**25-1043**

IN THE

# United States Court of Appeals

**FOR THE FOURTH CIRCUIT**

SUHAIL NAJIM ABDULLAH AL SHIMARI; SALAH HASAN NUSAIF JASIM AL-EJAILI; ASA'AD HAMZA HANFOOSH AL-ZUBA'E,

*Plaintiffs-Appellees,*

(*Caption continued on inside cover*)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

## BRIEF FOR PLAINTIFFS-APPELLEES

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—and—

TAHA YASEEN ARRAQ RASHID; SA'AD HAMZA HANTOOSH AL-ZUBA'E,

*Plaintiffs,*

—v.—

CACI PREMIER TECHNOLOGY, INCORPORATED,

*Defendant and 3rd-Party Plaintiff-Appellant*

—and—

TIMOTHY DUGAN; CACI INTERNATIONAL, INCORPORATED;
L-3 SERVICES, INCORPORATED,

*Defendants,*

—v.—

UNITED STATES OF AMERICA; JOHN DOES 1-60,

*Third Party Defendants-Appellees.*

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## INTRODUCTION

Two decades removed from the scandal that bears its name, Abu Ghraib remains a symbol of incomprehensible horror. The images of U.S. civilians and military personnel degrading Iraqi civilians produced worldwide shock and a demand by the U.S. political branches for accountability.[1] In partial fulfillment of this demand, a number of military personnel, including Army Military Police ("MPs"), were court martialed and sentenced to prison. But, as reports of several military investigations thoroughly documented, these MPs did not act alone: they were carrying out instructions of military intelligence—which included interrogators employed by CACI Premier Tech., Inc. ("CACI"), a multi-billion-dollar private military contractor—to "soften up" detainees for interrogations. As an Army Major General put it, the brutality inflicted on the detainees at Abu Ghraib was so pervasive that it was a "standard operating procedure." After more than sixteen years of litigation, CACI has finally been held accountable, in part based on the testimony of its own employees as well as the very MPs who conspired with CACI interrogators

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[1] White House, Press Release, President Bush Meets with Al Arabiya Television, 2004 WLNR 2540883 (May 5, 2004) (statement of President Bush calling for "justice to be served" for atrocities at Abu Ghraib); *see also Al Shimari v. CACI Premier Tech., Inc.*, 758 F.3d 516, 521 (4th Cir. 2014) (noting both houses of Congress condemned the abuses as violating the "policies, orders, and laws of the United States and the United States military" and "urg[ed] that all individuals responsible for such despicable acts be held accountable." (quoting H.R. Res. 627 and S. Res. 356, 108th Cong. (2004)).

to commit acts of torture and cruel, inhuman and degrading treatment ("CIDT") on Abu Ghraib detainees, including the Plaintiffs.

Throughout this litigation, CACI has insisted that trying this case before a jury would cause the sky to fall—that it would impermissibly question sensitive military judgments, interfere with the "conduct of war," and in countless other ways, would somehow compromise national security—arguments it repeats in this, the sixth appeal in this case. CACI was, and is, wrong. Over the course of this long litigation, this Court has provided clear, consistent guidance on how this case could be tried without interfering with military prerogatives—just as the United States itself has stressed in these proceedings that the important federal interests in prohibiting torture remain paramount.

The district court followed this guidance faithfully. It properly applied the law of this Court and the Supreme Court in every respect, including with respect to its jurisdiction under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, on the way to resolving more than two dozen dispositive motions by CACI. It carefully presided over two trials, the second of which resulted in the jury's landmark verdict against CACI.

In short, the judicial system has worked. It resolved this important and complex case in a manner that reflects the proper understanding of the judiciary's role in cases implicating individual rights and international law obligations. The

district court committed no reversible error; the jury's verdict is fully supported by substantial evidence; and the law has been faithfully applied. After much time and effort, a measure of justice has been served. This Court should not, at long last, disturb it.

## COUNTERSTATEMENT OF THE CASE

### I. STATEMENT OF FACTS

In 2003, a multi-national force led by the United States invaded Iraq, deposed its leader Saddam Hussein, and established a new temporary governing body, the Coalition Provisional Authority ("CPA"), which established plenary U.S. legal and political control over Iraq and whose leadership was appointed by and answered to the President of the United States. JA7706-07; *Al Shimari v. CACI Premier Tech., Inc.*, 684 F. Supp. 3d 481, 495–96 (E.D. Va. 2023); *Al Shimari v. CACI Premier Tech.*, 758 F.3d 516, 521, 524 n.4 (4th Cir. 2014) ("*Al Shimari III*"). From May 2003-June 2004, the CPA displaced Iraqi law and governmental institutions, and immunized coalition personnel and contractors from Iraqi laws and "Iraqi Legal Process," instead subjecting them to the "exclusive jurisdiction of their Parent States." JA7706; JA4259-61. The U.S. military took control of Abu Ghraib, a prison facility near Baghdad, and used it to detain thousands of Iraqi civilians, including Plaintiffs. JA8451.

The United States executed a contract with CACI, a Virginia-based company, to supply civilians to provide interrogation services at Abu Ghraib. JA8452, JA8021, JA8070, JA7348, JA7356. CACI is a wholly-owned subsidiary of CACI International, Inc., a publicly traded Delaware corporation headquartered in Virginia. JA8452. Pursuant to the governing contract, which was issued by the U.S. Department of the Interior in Arizona, CACI promised to supply "resident experts" in interrogation, who would "assist, supervise, coordinate, and monitor all aspects of interrogation activities." JA8026, JA7278. The contract required CACI to comply with all "Department of Defense, US Civil Code, and International Regulations" and mandated that CACI was "responsible for providing supervision for all contractor personnel." JA8026-27; *see also* JA7366-67.

CACI sent its U.S.-citizen interrogators to Abu Ghraib from the United States in late September 2003. JA8452; JA8026; JA8026, JA8029-30. Between October and December 2003, "numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted" on detainees at Abu Ghraib "by a small group of morally corrupt soldiers and civilians." JA8183; *see also* JA7814-15, JA7852-55, JA7913-14. These abuses included sexual assaults, vicious beatings, forced nudity, and the use of dogs to terrorize detainees. JA8184-85.

Plaintiffs are three Iraqi civilians who were detained at Abu Ghraib during this period. Like many others, Plaintiffs were subjected to torture and abuse: they

were sexually assaulted and humiliated, JA7190-92, JA7195; forced to be naked or wear women's underwear for extended periods, JA6694-95, JA6701, JA6784-85, JA7196; beaten viciously, JA6697-99, JA6782-83, JA7197-98; threatened and attacked with dogs, JA6700-01, JA6800-02, JA7193, JA7198, JA7207; threatened or had their family members threatened, JA6785, JA6799-800, JA7195, JA6685-88; and placed in painful and prolonged stress positions, JA6686-90, JA6697-98, JA7786, JA6697-98, JA6789-91, JA7192-94, JA7196-97; among other abuses.

Following revelations of the shocking abuses at Abu Ghraib, two U.S. Army Major Generals conducted comprehensive investigations and concluded that CACI interrogators directed and participated in the abuses to "soften up" detainees to obtain information during interrogations. JA8183-84, JA8215, JA7852, JA7854-55, JA7931-34; *see also* JA5888-89, JA5891, JA5897, JA5900-02. As this Court has recognized, "[t]hese atrocities were condemned by the President . . . as being 'abhorrent' practices that 'don't represent America,'" and by Congress, which stated that the conduct "contradict[ed] the policies, orders, and laws of the United States and the United States military." *Al Shimari III*, 758 F.3d at 521 (citations omitted).

After five days of trial, with testimony from more than 20 witnesses—including the investigating Army Generals, Army MPs who conspired with CACI to abuse detainees, several CACI interrogators (including one who raised an alarm on abuse), as well as Plaintiffs, who suffered severe physical and mental harm as a result

of the conspiracy—the jury unanimously found CACI liable of conspiring to commit torture and CIDT in violation of international law. JA6399. In finding CACI liable, the jury rejected CACI's affirmative defense that it was not responsible for its employees' misconduct under the "borrowed servant" doctrine. After the verdict, the district court again confirmed its subject matter jurisdiction over Plaintiffs' ATS claims, emphasizing that the trial record showed "there were extensive, extensive contacts with the United States [and] with CACI back here in Virginia." JA6468-69.

### A. The Conspiracy Between CACI Interrogators and Military Personnel to Abuse Detainees

Certain detainees, who were suspected of having relevant information, were housed in the "Hard Site" at Abu Ghraib, and specifically in a small, confined portion known as Tier 1. JA8451, JA8284, JA8306. MPs with the U.S. Army 800th Military Police Brigade were responsible for detention operations in Tier 1. JA8173-74. But the trial record demonstrated a command vacuum at Abu Ghraib, which created chaotic conditions and uncertainty about who was in charge. JA6945-47, JA8193, JA7822-23, JA7830, JA7834-35, JA7864, JA7885, JA7894, JA7897, JA5959-60, JA5963, JA5978, JA6237.

The investigative Generals concluded that CACI interrogators exploited this command vacuum by directing military personnel to abuse detainees. At Abu Ghraib, CACI interrogators and the MPs worked together as a "brotherhood" to "set

the conditions for interrogations" of detainees. JA5875-76, JA5884, JA5990. CACI interrogators visited Tier 1 to interrogate detainees, JA6945-46, JA6175, JA6182, and instructed and encouraged the MPs there to "treat [detainees] like shit" in order to "soften them up" for interrogations. JA5923, JA5888-89; *see also* JA6943, JA5989-90, JA8215, JA7975-77, JA7028, JA7045, JA7066, JA7060, JA7072, JA7091, JA5884-91, JA5897, JA5855-57, JA586062, JA7016-19, JA7021-22, JA7040-45, JA7064-66. The MPs understood and carried out these instructions by abusing detainees throughout Tier 1, including Plaintiffs. *E.g.*, JA5900-02, JA5909, JA7924, JA7927-29, JA7931-32, JA7934. The mistreatment in Tier 1 took place openly and notoriously, so much so that "everybody knew" of it. JA7046. It was memorialized in hundreds of pictures, some of which were openly displayed as computer screensavers. *See* JA6936, JA7039-40.

In addition to conspiring with military personnel to abuse detainees at Abu Ghraib, CACI interrogators sometimes engaged in abuse directly. *See, e.g.*, JA6276-77, JA7021-22. Three CACI interrogators in particular—Steve ("Big Steve") Stefanowicz, Dan ("DJ") Johnson, and Tim Dugan—were found by the investigating Generals to have abused detainees. JA7975-77, JA8215, JA7975-77, JA7979, JA8268-69; *see also* JA6943, JA6980. For example, Stefanowicz terrorized a detainee with a dog, kicked a detainee into a cell, and bragged to several people that he had forcibly shaved a detainee's hair and beard and put him in red women's

underwear. JA7979; *see also* JA5896-97. Both military Generals found that Stefanowicz lied to them about his role in the abuses. JA7979, JA8215, JA8269.

Plaintiffs were each held in Tier 1, questioned by CACI interrogators, JA8451-52, JA6699-700, JA6733-34, JA6158, JA8498-99, and abused by MPs, often shortly before or after an interrogation and sometimes during interrogations themselves. JA6792-97, JA804-05, JA6685-94, JA7190, JA7193, JA7198-99, JA7219, JA7221-22. At trial, MPs (including some who abused Plaintiffs) testified that CACI interrogators directed them to carry out this abuse to "soften up" detainees for interrogations and "to get them to talk." JA5888-89; *see e.g.*, JA5856-57, JA5860-62, JA5887-89; *see also* JA6692-93, JA6724, JA6725, JA6727-28, JA6804-05, JA7198-99, JA7224.

Each Plaintiff suffered severe mental and physical injuries as a result of the abuse inflicted upon them. *E.g.*, JA6702-03, JA6806-07, JA7190, JA7199-7201, JA7230-31. CACI's own medical expert testified that Plaintiffs' symptoms and injuries were consistent with the torture they suffered. JA7563-71.

