UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SALEH, et al.,

Plaintiff,

vs.

TITAN CORPORATION, et al.,

Defendant.

CASE NO. 04CV1143 R (NLS)

ORDER GRANTING MOTION TO TRANSFER ACTION

I. Introduction

Defendants CACI International Inc., CACI Inc.-Federal, and CACI N.V. (collectively, "the CACI defendants") move to transfer this action to the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a). For the reasons set forth *infra*, the motion is granted.

II. Factual Background

Plaintiffs bring this action on behalf of themselves and others who have been detained in Iraqi prisons under the control of the United States. Plaintiffs seek to challenge, in the context of a class action, abuses which they contend have occurred in such prisons.

III. Analysis

I. Motion to Transfer

The CACI defendants have the burden of demonstrating that a transfer is warranted pursuant to § 1404(a). See Commodity Futures Trading Commission v. Savage, 611 F.2d 270, 279 (9th Cir. 1979). 28 U.S.C. § 1404(a) provides in relevant part:

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> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Thus, the statute on its face has two requirements: (1) that the district to which the defendant seeks to have the action transferred is one in which the action "might have been brought," and (2) that the transfer is "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). The purpose of § 1404(a) "is to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense . . . .'" Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (quoting Continental Grain Co. v. The Barge FBL-585, 364 U.S. 19, 26, 27 (1960)).

It is undisputed that this action could have been brought in the Eastern District of Virginia. Thus, the court turns to the issue of whether this action should be transferred to the Eastern District of Virginia "[f]or the convenience of parties and witnesses, in the interest of justice."

Section 1404(a) "displaces the common law doctrine of *forum non conveniens*" with respect to transfers between federal district courts. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir.1986). Section 1404(a) is not, however, a mere codification of that common law doctrine. See Norwood v. Kirkpatrick, 349 U.S. 29, 31-32 (1955). By passing § 1404(a), Congress "intended to permit courts to grant transfers upon a lesser showing of inconvenience" than was needed for dismissal under the doctrine of *forum non conveniens*. Id. at 32. "This is not to say that the relevant factors have changed or that the plaintiff's choice of forum is not to be considered, but only that the discretion to be exercised is broader." Id.; see also Decker Coal, 805 F.2d at 843 (explaining that in deciding whether to grant a motion pursuant to § 1404(a), courts look to *forum non conveniens* factors). Relevant factors to consider in determining whether to transfer this case pursuant to § 1404(a) include: (1) the plaintiffs' choice of forum; (2) the extent to which there is a connection between the plaintiffs' causes of action and this forum; (3) the parties' contacts with this forum; (4) the convenience of witnesses, (5) the availability of compulsory process to compel attendance of unwilling non-party witnesses; (6) the ease of access to sources of proof; (7) the existence of

administrative difficulties resulting from court congestion; (8) whether there is a "local interest in having localized controversies decided at home"; (9) whether unnecessary problems in conflict of laws, or in the application of foreign law, can be avoided; and (10) the unfairness of imposing jury duty on citizens in a forum unrelated to the action. See Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000); Decker Coal, 805 F.2d at 843; 28 U.S.C. § 1404(a).

Plaintiff's choice of forum and material contacts with the forum

"The courts have developed a bewildering variety of formulations on how much weight is to be given to plaintiff's choice of forum." 15 Wright and Miller, Federal Practice & Procedure § 3848 at 375. "These various forms of words on the weight to be given plaintiff's choice of forum are an attempt to verbalize the burden that defendant must carry in order to persuade the court that transfer should be granted." Id. at 383. As a leading commentator has explained, although numerous cases can be found stating that "the balance of convenience must be strongly in favor of the moving party before a transfer will be ordered," these cases are following language from Gulf Oil Co. v. Gilbert, 330 U.S. 501 (1947), which was a *forum non conveniens* case. 15 Wright and Miller at 389, 391. As noted *supra*, *forum non conveniens* is a dismissal doctrine, and the Supreme Court in Norwood explained that by passing § 1404(a), Congress "intended to permit courts to grant transfers upon a lesser showing of inconvenience" than was needed for dismissal under the doctrine of *forum non conveniens*. Norwood, 349 U.S. at 42; 15 Wright and Miller at 392. Thus, "it is possible to think, as some courts have, that this common formulation [regarding the weight to be accorded the plaintiff's choice] overstates the showing required." 15 Wright and Miller at 391; see Y4 Design, Ltd. v. Regensteiner Pub. Enterprises, Inc., 428 F.Supp. 1067, 1070 (D.C.N.Y. 1977) ("Plaintiffs' choice of forum, while still an important factor in the determination of a motion to transfer, is no longer given the overriding consideration it may have once enjoyed under the former doctrine of *forum non conveniens* . . . . Other factors are now given equal consideration especially when plaintiff brings suit outside his own home forum.") (internal citations omitted); Hernandez v. Graebel Van Lines, 761 F.Supp. 983, 990 (E.D.N.Y. 1991) ("It has been

