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

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	Case No. 1:08-cv-827 (LMB/JFA)
v.	)	
CACI PREMIER TECHNOLOGY, INC.,	)	
Defendant.	)	

PLAINTIFFS' OPPOSITION TO DEFENDANT CACI PREMIER TECHNOLOGY, INC'S MOTION *IN LIMINE* TO ADMIT EVIDENCE OF OTHER CIVILIAN INTERROGATORS AT ABU GHRAIB PRISON

In its motion, CACI seeks the Court's permission to introduce evidence of the Central Intelligence Agency's and other government agencies' misconduct at Abu Ghraib. The Court has already ruled on this subject multiple times. Whether there are instances where other government agencies inflicted brutality on certain so-called "ghost detainees" at Abu Ghraib is not relevant to whether ***CACI*** conspired with the military police and aided and abetted the widespread and undisputed abuse of civilian detainees there, including the Plaintiffs, that is the focus of this case. In an effort to sidestep those rulings, CACI's motion begins with a false premise: that it was denied "[b]asic fairness and due process" because the Court prohibited it from offering evidence that there were individuals at Abu Ghraib who wore civilian clothing other than CACI personnel. Not so. In response to CACI's request, the Court permitted CACI to elicit that "there were other

people in civilian clothes interacting with the detainees"—a ruling that CACI nowhere acknowledges in its motion and which ***Plaintiffs have not sought to undo***—and CACI needs no further leeway from the Court on this subject.

At core, what CACI actually seeks in this motion is to introduce evidence wholly unconnected to Plaintiffs about other government agencies' presence at Abu Ghraib to mislead and inflame the jury in ways previously disallowed by the Court: that Plaintiffs are terrorists (they are not) who were interrogated by other government agencies (they were not) because they had information that implicates national security (they did not); that CACI should not be held liable because its abuses were authorized by the government (they were not), such that the government bears sole responsibility for CACI's employees' conduct (it does not); and that CACI's abuses were less egregious than those of other actors at Abu Ghraib (not true and also not relevant). The Court has already ruled multiple times that such evidence is irrelevant. Plaintiffs respectfully submit that CACI's motion should be denied.

BACKGROUND

There is no dispute in this case that each Plaintiff was interrogated, formally or informally, by CACI personnel. *See* Ex. A (PTX 226 (Stipulation)) ¶¶ 8, 18; Ex. B (DX 2) at 4-5. While the record makes clear that Plaintiffs also were interrogated by Army military intelligence, *see* Ex. B (DX 2) at 4-5, there is no record evidence that any Plaintiff ever interacted with, let alone was interrogated by, a representative of any "Other Government Agency" ("OGA") like the

Central Intelligence Agency ("CIA"), the entity to whom the term most commonly refers.[1] No such evidence appears in Plaintiffs' lengthy detainee files or in the logbooks of military police—Plaintiffs plainly were not the "ghost detainees" of the OGAs who were "not accounted for in the detention system," which impacted the military because "at the operations level" military personnel "were uncertain how to report them or how to classify them." ECF No. 1675-1 (PTX 23) at 43, 87. Unlike CIA detainees, each Plaintiff had a prisoner identification number assigned by the military, was recorded in the system, was the subject of a detainee file, and had the status of a civilian or military hold, not "OGA" holds who, when identified at all, were identified separately. *See, e.g.*, Ex. A (PTX 226) ¶¶ 5-7, 13-15, 19-20; Ex. C (PTX 19) (military police logbook) at 2 ("New MI#152529 [Plaintiff Asa'ad] placed in isolation per MI instructions"), 4 ("2015 New Civilian Internee #152735 [Plaintiff Al-Ejaili] works for Al Jezeera say he is a reporter moved to 1A-28"); *c.f.* Ex. C (PTX 19) at 5 ("per OGA – OGA #[redacted] should have normal food for all meals"). Reports of such administrative confusion regarding a small number of OGA detainees cannot support the more far-reaching theory CACI now seeks to press: that the OGA/CIA—and not CACI interrogators whose involvement in a conspiracy with military personnel to abuse detainees is clear—were responsible for setting the conditions for Plaintiffs' torture and abuse.

