

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

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

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION TO  
ENLARGE TIME TO COMPLETE PLAINTIFFS’ DEPOSITIONS**

**INTRODUCTION**

Plaintiffs, four Iraqi men who were tortured at Abu Ghraib prison in Iraq, have pursued their claims in this Court since 2008. After years spent litigating jurisdictional matters, discovery commenced on November 6, 2012. Plaintiffs are eager for this phase of their case to proceed in accordance with the schedule set forth in the Court’s Supplemental Discovery Order [Dkt #160] and have sought to comply with all Court Orders to ensure that the Court’s schedule does not require modification.

The Court issued an Order on March 8, 2013, in which it required that Plaintiffs appear for depositions in the Eastern District of Virginia during the week of March 18, 2013. Dkt #214.<sup>1</sup> As the Court is aware, as foreign nationals, Plaintiffs are not permitted entry into the United States without a visa issued by the United States Department of State. By February 25, 2013, all

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<sup>1</sup> This Order modified a prior Order, dated February 14, 2013, which required that the Plaintiffs make themselves available for depositions in the District no later than thirty (30) days from the entry of that Order. Dkt #205.

four Plaintiffs' applications for visas to enter the United States had been granted. Declaration of Baher Azmy, Esq., dated March 22, 2013 ("Azmy Decl.") at ¶ 6. Counsel proceeded to work together to schedule depositions in accordance with the Order. Azmy Decl. ¶ 8.

Plaintiff Salah Hasan Al-Ejaili, who currently resides in Doha, Qatar, appeared in the United States for deposition and medical examinations during the week of March 4, 2013. Azmy Decl. ¶ 7. He left the United States to return to Qatar on March 6, 2013. *Id.*

The remaining three Plaintiffs, Suhail Najim Abdullah Al-Shimari, Asa'ad Hamza Hanfoosh Al-Zuba'e, and Taha Yaseen Araq Rashid, currently reside in Iraq (collectively, the "Baghdad Plaintiffs"), Azmy Decl. ¶ 3, and were scheduled to appear for depositions in the Eastern District of Virginia during the week of March 18, 2013, in accordance with the Court's Order, and had taken all steps necessary to so appear. Azmy Decl. ¶¶ 9-14.

As set forth in detail in the accompanying Declaration of Baher Azmy, through no fault of the Plaintiffs or counsel and due to unexplained reasons that were attributed to the U.S. government, the Baghdad Plaintiffs were not permitted to travel to the United States as planned on Friday, March 15, 2013. Azmy Decl. ¶¶ 15-16. The Baghdad Plaintiffs were since informed by officials in the Department of State that the required government inter-agency coordination related to their travel failed to occur, as it should have. Azmy Decl. ¶ 20. Since that date, the Baghdad Plaintiffs and their counsel have taken every measure to ensure their arrival in the United States as quickly as possible. Azmy Decl. ¶¶ 18-20, 22-26, 28-32. Despite their efforts and being in possession of valid visas to enter the United States, to date, the Baghdad Plaintiffs have not been able to travel to the District for their depositions. Azmy Decl. ¶ 29.

Accordingly, Plaintiffs seek a two-week extension of the time period in which all Plaintiffs must appear for deposition by two weeks, to April 5, 2013. Plaintiffs' counsel have

been advised that another order issued by this Court compelling the appearance of the Plaintiffs for depositions in this District as soon as possible is necessary to facilitate the processing of the Baghdad Plaintiffs' applications to enter the United States. Azmy Decl. ¶¶ 30-31.

Plaintiffs will keep the Court apprised of any developments in this matter, and should the issuance of a Court Order extending the time by which the Baghdad Plaintiffs must appear to April 5<sup>th</sup> not be sufficient to facilitate and allow for a resolution to the inter-agency issues, Plaintiffs will renew this request to the Court at the appropriate time.

### **ARGUMENT**

#### **I. There is Good Cause to Enlarge the Time in Which Plaintiffs Must Appear for Depositions**

Plaintiffs have made diligent efforts to comply with the Orders of the Court in regard to Plaintiffs' appearances for depositions. The recent delay in Plaintiffs' travel cannot be attributed to Plaintiffs as they had secured valid visas, had purchased their tickets, and were only not permitted to board at the last minute due to an as yet unexplained decision by the U.S. government. Since first learning that the Baghdad Plaintiffs were not allowed to travel on March 15<sup>th</sup>, Plaintiffs' counsel have been working diligently with its State Department contacts to remediate this problem. Azmy Decl. ¶¶ 18-20, 25-26, 28, 30. Counsel have been advised that additional time is needed to resolve the inter-agency issues that delayed the Baghdad Plaintiffs' travel. Azmy Decl. ¶ 30. Accordingly, the Baghdad Plaintiffs respectfully submit there is good cause to grant them more time to appear in this District for their depositions.

Specifically, as detailed in the accompanying declaration of Baher Azmy, Esq., following the issuance of the Court's Order on February 14, 2013, Plaintiffs' counsel worked assiduously to ensure that Plaintiffs' visa applications were reviewed in an expeditious manner. Plaintiffs' counsel was in regular contact, by email and telephone, with various offices within the

Department of State to expedite review of the Baghdad Plaintiffs' visa applications. Azmy Decl.

¶ 5. The Baghdad Plaintiffs' visas were subsequently granted within eleven (11) days of the Court's February 14<sup>th</sup> Order. Azmy Decl. ¶ 6.