observed, however, that since the result under section 1404(a) is that the action is merely transferred and not dismissed as with a *forum non conveniens* motion, the plaintiff's choice of forum is not accorded any great significance in the analysis."); Georgouses v. NaTec Resources, Inc., 963 F.Supp. 728, 730 (N.D.Ill. 1997) ("While plaintiff argues that his choice of forum should be afforded substantial deference, it is 'simply one factor among many to be considered.'") (quoting Club Assistance Program, Inc. v. Zukerman, 598 F.Supp. 734, 736 (N.D. Ill. 1984)). Unfortunately, by the time Norwood was decided

> there were so many cases saying a transfer can be granted only if the balance is strongly in favor of the moving party that they had a momentum of their own, and later cases have cited and quoted them often without recognizing that the original source of this theory was in connection with *forum non conveniens*, and that application of the theory to § 1404(a) is very doubtful.

15 Wright and Miller at 392.

Although the Ninth Circuit in Decker Coal appears to have joined the ranks of those courts who continue to follow language from earlier *forum non conveniens* cases by stating that a "defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum," 805 F.2d at 843, in that case the plaintiff, a mining company, brought a breach of contract action in the state in which it was engaged in mining operations and in which its claim arose. Thus, Decker Coal does not speak to a defendant's burden where, as here, foreign plaintiffs seek to litigate a class action involving claims that did not arise in the chosen forum.

As recognized by the Ninth Circuit, the Supreme Court has explained in the context of a motion to dismiss on *forum non conveniens* grounds that "'a foreign plaintiff's [forum] choice deserves less deference" than the forum choice of a domestic plaintiff." Ravelo Monegro v. Rosa, 211 F.3d 509, 514 (9th Cir. 2000) (quoting Piper Aircraft Co. v. Reyno, 454 U.S. 235, 256 (1981)). Given that the standard for transfer is more easily met than the standard for dismissal on *forum non conveniens* grounds, it is equally appropriate to give less deference

to a foreign plaintiff's forum choice where transfer is sought pursuant to § 1404(a).

Moreover, the Ninth Circuit, like other courts, has noted that the weight to be given the plaintiff's choice of forum is discounted where the action is a class action. See Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987) ("[W]hen an individual brings a derivative suit or represents a class, the named plaintiff's choice of forum is given less weight.") (citing Helfant v. Louisiana & Southern Life Ins. Co., 82 F.R.D. 53, 58 (E.D.N.Y.1979) and Stolz v. Barker, 466 F.Supp. 24, 27 (M.D.N.C.1978)); see also Georgouses, 963 F.Supp. at 730 ("[B]ecause plaintiff alleges a class action, plaintiff's home forum is irrelevant.").

In addition, numerous courts have given less deference to the plaintiff's choice of forum where the action has little connection with the chosen forum. See Cain v. New York State Bd. of Elections, 630 F.Supp. 221, 227 (E.D.N.Y.1986) ("The Court notes that, while it respects Fahy's right as a plaintiff to file suit in a forum of his choosing, this choice is not entitled to the weight generally accorded such a decision where there is lacking any material connection or significant contact between the forum and the events allegedly underlying the cause of action."); Hernandez v. Graebel Van Lines, 761 F.Supp. 983, 990-91 (E.D.N.Y.1991) (giving "less significance" to the plaintiff's choice of New York as a forum where the accident occurred in Florida and most of the witnesses were there and the only connection with New York was that the plaintiff resided in New York and received treatment there); Helfant v. Louisiana & Southern Life Ins. Co., 82 F.R.D. 53, 57 (D.C.N.Y. 1979) ("Since the operative facts underlying the alleged cause of action have no material connection whatsoever with this forum, plaintiff's choice of forum is a less weighty consideration."); Chrysler Capital Corp. v. Woehling, 663 F.Supp. 478, 482 (D.Del.1987) ("[W]hen the plaintiff chooses a forum which has no connection to himself or the subject matter of the suit, and is thus not his 'home turf,' the burden on the defendant is reduced and it is easier for the defendant to show that the balance of convenience favors transfer."); Boyd v. Snyder, 44 F.Supp.2d 966, 970 (N.D. Ill.1999) ("When the conduct and events giving rise to the cause of action did not take place in the plaintiff's selected forum, the plaintiff's preference has minimal value even if it is his home forum.") (quotations and citations omitted); Sierra Club v. Flowers, 276 F.Supp.2d 62,

67 (D.D.C. 2003) ("When the connection between the controversy, the plaintiff, and the chosen forum is attenuated, the court pays less deference to plaintiffs' choice of forum.").