[1] CACI repeatedly suggests that Al Shimari's testimony that one of his interrogators had a ponytail "support[s]" the notion that he was interrogated by OGA. Mot. at 6. There is no evidence in the record of this case that OGA personnel wore ponytails or were any more likely to have such a hairstyle than CACI personnel. Indeed, Army Interrogator I testified that CACI employees "usually had … hair that's longer than regulation." Ex. D (Army Interrogator I Dep. Tr.) at 169:2-169:5.

CACI's motivation for seeking to introduce evidence about OGAs is abundantly clear. During the *de bene esse* deposition of Colonel Thomas M. Pappas, CACI initially sought to elicit testimony designed to convey that detainees at Abu Ghraib (like Plaintiffs) were terrorists who possessed highly sensitive national security information. CACI asked Colonel Pappas whether the abbreviations "FF" and "FRL" on a Joint Interrogation Debriefing Center chart stood for "foreign fighter[s]" and "foreign regime loyalists," emphasizing labels like "extremists," and eliciting that there were "cases where … we needed to get more" from detainees who "had more information and the other [interrogators] weren't being successful." Ex. E (Pappas Dep. Tr.) at 32:3-34:13. Plaintiffs objected to the testimony and the Court sustained the objection, explaining that any "hint or concern—or reference to suspicions about what the plaintiffs in this case may or may not have done, whether they were terrorists, whether … they had valuable information … is actually irrelevant to the issues in this case, which has solely to do with whether or not they were subjected to cruel and demeaning or degrading conduct or treatment." *Id.* at 35:6-15. That gambit having failed, about 15 minutes later, CACI tried to establish the same point in a different way, returning to the same document and inquiring about an apparent reference to "other government agencies." *Id.* at 47:5-9. Plaintiffs again objected on relevance grounds, and the Court, over CACI's insistence that it just wanted to show that there were other non-CACI personnel in civilian clothing, again sustained the objection, emphasizing that it "already ruled previously that the FBI and other Government agencies that were there is actually not relevant" to any issues in the case. *Id.* at 47:5-48:19.

CACI returned to the issue a third time. Just before trial, CACI submitted to the Court a request to "introduce testimony that would establish the presence of multiple groups of people at Abu Ghraib who wore civilian clothing," including OGAs, so that the jury was not led to believe "that anyone in civilian clothing worked for CACI." ECF No. 1570 at 17-18. During argument on the request, CACI additionally sought to be able to offer evidence of civilian interrogators other than CACI interrogators. ECF No. 1578 (Apr. 12, 2024 Tr.) at 21:23-22:2. Counsel for CACI represented then that CACI didn't "want to go into any more detail than that." *Id.* at 22:16. The Court permitted CACI to "elicit that there were other people in civilian clothes interacting with the detainees," which would cure any concern that references to "civilians" were automatically equated in jurors' minds with CACI. *Id.* at 23:11-23:13. This is the very concern that CACI purports to address by this current motion. But, recognizing that the conduct of OGAs is not relevant and may confuse the jury, the Court prohibited CACI from eliciting that OGAs or any other civilians were "interrogating" detainees. *Id.* at 23:11-14.

CACI has never previously contended that evidence regarding OGAs' presence is relevant, much less necessary, for any purpose other than establishing that CACI personnel were not the only personnel at Abu Ghraib who wore civilian clothing, and has not previously sought to make the misconduct of OGAs an issue in this case. CACI should not be permitted to introduce an irrelevant issue that would open up new lines of questioning, new disputes with the government, and potentially additional discovery, on the eve of retrial.