### B. CACI's Control Over Its Interrogators At Abu Ghraib

U.S. law and military authorities, CACI's government contract, and CACI's internal policies and operating procedures mandated that CACI exclusively manage and supervise its employees at Abu Ghraib. Binding Army regulations required CACI, like all contractors, to control its own employees, which mandated that "only

contractors manage, supervise, and give directions to their employees," JA8324, and made clear that "[c]ontractor employees are not under the direct supervision of military personnel in the chain of command." JA8471; *see* JA8324, JA8377, JA8399, JA8471, JA8471-72, JA8547-48, JA8551, JA8040, JA8091, JA8481-84. In accordance with this regulatory requirement, CACI's contract stipulated that CACI alone was "responsible for providing supervision for all contractor personnel." JA8027; *see also* JA5944 (CACI's corporate representative confirming the same). Every interrogator that CACI sent to Abu Ghraib was an at-will employee, whom CACI could discipline or fire. JA7310; *see also* JA5931. The Army's contractual relationship was with CACI itself, JA8469, and the Army had no authority to hire, fire, or discipline CACI employees or "interfer[e] with the contractor's management prerogative," JA8400. CACI alone had that power. JA8324; *see also* JA8143, JA8448-49.

CACI's own policies further aligned it with the Army's directive that "the prerogative to supervise contractor employees and direct their work efforts resides with the contractor." JA7387. CACI's Code of Conduct, which all employees had to sign each year, JA7305, stated that "we are fully accountable for what we do," JA8107, and that "CACI management retains all rights to operate the business according to its judgment, including, but not limited to the right to …direct,

supervise, control, and when it deems appropriate, discipline the work force," JA8111-12.

To execute its supervisory responsibilities, CACI installed Abu Ghraib Site Lead Dan Porvaznik to be its "operational supervisor" who was "charged with supervising all aspects of interrogation activities at Abu Ghraib." JA59445 (testimony of CACI's corporate representative), JA5929 (CACI's Program Manager confirming CACI site leads were supervising the CACI employees); *see also* JA8481, JA8091. A highly-trained, former military interrogator and "resident expert," JA7278, Porvaznik described his job duties in 2004 as "managing all CACI contractors" at Abu Ghraib, JA7322-23, JA8434. He interviewed all CACI personnel upon their arrival at Abu Ghraib and assigned them to what he deemed the appropriate team. *See* JA5944-45, JA7885. Porvaznik also monitored the CACI interrogators' performance by reviewing their interrogation plans and notes, JA7299-7302; monitoring interrogations himself, JA7296-97; and meeting daily with the Army to discuss how CACI interrogators were performing, JA7301-02. Porvaznik was the liaison to CACI management on the company's employees' performance at Abu Ghraib. JA7305-11.[2]

[2] CACI barely mentions Porvaznik's testimony about CACI's control over its employees in its brief, clearly running from the testimony given by this critical witness. Br. 11-16.

Other CACI leaders also had supervisory responsibility over the company's interrogators at Abu Ghraib. CACI's Tom Howard—described by a CACI witness as "an expert in intelligence" (JA7370)—was a senior adviser to the Army intelligence staff at Abu Ghraib and had hiring and firing authority over CACI interrogators. JA6909-10. Charles Mudd, a CACI Vice President based in Virginia who had "oversight" of the company's Abu Ghraib work, visited Iraq seventeen times and Abu Ghraib at least ten-to-twelve times. JA7464-66. On these visits, Mudd met with the Army to discuss how CACI interrogators were performing, and then provided feedback directly to CACI employees. JA7465-66. Mudd also testified that CACI's Code of Conduct governing employees at Abu Ghraib directed CACI employees to report any issues they saw to CACI leadership rather than the Army. JA7615-16, JA7467-70.

In addition, CACI required its employees to report any detainee abuse they learned about to CACI's Site Lead, Porvaznik. JA6911, JA7613-16. Porvaznik had both the authority and the responsibility, including under CACI's Code of Conduct, to stop any abuse that he learned about and to report any such abuse up the CACI chain of command. JA7309-11, JA6861-62. Any employee who did not follow Porvaznik's directives could be fired by CACI. JA7309-10. Some CACI employees did in fact report abuse to Porvaznik. JA7315-18 (CACI employee Claudius Albury reported that another CACI employee, Billy Krieger, had abused detainees),

JA6270-74 (a CACI interrogator reported incidents of detainee abuse to Porvaznik, including one involving another CACI employee), JA6852-57 (CACI interrogator Torin Nelson reporting concerns about DJ and Dugan to Porvaznik).

### C. CACI Headquarters' Domestic Conduct Relevant to Plaintiffs' Abuse

CACI's management in Virginia enabled the abuse at Abu Ghraib and then tried to cover it up. CACI's management negotiated and entered into its U.S.-government contracts in the United States. JA8021; JA8070. CACI's Virginia-based management recruited, hired, and on-boarded each CACI interrogator it sent to Abu Ghraib. JA7400-01, JA7357, JA5930-31, JA5943, JA7474-76, JA6171. CACI's management knew, and communicated to each other, that many of the interrogators they sent to Abu Ghraib were unqualified—including Stefanowicz and Dugan, who investigating Generals found mistreated detainees. Indeed, CACI's Tom Howard wrote in an email to senior CACI management in Virginia that "NONE of these candidates have the basic qualifications" to interrogate detainees. JA8135-42; *see also* JA8129-34. But CACI's Virginia management hired Stefanowicz and Dugan and sent them to Abu Ghraib anyway. *Id*., JA8123.

CACI's Virginia management thereafter closely oversaw the activities of these employees, for example, through frequent visits by CACI leadership to Abu Ghraib, JA5937, and by installing an "in-country manager" in Iraq and Porvaznik as

site lead at Abu Ghraib, who had "almost daily communication" with CACI's Project Manager in Virginia. JA5928-30; *see also* JA7401-02; JA8160-64.

Concerns of CACI employees at Abu Ghraib were to be reported to the site lead and other CACI in-country management, as detailed above, who in turn would report them to CACI's Virginia headquarters. Indeed, CACI's Virginia management received reports of detainee abuse at Abu Ghraib as early as October 2003. JA8158-59, JA7144-45. Richard Arant, a CACI interrogator, emailed CACI management in Virginia that he was leaving Abu Ghraib because he was disturbed by abuse in connection with interrogations, JA5932; he and Porvaznik agreed to conceal from the Army the reason for his departure, JA8158-59, JA7318-21. CACI did nothing to investigate or report this abuse, and continued operating and sending interrogators to Abu Ghraib. JA5933. In addition, CACI's Stefanowicz also shared concerns with CACI's management in Virginia, JA6173, for example writing to CACI's headquarters that "little to no [CACI] persons have the [qualifications] here and we're not able to fulfill our roles." JA8144-47.

CACI's Site Lead Porvaznik also lied to Army officials investigating detainee abuse, telling them he had no helpful information. JA7323-24, JA8434. As noted, Porvaznik even helped concoct a pretext to give the Army for Arant's departure from Abu Ghraib and later lied at a deposition, claiming it was for an eye operation. JA7318-21. Stefanowicz, Porvaznik's right-hand man who had "de facto

supervisory authority" at Abu Ghraib, JA6842-43, participated in detainee abuse and then lied to both investigative Generals about his own involvement. JA7979, JA8215. Stefanowicz then wrote to CACI management in Virginia demanding a promotion and pay raise because his "liability" had risen. JA8153-56. CACI obliged: its most senior Virginia-based executives promoted Stefanowicz to the Site Lead and gave him a substantial pay raise. JA8157. And when the Army requested that CACI fire DJ for forcing a detainee to sit in a dangerous stress position (captured in a photograph), JA5941, JA8012, JA8012, JA7463, JA7614, CACI did not do so, explaining away the abuse by referencing so-called Iraqi cultural preferences. JA7463, JA5948, JA6858. Ultimately, CACI refused to discipline *any* of its employees, *e.g.*, JA7407, JA6201-03, despite specific findings by Generals Taguba and Fay that they participated in the abuses at Abu Ghraib.

## II. PROCEDURAL HISTORY

This case has an extensive procedural history, including two merits decisions from this Court that have substantively governed these proceedings, two unsuccessful interlocutory appeals by CACI (including a 11-3 *en banc* ruling against CACI), and the district court's resolution of more than two dozen dispositive motions by CACI. This history, briefly summarized here, reveals that this Court has already addressed many issues raised by CACI again in this appeal, and

demonstrates the district court's conscientious work in implementing this Court's guidance on how to evaluate this case.

### A. Plaintiffs' Complaint and CACI's First Appeal to This Court

Plaintiffs commenced this action in 2008, bringing (as relevant to this appeal) claims under the ATS, 28 U.S.C. §1350, against CACI for conspiring to inflict torture and CIDT on detainees at Abu Ghraib, including Plaintiffs. JA15. The district court denied CACI's first motion to dismiss on, *inter alia*, preemption and political question grounds, JA298, an interlocutory order which CACI then sought to appeal. *See Al Shimari v. CACI Int'l, Inc.*, 658 F.3d 413 (4th Cir. 2011) ("*Al Shimari I*"). In *Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205 (4th Cir. 2012) ("*Al Shimari II*"), this Court, sitting *en banc*, dismissed CACI's interlocutory appeal because CACI's asserted defenses involved "fact-bound issues," including CACI's "duties under [its] contracts with the government and whether [CACI] exceeded the legitimate scope thereof." *Id*. at 223.

### B. *Al Shimari III*: Plaintiffs' Claims Are Not Impermissibly Extraterritorial

In *Al Shimari III*, 758 F.3d 516 (4th Cir. 2014), this Court conducted a fact-based inquiry and held that "*Kiobel* [*v. Royal Dutch Petroleum*, 569 U.S. 108, 125 (2013)] does not foreclose the plaintiffs' [ATS] claims" on extraterritorial grounds, 758 F.3d at 520. This Court found that Plaintiffs' claims "reflect extensive 'relevant conduct' in United States territory," *id*. at 528 (quoting *Kiobel*, 569 U.S. at 124),

which included allegations of torture and cruel treatment by U.S. citizens at a U.S. military-run detention facility arising out of the performance of a contract executed in the United States between a U.S. corporation and the U.S. government, *id*. at 528-29, as well as allegations that CACI managers in the United States tacitly approved the acts of torture and abuse, tried to cover it up, and "implicitly, if not expressly, encouraged" it. *Id*. at 529-31.[3]

### C. *Al Shimari IV*: Plaintiffs' Claims Are Justiciable.

This Court reversed the district court's dismissal of Plaintiffs' claims under the political question doctrine by distinguishing between non-justiciable claims "calling into question military standards of conduct" (such as the negligence claims in *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326 (4th Cir. 2014)) and justiciable claims of "intentional acts . . . that were unlawful" (like against the Plaintiffs), which require interpretation of federal "statutory terms and established international norms." *Al Shimari v. CACI Premier Tech., Inc.*, 840 F.3d 147, 151, 161-62 (4th Cir. 2016) ("*Al Shimari IV*"). This Court reasoned that, because "the military cannot lawfully exercise its authority by directing a contractor to engage in unlawful activity," any "conduct by CACI employees that was unlawful when committed is

[3] The facts adduced at trial included far greater evidence of U.S. connections than what this Court held sufficed in *Al Shimari III*, *see, e.g.*, Facts I.C, leading the district court to observe post-trial "that there were extensive, extensive contacts with the United States." JA6468-69.

justiciable, irrespective whether that conduct occurred under the actual control of the military." *Id*. at 151; *see also id*. at 159.

The Court instructed the district court on remand to determine which acts by CACI employees "violated settled international law and criminal law governing CACI's conduct and, therefore, are subject to judicial review." *Id*. at 160. In doing so, the Court observed that "some of the alleged acts plainly were unlawful at the time they were committed." *Id*.

### D. The District Court's Post-Remand Jurisdictional Decisions

On remand, the district court followed this Court's instructions and carefully addressed the remaining jurisdictional issues against a developed record. Given that CACI filed more than two dozen dispositive motions, the following discussion reflects only the most salient of the district court's many decisions in this case.