Plaintiffs admit that "[g]iven the national and international scope of these corporations' actions, there is no single location in the United States where this case 'arose' or 'naturally' should have been brought.'" Plaintiffs' Opposition To CACI Defendants' Motion to Transfer at 1:6-8. Nonetheless, in an attempt to demonstrate that their claims have a material connection to this district, plaintiffs cite to various paragraphs of the complaint. However, even assuming the truth of the allegations in the complaint, there is no basis for concluding that plaintiffs' claims have a *material* connection with this district.

For example, plaintiffs' reliance on ¶¶ 58 through 60 of the Second Amended Class Action Complaint ("SACAC") for the proposition that their claims have a material connection with this forum is unavailing, as these paragraphs simply allege that defendants did not properly train and supervise persons conducting interrogation services. Given that the interrogation services were being provided in Iraq, it does not follow that the alleged failure to train and supervise occurred in the Southern District simply because Titan is headquartered here. In fact, plaintiffs allege in ¶ 59 of the SACAC that "Defendant Titan acknowledged that it was responsible for supervising its employees *located in Iraq*." (emphasis added). Similarly, plaintiffs allege in ¶ 61 that "[t]he CACI Corporate Defendants admit on their website that Interrogators and other employees *in Iraq* work under 'minimal supervision' or' moderate supervision.'" (emphasis added). From these allegations one could conclude that the failure to supervise occurred in Iraq, not in the Southern District of California.

Plaintiffs also point to ¶¶ 86 and 87 of the SACAC; however, ¶ 86 simply alleges that defendants screened potential applicants in "California, Virginia and other locations throughout the United States . . . ." This paragraph does not establish a material connection with this district that would suggest that greater weight should be afforded plaintiffs' choice of the Southern District of California. Although plaintiffs allege one count of negligent hiring and supervision, the crux of this case is the allegation that defendants conspired to torture

Iraqis in Iraq. See SACAC ¶ 80 ("Defendants and certain government officials conspired and formed an ongoing criminal enterprise designed to flout the United States domestic and international laws prohibiting the torture, abuse, and other mistreatment of the Plaintiffs . . . ."); Counts I and II, ¶¶ 172-194 (describing an alleged RICO conspiracy, the predicate acts of which included "acts and threats of murder, assault and abuse, kidnapping, and obstruction of justice" and describing the victims of the conspiracy as "all detainees who have been killed, tortured, abused, or otherwise mistreated" by defendants and their alleged co-conspirators); Counts III through IX, ¶¶ 195-247 (alleging cause of action predicated upon the mistreatment, execution, torture, "enforced disappearance," and arbitrary detention of detainees in Iraqi prisons in violation of the Alien Tort Claims Act); Count X ¶¶ 248-253 (alleging that the torture, abuse and mistreatment of detainees in Iraqi prisons violated the Third and Fourth Geneva Conventions and seeking to hold defendants liable for such violations); Count XI, ¶¶ 254-259 (alleging that Iraqi detainees were imprisoned within the meaning of the Eighth Amendment and subjected to cruel and unusual punishment); Count XII, ¶¶ 260-265 (alleging deprivation of life and liberty without due process of law); Count XIII, ¶¶ 266-271 (alleging violation of the Fourth Amendment); Counts XV to XVIII, ¶¶ 278-298 (alleging the assault, sexual assault, battery, false imprisonment, and wrongful death of Iraqi detainees); Counts XIX, ¶¶ 299-302 (alleging the intentional and negligent infliction of emotional distress on Iraqi detainees); see also Opposition to CACI Defendants' Motion to Transfer Venue at 14:13-15 ("At issue in the suit, essentially, are the policies of the defendant corporations and the United States government in interrogating and detaining detainees"). The alleged detention, interrogation, torture and abuse of the detainees in this case undisputably occurred in Iraq.