ARGUMENT

I. Evidence of Other Government Agencies' Misconduct is Irrelevant

CACI's real goal as stated throughout its brief is to shift focus and blame away from CACI, whose personnel interrogated civilian and military "holds," including the Plaintiffs, and instead on OGA personnel's conduct vis-à-vis ghost detainee interrogations—in particular, to show that these personnel "have been implicated in the abuse and even death of detainees" and were "a substantial factor contributing to the abuses committed by military police." Mot. at 2, 6. CACI repeats variations of this theme over and over through selective quotations from the Jones-Fay Report. *See, e.g.*, *id.* at 2 (contending that this Report "determined that OGA interrogators had a much more global ill effect that 'encouraged Soldiers to deviate from prescribed techniques.'" (quoting PTX 23 at 24)); *id.* at 7 (claiming that the Report's authors "reached the conclusion that it was OGA interrogators' 'detention and interrogation policies [that] contributed to a loss of accountability and abuse at Abu Ghraib'" (alteration in CACI's brief) (quoting PTX 23 at 43)); *see also generally id.* at 4.

CACI grossly overstates and mischaracterizes the findings of General Jones and General Fay. Their report did find that OGAs' conduct regarding the limited group of ghost detainees that OGA/CIA interrogated "contributed" to abuse at Abu Ghraib (among a laundry list of "other contributing factor[s]"), but, more importantly, the Generals identified "primary causes," which specifically included the conduct of civilian contractors, *see* ECF No. 1675-1 (PTX 23) at 3-4, and certainly drew no conclusion that OGAs "had a much more global ill effect" than these other causes. *See* Mot. at 2. But this mischaracterization is largely beside the point because it is

irrelevant to whether CACI is liable for the abuse Plaintiffs suffered at Abu Ghraib. CACI does not need to be, and Plaintiffs have never argued that CACI was, the ***only*** contributor to the abuses that occurred at Abu Ghraib for CACI to be liable for conspiracy and aiding and abetting: the degree of OGA's own misconduct as compared to CACI or any other participant in abuses there is irrelevant to Plaintiffs' claims or CACI's defenses. OGA's misconduct towards ghost detainees does not make it any less likely that there was *also* a conspiracy to abuse the military's detainees, including Plaintiffs, at Abu Ghraib, that CACI and military personnel were participants in that conspiracy, or that CACI aided and abetted the abuse of detainees at Abu Ghraib.

While CACI insists, in conclusory fashion, that evidence of OGA personnel's own abuses and their claimed "systemic effect" on the treatment of *all* detainees is "of particular relevance," Mot. at 6, 7, CACI does not explain how.[2] That is because the only purposes for which

[2] If anything, the Jones/Fay Report's conclusions regarding the "permissive and compromising climate for soldiers," the "systemic lack of accountability for interrogator actions and detainees," and the "perception" of "different rules regarding interrogation and detention operations" that "encouraged Soldiers to deviate from prescribed techniques," ECF No. 1675-1 (PTX 23) at 24, 33, 88, all help explain—consistent with Plaintiffs' allegations but anathema to CACI's defenses—why CACI interrogators were able to enlist military personnel's assistance in engaging in the abuses at issue and why CACI management closed their eyes to that abuse so readily. *See, e.g.*, Ex. F (PTX 115) (CACI interrogator Rich Arant emailing his employer regarding concerns about abuse, explaining that abuse likely was "not … isolated" and would "likely continue to occur"); ECF No. 1650-3 (Apr. 18, 2024 Trial Tr.) at 66:1-17 (CACI manager testifying that Arant's email "just wasn't something that [would have] seemed significant"); *see also* Ex. G (Porvaznik Dep. Tr.) at 225:2-225:24 (CACI's Site Manager at Abu Ghraib testifying, in a remarkable combination of literal dishonesty but metaphorical truth, that Arant resigned from CACI because of "problems with his eyes." Arant resigned because of the abuses he witnessed, which—unlike Porvaznik and other CACI personnel—he could not unsee and ignore).

The same findings, moreover, give lie to the notion that in practice, the Army completely controlled and directed the work of interrogators, contrary to CACI's arguments in support of its

CACI actually seeks to introduce such evidence at trial are plainly improper.

II. Evidence of Other Government Agencies is Prejudicial and Confusing

CACI is intent on using the conduct of OGAs to convey at least three well-trodden theories to the jury that are not only irrelevant, but are also highly prejudicial and confusing, and which the Court has rightly rejected each time that CACI has tried to present them in a repackaged new guise.

