

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

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

PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO COMPEL

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PRELIMINARY STATEMENT

CACI Premier Technology, Inc. and CACI International, Inc. (“CACI”) seek a court order to compel action that Plaintiffs are already trying to accomplish – making Plaintiffs available for depositions in this District. The Motion to Compel – which is largely premised on a grossly distorted portrayal of Plaintiffs’ willful defiance of the Federal Rules of Civil Procedure – is overheated and inappropriate. First, CACI failed to satisfy its obligation under Federal Rule of Civil Procedure 37(a)(1) and Local Rule 37(E) to meet and confer with Plaintiffs’ counsel in order to narrow or resolve the issues raised in its motion. Had it done so properly and in good faith, the burdens associated with adjudicating the motion would have been obviated.

Specifically, on January 9, 2013, Plaintiffs’ counsel wrote CACI’s counsel to timely object to Defendants’ Notice of Depositions of the four plaintiffs (for consecutive dates between January 29 through February 1, 2013), on the grounds that Plaintiffs’ visa process – which, the letter explained, contemplated the completion of U.S. embassy interviews of all the Plaintiffs by January 24th – would probably not be completed in time to attend the depositions.¹ The letter advised counsel that Plaintiffs would work to schedule depositions reasonably soon after their visas were granted (and within the scheduled discovery period) and reiterated a previous offer to make Plaintiffs available for their depositions in Istanbul, Turkey or Erbil, in Kurdish Iraq at CACI’s election. CACI never responded to this letter, nor did it seek updates regarding the visa process, despite multiple opportunities to do so including a formal meet-and-confer held on January 24, 2013 to discuss other discovery issues. Instead, CACI’s counsel informed Plaintiffs only on Friday, February 8, 2013, that it intended to file a motion to compel Plaintiffs’

¹ A detailed account of Plaintiffs’ efforts to obtain visas and communications between CACI and Plaintiffs is contained in the accompanying Declaration of Baher Azmy, Esq, dated February 13, 2013.

appearance at a deposition. During the call to discuss the motion, Plaintiffs' counsel informed CACI's counsel that one of the Plaintiffs, who resides in Qatar, recently had his visa approved and that, based on this development, there was reason to believe that visas for the other Plaintiffs would be forthcoming as well. Rather than working with Plaintiffs' counsel to try to resolve when the depositions could practicably be scheduled, CACI moved ahead into unnecessary motion practice.

Second, an order to compel Plaintiffs' depositions is not necessary. Contrary to Defendants' suggestion, Plaintiffs do not refuse to appear for depositions – the scenario contemplated by motions to compel under Federal Rule of Civil Procedure 37. *See* Fed. R. Civ. P. 37(a)(3). Rather, as is often the case in international litigation, Plaintiffs are still uncertain about when the depositions can occur, due to circumstances solely in the control of the U.S. State Department. Plaintiffs' counsel has worked in good faith to make Plaintiffs available for depositions in this District – or in reasonable alternative locations abroad – prior to the scheduled conclusion of the discovery period. Thus, there appears to be nothing the Court can order Plaintiffs to do that they are not already attempting. If anything, for reasons set forth below, this Court could find that “special circumstances” exist under Local Rule 30, and order the depositions to take place in Istanbul, Turkey or Erbil, in Kurdish Iraq.

Finally, Defendants' motion proceeds, in unnecessarily harsh tones, to interject immaterial and unfair insinuations about Plaintiffs' counsel's faithfulness to its discovery obligations and even the ultimate merit of Plaintiffs claims for relief.² In the end, it is not clear

² For example, CACI appears to mock Plaintiffs for their ability to draw “worldwide publicity” to this matter, as if to suggest that media interest in this serious episode in American history somehow empowers Plaintiffs and their counsel to supersede the visa approval protocols set by the State Department.

why CACI filed this motion, because it could likely have obtained the relief it sought without resort to a motion, let alone one as intemperate as this.