Plaintiffs cite to various paragraphs in the SACAC that allege that defendant The Titan Corporation ("defendant Titan"), which is headquartered in the Southern District of California, earned additional profits as a result of its allegedly illegal conduct and invested the fruits of that conduct in its ongoing operations. Plaintiffs also point to the fact that the CACI entities have offices in the Southern District of California and that the CACI defendants and defendant

Titan worked together on a contract relating to intelligence services. While it certainly cannot be disputed that the defendants, one of which is headquartered here, have some connections with the Southern District of California, plaintiffs have failed to demonstrate that *their claims* have a *material* connection with this district, as, again, the crux of this case is the allegation that defendants entered into a conspiracy to torture and otherwise mistreat Iraqis in Iraq.

Finally, while the SACAC alleges upon information and belief that "government officials and senior management in Defendant Titan and CACI Corporate Defendants had relationships that assisted in the formation and implementation of" the alleged conspiracy which relationships "were formed and fostered by meetings, telephonic discussions, in-person discussions, email discussions and other communications that occurred in, among other places, California, Virginia and the District of Columbia," SACAC ¶ 83, such contacts with this district arise merely because of the fact that defendant Titan happens to be headquartered in this district and the CACI defendants happen to have offices here. Such contacts do not demonstrate that plaintiff's claims have a material connection with this district.

Convenience of the parties

Plaintiffs are residents of Iraq, not the Southern District of California. Defendant Titan is headquartered in the Southern District of California but has offices in the District of Columbia and Virginia. Titan's Operational Support Group, which supervises Titan's linguist operations worldwide, is located in Reston, Virginia. See Titan's Opposition to Plaintiffs' Motion to Enjoin Duplicative Action at 7:19-21 (filed October 18, 2004). Defendant Titan does not oppose the transfer. Defendants CACI International Inc. and CACI Inc.-Federal have their principal places of business in the Eastern District of Virginia. See Declaration of Jeffrey P. Elefante in Support of Motion by [CACI Defendants] to Transfer Venue. Defendant Stefanowicz is apparently a resident of Pennsylvania and defendant Nakhla is apparently a resident of Maryland. Neither opposes the motion, and both states are significantly closer to the Eastern District of Virginia than to the Southern District of California. Although defendant Israel is alleged to be a resident of California, he has been redeployed to Iraq. Therefore, this

district is not necessarily more convenient for him than the Eastern District of Virginia. Given the geographical location of all of the parties, and the lack of objection to a change of venue by defendant Titan or the individual defendants, the court concludes that it would be significantly more convenient for the parties in this action to litigate in the Eastern District of Virginia.

The court notes that plaintiffs rely on Ravelo Monegro for the proposition that this district, which is defendant Titan's home forum, is the "quintessentially convenient forum." While the Ninth Circuit in Ravelo Monegro did note in passing that "foreign plaintiffs typically bring such suits in the quintessentially convenient forum for the defendant – the defendant's home forum," 211 F.3d at 513, Ravelo Monegro is not authority for the proposition that the Southern District of California is the quintessentially convenient forum here, nor is it authority for the proposition that the CACI defendants' motion to transfer should be denied. In Ravelo Monegro, the plaintiffs, aspiring professional baseball players living in the Dominican Republic, brought suit against the San Francisco Baseball Associates and others in California. The district court dismissed the action on *forum non conveniens* grounds, concluding that the Dominican Republic was a better forum. The Ninth Circuit reversed. First, it noted that the plaintiffs' chosen forum was "more than merely the American defendants' home forum. It is also a forum with a substantial relation to the action." Id. at 513-4. Second, it noted that there were "no possible co-defendants or third-party defenses who could not be made to appear in the American forum." Id. at 514. In contrast, it was not clear that one of the defendants could be compelled to appear in a suit in the Dominican Republic. Id. Third, there was "no showing that access to proof . . . would be easier in the Dominican Republic." Id.

Here, besides the fact that the court is confronted with a motion to transfer pursuant to § 1404(a) rather than a motion to dismiss on *forum non conveniens* grounds, this forum does not have a "substantial relation" to plaintiffs' action. Moreover, as will be seen, the CACI defendants have identified material witnesses who could not be compelled to appear in this forum, and there has been a showing that access to proof would be easier in the Eastern District of Virginia. Thus, Ravelo Monegro does not dictate a finding that it would be

inappropriate to grant the CACI defendants' motion to transfer.