#### 1. Political Question, Preemption, and Conspiracy

Pursuant to this Court's instructions in *Al Shimari IV*, the district court identified the applicable legal standard for Plaintiffs' claims of torture and CIDT and assessed "whether the alleged CACI conduct was unlawful when committed." *Al Shimari v. CACI Premier Tech., Inc.*, 263 F. Supp. 3d 595, 598 (E.D. Va. 2017). It concluded that torture and CIDT constituted violations of the law of nations and were actionable under the ATS. *Id*. at 600-04. The district court found Plaintiffs stated an ATS claim and rejected the applicability of the political question doctrine

because "plaintiffs' allegations—and the evidence they have produced in support of those allegations—describe sufficiently serious misconduct to constitute torture, CIDT, and war crimes [a claim that was later dropped], all of which violated settled international law at the time—and still do." *Al Shimari v. CACI Premier Tech., Inc.*, 300 F. Supp. 3d 758, 782 (E.D. Va. 2018).[4] It observed that Plaintiffs' "substantial factual allegations" created "an inference that CACI employees entered into an agreement with other personnel at the Hard Site to subject the detainees at the site, including plaintiffs, to torture [and] CIDT." *Id*. at 783. And, under Fourth Circuit law, it held that CACI was liable for acts of its employees who were acting within the scope of their employment. *Id.* at 785-86.[5]

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[4] Later, the district court rejected CACI's motion to dismiss under *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018), which held the ATS does not apply to *foreign* corporations, and reiterated that the separation of powers considerations elucidated by this Court foreclosed CACI's nonjusticiability arguments. *Al Shimari v. CACI Premier Tech., Inc.*, 320 F.Supp.3d 781, 785-86 (E.D. Va. 2018) (citing *Al Shimari II*, 758 F.3d at 529-30 and *Al Shimari III*, 840 F.3d at 154, 157-58). A few months later, the district court rejected CACI's argument that the *earlier* Supreme Court case, *RJR Nabisco Inc. v. European Cmty.*, 579 U.S. 325 (2016), dictated a ruling that Plaintiffs' claims were impermissibly extraterritorial. JA3806-08; JA3802. CACI then filed its first mandamus petition, which this Court summarily denied. *In re: CACI Premier Technology, Inc.*, No. 19-1238 (4th Cir.), Dkt. Nos. 2, 13-14 (order and judgment denying petition).

[5] CACI's contention that the district court "prejudg[ed] this case" is baseless and belied by the district court's dismissal of Plaintiffs' direct liability claims, *Al Shimari*, 300 F. Supp. 3d at 782-83, and by its later grant of summary judgment to CACI against a fourth plaintiff, JA3802.

The district court also rejected CACI's argument that the combatant-activities exception to the Federal Tort Claims Act ("FTCA") preempted Plaintiffs' claims. *Id.* at 788-89. It reasoned that "plaintiffs' claims are exclusively brought pursuant to federal law"—*i.e.*, federal common law under the ATS—which codifies powerful federal interests against torture, and such ATS claims could not be preempted even if the claim concerned "activities arising out of combatant activities." *Id.*

**2. Derivative Sovereign Immunity**

CACI moved to dismiss again, contending it had derivative sovereign immunity from Plaintiffs' claims. JA2238. The district court denied CACI's motion for two reasons. *Al Shimari v. CACI Premier Tech., Inc.*, 368 F. Supp. 3d 935 (E.D. Va. 2019). First, it found that the United States does not have sovereign immunity against claims of *jus cogens* violations. *Id.* at 958-68. And second, even if the United States did enjoy such predicate immunity, "derivative immunity . . . is not awarded to government contractors who violate the law or the contract." *Id.* at 970 (*citing Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 165-69 (2016)). The court concluded that a conspiracy to torture detainees would violate both the law and CACI's contracts, which required CACI to comply with U.S. and international law prohibitions on detainee mistreatment. *Id*. at 970.

CACI sought another interlocutory appeal of this decision, which this Court dismissed in a summary order, holding that CACI's appeal was plainly foreclosed

by *Al Shimari II*'s *en banc* holding. *Al Shimari v. CACI Premier Tech., Inc.*, 775 Fed. App'x 758 (4th Cir. 2019). This Court underscored that any derivative sovereign immunity defense would turn on "continuing factual disputes regarding whether CACI violated the law or its contract," in which case CACI would not be entitled to derivative immunity. 775 Fed App'x at 760, *cert. denied*, 141 S. Ct. 2850 (2021). The jury verdict confirmed that CACI violated the law and its contract.

### 3. Extraterritoriality After *Nestlé USA, Inc. v. Doe*

After the Supreme Court denied *certiorari* from CACI's interlocutory appeal, CACI moved to dismiss yet again, insisting that Plaintiffs' claims were impermissibly extraterritorial under *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021), which, CACI argued, overruled *Kiobel*'s touch-and-concern test. JA4140. The district court recognized that *Nestlé* "warrants refining the assessment of the presumption against exterritoriality" and, applying *Nestlé,* determined, based on repeated Supreme Court pronouncements, that the "focus" of the ATS is to avoid "foreign entanglements" that would arise if the United States failed to provide a remedy to foreign nationals for law-of-nations violations sufficiently connected to the United States. *Al Shimari*, 684 F. Supp. 3d at 494, 505. The court "consider[ed] whether plaintiffs [] established that 'the conduct relevant to the statute's focus occurred in the United States." *Id.* at 493 (quoting *Nestlé*, 593 U.S. at 633).

The court concluded there was "substantial domestic conduct that is relevant to the alleged law of nations violations," including conduct constituting secondary liability, *id*. at 497, analyzing the role of CACI's U.S.-based management in hiring and supervising its civilian contractors arising from a contract with the United States; knowing of, and failing to report the torture; and "in fact, to continue employing and even promoting the individuals involved," *id*. at 503—among additional conduct, *id*. at 497-503. It further found that the tortious conduct was committed (i) when the United States was an occupying force, had displaced all Iraqi law and legal process, and mandated application of U.S. law to U.S. contractors; and (ii) by a U.S. corporation under a U.S.-executed contract with the U.S. government at a facility operated by the U.S. military, which was also relevant to vindicating the focus of the ATS to provide a forum for aliens to seek redress for international law violations committed by U.S. persons. *Id*. at 494-95, 499-500.

All of these compelling and unique facts "show that plaintiffs' claims involve a domestic application of the ATS." *Id*. at 497 (quoting *Al Shimari III*, 758 F.3d at 530-31.

### E. The Trial, Verdict and Posttrial Motions

The first trial in this case resulted in a hung jury. JA4599-601. A second trial followed. *See* JA6485-7785, JA5851, JA5863, JA6024, JA6213, JA6257, JA6278. The parties presented more than 20 witnesses, including the three Plaintiffs, the two

Army Major Generals who investigated the abuse at Abu Ghraib, four Army co-conspirators involved in the abuse, four CACI interrogators, five CACI managerial employees, an expert in torture under international standards, a medical expert, as well as other soldiers.[6] *Id*.

The jury found CACI liable to Plaintiffs for conspiracy to commit torture and CIDT, and found that CACI did not prove its borrowed servant affirmative defense. JA6399-400. The jury awarded each Plaintiff $3 million in compensatory and $11 million in punitive damages. *Id.* The punitive damages award was tied to the $32 million that CACI stood to gain from its contracts with the Army. JA7364-66; *see also* JA7668. The district court then denied CACI's motions for judgment as a matter of law and for a new trial, JA6463, rejecting the issues CACI raises again on appeal and noting in particular that the trial evidence showed "extensive, extensive contacts with the United States." JA6468-69.

## SUMMARY OF THE ARGUMENT

CACI's blunderbuss appeal raises ten issues for this Court's review, Br. 5, and contests sixteen orders of the district court, JA6480.[7] In so doing, CACI

[6] After the presentation of evidence, the district court granted CACI judgment as a matter of law on Plaintiffs' aiding-and-abetting claims, further contradicting CACI's complaint that the court "prejudged the case." Br. 2.

[7] Plaintiffs are constrained by space from addressing every single permutation of CACI's arguments. To the extent not specifically addressed herein, Plaintiffs nevertheless dispute and contest all of them on appeal.

consistently distorts the district court's analysis, ignores clear precedent of this Court and the Supreme Court foreclosing CACI's positions, and sidesteps or mischaracterizes the overwhelming trial evidence supporting Plaintiffs' claims.

**Jurisdiction**. Plaintiffs pled and proved actionable claims under the ATS for torture and CIDT. First, there is substantial domestic conduct relevant to the ATS's focus—which the Supreme Court has repeatedly identified as avoiding the international discord that would come from a failure to remediate U.S.-connected injuries against foreign nationals—thus permitting a domestic application of the ATS. Conduct relevant to this focus includes tortious conduct committed by CACI employees in *de facto* U.S. territory: that is, at a U.S.-run detention facility, at a time and place where the United States displaced Iraqi law imposed its jurisdiction and control over the territory, and where the United States mandated application of U.S. law to U.S. contractors such as CACI. Relevant conduct also includes what the district court correctly observed was "extensive, extensive" conduct by CACI management and leaders occurring within the continental United States and that was actually connected to the tortious conduct, which far exceeds the "general corporate activity" found insufficient in *Nestlé* to permit a domestic application of the ATS.

Second, the Supreme Court and this Court have held that the ATS is a congressional enactment that authorizes federal courts to recognize a limited class of federal common law causes of action, including torture and CIDT.

Finally, this Court's opinion in *Al Shimari IV* forecloses CACI's argument under the political question doctrine.

**Preemption and Derivative Sovereign Immunity.** Under the Constitution, the preemption doctrine only operates to displace *state* law claims, and the cases CACI relies upon say nothing more. The ATS is a *federal statute* authorizing claims under *federal* common law and cannot be displaced by a free-wheeling application of federal policy interests reflected in the FTCA's "combatant activities" exception to federal sovereign immunity, particularly because, as the district court and the United States have recognized, the federal interest in prohibiting and remediating torture is paramount. Separately, CACI is not entitled to the defense of derivative sovereign immunity, regardless of whether the U.S. waived sovereign immunity, because the jury found, by conspiring to commit torture and CIDT, CACI violated the terms of its contract and federal law.

**Legal and Evidentiary Issues**. Viewing the evidence in the light most favorable to Plaintiffs, none of CACI's arguments regarding the sufficiency of evidence is meritorious. First, the district court properly instructed the jury that CACI would not prevail on a "borrowed servant" defense if CACI and the U.S. Army both had control over the CACI interrogators because the Supreme Court, the Restatement of Agency, and the leading Fourth Circuit case require an employer to *completely relinquish* control over their employees to avoid liability for their

misconduct, and likewise recognize the "dual servant" doctrine, whereby the original employer remains liable. CACI barely addresses the voluminous trial evidence establishing that CACI had the power to control its employees when they conspired to commit torture and CIDT.

Second, as the district court correctly found, the United States' invocation of state secrets over individual interrogator identities did not implicate facts so central as to merit dismissal of the entire case, particularly since conspiracy liability does not require a direct connection between a specific interrogator and Plaintiffs (although such evidence was presented at trial). The district court also correctly observed that Plaintiffs were equally prejudiced by the state secrets invocation and issued a curative jury instruction to address prejudice to both parties. Third, there was copious trial evidence demonstrating that CACI conspired with military personnel to abuse detainees at Abu Ghraib, including evidence from MP co-conspirators, two investigating military Generals, and even CACI employees.

**Damages**. Ample evidence supported the jury's compensatory damages award, and there is no requirement that Plaintiffs produce expert testimony substantiating the evident trauma and its psychological effects Plaintiffs endured, as similar ATS cases show. The punitive damages award was reasonable, tethered to the value of CACI's contracts and not limited to Virginia's statutory cap, which is applicable only to state law claims.

## STANDARD OF REVIEW

On appeal of a denial of a motion for judgment as a matter of law following a jury verdict in Plaintiffs' favor, the Court must "view the evidence in the light most favorable to [Plaintiffs], giving [Plaintiffs] the benefit of all reasonable inferences without weighing the evidence or assessing the credibility of any witnesses." *Ward v. AutoZoners, LLC*, 958 F.3d 254, 263 (4th Cir. 2020). "Put differently, if 'reasonable minds could differ' regarding the jury's factual findings, [this Court] must affirm a district court's denial of a motion for judgment as a matter of law." *Id.* (quoting *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 196 (4th Cir. 2017)).

"When a district court denies a motion for a new trial, [this Court] employ[s] a deferential abuse-of-discretion standard, reversing the court's judgment only in exceptional circumstances." *Hicks v. Ferreyra*, 64 F.4th 156, 171 (4th Cir. 2023) (internal quotations omitted).

## ARGUMENT

### I. PLAINTIFFS HAVE PROVED ACTIONABLE CLAIMS UNDER THE ATS

Plaintiffs proved their conspiracy claims of torture and CIDT under the ATS, including by satisfying the extraterritoriality test mandated by *Nestlé, USA Inc. v. Doe*, 593 U.S. 628 (2021).

*First*, Plaintiffs have proved facts sufficient to support a domestic application of the ATS, particularly given the unique circumstances in which these torts arose.