FACTUAL BACKGROUND

The Court is well aware of the procedural history of this case, including the reasons for an over three-year delay between this Court's denial of CACI's motion to dismiss the complaint and the commencement of discovery in this Court in November 2012. *See Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205 (4th Cir. 2012) (en banc) (dismissing CACI's improvident appeal of this Court's March 2009 order denying CACI's motion to dismiss the complaint). CACI moved to stay the Court of Appeals' mandate on the grounds that it intended to file a petition for certiorari to the United States Supreme Court. *See Appellants' Mot. Stay Mandate, Al Shimari v. CACI Int'l, Inc.*, No. 09-1335 (4th Cir. May 31, 2012), ECF No. 179. That Motion was denied. ECF No. 186. Still, CACI had 90 days to seek *certiorari* review in the Supreme Court, from the date of the Fourth Circuit's judgment, and yet another opportunity to seek a stay of discovery in this court. Despite CACI's representations to the Court of Appeals, it did not ultimately seek *certiorari* review.

C. Plaintiffs' Applications for Visas to Enter the United States

On October 12, 2012, this Court (Honorable Gerald Bruce Lee), held a status conference. Dkt. No. 149. The Court issued a Supplemental Discovery Order on November 6, 2012. Dkt. No. 160. That Discovery Order sets the close of discovery for April 26, 2013. After postponing

To cite another example, CACI expresses surprise that Plaintiffs have not produced many documents that are responsive to their document requests, at the same time CACI highlights one such document it believes is detrimental to Plaintiffs' case. CACI cannot have it both ways. These Plaintiffs are civilians who were plucked off the street, imprisoned, stripped, hooded and abused, and released without charge. They (like any plaintiff in a prison abuse case) do not possess a paper trail detailing their abuses. Similarly, the document produced by Mr. Al Shimari that purportedly acknowledges his a lack of mistreatment while in detention can readily be explained by Mr. Al Shimari at his eventual deposition.

a planned trip to Istanbul to meet with clients during the week of November 26, 2012, due to scheduling difficulties, counsel for Plaintiffs met with all four Plaintiffs during the week of December 10, 2012, in order to discuss the case in person and review and verify responses to Defendants' interrogatories. Declaration of Baher Azmy, Esq., dated February 13, 2013 ("Azmy Decl.") at ¶ 7.³ Three of the Plaintiffs, Mr. Al Shimari, Mr. Rashid, and Mr. Al-Zuba'e reside in or around Baghdad, Iraq (collectively, the "Baghdad Plaintiffs"). The fourth Plaintiff, Mr. Al-Ejaili, resides in Doha, Qatar. Azmy Decl. ¶ 3.

During this trip, counsel also had an opportunity to discuss with the Plaintiffs (and counsel's Iraqi coordinator who has assisted with aspects of this and other Abu Ghraib litigations since 2004) the process and content of applications for visas to enter the United States in connection with this litigation. Azmy Decl. ¶ 8. Plaintiffs' counsel believed that some of the Plaintiffs had applied for visas in 2008 in anticipation for appearing in this litigation, at the U.S. Embassy in Ankara, Turkey. (Apparently, the U.S. Embassy in Baghdad was not then able to process visas.) *Id.* Plaintiffs' counsel were concerned about applying for visas anew, when applications may have been on file with the U.S. Embassy, lest a duplicate filing cause significant processing delay or lead to outright denial, and thus sought to clarify, in person, the status of previous applications. Azmy Decl. ¶ 9.

Almost immediately after returning from Istanbul, Plaintiffs' counsel confirmed that the Baghdad Plaintiffs had previously submitted visa applications in Ankara in 2008 (which were subsequently closed), and, during the week of December 17, through December 26, 2012, Plaintiffs' counsel obtained instructions on how to file new applications in U.S. embassies in

³ On December 3, 2012, Susan Burke, Esq., who had served as lead counsel in this case, informed CACI and Plaintiffs' counsel of her intention to withdraw from the case and cease working on it. Azmy Decl. ¶ 6.