Convenience of the witnesses

"The relative convenience to the witnesses is often recognized as the most important factor to be considered in ruling on a motion under § 1404(a)." State Street Capital Corp. v. Dente, 855 F.Supp. 192, 197 (S.D.Tex.1994). Importantly, "[w]hile the convenience of party witnesses is a factor to be considered, the convenience of non-party witnesses is the more important factor." Aquatic Amusement Associates, Ltd. v. Walt Disney World Co., 734 F.Supp. 54, 57 (N.D.N.Y.1990) (internal citation omitted). In determining whether this factor weighs in favor of transfer, the court must consider not simply how many witnesses each side has and the location of each, but, rather, the court must consider the importance of the witnesses. State Street Capital Corp., 855 F.Supp. at 198; see also Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1335-36 (9th Cir. 1984) (*forum non conveniens* case; concluding that "the district court improperly focused on the number of witnesses in each location" and should have instead "examined the materiality and importance of the anticipated witnesses' testimony and then determined their accessibility and convenience to the forum").

The CACI defendants have provided the declarations of four individuals who are not employees of the named CACI defendants, who reside in Virginia, and who appear to have first-hand, material knowledge of the events upon which this suit is predicated. For example, Harry Thornsvard was Division Group Senior Vice President with CACI Premier Technology, Inc. ("CACI PT") until he resigned on November 21, 2004. CACI PT, while related to the CACI defendants in this case, is not a named party to this suit. According to the declaration of Jeffrey Elefante, in May 2003, defendant CACI Inc.-Federal acquired most of the assets of the company formerly known as Premier Technology Group, Inc., headquartered in Chantilly, Virginia. These assets became the corpus of CACI PT. CACI PT provides personnel, including interrogators, in support of the United States military's mission in Iraq under a contract issued directly to CACI PT by the United States Army. Mr. Thornsvard works and resides within the borders of the Eastern District of Virginia. In his role as a Senior Vice

President with CACI PT, Mr. Thornsvard "oversaw CACI PT's provision of government contractor services, including interrogation services, on a daily basis." He "had regular contact with the CACI PT country managers who provided administrative support to the CACI PT Employees working in Iraq, as well as with the United States government officials, both in Iraq and in the United States, who monitored, supervised, and oversaw CACI's provision of civilian contracting services in support of the United States military's mission in Iraq." Mr. Thornsvard could testify that "neither the CACI Defendants nor any affiliates or subsidiaries thereof entered into any conspiracy with United States government officials, The Titan Corporation, or any other person or entity to abuse detainees in Iraq," that "the CACI Defendants and their affiliates and subsidiaries did not coordinate in any way with The Titan Corporation in obtaining contracts from the United States government to provide interrogation services in support of the United States military's mission in Iraq," that "the CACI Defendants and their subsidiaries and affiliates have not encouraged abuse of detainees in Iraq by any person and have condemned the abuses that have been portrayed in the media," and that "the CACI Defendants and their subsidiaries and affiliates did not, and do not, support the treatment of detainees in Iraq in any manner that is inconsistent with applicable law."

Charles Mudd is a Division Vice President with CACI PT who works and resides within the borders of the Eastern District of Virginia. Mr. Mudd "learned of the United States military's need for civil interrogators in Iraq" and was the one "who suggested to the United States military that CACI could provide civilian interrogators to support the United States military's mission in Iraq." Mr. Mudd "regularly communicate[s] with the CACI personnel designated as country managers for the various contracts under which CACI provides civilian contractor support to the United States military in Iraq." Mr. Mudd could testify regarding "[t]he manner in which CACI PT obtained its initial contract to provide interrogators in support of the United States military's mission in Iraq." Mr. Mudd could also testify that "there was no coordination between the CACI Defendants or any of their affiliates or subsidiaries and Defendant The Titan Corporation during the process by which a subsidiary of CACI International, Inc. obtained a contract from the United States government to provide

interrogators to support the United States military's mission in Iraq" and that "the CACI Defendants and their affiliates and subsidiaries did not obtain their contracts from the United States government to provide interrogation services in support of the United States mission in Iraq as part of any corporate strategy to build a capacity and demand for interrogation services."

John Hedrick was employed by CACI PT as a Business Group Executive Vice President until his retirement on October 3, 2004. Although Mr. Hedrick resides within the boundaries of the Western District of Virginia, he lives only two hours from the Alexandria courthouse in the Eastern District of Virginia. Mr. Hedrick had regular oversight of CACI PT's provision of civilian contractors in support of the United States military's mission in Iraq, including the civilian interrogators employed by CACI PT who deployed to Iraq. Mr. Hedrick could provide testimony along the lines of that which would be provided by Mr. Thornsvard.