As the district court correctly observed in applying the *Nestlé* framework, the "focus" of the ATS is to prevent "international discord" that would arise if the United States failed to remediate international law violations inflicted on foreign nationals via U.S. conduct. JA4384; *see Jesner* 584 U.S. at 270. Conduct that is relevant to the focus of the ATS (1) happened at a time and place that was functionally U.S. territory, and (2) substantial relevant conduct occurred inside the continental United States.

Specifically, much of the relevant conduct in this case occurred in a U.S.-run detention center during a discrete period of time when the U.S. government occupied Iraq, displaced Iraqi law, and, under the governing U.S-led CPA, required application of U.S. law to U.S. contractors like CACI. JA4380-84. Indeed, with this level of U.S. "complete jurisdiction and control," the presumption against extraterritoriality *should* not even apply, since there is no risk of conflict with foreign law or a foreign sovereign. *See Rasul v. Bush*, 542 U.S. 466, 476, 480 (2004); *cf. Jesner*, 584 U.S. at 255 (the "principal objective" of the ATS "was to avoid foreign entanglements"). Connecting this relevant conduct with the focus of the ATS, as is required by *Nestlé*, 593 U.S. at 633, demonstrates that *failing* to provide remediation to Plaintiffs for the egregious torts committed by U.S. persons in what was *de facto* U.S. territory, would invite the very foreign discord the ATS is designed to prevent.

Furthermore, the district court identified "substantial domestic conduct that is relevant to the alleged law of nations violations," including CACI executing a U.S.-government contract in the United States, the domestic hiring of U.S. citizen interrogators sent to Abu Ghraib, significant U.S.-based management and supervision of CACI conduct at Abu Ghraib, and U.S.-based indifference by CACI to repeated warnings about abuses occurring there. JA4384, JA4389-96 (detailing evidence). The district court correctly found that the domestic conduct relevant to the ATS's focus here far exceeded the domestic conduct advanced in *Nestlé* which was both nominal and unconnected to the commission of the torts. Indeed, this Court has already found that "[t]he plaintiffs' claims reflect extensive 'relevant conduct' in United States territory." *Al Shimari III,* 758 F.3d at 528.

*Second*, the district court applied long-standing precedent in recognizing a cause of action for torture and CIDT under the ATS. The Supreme Court has repeatedly instructed that the ATS expressly authorizes federal courts to recognize certain claims under widely accepted international norms, as federal common law. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004); *Nestlé*, 593 U.S. at 631; *Al Shimari III,* 758 F.3d at 525. The prohibitions against torture and CIDT are such norms. *See Kiobel*, 569 U.S. at 117. The congressional grant of authority in 28 U.S.C. § 1350 makes ATS claims fundamentally distinguishable from judicially implied causes of action under *Bivens*, which lack *any* congressional authorization.

### A. The Facts Support a Permissible Domestic Application of the ATS

#### 1. The District Court's Properly Applied the Focus Test as Mandated by *Nestlé*

In *Nestlé*, the Supreme Court made clear that when "the conduct relevant to the statute's focus occurred in the United States[,] . . . the case involves a permissible domestic application *even if other conduct occurred abroad*." *Nestlé*, 593 U.S. at 633 (quoting *RJR Nabisco*, 579 U.S. at 337) (emphasis added). CACI rests its argument on the premise that the "district court *refused to apply* the focus test" from *Nestlé*. Br. 19 (emphasis added). The assertion is perplexing. Under a heading titled "Focus of the ATS," JA4377-78, the district court began its thorough extraterritoriality analysis noting that "*Nestlé* warrants a reassessment of extraterritoriality," and that *Nestlé* "made clear that the general 'two-step framework for analyzing extraterritoriality issues established by the Supreme Court applies to the ATS." JA4377, JA4376 (quoting *Nestlé*, 593 U.S. at 632).[8]

[8] Despite CACI's protestations that *Kiobel* has no remaining relevance, the district court correctly concluded that "CACI overstates *Nestlé*'s impact on *Kiobel*'s 'touch and concern' standard," even as it proceeded to apply *Nestlé*. JA4376. After all, *Nestlé* cited *Kiobel* with approval, *see Nestlé*, 593 U.S. at 632 (*Kiobel* required a "domestic application of the ATS"). And, in language CACI consistently evades, this Court has agreed that *Kiobel* continues to have force after *RJR Nabisco* (which *Nestlé* relied upon in directing to determine the statute's focus, 593 U.S. at 633). *See Roe v. Howard*, 917 F.3d 229, 240 n. 6 (4th Cir. 2019) ("*RJR Nabisco* did not overturn *Kiobel* and—in step two—retains a similar emphasis on the relevant claim's connection to U.S. territory."). If, as *Al Shimari III* found, these claims sufficiently "touch[] and concern[]" the United States, they should also satisfy the

The district court then properly ascertained the focus of the ATS, noting that as a jurisdictional statute, the ATS does not "expressly regulate conduct." JA4377-78; *Nestlé*, 593 U.S. at 633. To identify the statute's focus, the court explained, it must look to the "object of its solicitude, which can include the conduct [the statute] seeks to regulate as well as the parties and interests it seeks to protect or vindicate." JA4377 (quoting *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 418 (2023) (citations omitted). Based on repeated Supreme Court pronouncements, the district court correctly concluded that the "interests" the ATS seeks to "vindicate" is "to promote harmony in international relations by ensuring foreign plaintiffs a remedy for international law violations in circumstances where the absence of such a remedy might provoke foreign nations to hold the United States accountable." JA4378 (quoting *Jesner*, 584 U.S. at 270); *see also id.* at 277 (Alito, J., concurring) ("The ATS was meant to help the United States avoid diplomatic friction."); *id*. at 289 (Gorsuch, J., concurring) (ATS based on understanding that the "law of nations required countries to ensure foreign citizens could obtain redress for wrongs committed by domestic defendants"); *Kiobel*, 569 U.S. at 123-24; *Al Shimari III*, 758 F.3d at 529-30).

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ATS's "focus"—ensuring remediation for U.S.-connected international law violations—and involve a permissible domestic application of the ATS.

When "the conduct relevant to the statute's focus occurred in the United States"—for the ATS, the conduct that could provoke discord and U.S. responsibility if left unremediated—*Nestlé* explains, "the case involves a permissible domestic application, even if other conduct occurred abroad." 593 U.S. at 633. Failing itself to apply the "focus test," CACI has no answer to this proper application of the ATS.

### 2. Because Relevant Conduct Occurred in a Time and Place Where the U.S. Exercised Complete Jurisdiction and Control, This Case Represents a Proper Domestic Application of the ATS

The facts of this case are unique: Plaintiffs were tortured and abused at a time and place where the United States exercised plenary legal and political control, and mandated that U.S. contractors, including CACI employees, operate under the laws of the United States. The presumption against exterritoriality is based on the premise that Congress does not legislate "beyond places over which the United States has sovereignty or has some measure of legislative control," *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (internal citation omitted), which "serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries." *Abitron*, 600 U.S. at 417 (internal citation omitted).

This is why, in *Rasul v. Bush*, the Supreme Court rejected *ex ante* the argument that federal statutory claims could not be brought by U.S.-detained foreign nationals at the U.S. Naval Base at Guantánamo Bay. The Supreme Court reasoned that, "whatever traction the presumption against extraterritoriality might have in

other contexts, it certainly has no application [to places] within the 'territorial jurisdiction' of the United States." *Rasul*, 542 U.S. at 480; *see also id*. (relevant consideration is U.S. "complete jurisdiction and control" regardless of Cuba's retention of "ultimate sovereignty" over Guantánamo); *Vermilya-Brown v. Connell*, 335 U.S. 377, 382 & n.4 (1948) (Fair Labor Standards Act applies to U.S. naval base in Bermuda because relevant lease granted "rights, power and authority" and "control" to the U.S.).

Here, the United States exercised "complete jurisdiction and control" over Abu Ghraib, a U.S.-run detention center in Iraq, which at that time was occupied by U.S-led coalition forces, and legally and politically governed by the U.S.-established CPA, which mandated application of U.S. law to contractors like CACI:

> The CPA exercises powers of government temporarily in order to provide for the effective administration of Iraq . . . The CPA is vested by the President [Bush] with all executive, legislative and judicial authority necessary to achieve its objectives . . . .[9]

Congress funded the CPA "in its capacity as an *entity of* the United States Government."[10] And the CPA immunized coalition forces and contractors from

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[9] Off. of Mgmt. & Budget, Exec. Off. of the President, Report to Congress: Pursuant to Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11) (June 2, 2003).

[10] *See* Emergency Supplemental Appropriations Act for the Defense and Reconstruction of Iraq and Afghanistan, Pub. L. No. 108-106, 117 Stat. 1209, 1225, 1236 (Nov. 6, 2003).

Iraqi laws and "Iraqi Legal Process," instead subjecting contractors like CACI to the "exclusive jurisdiction of their Parent States," *e.g.*, the United States, JA4259-60, "in a manner consistent with [their] national laws," JA4261.

Thus, relevant conduct occurred in what was *functionally United States territory*, such that any conflict-of-laws concerns or concerns about foreign strife related to "extraterritorial" application of the U.S. law have no traction, *see Kiobel*, 569 U.S. at 117 (expressing comity-based concerns). Indeed, the *law in place* governing CACI during the conduct in question was—by very order of the United States government—*U.S. law*.[11] Critically, as in *Rasul*, the Court does not need to make any determination about the precise legal status of Iraq or who exercised ultimate sovereignty there. The *fact* of U.S. territorial control and the required application of U.S. law to contractors like CACI is powerful evidence of U.S.-connected conduct that is relevant to the focus of the ATS.

Accordingly, "Abu Ghraib's unique status during the relevant time period," JA4383, shows this case involves a permissible domestic application of the ATS.

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[11] *Jesner* and *Kiobel* rejected an extraterritorial application of the ATS involving *foreign* corporate defendants and torts that occurred inside the territory of an independent *foreign sovereign*, because of concern over promoting diplomatic strife, *see Kiobel*, 569 U.S. at 113 (permitting suit against Dutch corporation contributing to torts in Nigeria implicating Nigerian forces with threadbare U.S. connections could generate "diplomatic strife"); *Jesner*, 584 U.S. at 271 (permitting suit against Arab Bank would produce "significant diplomatic tensions" with Jordan, who considered suit a "grave affront" to its sovereignty). Those concerns are absent, and actually inverted, here.

Under the focus-driven inquiry mandated by *Nestlé*, a failure to apply the ATS to circumstances here, which involve egregious international law violations committed by CACI's U.S. employees in U.S.-controlled territory, would plainly frustrate the interests that the ATS seeks to protect. *See Abitron*, 600 U.S. at 419; *Jesner*, 584 U.S. at 270 (purpose of the ATS is avoid "international discord" from *not* remediating U.S.-based international law violations against foreign nationals).[12]

### 3. The Substantial Domestic Relevant Conduct Here Far Exceeds the Conduct in *Nestlé* and Supports a Domestic Application of the ATS

The trial evidence further confirms that Plaintiffs' claims involve a permissible domestic application of the ATS under *Nestlé's* focus test due to extensive relevant conduct in the continental United States. This Court has already concluded that Plaintiffs' "claims reflect extensive 'relevant conduct' in United States territory." *Al Shimari III,* 758 F.3d at 528. And the district court correctly

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[12] Under the combined logic of *Rasul*, *Aramco,* and *Nestlé*, these unique facts on their own demonstrate sufficient "relevant domestic conduct" to permit these ATS claims to proceed. Even if this Court does not agree with this categorical and straightforward application of the presumption against extraterritoriality, it should still consider the specific factual context of Abu Ghraib during the relevant time as part of its analysis under *Nestlé,* as the district court did. The Supreme Court and this Court have recognized that considering supplemental factors alongside relevant domestic conduct is appropriate if warranted by the statute's focus—here, for the ATS, the importance of avoiding international strife from U.S.-connected torts. *See Yegiazaryan v. Smagin*, 599 U.S. 533, 543–44 (2023) (step two "is a context-specific inquiry" that "considers the particular facts surrounding the alleged injury."); *Percival Partners Ltd. v. Nduom*, 99 F. 4th 696 (4th Cir. 2024) (considering factors such as corporate citizenship in the RICO context).

concluded that trial evidence proved "extensive, extensive" U.S.-based conduct in this case. JA6468-69. CACI simply ignores this overwhelming trial evidence, and instead presses the argument that all aspects of the torts must occur in the United States, Br. 24-26. But *Al Shimari III* already rejected CACI's argument, reasoning that it was advanced by only two justices in *Kiobel*, 758 F.3d at 528; *accord Warfaa v. Ali,* 811 F.3d 653, 659 (4th Cir. 2016); *see also Nestlé*, 593 U.S. at 633-34 (sufficient "domestic conduct" that "aid[s] and abet[s] an injury that occurs overseas" can overcome the presumption).[13]

*Nestlé* does not resuscitate CACI's argument. In *Nestlé*, the Supreme Court concluded that "[n]early all the conduct that [plaintiffs] say aided and abetted forced labor—providing training, fertilizer, tools, and cash to overseas farms—occurred in Ivory Coast," and held "general corporate activity . . . *alone*" is not enough to establish domestic application of the ATS.[14] 593 U.S. at 634 (emphasis added); *see*

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[13] The district court correctly rejected CACI's reliance on a stray line from *United States v. Elbaz*, 52 F.4th 593, 604 (4th Cir. 2022), concluding that domestic conduct furthering the conspiracy is relevant to the ATS even if the ultimate object of the conspiracy occurred abroad. JA4387 (quoting *United States v. Ojedokun*, 16 F.4th 1091 (4th Cir. 2021) ("conspiracies operate wherever the agreement was made or wherever any overt act in furtherance of the conspiracy transpires, which may include the place where the defendant has never set foot.").