Baghdad and Doha (rather than having the Plaintiffs fly to Ankara to appear in person there) and continued collecting information for renewed visa applications. Azmy Decl. ¶ 9.⁴ On December 25, 2012, Mr. Al-Ejaili's visa application to the U.S. Embassy in Doha was completed. Azmy Decl. ¶ 16 & Exh. 2.⁵ On December 27, 2012, Plaintiffs' counsel submitted a letter to the U.S. Embassy in Doha, requesting expedited processing of Mr. Al-Ejaili's visa application, attaching relevant litigation documents to substantiate the need for expedited processing. Azmy Decl. ¶ 18 & Exh. 3.

Four days later, on December 31, 2012, visa applications for the Baghdad Plaintiffs were completed and submitted to the U.S. Embassy in Baghdad, Iraq. Azmy Decl. ¶ 20 & Exh. 4. That day, Plaintiffs' counsel also submitted letters requesting expedited processing of the Baghdad Plaintiffs' visas. Because CACI had served Deposition Notices on Plaintiffs on December 28, 2013, Plaintiffs' counsel attached those Notices to the Embassy letters, in order to underscore the exigency of Plaintiffs' requests. Azmy Decl. ¶ 21.

Thereafter, the U.S. Embassy in Doha scheduled an interview of Mr. Al-Ejaili on January 9, 2013. The U.S. Embassy in Baghdad scheduled interviews of the Baghdad Plaintiffs and the Iraqi coordinator on January 23, 2013. All interviews took place on their scheduled dates. Azmy Decl. ¶ 22 & Exh. 5. The U.S. Embassy in Doha approved Mr. Al-Ejaili's visa on January 14, 2013. Azmy Decl. ¶ 25. Mr. Al-Ejaili traveled to Erbil, in Kurdish Iraq, between January 10 and 13, to be examined by Plaintiffs' medical expert, Dr. Stephen R. Xenakis. Azmy

⁴ This was a time consuming and inefficient process. For example, during the time period in which Plaintiffs' counsel attempted to reach it, the visa office at the U.S. Embassy in Ankara handled such inquiries for only one hour per day, at between 4:00-5:00 a.m. Eastern Standard Time. Azmy Decl. ¶ 13. Counsel finally reached a consular official in Ankara on December 26, who informed counsel that the Baghdad Plaintiffs could file new visa applications with the U.S. Embassy in Baghdad, which counsel immediately proceeded to do. Azmy Decl. ¶ 14.

⁵ On December 26, 2012, Plaintiffs filed a Second Amended Complaint. Dkt. No. 177.

Decl. ¶ 30. He then traveled to Sierra Leone, on assignment as a reporter for Al Jazeera, and returned to Doha on February 7, 2013. *Id.*

Plaintiffs' counsel contacted Mr. Al-Ejaili on February 10, 2013, to ascertain his availability to travel from Doha for depositions in the U.S. Mr. Al-Ejaili confirmed he would be available for deposition on dates around February 25, 26, or 27, depending upon travel and logistics. Azmy Decl. ¶ 31.

As of the filing of this brief, the U.S. Embassy has not yet granted the Baghdad Plaintiffs' visas.

D. Communications Between Counsel Regarding Plaintiffs' Depositions

On December 17, 2012, William Koegel, Esq., counsel for CACI, emailed Baher Azmy, Esq. and Susan Burke, Esq. (who has since ceased serving as counsel for Plaintiffs), to request dates for depositions for Plaintiffs in January in the Eastern District of Virginia. As previously described, Plaintiffs' counsel had just returned from Istanbul, and were working on determining how to process Plaintiffs' visas in light of questions surrounding the status of any prior visa applications. Mr. Azmy responded by email dated December 18, 2012, that Plaintiffs were in the process of applying for visas and that, because the decision of whether and when to grant visas to Plaintiffs was out of Plaintiffs' control, counsel could not predict when they would be available. Mr. Azmy suggested that March was a more realistic time frame to ensure their availability. He also offered to make Plaintiffs available for depositions in Istanbul in January, if Defendants wished to go forward with their depositions that month. Azmy Decl. ¶ 10.

By email dated December 19, 2012, Mr. Koegel expressed dissatisfaction with Plaintiffs' response, appeared to attribute eight years of delay in this litigation to Plaintiffs, and asked that counsel inform him "specifically and in detail, exactly what Plaintiffs have done for Plaintiffs to

be able to appear in this country in this action and when each action was taken.” Azmy Decl.