Finally, Scott Northrop, who resides within the borders of the Eastern District of Virginia, is employed by CACI PT and from November 16, 2003 to November 26, 2004 was CACI PT's country manager in Iraq. In that role, Mr. Northrop monitored CACI PT's provision of interrogators in support of the United States military's mission in Iraq. Mr. Northrop explains that "[a]lthough these interrogators were under the operational control of the United States Military," he "was their administrative manager and regularly met and communicated with CACI PT interrogators in Iraq." He also "regularly interfaced with the members of the United States military responsible for overseeing CACI PT's interrogation contracts with the United States military." Mr. Northrop could testify that "neither CACI PT not the CACI Defendants conspired with the United States government or with The Titan Corporation to abuse persons detained by the United States miliary in Iraq" and that "CACI PT expected its interrogators to comply with all applicable laws in performing their duties in Iraq, and that CACI PT communicated that expectation to its interrogators."

Clearly, these four witnesses have material, first-hand knowledge regarding the seminal issues in this case, and because they live and reside in or near the Eastern District of Virginia, the Eastern District of Virginia would be a more convenient forum.

Plaintiffs' reliance on Cochran v. NYP Holdings, Inc., 58 F.Supp.2d 1113 (C.D. Cal. 1998) for the proposition that defendants must affirmatively assert that their witnesses would be unable to travel to the plaintiff's chosen forum is unavailing. In Cochran, the defendants "broadly state[d] that 'most of the relevant witnesses that would be called upon to provide testimonial evidence and any documentary evidence'" were located in New York, and the witnesses were only generally identified as employees of the defendant corporation. Id. at 1119-20. The court explained that "[t]his description utterly fails the particularity requirement set forth in" Commodity Futures Trading Comm'n, 611 F.2d at 279. Cochran, 58 F.Supp.2d at 1120. Although the court noted that the defendant did not "assert that their witnesses would be unable to travel to California to defend suit here," it also stated that the defendant did not "demonstrate that the convenience of parties and witnesses, and the interests of justice, favor such transfer." Id. It explained:

> In this case, either plaintiff and his witnesses will travel to New York, or Defendants and their witnesses will travel to California. A transfer will not be ordered if the result is merely to "shift" the inconvenience from one party to another.

Id. (citation omitted).

Here, unlike in Cochran, defendants have specifically identified their witnesses by name and have presented a detailed description of the testimony it is anticipated that they will provide. In addition, as detailed throughout this order, defendants have demonstrated that the convenience of the parties and witnesses and the interests of justice do favor a transfer. This is sufficient to warrant a transfer pursuant to § 1404(a).

Plaintiffs' reliance on Aquatic Amusement Associates is similarly unavailing. In determining that a transfer was not appropriate, one factor the court considered was the fact that the defendant did not provide "any details concerning the length of the testimony which may be required of its witnesses, the impact of their absence on the corporate offices, or the relationship of their testimony to the issues in this case," while the plaintiff asserted that "its six witnesses are high corporate officials whose absence from northern New York for a long period of time would be detrimental to [its] ongoing business activities." 734 F.Supp. at 58.

However, the court in Aquatic Amusement did not hold that a defendant seeking a transfer of venue must affirmatively assert that its witnesses would be unable to travel to the chosen forum to litigate in order to prevail on a motion to transfer.

Finally, the court will not, as plaintiffs urge, discount defendants' showing of inconvenience for its witnesses, who all work and reside on the East Coast, simply because defendants have failed to state the obvious: that it would be more convenient for these witnesses to appear in a courtroom in the Eastern District of Virginia than in the Southern District of California.

In contrast to the CACI defendant's detailed witness declarations, plaintiffs present only two conclusory declarations of potential witnesses, Peter Bauer and Marney Mason. A review of these declarations reveals that both individuals were interrogators with the United States Army; however, neither declaration establishes the substance of the declarant's proposed testimony or otherwise establishes that the declarant could provide relevant testimony in this case. Neither of these witnesses resides in the Southern District of California, and each simply states that, if called as a witness, it would be "*as* convenient" for each to travel to the Southern District as it would be to travel to the Washington, D.C. area. (emphasis added)

Plaintiffs also provide a laundry list of individuals residing in California who they "may" call as witnesses. However, a review of this list does not change the conclusion that the Eastern District of Virginia is the most convenient forum for the important witnesses in this case. Not only are plaintiffs equivocal about whether they will call the individuals on their list, but plaintiffs have failed to demonstrate that any of these witnesses have important testimony.