[14] CACI's recitation of the alleged facts at issue in *Nestlé* is taken from the Ninth Circuit's opinion. Br. 21. But the Supreme Court's opinion in *Nestlé* did not consider many of those facts, so they are not part of the Supreme Court's reasoning relevant to this appeal. CACI also lists conduct that the Supreme Court determined occurred abroad, such as the provision of technical farming aid, as "domestic contacts," thus misleadingly suggesting that the Supreme Court considered those

*also Al Shimari III*, 758 F.3d at 528 (distinguishing the "relevant conduct" alleged in this case from "mere corporate presence" deemed insufficient in *Kiobel*). Here, the trial evidence—which CACI largely ignores—establishes that CACI's domestic conduct relevant to the ATS's focus far exceeds the generic corporate activity deemed insufficient in *Nestlé*; this domestic conduct demonstrates an *actual connection* to the torture and CIDT, as well as to conduct implicating U.S. actors—making it all conduct relevant to the ATS' focus. *See* Facts I.C. To summarize that evidence:

(i) CACI management entered into two contracts to provide interrogation services to the Army in Iraq. JA8020-90, JA8452, JA8070. These contracts were issued by the U.S. government and executed in the United States. *See id.* The second contract was executed in December 2003, during the course of the conspiracy to abuse detainees and when Plaintiffs were being abused. JA8070.

(ii) CACI ran its recruitment and hiring process of U.S. citizen contractors from its Virginia headquarters. JA7400-01, JA7357, JA5930-31, JA5943, JA7474-76, JA6171. After U.S.-based onboarding, CACI sent the interrogators it hired from the United States to the U.S.-run detention center at Abu Ghraib to work with U.S. military personnel. JA8452. CACI's own U.S. management regarded the interrogators they hired and chose to send to Abu Ghraib as unqualified to conduct interrogations, which foreseeably helped produce the conspiracy in Abu Ghraib to abuse detainees. JA8135-42; *see also* JA8129-34.

(iii) CACI—as required by the contract, U.S. military regulations and CACI company policy—managed and supervised its employees and maintained a supervisory structure which required CACI employees to

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acts to be encompassed within "general corporate activity." The Supreme Court in fact held the opposite: it explicitly distinguished that technical assistance, which occurred abroad, from the general corporate activity occurring domestically.

register any concerns with the CACI Site Lead, who was to report to the CACI in-country manager and to program managers inside the United States. JA7138-40. CACI management in the U.S. was in constant contact with its supervisors in Iraq, who produced *daily* reports to U.S. headquarters. *Id.*, JA7402, JA8144-57. A U.S.-based Vice President visited CACI employees in Iraq seventeen times and Abu Ghraib at least ten-to-twelve times. JA7464-7466. U.S.-based managers evaluated and made promotion decisions as to Iraqi-based employees, including at Abu Ghraib. *See, e.g.*, JA8157.

(iv) CACI's Virginia headquarters received reports of detainee abuse at Abu Ghraib as early as October 2003. JA8158-8159. CACI's management never investigated these reports, and CACI continued sending interrogators to Abu Ghraib. JA7142-45.

(v) Later, during its investigations into the abuse at Abu Ghraib, the Army sent CACI's management a photograph of CACI employee DJ forcing a detainee to sit in a painful stress position and asked CACI to fire him; but CACI's U.S.-based management refused and minimized the abuse as a mere cultural preference of the detainee. JA5941, JA8012, JA8012, JA7463, JA7614, JA7463, JA5948, JA6858.

(vi) CACI's most senior, U.S.-based executives promoted CACI's Stefanowicz and gave him a substantial pay raise after the Army found he engaged in detainee abuse and lied to Major General Taguba. JA8157, JA6203.

The district court, applying *Nestlé*'s focus test, properly concluded that such U.S.-based conduct, if left unremediated, could produce the diplomatic strife the ATS is designed to prevent. JA4384. The district court also properly took into account the unique legal status of Abu Ghraib as relevant to the focus of the ATS and which further supported a domestic application of the statute. JA4377-96.

CACI's significant domestic conduct, which is *directly connected* to Plaintiffs' abuse at Abu Ghraib, far exceeds the "general corporate activity" that

would be "common to most corporations" and which was found by the Supreme Court to be insufficient in *Nestlé*. Unlike *Nestlé*, where the facts did not "draw a sufficient *connection* between the cause of action . . . and domestic conduct," 593 U.S. at 634 (emphasis added), here the evidence directly connected CACI's U.S.-based conduct with the ultimate injury to Plaintiffs.

### B. Supreme Court Precedent and *Al Shimari III* Confirm That the ATS Authorizes the Courts to Recognize a Cause of Action for Torture and CIDT

The district court correctly applied the well-settled principle that the ATS expressly authorizes federal courts to exercise jurisdiction over certain torts in violation of the law of nations, *Sosa*, 542 U.S. at 732; *Nestlé*, 593 U.S. at 631, including torture and CIDT. *Al Shimari III*, 758 F.3d at 525.

Yet in arguing otherwise, CACI barely references the foundational ATS case, *Sosa v. Alvarez-Machain*. This is striking since CACI apparently seeks, *sub silentio*, to overrule its central holding that the ATS was "enacted on the understanding that the common law would provide a cause of action for the modest number of international law violations." *Sosa*, 542 U.S. at 724. Further, CACI falsely asserts that "none of this Court's decisions … addressed district courts' power to create and define causes of action." Br. 28. In fact, *Al Shimari III* recognized the court's authority to do just that, a holding that has governed the subsequent eleven years of

this litigation. 758 F.3d at 526. Ultimately, CACI "fundamentally misunderstands the nature of an ATS claim." *Al Shimari*, 654 F.Supp.3d at 506; JA4398-99.

CACI instead seeks to engraft the analytically distinct *Bivens* "special factors" jurisprudence onto the ATS, making the unsupportable contention that the "test for creating *Bivens* and ATS claims is *identical*." Br. 28 (emphasis in original). It is true that the Supreme Court's recent *Bivens* jurisprudence has limited a court's authority to imply a cause of action directly under the Constitution, but that is because such judicial recognition lacks *any* congressional imprimatur. *See Ziglar v. Abassi*, 582 U.S. 120, 133 (2017). CACI's radical proposal fails to grapple with this elementary distinction: "the ATS is itself a federal *statute*" and a court's authority to interpret it does "not change the fundamental nature of the statute as an exercise of congressional power." JA4399 (emphasis added)). By exercising jurisdiction over claims of international law violations, therefore, the courts *carry out* Congress's legislative judgment embodied by the ATS.

CACI's argument likewise cannot be reconciled with decades of ATS jurisprudence. *See Nestlé*, 593 U.S. at 631 ("courts may exercise common-law authority under this statute to create private rights of action in very limited circumstances"); *Kiobel*, 569 U.S. at 115. Even the case CACI principally relies upon, *Jesner v. Arab Bank*, recognized that "the test announced in *Sosa*" authorizes federal courts to "recogniz[e] a common law action under the ATS." 584 U.S. at

257. The Supreme Court has emphasized that the "First Congress did not intend the [ATS] to be 'stillborn.'" *Kiobel*, 569 U.S. at 115 (quoting *Sosa*, 542 U.S. at 724); *see also Jesner,* 584 U.S. at 254 ("the statute was not enacted to sit on a shelf awaiting further legislation").[15] Accordingly, as this Court has recognized, the "narrow class" of international law violations that are sufficiently "specific, universal and obligatory," so that they reflect "historical paradigms" familiar to Congress in 1789, include torture and CIDT. *Al Shimari III*, 758 F.3d at 525 (quoting *Sosa*, 542 U.S. at 732); *see also Sosa*, 542 U.S. at 732 ("[F]or purposes of civil liability, the torturer has become—like the pirate and slave trader before him—*hostis humani generis,* an enemy of all mankind") (citation omitted). Plaintiffs' claims lie at the heart of the ATS.

CACI nevertheless baldly asserts that the ATS cannot apply to claims "arising from the United States' conduct of war." Br. 28. First, Plaintiffs' torture and CIDT claims against CACI—a U.S. corporation—do not interfere with the executive's or Congress's war powers. This Court has already explained that Plaintiffs' claims do not relate to the executive's "conduct of war"; they involve "sadistic, blatant, and wanton criminal abuses," inflicted outside of formal interrogations, against civilian

[15] CACI's reliance upon the three-justice concurrence by Justice Thomas in *Nestlé*, contending that only 1789-recognized torts exist under the ATS, only reaffirms that the Supreme Court's supermajority rejected CACI's view. *See Nestlé*, 593 U.S. at 631.

detainees who were entitled to the full protections of international law. *Al Shimari III*, 758 F.3d at 521-22; *see also United States v. Passaro*, 577 F.3d 207, 218 (4th Cir. 2009) ("No true 'battlefield interrogation' took place here; rather, Passaro administered a beating in a detention cell."). This Court confirmed that illegal conduct is not insulated from judicial review. *Al Shimari IV*, 840 F.3d at 158.

Second, the political branches themselves made clear that the United States will not tolerate acts of torture: the President signed and Congress ratified the Geneva Conventions, which prohibit torture and cruel treatment in times of war, as well as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, which specifies that a "state of war" cannot justify derogation from the prohibition (1465 U.N.T.S. 85, art. 2(2)), and Congress codified anti-torture and war crimes prohibitions (18 U.S.C. §§ 2241, 2340A).[16] Like the President, both houses of Congress specifically condemned the unlawful abuse at Abu Ghraib. *Al Shimari III*, 758 F.3d at 521 (quoting H.R. Res. 627 (108th Cong. 2004)). And, as this Court held, "ATS jurisdiction is not precluded" on the grounds that Plaintiffs "were detained in the custody of the U.S. military," *id*. at 530 n.7; *accord Rasul*, 542 U.S. at 485 ("The fact that petitioners in these cases are being held in military

[16] Congress also expressly reaffirmed and endorsed ATS claims for torture in enacting the Torture Victim Protection Act, 28 U.S.C. § 1350, note. *See Sosa*, 542 U.S. 728 (citing H.R .Rep. No. 102–367, pt. 1, p. 3 (1991) as stating § 1350 should "remain intact").

custody is immaterial to the question of the District Court's jurisdiction over their [ATS] claims.").

Finally, the United States has represented to this Court that recognizing Plaintiffs' claim accords with the strong federal interest in "ensuring that a contractor's involvement in detention operations is conducted in a manner consistent with [the torture] prohibition, and in providing a basis for holding the contractor accountable for its conduct." JA6453; *see infra* Argument III.

## II. THIS COURT HAS CONCLUSIVELY REJECTED CACI'S POLITICAL QUESTION ARGUMENT

CACI regurgitates an argument under the political question doctrine that was directly foreclosed by this Court in *Al Shimari IV* and ignores the jury's finding that CACI's participation in Plaintiffs' torture and CIDT violated international law.