¶ 11 & Exh 1.

Mr. Azmy responded on December 20, 2012, by objecting to any attribution of blame for the delay in the litigation to Plaintiffs, and resisting CACI’s demand “for an accounting of our efforts” to obtain visas, and to reassure CACI that “we are in the process of obtaining visas for the plaintiffs (the outcome and timing of which, as you know, are not fully within Plaintiffs control), and we fully intend to make them available in E.D.Va for depositions before the conclusion of the discovery period.” Azmy Decl. ¶ 12 & Exh. 1. Mr. Azmy also reaffirmed Plaintiffs’ counsel’s commitment to make all of the Plaintiffs available for depositions in Istanbul in the meantime. *Id.* Nevertheless, Mr. Koegel responded the next day stating, “Your refusal to provide information about [*sic*] the Plaintiffs efforts to obtain visas *means that* they’ve been either dilatory or unsuccessful. Neither explanation is satisfactory.” Azmy Decl. ¶ 13 & Exh. 1 (emphasis added).

On December 28, 2012, counsel for CACI served Notices of Depositions for all four plaintiffs, scheduling them for consecutive days in the Eastern District of Virginia, between January 28 through February 1, 2013. Azmy Decl. ¶ 19. On January 9, 2013, Mr. Azmy sent a letter to Mr. Koegel, within the time frame contemplated by Local Rule 26(C), advising him that Plaintiffs objected to the Notice of Depositions insofar as all of the Plaintiffs would likely not have their visas in time to travel to the U.S. for the dates noticed. Azmy Decl. ¶ 23 & Exh. 6.⁶ Specifically, the letter stated, “As of this date, all Plaintiffs are scheduled to complete interviews by U.S. officials at their respective U.S. Embassy by January 24, 2013 – a date too close to the proposed depositions to ensure their availability.” The letter affirmed Plaintiffs’ intention to

⁶ Plaintiffs also offered that they would not object to an enlargement of the discovery schedule in order to schedule Plaintiffs’ depositions.

appear in the Eastern District of Virginia and pledged to advise Defendants when the visas were completed, so Plaintiffs could sit for their depositions. The letter reiterated an offer to make Plaintiffs available for depositions in either Erbil, in the Kurdish area of Iraq or in Istanbul. *Id.* At that time, Plaintiffs did not know how long it would take the visas to be processed, following the interviews. Azmy Decl. ¶ 23.

Counsel for CACI never responded to this letter in any way – in writing or by phone – despite multiple email and phone conversations between both parties’ counsel regarding various discovery issues. CACI’s counsel never inquired about the status of Plaintiffs’ visas, or otherwise indicated any interest in discussing or resolving the timing or location of Plaintiffs’ depositions. Azmy Decl. ¶ 24. In fact, on January 24, 2013, during an hour-long telephonic meet-and-confer between Plaintiffs’ counsel and CACI’s counsel John O’Connor, Esq. – during which the parties discussed a proposed protective order, CACI’s objections to Plaintiffs’ interrogatory and document responses and Plaintiffs’ discovery responses – Mr. O’Connor again did not raise any questions about the scheduling of Plaintiffs’ depositions or the substance of Plaintiffs’ last communication to CACI on this issue. Azmy Decl. ¶ 26.

On February 8, 2013, Mr. O’Connor sent Plaintiffs’ counsel an email (referencing a voicemail he had left the day before in the late afternoon), which stated CACI’s intention to file, on that very day, a motion to compel Plaintiffs’ depositions, and which sought to confirm the availability of Plaintiffs’ counsel for a hearing on February 15. Azmy Decl. ¶ 27 & Exh. 7. Although the email states that “the parties conferred at some length in December and January,” and requested more information about Plaintiffs’ availability, this email was the first time Plaintiffs learned that Defendants considered Plaintiffs’ January 9, 2013 letter insufficient or otherwise intended to file a motion with the Court. *Id.*

