did). Taken together, *Wortman* and *Ferens* demonstrate that there is no due process violation in this Court applying Ohio's statute of limitations to this action, including the claims of the Rashid Plaintiffs.

Wortman involved similar facts as *Shutts*–a class action over royalty payments filed in Kansas state court. 486 U.S. at 720-21. However, whereas *Shutts* involved the application of Kansas substantive law to claims insufficiently connected to Kansas, *Wortman* dealt with the statute of limitations, which the Court categorized as procedural for the purposes of its analysis. *Id*. at 721, 726. The Court held that "the Constitution does not bar application of the forum State's statute of limitations to claims that in their substance are and must be governed by the law of a different State." *Id*. at 722. Doing so does not violate due process: "[P]etitioner could in no way have been unfairly surprised by the application to it of a rule that is as old as the Republic. There is, in short, nothing in Kansas' action here that is 'arbitrary or unfair,' and the due process challenge is entirely without substance." *Id*. at 730 (citation omitted) (quoting *Shutts*).

A close reading of the *Ferens* litigation shows that the Supreme Court has already considered, and rejected, CACI's due process argument. The *Ferens* decision discussed above was the second Supreme Court opinion in that case. The first vacated a Third Circuit opinion holding what CACI urges this Court to hold here: that application of the transferor forum's statute of limitations would violate due process. *Ferens v. Deere & Co.*, 487 U.S. 1212, 1213 (1988). The principal plaintiff was a Pennsylvania resident who was injured in Pennsylvania by a machine made by the defendant, a Delaware corporation with its principal place of business in Illinois. Ferens filed a breach of warranty claim in the Western District of Pennsylvania, but, because the Pennsylvania statute of limitations on his tort action had run, he filed his tort claim in the Southern District of Mississippi. 494 U.S. at 519. Ferens selected Mississippi because it had a longer statute of limitations, which a Mississippi court would apply to his claim. Ferens then sought a transfer of the case to Pennsylvania under § 1404(a), intending that the Mississippi statute of limitations would continue to apply. The transfer was granted, but the district court in Pennsylvania declined to apply the Mississippi limitations period. *Id.* at 520.

On appeal, the Third Circuit affirmed the decision to apply Pennsylvania law, finding that application of Mississippi's statute of limitations would violate due process. *Ferens v. Deere & Co.*, 819 F.2d 423, 427 (3d Cir. 1987). The Third Circuit concluded that the only connection between the case and Mississippi was that the defendant company had appointed a local resident agent to do business there. *Id*. Relying on *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), and *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930), the court concluded that "Mississippi's contacts with the parties and the occurrence or transaction are plainly so insignificant that the application of its law would be arbitrary, fundamentally unfair, and therefore unconstitutional." *Id.* at 427. Because it concluded that Mississippi could not

constitutionally apply its own laws to the case, the court concluded that *Van Dusen* did not require the transferee forum to do so. *Id*.

In a unanimous, summary opinion, the Supreme Court vacated the decision and remanded for "further consideration in light of *Sun Oil Company v. Wortman*, 486 U.S. 717 (1988)." *Ferens v. Deere & Co.*, 487 U.S. 1212, 1212-13 (1988). On remand, the Third Circuit acknowledged that its prior decision's "reasoning is inconsistent with the Supreme Court's determination in *Sun Oil Co. v. Wortman.*" 862 F.2d 31, 32 (3d Cir. 1988). In its second *Ferens* opinion, the Supreme Court expressed no due process qualms about Mississippi's statute of limitations being applied by the district court in Pennsylvania after the transfer.