Of the witnesses on this list of individuals residing in California who plaintiffs "may" call, 9 of the 14 witnesses are employees of defendant Titan and the CACI defendants. As noted, the convenience of nonparty witnesses is more important than party witnesses. Moreover, plaintiffs have failed to outline the proposed testimony of these witnesses or give any suggestion that in fact these particular employees would have information relevant to this suit.

Plaintiffs identify members of SEAL Team-7, which conducted missions in Iraq and which are being tried for abusing detainees in Iraq; however, plaintiffs have failed to explain what connection these individuals have with the present case or give any suggestion as to what information these individuals might possess that would be relevant to the present case.

Plaintiffs also identify as a potential witness Staff Sergeant William Kimbro, a dog handler at Abu Graib prison who resides in San Diego and who plaintiffs contend could testify "regarding the use of dogs in interrogations at Abu Graib." However, having reviewed Plaintiffs' Exhibit 30, which is an interview of Staff Sergeant Kimbro, there does not appear to be any basis for concluding that Staff Sergeant Kimbro could provide any material testimony in this case, *i.e.*, testimony that would tend to establish a basis for defendants' civil liability for the treatment of prisoners at Abu Graib prison.

Plaintiffs identify as potential witnesses unspecified members of the 223rd Military Intelligence Battalion of the Army National Guard, based in San Francisco, California and the 250th Military Intelligence Battalion, based in San Rafael, California. Plaintiffs contend in a conclusory fashion that members of the 223rd are "likely to be called as witnesses regarding abuse of Iraqi prisoners in Samarra," while contending in a conclusory fashion that members of the 250th "are likely to have relevant information regarding interrogators and translators in Iraq." However, these vague characterizations of the members' possible testimony does not establish that these potential witnesses could provide important testimony.

Finally, plaintiffs also identify as a potential witness Spc. Luciana Spencer, who is identified in Plaintiffs' RICO Case Statement as a governmental co-conspirator. However, plaintiffs have failed to set forth the substance of Spc. Spencer's purported testimony. Moreover, even if the court was to conclude that the alleged government co-conspirators are likely to have testimony relevant to plaintiffs' claims, the convenience of all of the alleged governmental co-conspirators must be considered. Plaintiffs have identified alleged governmental co-conspirators in Arizona (2), Colorado (4), Kentucky (1), Maryland (3), New York (1), Pennsylvania (7), South Carolina (1), North Carolina (1), Texas (1), Virginia (3) and West Virginia (1). However, absent from plaintiffs' list are numerous other alleged

governmental co-conspirators, including Secretary of Defense Donald Rumsfeld and Undersecretaries of Defense Douglas Feith and Steven Cambone, for whom the Eastern District of Virginia would clearly be a more convenient forum.[1] Considering the locations of all of the alleged governmental co-conspirators, the court concludes that the Eastern District of Virginia would be a more convenient forum. Although plaintiffs broadly contend that "[f]lying into San Diego is typically less expensive that flying to Washington, D.C." and that San Diego has a shorter check point wait time than the Dulles and Reagan airports, the court is unable to conclude that San Diego would be a more convenient forum for the alleged governmental co-conspirators plaintiffs identify, who hail from all over the country and who hail in large part from the east coast.

In summary, the CACI defendants have demonstrated that they have important witnesses with firsthand knowledge relevant and material to plaintiffs' allegations that defendants masterminded and/or implemented the alleged conspiracy, which witnesses are located in or very near the Eastern District of Virginia. On the other hand, plaintiffs have failed to demonstrate that there are any important witnesses located in the Southern District of California. Plaintiffs simply provide a list of witnesses they "may" call and fail to establish that these witnesses are likely to have information relevant and material to their case. At best, plaintiffs have identified some potential witnesses in California who may be able to testify generally to the alleged abuses of detainees in Iraq; however, it does not appear that any of these witnesses would be able to provide testimony that would tend to establish a basis for

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[1] In their March 9, 2005 letter to the court plaintiffs suggest that the convenience of these alleged governmental co-conspirators is irrelevant or should be given little weight; however, the convenience of these alleged governmental co-conspirators is at least as relevant as the convenience of the alleged governmental co-conspirators identified by plaintiffs as potential witnesses located in California. Moreover, plaintiffs suggest that the fact that lawsuits against Secretary of Defense Rumsfeld and three high-ranking military officials were recently filed in districts other than the Eastern District of Virginia raises a question as to whether that district would be most convenient. However, a review of the Motion to Transfer filed with the Judicial Panel on Multidistrict Litigation with respect to those cases reveals that these government officials were sued in other districts in order to satisfy the requirement of personal jurisdiction over each defendant, not because the district was determined to be the most convenient for those defendants. See Memorandum in Support of Motion for Transfer Under 28 U.S.C. § 1407, submitted in conjunction with plaintiffs' March 9, 2005 letter, page 1.

imposing civil liability against defendants for these abuses.