Plaintiffs' counsel called Mr. O'Connor that afternoon. Counsel explained that Mr. Al-Ejaili's visa was approved approximately one week after his interview at the Embassy in Doha, on January 14, 2013, and shared Plaintiffs' guarded optimism that visas for the Baghdad Plaintiffs would likely be granted as well. But, counsel explained that it appeared the separate Embassies were processing the applications at a different pace. Plaintiffs' counsel reiterated that, therefore, all Plaintiffs were expected to be available for depositions in the District, but of course, could not guarantee that result. Mr. O'Connor did not ask if Mr. Al-Ejaili would have been available for his deposition on February 1, 2013. Azmy Decl. ¶ 28. Because CACI did not respond to Plaintiffs' January 9 letter stating Mr. Al-Ejaili's likely unavailability, Plaintiffs' counsel simply did not know if CACI wanted to proceed separately with his deposition on February 1, or if CACI was awaiting information on all four Plaintiffs' visas or if CACI was considering traveling abroad for the depositions. In fact, Mr. Al-Ejaili would not have been available on February 1, as he was on assignment as a reporter, in Sierra Leone until February 7, 2013. Azmy Decl. ¶ 30. During the February 8 call, Plaintiffs' counsel inquired if Defendants wished to take Mr. Al-Ejaili's deposition separately from the other Plaintiffs. At that point, Mr. O'Connor responded that CACI would prefer that arrangement. Azmy Decl. ¶ 28.

Since the date of the filing of Defendants' Motion, Plaintiffs' counsel has contacted Mr. Al-Ejaili. Mr. Al-Ejaili has indicated that he could be available for a deposition in the United States around the dates of February 25, 26 or 27, depending on flight availability and logistics. Azmy Decl. ¶ 31. Should CACI seek to proceed with his deposition, Plaintiffs will work to schedule a deposition around those dates.

ARGUMENT

A. CACI Failed Its Obligation to Meet and Confer Prior to Filing this Motion

CACI failed to abide by the procedural and substantive requirements of the Federal Rules of Civil Procedure and this Court's Local Rules. Federal Rule 37(a)(1) requires that any motion to compel discovery "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an *effort to obtain it without court action.*" Fed. R. Civ. P. 37(a)(1) (emphasis added). This Court's Local Rules impose an even stronger obligation: Local Rule 37(E) states:

(E) Consultation Among Counsel: Counsel shall confer to *decrease, in every way possible* the filing of unnecessary discovery motions. No motion concerning discovery matters may be filed until counsel shall have conferred in person or by telephone to explore with opposing counsel the possibility of resolving the discovery matters in controversy. *The Court will not consider any motion* concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue. (emphasis added).

CACI's Motion states: "Counsel for Defendants conferred with counsel for Plaintiffs regarding the relief sought in this Motion. Counsel for Plaintiffs did not agree to the relief sought herein." Dkt. No. 196 at n.1. Under the Federal Rules and Local Rules this does not constitute a "good faith" attempt to resolve the scheduling of Plaintiffs' depositions or to obtain the relief they requested "without court action."

First, CACI's counsel never responded to Plaintiffs' counsel's letter dated January 9, 2013, which informed CACI that the four Plaintiffs' interviews with their respective U.S. Embassies were scheduled to be completed by January 24, and thus could not realistically attend the depositions CACI noticed for the end of January; nor did Defendants respond to Plaintiffs' offer to make Plaintiffs available for depositions in Erbil, in Kurdish Iraq or Istanbul, Turkey. Azmy Decl. ¶¶ 23-24. Indeed, despite multiple opportunities to address the scheduling of

Plaintiffs' depositions – including during the planning and occurrence (on January 24, 2013) of a formal meet-and-confer on a host of other discovery disputes – Defendants did not address the substance of Plaintiffs' January 9 letter or inquire about the status of Plaintiffs' visa applications. Azmy Decl. ¶¶ 24, 26. Plaintiffs first learned that CACI believed Plaintiffs' response was insufficient and that CACI would seek a court order approximately three weeks later, on February 8, 2013 – the same day CACI filed its motion to compel. Azmy Decl. ¶ 27.