In *Al Shimari IV*, this Court held that CACI's violations of international law were justiciable *even if* they were directed by the military (which the evidence demonstrated they were not) because "the military cannot lawfully exercise its authority by directing a contractor to engage in unlawful conduct." 840 F.3d at 157. CACI ignores this holding. As this Court explained, "when a contractor has engaged in unlawful conduct, *irrespective of the nature of control exercised by the military*, the contractor cannot claim protection under the political question doctrine." *Id.* (emphasis added); *see also id.* at 158 (claims raising violations of "settled international law . . . fall outside the protection of the political question doctrine");

*see also id*. at 162 (Floyd, J., concurring) ("[I]t is beyond the power of even the President to declare such conduct [amounting to torture] lawful."). This Court remanded for the district court to separate genuinely discretionary interrogation decisions in the "grey area" of misconduct, which might be nonjusticiable, from plausible claims of torture, which would be justiciable. *Id.* at 160. The district court faithfully applied these instructions, *see* 263 F. Supp. 3d 595 (E.D. Va. 2017), and the jury determined that CACI did conspire to torture and abuse the Plaintiffs. JA6399-6400.

CACI nevertheless asks this Court to categorically bar all claims that may happen to touch on military issues. But judicial review based on the distinction between the executive's lawful discretionary acts and its conformity with mandatory legal duties is as old as the republic. *See Marbury v. Madison*, 5 U.S. 137, 166, 177 (1803) (while judiciary should demure if "the executive possesses a constitutional or legal discretion," where the executive is "amenable to the laws for his conduct," it is the "duty of the judicial department to say what the law is"); *see also Japan Whaling Ass'n v. Am. Cetacean Society*, 478 U.S. 221, 230 (1986) (distinguishing determinations that "revolve around policy choices and value determinations constitutionally committed" to the executive, from the judicial mandate to constrain executive action through "a purely legal question of statutory interpretation"); *Zivotofsky v. Clinton,* 566 U.S. 189, 196 (2012) (applying law to a challenge to

executive authority even in the foreign policy realm is "a familiar judicial exercise.").[17]

This Court has already considered and distinguished the type of contractor-negligence cases CACI cites, explaining that they involve *negligence* claims challenging the *wisdom* of *lawfully discretionary* military decisions and do not, as here, involve "intentional acts" that violate "settled international law or criminal law." *Al Shimari IV*, 840 F.3d at 156, 158. These contractor-negligence cases—which include this Court's recent decision in *Hencely v. Fluor Corp.*, 120 F.4th 412 (4th Cir. 2024)—have no more relevance now to CACI's intentional violations of international law than when this Court previously distinguished them.[18]

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[17] The Supreme Court also authorized judicial review of military detention decisions because of the legal mandate imposed by habeas corpus and international law, in the post 9/11 Guantánamo litigation—rulings that cannot be squared with CACI's absolutist position. *See Rasul*, 542 U.S. at 484 ("nothing . . . categorically excludes aliens detained in military custody . . . from [asserting an ATS claim] in U.S. courts."); *Hamdan v. Rumsfeld*, 548 U.S. 557, 632-33 (2006) (recognizing international law constrains executive actions in "war on terror"); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (since *Youngstown Steel*, courts recognize that "state of war is not a blank check for the President").

[18] *Dorado-Ocasio v. Averill*, 128 F.4th 513 (4th Cir. 2025), *see* Br. 36, supports Plaintiffs' position by reaffirming that the judicial deference courts owe to *discretionary* military disciplinary procedures still "does not enable federal courts to look away from gross abuses of military authority that violate constitutionally protected rights." *Dorado-Ocasio*, 128 F.4th at 521.

## III. PLAINTIFFS' FEDERAL STATUTORY CLAIMS ARE NOT PREEMPTED

CACI argues that Plaintiffs' federal ATS claims are somehow "preempted" by the generalized policy interests reflected in the FTCA's "combatant activities" exception to the waiver of sovereign immunity that is accorded to the government (though not to independent contractors like CACI). *See Burn Pit,* 744 F.3d at 341; 28 U.S.C. § 2671. But CACI has waived a preemption defense—which it has the burden to establish—by failing to seek a jury instruction on whether CACI in fact engaged in "combatant activities," as would be necessary to evaluate the factual predicate for any FTCA defense. *See Bates v. Dow Agrosciences LLC,* 544 U.S. 431, 453-54 (2005) (trial court should instruct jury on preemption defense). The Court need go no further.

Should the Court reach the merits (and it need not), CACI's claim easily fails. First, Plaintiffs' ATS claims cannot be "preempted" because they are federal claims brought under a federal *statute*. Preemption governs federal-state relationships textually rooted in the Constitution's Supremacy Clause and requires intentional congressional action to displace conflicting *state* law, not federal law like the ATS. *Norfolk S. Ry Co. v. City of Alexandria*, 608 F.3d 150, 156 (4th Cir. 2010) (preemption doctrine "permits Congress to expressly displace *state or local* law"). The Constitution provides no authority for a free-wheeling judicial balancing of

federal interests. *Cf. Boyle v. United Tech. Corp*. 487 U.S. 500, 507 (1988) ("federal policy or interest" permits preemption only of "the operation of state law").

CACI seeks to evade this doctrinal reality by relying on a single stray reference in *Hencely* regarding preemption of a "non-federal" tort duty—which CACI asserts, without support, includes duties under international law. Br. 39–40. But *Hencely*, like *Burn Pit*, dealt with the unremarkable proposition that combatant-activities can preempt *state law* negligence claims. In conducting its narrow preemption analysis, *Hencely* did not *sub silentio* sweep in international law duties reflected in the ATS, which the Supreme Court has long recognized are a special class of *federal common law* claims. *See, e.g.*, *Sosa*, 542 U.S. at 732 (recognizing the "congressional choice" to confer jurisdiction over "claims under federal common law for violations of any [specific, universal and obligatory] international law norm."); *Kiobel*, 569 U.S. at 115 ("[*Sosa*] held that federal courts may 'recognize private claims [for such violations] under federal common law'").

CACI cites a conclusory statement in *Saleh v. Titan Corp.*, Br 41-42, that is clearly dicta. 580 F.3d 1 (D.C. Cir. 2009). It came after the court dismissed the plaintiffs' ATS claims on other grounds, thus vitiating any remaining federal claim—and any corresponding federal interest in vindicating the anti-torture norm—in that case. *Id.* at 14-16. By contrast, and as the district court correctly found, the federal interests in vindicating the prohibition against torture remain here and

override any federal interest from the combatant-activities exception. *Al Shimari*, 300 F.Supp.3d at 789. Moreover, contrary to CACI's misleading suggestion, Br. 39, *Hencely* nowhere even mentions *Saleh*'s *dicta*. Instead, *Hencely* merely followed *Burn Pit* in "adopt[ing] the *Saleh* test" for the preemption of *state tort law*. *Burn Pit*, 744 F.3d at 351; *see Hencely*, 120 F. 4th at 426.

CACI's preemption defense fails for yet another reason. Even if the combatant-activities defense could be invoked to displace federal common law regarding torture (which it cannot), there remains a factual question about "whether the contractor complied with the government's specifications and instructions." *Al Shimari II*, 679 F.3d at 219. The record, viewed in the light most favorable to Plaintiffs, demonstrates that the Army never authorized CACI to abuse detainees and CACI's conduct violated contractual terms to abide by federal and international law. *See, e.g.*, JA5961; JA5943.

Finally, the United States has specifically underscored in this case that there is no federal policy interest in the combatant-activities exception that could overcome the "strong federal interest" in the prohibition of torture; thus, according to the United States "federal preemption in this context . . . should *not* apply to conduct by civilian contractors that constitutes torture as defined in federal criminal law." JA6444 (emphasis added).

## IV. CACI IS NOT ENTITLED TO DERIVATIVE SOVEREIGN IMMUNITY

CACI excoriates the district court for ruling that the United States has waived sovereign immunity for *jus cogens* violations, Br. 31-33, but fails to acknowledge that it was CACI that initiated and defended this very argument below, in resisting dismissal of its third-party claims against the United States. JA3962-63. CACI's attempt to collaterally attack its own argument to now benefit from a derivative sovereign immunity defense should be deemed waived under the invited error doctrine or otherwise judicially estopped.

The invited error doctrine "is a branch of the doctrine of waiver by which courts prevent a party from inducing an erroneous ruling and later seeking to profit from the legal consequences of having the ruling set aside." *In re Bayer Healthcare & Merial Ltd. Flea Control Prod. Mktg. & Sales Pracs. Litig.*, 752 F.3d 1065, 1072 (6th Cir. 2014) (quotation marks omitted); *accord United States v. Jackson*, 124 F.3d 607, 617 (4th Cir. 1997). Likewise, the doctrine of judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Zedner v. United States*, 547 U.S. 489, 504 (2006). Because CACI previously advocated that the United States waived sovereign immunity, it cannot change horses now to say the United States retains sovereign immunity.

The district court correctly concluded that the United States has waived sovereign immunity by adopting numerous international law instruments prohibiting torture and remediating the *jus cogens* violation.[19] Nevertheless, even if CACI's argument is not deemed waived, the Court need not decide that question, because there is a sufficient *independent* reason that CACI cannot bear its burden "to establish their entitlement" to derivative sovereign immunity—a defense which is not coterminous with federal sovereign immunity. *Al Shimari II*, 679 F.3d at 223. Specifically, "[w]hen a contractor violates both federal law and the Government's explicit instructions," or otherwise fails to "comply with all federal directions," no derivative sovereign immunity "shields the contractor from suit by persons adversely affected by the violation." *Campbell-Ewald*, 577 U.S. at 166, 167; *see also Al Shimari*, 368 F. Supp. 3d at 970 ("When a contractor breaches the terms of its contract with the government or violates the law, sovereign immunity will not protect it.").[20]

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[19] Though not necessary to consider for this appeal, Plaintiffs addressed the merits of this question in their brief to this Court in 2019. *See* No. 19-1328 (4th Cir.), Dkt. No. 31 at 45-48.

[20] In addition, because derivative sovereign immunity is a function-based immunity defense, *Burn Pit*, 744 F.3d at 344, the defense is foreclosed because "unlawful conduct in violation of settled international law or criminal law" is "not a *function* committed to a coordinate branch of government." *Al Shimari IV*, 840 F.3d at 158 (emphasis added).

Moreover, as the United States correctly explained earlier in this case, "the so-called 'derivative sovereign immunity' doctrine" is really a "defense to liability on the merits." Br. for the United States as *Amicus Curiae*, *CACI Premier Tech., Inc. v. Al Shimari*, 140 S. Ct. 954 (U.S. 2020)), at 5; *accord Yearsley v. W.A. Ross Const. Co.,* 309 U.S. 18, 21 (1940). That defense fails here because the jury found on the merits that CACI conspired to commit torture and CIDT, conduct that violated the government's instructions and federal law. CACI's reliance on *Cunningham v. General Dynamics Information Technology, Inc.*, Br. 34, is inapposite because there the contractor *did* adhere to the terms of its government contract, 888 F.3d 640, 646 (4th Cir. 2018). *Cunningham* expressly distinguishes itself from *Campbell-Ewald*, a case in which the contractor, like CACI, violated both federal law *and* its government contract and therefore was not entitled to derivative sovereign immunity.

CACI does not argue that the government gave it "explicit instructions" to undertake the conduct the jury found to violate international law. *See also Al Shimari IV*, 840 F.3d at 156 (record evidence "indicated that the military failed to exercise actual control over the work conducted by the CACI interrogators"). Instead, CACI argues that its breach of contract (by violating federal and international law prohibiting mistreatment of detainees) can be swept under the rug, because it generally "adhered to the terms of the contracts" by "provid[ing]

interrogation personnel." Br. 34. But it is not enough to "stay[] within the thematic umbrella of the work that the government authorized . . . to render the contractor's activities 'the act[s] of the government.'" *Burn Pit*, 744 F.3d at 345 (internal citation omitted).

## V. CACI CANNOT ESCAPE LIABILITY UNDER THE BORROWED SERVANT DOCTRINE

### A. The District Court Did Not Err in its Instructions on CACI's Borrowed Servant Defense

The Court "review[s] challenges to jury instructions for abuse of discretion, bearing in mind that a trial court has broad discretion in framing its instructions to a jury." *Gentry v. E. W. Partners Club Mgmt. Co. Inc.*, 816 F.3d 228, 233 (4th Cir. 2016) (internal quotation omitted). "Instructions will be considered adequate if construed as a whole, and in light of the whole record, they adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the [objecting] party." *Id*.