Moreover, while CACI is quick to list Plaintiffs' lack of ties to Ohio, it has been consistently, and conspicuously, silent about its own connections to Ohio. For that additional reason, CACI has failed to demonstrate that "the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).[6] This action was filed in Ohio in part because Timothy Dugan, a CACI employee who committed atrocities at Abu Ghraib and a named defendant in the original complaint, resided there. In addition, CACI's website lists several "CACI Locations" in Ohio. LoBue Decl., Ex. A. CACI also lists seven job openings currently available in Ohio. LoBue Decl., Ex. B. Its website further notes a contract won by CACI from the United States Air Force Command at Ohio's Wright-Patterson Air Force Base. LoBue Decl., Ex. C. From the Ohio Secretary of State's website, it appears that several CACI entities have been actively licensed to

[6] CACI's objection on due process grounds to application of Ohio's statute of limitations is in the nature of an affirmative defense. CACI, therefore, bears the burden in moving for summary judgment affirmatively to demonstrate that there are no genuine issues of fact in dispute and that it is entitled to judgment as a matter of law. *See Celotex, Inc. v. Catrett*, 477 U.S. 317, 323 (1986); *see also Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 547 (1935) (putting burden on the party making constitutional challenge to state's application of its own laws). In any event, Plaintiffs have submitted evidence in opposition to Defendants' motion, discussed in text above, that demonstrates not merely that there are facts contrary to CACI's assertion of no contacts with Ohio, but that there are sufficient undisputable facts to require the conclusion that CACI has such contacts with Ohio as to render the application of its statute of limitations consistent with due process.

do business in Ohio. LoBue Decl., Ex. D. In fact, CACI has never argued that Ohio lacked personal jurisdiction over it.[7] CACI cannot credibly claim that this action has *no* connection to Ohio, because CACI itself has connections to Ohio. Indeed, CACI's contacts with Ohio are more substantial than the minimal contact of the defendant company to Mississippi in *Ferens*, which proved sufficient for the Pennsylvania transferee court to apply Mississippi's statute of limitations.

For these reasons, under *Ferens* and *Wortman*, there is no due process violation in this case. This Court is sitting as an Ohio court for the purposes of state law, and there is no due process violation in a forum applying its own state statute of limitations. Notably, CACI does not argue that application of Ohio law would violate due process with respect to Mr. Al Shimari. It cannot do so after *Ferens*, although the logic of its present argument would require that result.[8] Application of Ohio law to the Rashid Plaintiffs' claims is equally consonant with due process, because as a result of CACI's § 1404(a) transfer this Court is operating as an Ohio court for state law purposes. Because this application of transferor forum law was constitutional in *Ferens*, there is nothing arbitrary or unfair about applying Ohio law to both Mr. Al Shimari's claims and the substantially identical claims of the Rashid Plaintiffs.

CONCLUSION

For the reasons stated above, application of Ohio law is appropriate to the state law claims of the Rashid Plaintiffs, and CACI's Motion for Reconsideration should be denied.

[7] For this reason, CACI may have waived any objections that Ohio lacked personal jurisdiction by filing its § 1404(a) motion without joining a claim for lack of personal jurisdiction. *See Schuman v. Mezzetti*, 702 F. Supp. 52, 53-54 (E.D.N.Y. 1988); *Sangdahl v. Litton*, 69 F.R.D. 641, 642-643 (S.D.N.Y. 1976); *but see Convergence Techs. (USA), LLC v. Microloops Corp.*, 711 F. Supp. 2d 626, 633 (E.D. Va. 2010).

[8] Limitations on the *Van Dusen* rule already act to prevent truly arbitrary and unfair results. For example, if the original venue was improper and the action was transferred under 28 U.S.C. § 1406(a), the law of the transferee court would apply. *See Myelle v. American Cyanamid Co.*, 57 F.3d 411, 413 (4th Cir. 1995). CACI did not argue that venue in Ohio was improper, and instead sought to have this case transferred under § 1404(a).

Date: January 31, 2013

s/George Brent Mickum
George Brent Mickum IV (VA Bar # 24385)
Law Firm of George Brent Mickum IV
5800 Wiltshire Drive
Bethesda, MD 20816
Telephone: (202) 281-8662
gbmickum@gmail.com

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

Robert P. LoBue, *Admitted pro hac vice*
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2013, I electronically filed the Plaintiffs' OPPOSITION TO DEFENDANTS' SUPPLEMENTAL MEMORANDUM REGARDING CHOICE OF LAW through the CM/ECF system, which sends notification to counsel for Defendants.

/s/ George Brent Mickum IV

George Brent Mickum IV (VA Bar # 24385)