Moreover, to the extent that the testimony of governmental co-conspirators would be important in this case, a number of government officials who are alleged to be co-conspirators are located on or near the east coast, which suggests that the Eastern District of Virginia would be a more convenient forum.

Having considered not simply how many witnesses each side has and the location of each, but also the importance of the witnesses, the court concludes that the convenience of the witnesses factor weighs heavily in favor of transfer. Cf. Hotel Constructors, Inc. v. Sea grave Corp., 543 F.Supp. 1048, 1051 (D.C.Ill. 1982) ("In light of the crucial character of the non-party witnesses located in New York, this Court bases its order to transfer, in part, on the primary concern of insuring whenever possible the live presence of these material non-party witnesses.").

The Availability of Compulsory Process to Compel Attendance of Unwilling Non-Party Witnesses

Clearly, the current and former employees of non-party CACI PT, who have information material to this suit and who reside in the Eastern District of Virginia, would be beyond the reach of this court's subpoena power but not that of a court in the Eastern District of Virginia. See Fed.R.Civ.P. 45(b)(2). In contrast, plaintiffs have failed to identify a single important witness for their case who would be beyond the subpoena power of the district court in the Eastern District of Virginia. Plaintiffs broadly contend that California is home to more Arabic speakers than any other state and as a result, defendant Titan recruited heavily in California. From this, plaintiffs conclude that the Southern District of California is preferable for purposes of compulsory process over unwilling non-party witnesses because a "large portion of California's Arabic speakers live in San Diego and surrounding areas and have relevant information about Titan's recruiting and operating practices." Opposition at 4:21-23. Plaintiffs' speculation that it will need compulsory process over unspecified Arabic-speaking individuals in the Southern District who may have information regarding practices of Titan that can be discovered by deposing Titan employees is insufficient to overcome the fact that

defendants have identified specific individuals with relevant and important testimony over whom this court does not have subpoena power.

Moreover, given plaintiffs' allegations of a conspiracy between defendants and government officials, it is likely that the testimony of the alleged governmental co-conspirators will be important in this case. The alleged governmental co-conspirators are concentrated either in Iraq or at or near the Pentagon. The Pentagon is located in the Eastern District of Virginia, beyond the reach of this court's subpoena power. Given the nature of the allegations against these alleged governmental co-conspirators and the fact that some have already been sued in other actions pertaining to abuses in Iraqi prisons, there is no basis for concluding that these alleged governmental co-conspirators would be willing to testify absent a subpoena.

Accordingly, this factor weighs strongly in favor of transfer.

Ease of Access to Sources of Proof

Plaintiffs contend that the CACI defendants have failed to "identify a single piece of evidence that would be unavailable to the parties if this case were to remain before this Court." Opposition at 13: 21-22. However, the issue is the "ease of access" to the sources of proof, not whether the evidence would be unavailable absent the transfer. As will be demonstrated, much of the documentary evidence in this case is more easily accessed from the Eastern District of Virginia.

Although plaintiffs characterize this lawsuit as a "challenge to corporate acts and omissions," Plaintiffs' Letter of March 9, 2005, the fact remains that crucial to this case is the allegation of a conspiracy between defendants and high-ranking government officials, including Donald Rumsfeld, Douglas Feith, Major General Geoffrey D. Miller, Stephen Cambone, Mark Jacobson, General Ricardo Sanchez, Lieutenant Colonel Jerry Phillabaum, Brigadier General Janis L. Karpinski, Colonel Thomas M. Pappas, Lieutenant Colonel Steven L. Jordan, Major David W. DiNenna, Sr., and others. See Plaintiffs' Rico Case Statement Filed Pursuant to Local Rule 11.1 ¶ 3. Plaintiffs allege that defendants, "together with the co-conspiring government officials, engaged in a systematic and extensive series of illegal acts that formed a pattern and practice of racketeering activity," including "kidnapping, assault