Second, when CACI's counsel finally requested updates on Plaintiffs' availability, on February 8, Plaintiffs' counsel provided information that could have obviated the need for this motion. Specifically, Plaintiffs' counsel informed CACI's counsel that Mr. Al-Ejaili's visa was approved approximately one week after his January 9 interview at the U.S. Embassy in Doha. Azmy Decl. ¶ 28. Plaintiffs' counsel informed CACI's counsel that the processing of the Baghdad Plaintiffs visa applications might take longer, owing to differences in Embassy protocol, but suggested that Mr. Al-Ejaili's experience provided a reasonable basis to expect the other visas would ultimately be granted. Plaintiffs' counsel also asked if CACI wished to take Mr. Al-Ejaili's deposition separately from the other Plaintiffs, and offered to make him available, potentially in late February. *Id.*

Because a court order cannot compel Plaintiffs to do more than they are already doing, and because Plaintiffs reiterated their willingness during the February 8 call with CACI's counsel to produce Plaintiffs in the United States for a deposition, CACI should have recognized they could obtain the relief they requested “without court action.” Fed. R. Civ. P. 37(a)(1). Nevertheless, CACI filed their motion to compel, forcing Plaintiffs and this court to address issues that could have been resolved absent briefing, travel and expense.

Remarkably, CACI interprets Plaintiffs' offer during the February 8 call to make Mr. Al-Ejaili available not as it was intended – an attempt to obviate the need for court intervention – but, rather, as nefarious proof of Mr. Al-Ejaili's willful defiance of the Notice of Deposition scheduled for February 1, 2013. CACI's aspersions make little sense. To begin, had CACI's counsel responded to Plaintiffs' January 9 letter (indicating his unavailability) or otherwise communicate with Plaintiffs on this issue prior to February 8, they could have worked with Plaintiffs' counsel to schedule his deposition sometime after February 1st. Likewise, had CACI's counsel sought to meet and confer earlier regarding Plaintiffs' objections to the Notices of Deposition, they would have learned that Mr. Al-Ejaili was on assignment in Sierra Leone through February 7, and would not have been available on the February 1st date Noticed, in any event.

Finally, because no visa process is required for Plaintiffs to travel to Turkey or Erbil, in the Kurdish area of Iraq, either location would have been suitable, as Plaintiffs offered, to take the depositions. If the need to take these depositions is as pressing as Defendants contend, the deposition could already have been completed. Plaintiffs recognize that the Local Rules establish a presumption that plaintiff depositions will occur in the Eastern District of Virginia, but CACI – a global, multi-billion dollar corporation – could have completed the depositions of these Plaintiffs in the time frame desired.

CACI's suggestion that Istanbul, one of the great tourist cities in the world, is too dangerous cannot be taken seriously.⁷ Similarly, the city of Erbil, in the semi-autonomous Kurdish area of Iraq is safe and most convenient for the Plaintiffs. It has a new international

⁷ In fact, Defendants' counsel in the related *Al-Quraishi* litigation, met with Plaintiffs in that case in Istanbul.

airport with direct flights from connecting European cities and, like Istanbul, is widely considered a safe and beautiful tourist and business destination.⁸ In fact, Plaintiffs' medical expert and Washington, DC native, Dr. Stephen R. Xenakis, conducted examinations of Plaintiffs over the course of one week in Erbil, which he considered safe, pleasant, and which has all the amenities of any modern city. Azmy Decl. ¶ 30, n. 2.

Plaintiffs continue to be available for their depositions in these locations and urge CACI's counsel and this Court to consider this as an alternative, should the visa process for the Baghdad Plaintiffs be unduly delayed.