First, evidence regarding OGA conduct is CACI's latest means of suggesting to the jury that Plaintiffs are terrorists and that any abuse they suffered was somehow justified or less reprehensible. Jurors will recognize the CIA and the FBI as the government's highest-level intelligence apparatus and will assume, even if there is no evidence of those agencies ever interrogating or even interacting with Plaintiffs, that if those agencies conducted interrogations at Abu Ghraib the facility's detainees must have been particularly important to the national security of the United States. The Court has told CACI—repeatedly—that such evidence is irrelevant and has warned CACI in no uncertain terms not to pursue arguments along these lines. *See, e.g.*, ECF No. 1460 (Dec. 15, 2023 Hearing Tr.) at 4:25-5:10 ("These men could have been captured and charged with capital murder.… It doesn't make any difference why they were in custody, so that's absolutely irrelevant. So you all [i.e., CACI] must be very careful to make sure that none of your documents or none of your questions or none of the answers of any of your witnesses were to try to disparage plaintiffs in that respect."); Ex. E (Pappas Dep. Tr.) at 35:6-15 (any "hint" or

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borrowed servant defense. *See* ECF No. 1659 at 8 (CACI stating that the defense "should be determined based on the actual facts on the ground").

"suspicions about what the plaintiffs in this case may or may not have done" or whether they had "valuable information" are "actually irrelevant to the issues in this case"); ECF No. 1650-40 (Apr. 5, 2024 Hearing Tr.) at 35:17-23 (warning CACI "don't make me have to say it [again] in front of the jury").[3] CACI is re-litigating the issue head-on in another motion *in limine*, *see* ECF No. 1685, but recognizing that the likelihood of success is low, CACI has crafted this more indirect—but no less harmful—route to the same impermissible argument.[4]

Second, CACI hopes that ad hoc references in the Jones/Fay Report regarding what CACI mischaracterizes as OGA's purported "systemic effect on the treatment of detainees at the Hard Site," Mot. at 7, will convince the jury that CACI's abuses were authorized by the government, and that the government is ultimately responsible or more responsible than CACI for abuses. But, as both the Fourth Circuit and this Court have made clear, any implicit or explicit authorization from OGAs (or anyone else) to subject their own or any other detainees to abuses that Congress and international law expressly proscribe is not valid and does not shield CACI from liability. *See Al Shimari v. CACI Premier Tech., Inc*., 840 F.3d 147, 157 (4th Cir. 2016); *Al Shimari v. CACI Premier Tech., Inc*., 368 F. Supp. 3d 935, 970 (E.D. Va. 2019). Further, as discussed above, the extent to which other government agencies also bear responsibility for abuses against ghost detainees is irrelevant to CACI's own liability for its role in furthering a conspiracy

[3] CACI in fact sought to portray Plaintiffs as terrorists despite these stark warnings. *See* ECF No. 1680-1.

[4] The effort is particularly unfair and prejudicial, both given the total absence of evidence that any Plaintiff actually encountered any OGA personnel. *See supra* at 2-3.

and otherwise aiding and abetting the torture and abuse of military detainees, and CACI should not be permitted to deflect blame by inviting jury speculation on this question.

Third, and similarly, CACI seeks to offer evidence of OGA's most extreme conduct in order to suggest that its own abuses were comparatively benign. *See* Mot. at 6 (noting the purported "particular relevance" that OGA personnel were "implicated in … death of detainees"). Indeed, CACI expressly asserts to the Court that CACI intends to elicit testimony regarding notorious photos of Manadel al-Jamadi—a ghost detainee who was killed by OGA while suspended by his wrists with his hands cuffed behind his back and whose corpse was packed in ice—from Sabrina Harman.[5] *See id.* at 8. But the Court already has made clear that evidence on this precise subject "shouldn't come into this case," ECF No. 1375-2 (Feb. 27, 2019 Tr.) at 39:12-17, and the government has not authorized and likely would not authorize—and indeed, as of the date of this submission, has not even received a request for—any testimony on this irrelevant and highly "incendiary" topic. *Id.* at 39:17.[6]

CACI has tried to downplay the nature of its own abuses since the first investigations into its conduct and has continued that trend through the April trial, despite the Court's suggestion that—to streamline the issues before the jury—CACI consider stipulating that the abuses alleged constitute at least cruel, unusual, or degrading treatment proscribed by law. *See, e.g.*, ECF No.