CACI asserted an affirmative defense based on the borrowed servant doctrine. The district court instructed the jury that in evaluating CACI's liability for its employees' misconduct, the jury must consider "under whose direction and control were [CACI] employees when they engaged in the alleged misconduct." JA6383. CACI did not object to the district court's instruction. JA7633-40, JA7738. While deliberating, the jury asked the Court: "Does control mean full control or some

control?" JA7746. After hearing argument, the district court gave the following supplemental instruction:

> It is a question of fact that the jury must decide whether CACI had the power to control the interrogation work being performed by CACI employees at Abu Ghraib when the alleged torture or [CIDT] occurred. Whether the Army alone or both the Army and CACI had this power to control is a factual question that you must decide.

JA6398. The court used the phrase "power to control" at CACI's request. JA7756-58.

The district court did not abuse its discretion in providing these instructions, which taken as a whole reflect agency law and precedent that a "'general employer' remains liable for the . . . conduct of his employee unless he has 'completely relinquished control' of the employee's conduct to a third party." *US Methanol, LLC v. CDI Corp.*, No. 21-1416, 2022 WL 2752365, at *5 n. 4 (4th Cir. July 14, 2022); As the Supreme Court explained in *Standard Oil v. Anderson*, "[i]n order *to relieve* the [original employer] from the results of the legal relation of master and servant [under the borrowed servant doctrine] ***it must appear that that relation, for the time***, ***had been suspended,*** and a new like relation between the [employee] and the [second employer] had been created." 212 U.S. 215, 225 (1909) (emphasis added). If not, then the employee is a dual servant and the original employer remains liable. *See Sharpe v. Bradley Lumber Co.*, 446 F.2d 152, 155 (4th Cir. 1971). The district

court's instruction correctly recognized this concept of shared control, and the properly instructed jury rejected CACI's defense. JA6398.

On appeal, CACI focuses only on the supplemental instruction. In so doing, CACI misconstrues *Estate of Alvarez v. Rockefeller Foundation*, 96 F.4th 686 (4th Cir. 2024). Br. 47-48. In fact, *Alvarez* forecloses CACI's contention that control of an employee serving two employers is a "binary determination," Br. 49, and supports the supplemental instruction.

In *Alvarez*, this Court cited Section 226 of the Restatement (Second) of Agency and confirmed that a person may be "the servant of two masters . . . at one time as to one act, if the service to one does not involve abandonment of the service to the other." 96 F.4th at 693 (quoting *N.L.R.B. v. Town & Country Elec., Inc.*, 516 U.S. 85, 94-95 (1995) and Restatement (Second) of Agency § 226). The consequence of a person being a "dual servant" is that the original employer remains liable for that person's acts. Res. (Second) of Agency § 226, cmt. a ("A person, . . . may cause both employers to be responsible for an act which is a breach of duty to one or both of them. He may be the servant of two masters, not joint employers as to the same act, if the act is within the scope of his employment for both."). Accordingly, in *Alvarez*, after assessing the borrowed servant issue, this Court still went on to consider whether the doctor's original employer had some control over

his work for purposes of the dual servant doctrine.[21] This Court concluded that there were *no* facts in *Alvarez* suggesting the original employer had any control over the doctor. Indeed, the doctor in *Alvarez* was *prohibited* by contract from taking any direction from his original employer, and thus he could not have been a dual servant—which stands in sharp contrast to the arrangements here, in which CACI was *required* to—and did—manage and supervise its employees.

CACI faults the supplemental instruction as not advising "that the relevant direction and control relates only to the manner in which CACI employees performed the interrogation mission." Br. 48. Not so. CACI ignores the supplemental instruction's preceding sentence, which explained the jury had to decide "whether CACI had the power to control *the interrogation work being performed* by CACI employees at Abu Ghraib *when the alleged torture or cruel, inhuman, or degrading treatment occurred*." JA6398 (emphasis added).

CACI also complains that the instruction "failed to instruct the jury what to do if it found both the Army and CACI had *some* power to control." *See* Br. 47-48 (emphasis in original). But, consistent with agency principles and precedent, the

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[21] *Cf. Pridemore v. Hryniewich*, 2022 WL 4542250, at *6 (E.D. Va. 2022) (explaining that "[defendant's] possible status as a borrowed employee of [second employer], by itself, may *not release the [original employer] from all liability*" because "[e]ven if a party is deemed to be a borrowed servant of one employer, this does *not automatically indicate that he is no longer the servant of the initial employer*" (emphasis added)).

court's instructions adequately advised the jury on the consequence: if it found that CACI and the Army both had power to control the CACI interrogators, then CACI failed to prove its affirmative defense. The instructions also informed the jury that if it found that the Army alone had the power to control the CACI interrogators, then CACI's defense would succeed. After considering all the facts in the evidence, as instructed by the court, the jury found that CACI did not prove its defense. JA6399.

Finally, CACI's reliance on the Restatement (Third) of Agency is unavailing, Br. 50, because it directly supports the district court's supplemental instruction by stating "[i]t is a question of fact whether a general or a special employer, ***or both***, have the right to control an employee's conduct." Res. (Third) of Agency § 7.03, cmt (d)(2) (2006); *see also* Res. (Second) of Agency § 226.

### B. A Reasonable Jury Could—And Did—Find that CACI Failed to Meet Its Burden to Prove the Borrowed-Servant Defense

This Court upholds a jury's rejection of an affirmative defense unless it "find[s] that not only was there sufficient evidence, so manifestly credible that it must be believed, to support [that defense], but also that there was insufficient evidence from which the jury could rationally have made any other finding." *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1165 (4th Cir. 1982).

The evidence, viewed in a light most favorable to Plaintiffs, showcased CACI's extensive power to control its interrogators at Abu Ghraib, including with

an on-site operational supervisor who closely monitored CACI interrogators, to whom CACI interrogators were required (and did) to report any abuse they witnessed, and who had the authority and obligation to stop any such abuse. *See* Facts I.B. CACI's contracts with the Army, as well as binding Army regulations and company policy, also required CACI to manage and supervise its interrogators. *Id.*; *see also* JA8026-27; JA8074; JA8323-25, JA8366, JA8399-400; JA8471-72; JA8650, JA8652. And the trial evidence showed a command vacuum at Abu Ghraib, creating chaotic conditions that made MPs unclear about who was in charge, and CACI interrogators stepped into the void to direct the MPs to "soften up" detainees. *See* Facts I.A. All this evidence easily gave the jury a sufficient basis to find that CACI failed to prove its defense.

CACI presents only the facts supportive of its position, without engaging with the evidence presented showing CACI's control over its employees, let alone explain how all of Plaintiffs' evidence was legally insufficient to support the jury's finding. Notably, CACI does not discuss perhaps the central trial witness on this question, CACI's Site Lead Dan Porvaznik, who CACI's corporate representative testified was CACI's on-site "operational supervisor" who was "charged with supervising all aspects of interrogation activities at Abu Ghraib." JA5944-45 (testimony of CACI corporate representative); *see* Facts I.B. The jury understandably rejected testimony

to the contrary from other members of CACI management, given that they admitted having "no idea" about what happened at Abu Ghraib. JA7362-63.[22]

The extensive evidence of CACI's actual control over its interrogators, *see* Facts I.B, easily sufficed for the jury to reject CACI's borrowed servant defense.

## VI. THE GOVERNMENT'S STATE-SECRETS ASSERTIONS DID NOT WARRANT DISMISSAL OF THIS ACTION

The United States asserted privilege over the personal identifying information of the CACI and Army interrogators who (per Army records) formally interrogated Plaintiffs, and any formally documented plans and reports of the same.[23] JA650, JA887, JA1025. This Court reviews legal determinations involving the state-secrets privilege de novo. *Wikimedia Found. v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 14 F.4th 276, 303(4th Cir. 2021). In *El-Masri v. United States*, this Court held that state secrets may warrant dismissal only "if the circumstances make clear that privileged

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[22] CACI also submits that the district court was wrong to admit certain Army authorities because one witness (Colonel Pappas) testified—21 years later—that he did not recall seeing them at the time. Br. 51. That is not a basis to exclude relevant evidence, much less an abuse of discretion.

[23] The United States produced information about each formal interrogation of Plaintiffs in its records, including dates, reported techniques used, and whether the interrogators were from CACI or from the Army. CACI was able to depose these individuals and present their testimony about their interactions with Plaintiffs at trial. While the United States maintained privilege over which interrogators were formally assigned to which detainees (and any interrogation plans and reports of the same), it summarized the substance of those plans and reports in interrogatory responses. JA920-21; JA926-27; JA4331-46; JA8500-10.

information will be so central to the litigation that any attempt to proceed will threaten that information's disclosure." 479 F.3d 296, 308 (4th Cir. 2007).

The evidence subject to the state-secrets privilege was not central—or even material—to the conspiracy at issue, prejudiced Plaintiffs equally and was otherwise subject to a curative jury instruction. Thus, the district court did not err in finding that the case could be fairly litigated without resort to privileged information, JA3802, JA3808-09; *see also* JA865, JA979, JA1377-78, and that CACI could not meet the extraordinarily high burden of a full dismissal based on the narrow invocation of state secrets. Indeed, by contending that the trial evidence warrants judgment in its favor, CACI concedes that it was not actually prejudiced in presenting its defense.

This conspiracy, which involved well-publicized events subject to public U.S. military investigative reports, and which did not depend on linking specific CACI interrogators to Plaintiffs' abuse, stands in stark contrast to *El-Masri* and *Wikimedia*. In *El-Masri*, this Court affirmed the dismissal of plaintiff's claims based on the CIA's "extraordinary rendition" program because "[w]ith respect to the defendant corporations and their unnamed employees, [plaintiff] would have to demonstrate the existence and details of CIA espionage contracts," an endeavor so central to the issues in dispute that it must be categorically barred. 479 F.3d at 309. In *Wikimedia*, dismissal was merited because "the whole object of [Wikimedia's] suit and of the

discovery is to inquire into 'the methods and operations of the [NSA]'—'a fact that is a state secret'"—and there was "simply no conceivable defense to this assertion that wouldn't also reveal the very information that the government is trying to protect." *Wikimedia*, 14 F.4th at 304 (internal citations omitted).

Here, Plaintiffs' conspiracy claims did not turn on proving specific CACI interrogators directly abused them during formal interrogations, and their proof at trial did not threaten to reveal the information over which the government invoked the state secrets privilege—namely, the identities of specific interrogators who conducted specific interrogations. The information over which the government asserted its privilege likewise had no bearing on CACI's borrowed servant defense, which turned on CACI proving that it had no power to control its interrogators during their misconduct at Abu Ghraib, which the trial record showed happened largely outside of formal interrogations. *See* Facts I.A-B.

CACI complains it could not elicit information about "the identities and backgrounds of interrogators interacting with Plaintiffs." Br. 18, 32. But that information was not an element of the conspiracy because, as the district court instructed the jury (without objection from CACI), "Once a conspiracy is formed, each member of the conspiracy is liable for the actions of the other co-conspirators performed during the course and in furtherance of the conspiracy." JA6389. Furthermore, CACI knows the identities of its interrogators that it sent to Abu

Ghraib, and could have called them at trial to "humaniz[e] them[]" or "prov[e] the[ir] training and experience." Br. 45-46. Yet CACI chose not to do so. Indeed, CACI did not bother calling its own employees DJ or Dugan at trial, despite now complaining it could not present evidence on "the source of CACI's [] vicarious liability." Br. 18.

CACI claims it was prevented from presenting evidence going to witness credibility, Br. 45, but that argument is based on mere speculation and could not meet the high threshold for dismissal under the state-secrets doctrine. Further, in denying CACI's motion to dismiss on state-secrets grounds, the district court concluded that "proper instructions given to the jury" would suffice to address any issues involving credibility of trial witnesses. JA3808-09; JA6372. CACI fails to demonstrate why the court's jury instructions did not address any concerns about witness credibility stemming from the invocation of state secrets. Br. 43-46.

Finally, as the district court recognized (and instructed the jury), the state secrets invocation affected both parties, who were each limited in the evidence they were able to present, JA7713, and any conceivable prejudice impacted both parties; for example, Plaintiffs were unable to impeach CACI's nine pseudonymous witnesses.