B. An Order Compelling Plaintiffs' Depositions Within 30 Days is Not Necessary

There is no need for a court to issue an order compelling Plaintiffs' depositions, as Plaintiffs do not object to being deposed. *Compare* Fed. R. Civ. P. 37(a)(3)(B)(i) (authorizing the filing of a motion to compel if "a deponent fails to answer a question asked"). An order compelling Plaintiffs to appear for depositions will not actually remove the central obstacle to

⁸ The *New York Times* listed Iraqi Kurdistan, of which Erbil is the capital, as one of the top 41 travel destinations in 2011, alongside American cities like Olympic Park, Washington and Durham, North Carolina. *The 41 Places to Go in 2011*, N.Y. TIMES, Jan. 7, 2011 at <http://travel.nytimes.com/2011/01/09/travel/09where-to-go.html?pagewanted=all>. *National Geographic*, listing Iraqi Kurdistan as one of its top 20 places to travel in 2011, described the region as "an oasis of peace and stability," noting its construction of several new luxury and business hotels. *20 Best Trips of 2011*, NATIONAL GEOGRAPHIC at <http://travel.nationalgeographic.com/travel/best-trips-2011-photos/>. The *Washington Post's* Travel section described Kurdistan as populated by citizens who "are possessed of an unqualified love for all Americans." *Kurdistan: the other Iraq*, WASHINGTON POST, May 27, 2011, at http://articles.washingtonpost.com/2011-05-27/lifestyle/35264092_1_kurdistan-iranian-soldiers-iraq. While the British government "advise[s] against all but essential travel to the whole of Iraq," it maintains an exception for the Kurdistan region, for which it has "no travel restrictions in place." UK Foreign and Commonwealth Office, Travel and Living Abroad: Iraq, Feb. 12, 2012, at <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/iraq>.

their appearance – the discretionary authority of the U.S. State Department to process and thereafter grant or deny a foreign national’s visa request.⁹

Discovery is not scheduled to end in this case until April 26. While CACI may wish to schedule discovery in a way that is most convenient to them, they cannot impose a unilateral deadline on certain depositions. Under the circumstances, and in light of Plaintiffs’ efforts to obtain visas, CACI’s insistence on immediate depositions does not make Plaintiffs’ current unavailability unreasonable. Indeed, in light of this District’s extremely short discovery period, it is reasonable to expect that parties attempt to conduct discovery in whatever order is feasible to meet deadlines.¹⁰ If it becomes necessary, Plaintiffs would not object to a reasonable extension of the discovery deadline in order to ensure CACI has adequate time to conduct Plaintiffs’ depositions.

Importantly, while this District has a presumption that depositions should occur here, that presumption can be overcome – and depositions scheduled elsewhere – where “special circumstances” exist. *See* Local Rule 30; *E.I. DuPont de Nemours & Co. v. Kolon Indus.*, Civil Action No. 3:09cv58, 2011 U.S. Dist. LEXIS 106767 (E.D. Va. Sept. 20, 2011). “Special circumstances” exist in light of the requirement that Plaintiffs obtain visas for travel to the District and the ready availability of reasonable, alternative forums abroad – that, contrary to

⁹ It is possible that a court order could prompt the State Department to act more quickly (and Plaintiffs could submit such an order to the State Department), but if the Court does issue such an order, it should be without prejudice for an extension of time, should the State Department not, in response, actually expedite the visa process.

¹⁰ For example, during the week of January 25, 2013 alone, Plaintiffs filed three briefs in opposition to CACI’s motions to dismiss or for summary judgment, and served two 30(b)(6) deposition notices; a second request for production of documents; and eight expert reports and three non-retained expert designations.

CACI's curious assertions, are perfectly safe – for the taking of Plaintiffs' depositions. This should not be a prohibitive imposition on CACI.

Finally, CACI's request for costs associated with the filing of its motion cannot conceivably be justified. *See* Fed. R. Civ. P. 37(a)(5)(a). Indeed, in light of CACI's failure to meet and confer in good faith with Plaintiffs' counsel – which could have obviated the considerable time and expense in adjudicating this motion – this Court should consider awarding costs to Plaintiffs. *See* Fed. R. Civ. P. 37(a)(5)(b). Plaintiffs reserve the right to seek costs associated with the filing of this unnecessary motion.

CONCLUSION

For the foregoing reasons, CACI's motion to compel should be denied.

Date: February 13, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2013, I electronically filed the Plaintiffs' OPPOSITION TO DEFENDANTS' MOTION TO COMPEL through the CM/ECF system, which sends notification to counsel for Defendants.

/s/ George Brent Mickum IV
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