[5] One of CACI's current counsel represented a CIA officer in investigations about the death of Mr. al-Jamadi, and CACI is no doubt prepared to launch a mini-trial this subject. *See* https://www.newyorker.com/magazine/2005/11/14/a-deadly-interrogation.

[6] CACI has subpoenaed Ms. Harman to ensure her availability during Plaintiffs' case, should Plaintiffs call her at trial.

1470-4 (Dec. 1, 2024 Hearing Tr.) at 11:6-18; *see also*, *e.g.*, ECF No. 1650-9 (Apr. 19, 2024 Trial Tr.) at 69:17-70:1 (characterizing photograph of CACI interrogator with detainee in what the government has confirmed is a "dangerous stress position" as a "relatively relaxed scene" and describing the stress position as a form of "[s]quatting" that is "common and unremarkable among Iraqis"); ECF No. 1650-14 (Apr. 16, 2024 Trial Tr.) at 67:6-13 (equating abuse inflicted by CACI to "any parent in here who has spanked their child"); ECF No. 627 at 28 (dismissing Plaintiff Al Shimari's description of a sexual assault as "nothing more than" a routine "cavity search[]."). CACI may be entitled to make such offensive arguments to the jury and hope they stick. What CACI cannot do is suggest that others' even more extreme conduct excuses or minimizes its liability for the abuses CACI directed or in which it otherwise participated.

III. CACI ALREADY HAS PERMISSION FROM THE COURT TO OFFER EVIDENCE THAT THERE WERE OTHERS AT ABU GHRAIB, INCLUDING OGA PERSONNEL, IN CIVILIAN CLOTHING

Prior to the April 2024 trial, the Court ruled—on more than one occasion—that evidence of the presence at Abu Ghraib of "Other Government Agencies" is irrelevant to the issues to be tried in this case. *See* Ex. E (Pappas Dep. Tr.) at 48:14-19 (sustaining relevance objection because "I already ruled previously that the FBI and other Government agencies that were there is actually not relevant"). Nevertheless, when CACI protested that it needed to demonstrate that CACI personnel were not the only civilians at Abu Ghraib, the Court permitted CACI "to elicit that there were other people in civilian clothes interacting with the detainees." ECF No. 1578 (Apr. 12, 2024 Trial Tr.) at 23:11-23:13. CACI now complains it was deprived of "basic fairness

and due process" because of its claimed inability to make this showing. Mot. at 1. But this ruling, which CACI ***nowhere*** acknowledges in its motion, eviscerates that claim.[7]

Ignoring the Court's ruling, which allowed CACI to offer the evidence of others who wore civilian clothing that can support the credibility issues CACI wants to raise regarding Plaintiffs' testimony, *see* Mot. at 6, CACI focuses narrowly on its ability to say explicitly that OGA personnel conducted interrogations. But CACI did not, and does not, need to introduce such evidence in order to clarify for the jury that some detainees at Abu Ghraib could have interacted with civilians, or individuals in civilian clothing, who were not CACI employees. Simply put, the Court's ruling on this subject did not preclude CACI from making the argument about the presence of other civilians at Abu Ghraib that CACI now suggests that it was prohibited from making. CACI knows that: its whole argument on this topic is a red herring, and its real aim on this motion is quite different—namely, to introduce evidence of OGA misconduct for the other, irrelevant and unfairly prejudicial purposes discussed above.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that CACI's motion *in limine* should be denied.

[7] Likewise, CACI nowhere acknowledges that the Court previously held, in the most explicit of terms, "that the FBI and other Government agencies that were there is actually not relevant," *supra* at 4, 11, instead wrongly insisting that limitations on its ability to offer evidence on this subject were based only on government objections about the release of classified information. *See* Mot. at 3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendant.

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