## VII. THE JURY'S CONSPIRACY VERDICT WAS SUPPORTED BY THE EVIDENCE

For this Court, the issue on appeal "is whether there was a legally sufficient evidentiary basis for a reasonable jury, viewing the evidence in the light most favorable to the prevailing party, to find for that party." *ABT Bldg. Prods. Corp. v. Nat'l Union Fire Ins. Co. Of Pittsburgh*, 472 F.3d 99, 113 (4th Cir. 2006). "If reasonable minds could differ about the verdict, [this Court is] obliged to affirm." *Id*.

To prove a conspiracy, "[a] plaintiff need not prove an express agreement, because 'proof of a tacit understanding suffices.'" *Keil v. Seth Corp.*, 2021 WL 5088242, at *16 (E.D. Va. Nov. 2, 2021) (quoting *Tysons Toyota, Inc. v. Globe Life Ins. Co.*, 1994 WL 717598, at *5 (4th Cir. 1994)). That CACI conspired with MPs to commit torture and CIDT had overwhelming evidentiary support. Plaintiffs introduced copious trial evidence of an agreement between military intelligence (including CACI interrogators) and MPs to inflict torture and/or CIDT on detainees in Tier 1 of the Hard Site—a partnership the conspirators described as "a brotherhood"—which resulted in the infliction of abuse on Plaintiffs. *See* Facts I-I.A. Interrogators, including CACI interrogators, instructed MPs to abuse detainees to "soften them up" for interrogations and "to get them to talk." JA5889; *see also* Facts I.A. The MPs carried out those instructions, using physical abuse, forced nudity, sexual humiliation, threats of violence, stress positions, and unmuzzled dogs

to terrorize detainees in Tier 1, and were praised by CACI interrogators as a result. *See id.*; JA5908-09.

Plaintiffs suffered this very abuse, sometimes inflicted by the very same MPs. *See* Facts I.A; *e.g.*, JA6816; JA6693-94, JA6696-97, JA7198-99. The evidence included testimony of co-conspirator MPs and interrogators, *see* Facts I.A; photographic and documentary evidence, *id.*; *e.g.*, JA7786, JA7804, JA8254, JA8276, JA8281, JA8284-305; and findings of Army investigators, *see* Facts I.A; *see also* JA8183-85, JA8215, JA7814-15, JA7852-55, JA7913-16, JA7932, JA7975-77, JA7979, JA7992. In light of the trial record, CACI's assertion that Plaintiffs "presented no evidence … [of] an agreement between CACI and soldiers to abuse detainees," Br. 52, is specious.

CACI argues, as it did to the jury, that "parallel conduct and a bare assertion of a conspiracy are not enough for a claim to proceed." Br. 53. But far from a bare assertion of parallel or lawful conduct, *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007), the trial evidence proved direct coordination between CACI interrogators and MPs to treat detainees "like shit," JA5923, for a particular purpose shared by the interrogators and the MPs: to "soften them up" for interrogations and "get them to talk. JA5897, JA5889. The MPs—who considered their CACI partnership a "brotherhood"—followed CACI's instructions.

CACI also argues that no one "with authority to bind CACI joined the company into a conspiracy." Br. 52. But it is hornbook law that CACI is vicariously liable for its employees' participation in the conspiracy, because the CACI interrogators at Abu Ghraib were unquestionably performing their duties for CACI at the time of their misconduct. *See Al Shimari*, 300 F. Supp. 3d at 785-86. In fact, at trial CACI did not contest that its interrogators were acting in the scope of their employment during the relevant events. JA7637.

Finally, CACI argues that the Taguba and Fay reports were improperly admitted because they are "brimming with multiple levels of hearsay." Br. 54-55. Not so. This Court "will overturn an evidentiary ruling only if it is arbitrary and irrational," and "will look at evidence in the light most favorable to the proponent, 'maximizing its probative value and minimizing its prejudicial effect.'" *Burgess v. Goldstein*, 997 F.3d 541, 559 (4th Cir. 2021). This Court has already recognized that "investigative government reports [like the Taguba and Fay reports] are admissible as an exception to the rule against hearsay under Federal Rule of Evidence 803(8)(A)(iii)." *Al Shimari IV*, 840 F.3d at 156 n.4. Under Rule 803(8)(A)(iii), reports of authorized government investigations are admissible unless the opponent proves the reports "indicate a lack of trustworthiness," which CACI did not and cannot prove. *Kennedy v. Joy Techs., Inc.*, 269 Fed. App'x 302, 310 (4th Cir. 2008). Here, the district court carefully and "painstakingly," JA7604-

05, analyzed the Taguba and Fay reports, admitting only excerpts that were "relevant" and "reliable." JA4448.

Further, and contrary to CACI's suggestion, Br. 54-55, an investigator is permitted to rely upon witness interviews or statements, and need not be an eyewitness to the events at issue for the report to be admissible under Rule 803(8)(A)(iii). 5 Weinstein's Federal Evidence § 803.10(4)(a); *see Chavez v. Carranza*, 559 F.3d 486, 496 (6th Cir. 2009) (holding such a report admissible); *Combs v. Wilkinson*, 315 F.3d 548, 554-56 (6th Cir. 2002) (same); *United States v. AT&T*, 498 F. Supp. 353, 364 (D.D.C. 1980) (same). The out-of-circuit cases cited by CACI do not support its argument, Br. 54, because here the district court admitted only the conclusions reached in the military reports, not the underlying third-party statements upon which the reports relied.[24] The district court did not abuse its discretion in admitting excerpts of the Taguba and Fay reports.

## VIII. DAMAGES WERE AMPLY SUPPORTED BY THE EVIDENCE

### A. The Jury's Compensatory Damages Award Had Ample Evidentiary Support

This Court reviews a claim of "alleged excessiveness of the jury's compensatory damage award for abuse of discretion, giving the benefit of every

[24] CACI did not raise below and therefore waived any "confrontation" clause argument, Br. 54, which is foreclosed by the Constitution's text, as the Sixth Amendment applies only to criminal prosecutions. U.S. Const. amend. VI.

doubt to the judgment of the trial judge." *Konkel v. Bob Evans Farms, Inc.*, 165 F.3d 275, 280 (4th Cir. 1999) (internal quotations omitted).

In asking this Court to overturn the jury's compensatory damages award, CACI operates on a mistaken premise: under the law, medical evidence and/or expert testimony is not needed to support a damages award to a victim who survived physical and psychological torture and abuse. In similar cases, damages awards have been upheld where the plaintiffs' only evidence of their injuries was their own testimony. *See Yousuf v. Samantar*, 2012 WL 3730617, *14-15 (E.D. Va. Aug. 28, 2012) (in ATS case for torture, jury awarded $1 million in compensatory damages to each victim, based on evidence from their own testimony), *appeal dismissed*, No. 12-2178 (4th Cir. Feb. 3, 2014).

Here, each Plaintiff testified in detail about the psychological and physical abuse they suffered and the harm it caused, along with the lasting psychological and emotional injuries with which they continue to struggle years later. *See* Facts I, I.A; *see also* JA6702-03, JA6740; JA6806-07; JA7232-34. This "credible and compelling testimony of cognizable injuries" amply supports the jury's award of compensatory damages. *Samantar*, 2012 WL 3730617, at *14. Moreover, the jury *did* hear medical evidence about Plaintiffs' injuries from CACI's own expert, who testified how the physical injuries he observed were "consistent" with the torture Plaintiffs suffered. *See* Facts I.A; *see also* JA7531-32.

CACI's reliance, Br. 58, on *Hetzel v. Cnty. of Prince William*, 89 F.3d 169, 171 (4th Cir. 1996), which involved nothing more than stress and headaches resulting from a denial of a promotion, is so far from the sustained torture and abuse here that it only serves to underscore the ample evidentiary basis for the jury's compensatory damages award. This Court should not disturb it.

### B. CACI's Arguments Regarding the Jury's Punitive Damages Award Are Meritless

This Court "review[s] the [district] court's punitive damages ruling for abuse of discretion." *Adkins v. Crown Auto, Inc.*, 488 F.3d 225, 233 (4th Cir. 2007).

First, the law does not require proof of participation of "managerial-level CACI employees" in the torture or CIDT to warrant imposition of punitive damages, Br. 59. Punitive damages are regularly awarded in ATS cases without such a showing.[25] *See, e.g., Licea v. Curacao Drydock Co., Inc.,* 584 F. Supp. 2d 1355, 1365-66 (S.D. Fla. 2008) (awarding $30 million in punitive damages for three plaintiffs' claims under the ATS for company's participation in human trafficking and forced labor conspiracy, without "managerial involvement"). In any case, Plaintiffs proved participation of CACI's "managerial-level employees"—including

[25] The cases CACI cites do not say otherwise. Br. 59 (citing *A.H. v. Church of God in Christ, Inc.* 831 S.E.2d 460, 478 (Va. 2019), which concerns state law claims, and *Ward v. AutoZoners, LLC*, 958 F.3d 254 (4th Cir. 2020), which concerns claims brought under Title VII, which limits when punitive damages can be awarded).

CACI's Dan Porvaznik, Steve Stefanowicz, and other CACI management—in the conspiracy to commit torture and CIDT. *See* Facts I.B-I.C.

Second, CACI argues that Plaintiffs had to prove *CACI's* profits at trial for any punitive damages. CACI is wrong on the law and also waived this issue. On a pre-trial motion *in limine*, the court concluded that (i) punitive damages would be capped at $35 million, which was the total revenue that CACI stood to receive under CACI's delivery orders; and (ii) CACI could present evidence of its actual profits to reduce that sum. JA4444-45; *see* JA7364-66. But CACI elected not to do so at trial or to argue the same, thereby rendering this issue unreviewable. *See United States v. Olano*, 507 U.S. 725, 733 (1993).

Third, CACI's argument that "the judgment improperly award[ed] punitive damages for injuries to others" is unsupported. Br. 73-74. The district court carefully instructed the jury about the applicable standard of proof, to which CACI did not object, and in response to the jury's question, explicitly instructed the jury that it could not award punitive damages for injuries suffered by others. JA7775. There is no basis to conclude that the jury failed to understand and follow these instructions. *See Weeks v. Angelone*, 528 U.S. 225, 234 (2000).

Fourth, contrary to CACI's claim, Br. 74, Virginia's statutory cap on punitive damages on state law claims does not limit punitive damages for claims brought under federal law. *Calliste v. City of Charlotte*, 695 F. Supp. 3d 708, 729 (W.D.N.C.

2023) (standard for punitive damages on federal claims different than the state standard).[26] Accordingly, the jury's punitive damages award to Plaintiffs for their federal claims should not be disturbed.

## CONCLUSION

For the reasons above, this Court should affirm the judgment below.

Respectfully submitted,

*/s/ Baher Azmy*

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[26] CACI points only to cases that involve punitive damages awards for state law claims. Br. 60 (citing *Gregg v. Ham*, 678 F.3d 333 (4th Cir. 2012) (South Carolina law); *Sines v. Hill*, 106 F. 4th 341 (4th Cir. 2024) (Virginia law)). CACI also cites *Samantar*, but that case contradicts CACI's argument because it involved punitive damages for ATS claims that far exceeded Virginia's $350,000 cap. 2012 WL 3730617, at *15–16 .

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation set by this Court's orders dated January 29, 2025 (Dkt. No. 24) and March 26, 2025 (Dkt. No. 38) because it contains 14,486 words, calculated by the word processing system used in its preparation (Microsoft Word), and excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and the type-style requirements of Fed. R. App. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

*/s/ Baher Azmy*

Baher Azmy

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of May 2025, I caused a true copy of the foregoing to be filed through the Court's CM/ECF system, which will automatically serve the below-listed counsel of record.

*/s/ Baher Azmy*

Baher Azmy

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**DISCLOSURE STATEMENT**

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 25-1043 Caption: Al Shimari v. CACI Premier Tech., Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Asa'ad Hamza Hanfoosh Al-Zuba'e
(name of party/amicus)

who is appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Muhammad U. Faridi Date: 1/27/2025

Counsel for: Asa'ad Hamza Hanfoosh Al-Zuba'e



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Salah Hasan Nusaif Jasim Al-Ejaili
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Signature: /s/ Muhammad U. Faridi Date: 1/27/2025

Counsel for: Salah Hasan Nusaif Jasim Al-Ejaili



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Suhail Najim Abdullah Al Shimari
(name of party/amicus)

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Signature: /s/ Muhammad U. Faridi Date: 1/27/2025

Counsel for: Suhail Najim Abdullah Al Shimari



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