Plaintiffs' counsel worked with Defendant's counsel to find dates that could accommodate the deposition and two medical examinations for each of the Baghdad Plaintiffs. Azmy Decl. ¶ 8. The depositions and medical examinations were scheduled to take place throughout the week of March 18<sup>th</sup>. Azmy Decl. ¶ 9.

Accordingly, the Baghdad Plaintiffs' tickets were purchased and they took all necessary steps to arrive in the United States on the evening of March 15<sup>th</sup>. Azmy Decl. ¶ 10-14. After receiving boarding passes and passing through security at the Baghdad airport, the Baghdad Plaintiffs were stopped as they attempted to board the plane due to an as yet unexplained decision by the U.S. government. Azmy Decl. ¶¶ 15-16.

Almost immediately after learning that the Baghdad Plaintiffs were not permitted to board their scheduled flight to the United States, Plaintiffs' counsel communicated with its contacts in the Department of Homeland Security Transportation Security Administration (TSA) and the Department of State Bureau of Democracy, Human Rights, and Labor in an effort to learn the reason why the Baghdad Plaintiffs were not allowed to travel and what steps should be taken to allow them to travel to the United States for their depositions. Azmy Decl. ¶ 18.

Plaintiff counsel's regular contact at the Department of State expressed considerable surprise and frustration that the Baghdad Plaintiffs were not permitted to board the plane and pledged to make inquiries to find out what happened. Azmy Decl. ¶ 20. During a phone call on the afternoon of March 15<sup>th</sup>, Plaintiffs' counsel was informed that there had been some kind of an inter-agency miscommunication regarding the Baghdad Plaintiffs and their travel to the

United States. *Id.* The Department of State official advised counsel that although the Baghdad Plaintiffs' visas were still valid, the Baghdad Plaintiffs should proceed to immediately re-apply for visas to the United States in order to allow the necessary inter-agency communication and coordination to occur, as it apparently had not happened when the visas were issued in February. *Id.*

The Baghdad Plaintiffs proceeded to submit new applications immediately, Azmy Decl. ¶ 22, and appeared for interviews at the U.S. Embassy in Baghdad in the morning of Sunday, March 17, 2013. Azmy Decl. ¶¶ 23-24.

Plaintiffs' counsel has remained in daily, regular telephone and email contact with the Department of State in Washington, D.C. regarding the visas and the Baghdad Plaintiffs' anticipated travel to the United States. Azmy Decl. ¶ 25. Plaintiffs' counsel have been informed that a Legal Officer from the Department of State Consular Affairs section has sent a letter directly to this Court explaining what happened with Plaintiffs' travel and advising the Court of its commitment to continue working toward bringing the Plaintiffs in the country. Azmy Decl. ¶ 32.

During the most recent call with the State Department, which occurred this afternoon (March 22<sup>nd</sup>), Plaintiffs' counsel were advised that the inter-agency coordination was continuing and that additional time would be needed to resolve the matter. Azmy Decl. ¶ 30. The State Department official advised Plaintiffs' counsel that another agency has taken the position that the Court's Order regarding the appearance of the Baghdad Plaintiffs for deposition has expired, which is not the position of the Department of State. *Id.* Given the position of the other agency, Plaintiffs' counsel understand that another order issued by this Court compelling the appearance

of the Plaintiffs for depositions in this District as soon as practicable is necessary to facilitate the processing of the Baghdad Plaintiffs' applications to enter the United States. Azmy Decl. ¶ 31.

Accordingly, it appears that a court order setting a reasonable deadline by which Plaintiffs are to be deposed is necessary to force the relevant government agencies to act on the outstanding visa and entry applications. Azmy Decl. ¶ 31. Plaintiffs understand that while a reasonable deadline – which Plaintiffs suggest would be April 5, 2013 – would put necessary pressure on the U.S. government to act on Plaintiffs' visa applications, there is a possibility that the applications may not be fully processed in time for Plaintiffs to appear by April 5. Accordingly, Plaintiffs would respectfully request that an order setting the deadline not preclude a subsequent enlargement of time, should Plaintiffs be able to represent that Plaintiffs' entry and appearance for depositions could occur after the April 5<sup>th</sup> deadline.

Plaintiffs' counsel has communicated with Defendant's counsel regarding the delay, and possible new dates for the depositions and medical examinations. Azmy Decl. ¶¶ 21, 27. Defendant's counsel informed Plaintiffs that Defendant cannot take a position on Plaintiffs' motion without knowing when or whether Plaintiffs will in fact be entering the United States.

As the foregoing demonstrates, the Baghdad Plaintiffs and Plaintiffs' counsel have sought over the last week to ensure the Baghdad Plaintiffs' timely arrival in the United States and in this District to appear for their depositions. After the issuance of their visas (and, indeed, the travel of one Plaintiff to and from the United States for his deposition without any complications), Plaintiffs had no reason to doubt that they would appear in the District for their depositions, as ordered by the Court.

The Baghdad Plaintiffs and their counsel will continue to take all steps that they can to cure this current deficiency, and seek additional time from the Court to do so.

**CONCLUSION**

Plaintiffs respectfully request that the Court grant Plaintiffs' motion, and extend the period of time by which the Baghdad Plaintiffs must make themselves available for deposition to April 5, 2013, without precluding Plaintiffs from seeking a subsequent enlargement if it appears that approval for Plaintiffs' entry into the United States is delayed beyond April 5, 2013 without fault of Plaintiffs.

Date: March 22, 2013

Respectfully submitted,

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