No. 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,

and

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

Plaintiffs

v.

CACI PREMIER TECHNOLOGY, INC.,

Defendant and Third-Party Plaintiff – Appellant,

and

TIMOTHY DUGAN; CACI INTERNATIONAL INC; L-3 SERVICES, INC.,

Defendants,

and

UNITED STATES OF AMERICA; JOHN DOES 1-60,

Third-Party Defendants - Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia, Case No. 1:08-cv-00827

PETITION OF APPELLANT CACI PREMIER TECHNOLOGY, INC. FOR REHEARING OR FOR REHEARING *EN BANC*

John F. O'Connor
Linda C. Bailey
STEPTOE LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000 – telephone
joconnor@steptoe.com
lbailey@steptoe.com

Nina J. Ginsberg
GREENSPUN SHAPIRO
GINSBERG & YANG, P.C.
3955 Chain Bridge Road, 2nd Floor
Fairfax, Virginia 22030
(703) 352-0100 – telephone
njg@greenspunlaw.com

Counsel for Appellant CACI Premier Technology, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION AND STATEMENT OF PURPOSE

The Court should grant this petition because the panel's 2-1 decision implicates exceptionally-important issues, conflicts with Supreme Court precedent, creates inter-circuit and intra-circuit conflicts, and addresses a question currently before the Supreme Court. Fed. R. App. P. 40(b)(2). The questions meriting rehearing or rehearing *en banc* include:

1. **Whether judicially-implied Alien Tort Statute ("ATS")[1] claims are permitted** (1) generally, (2) in the secondary-liability context, (3) in the context of war, and (4) where Congress has enacted a narrower *statutory* ATS claim for torture.

   The majority's decision conflicts with *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 264 (2018), which requires applying the *Bivens* test for implying new ATS claims, with *Egbert v. Boule*, 596 U.S. 482, 491-94 (2022), which prohibits judicially-implied claims extending to a "new category of defendants" or where a national-security nexus exists, and with the Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350 note, a *statutory* torture claim under ATS that excludes Plaintiffs' claims. These questions also will be impacted, if not controlled, by forthcoming Supreme Court decision in *Cisco Systems, Inc. v. Doe I*, No. 24-856. This Court should hold this petition pending *Cisco* so that it can consider *Cisco*'s impact on the case.

2. **Whether claims involving alleged injuries, conspiracies, and torts in a foreign country are "domestic" for extraterritoriality purposes**.

   The majority's decision sidesteps Supreme Court precedent barring ATS claims "for violations of the law of nations occurring outside the United States." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013); *see Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 633 (2021) (requiring relevant conduct "in the United States");

[1] 28 U.S.C. § 1350.

RJR Nabisco v. Eur. Cmty., 579 U.S. 325, 337 (2016) (same). Treating Iraqi territory as "domestic" conflicts with *Adhikari v. Kellogg Brown & Root, Inc.*, 845 F.3d 184, 197 (5th Cir. 2017), and with precedents holding, even in the more far-reaching and Constitution-based *habeas* context, that Guantanamo Bay is "unique" and that foreign territory under non-permanent U.S. control remains extraterritorial. *Boumediene v. Bush*, 553 U.S. 723, 764-69 (2008); *Al Maqaleh v. Gates*, 605 F.3d 84, 97 (D.C. Cir. 2010). Unlike *habeas*, ATS is not extraterritorial. Moreover, the majority's conclusion that federal courts should decide whether a foreign sovereign exercises "enough" control over foreign territory to implicate the presumption against extraterritoriality is a judicially-unworkable and constitutionally-impermissible standard. And the majority's alternative holding that domestic conduct, such as hiring and facilitating employee security clearances, made foreign torts "domestic" conflicts with *Nestlé*'s holding that "general corporate activity" cannot make an ATS claim domestic. 593 U.S. at 634.

3. **Whether the political question doctrine bars courts from regulating the U.S. government's conduct of war**. The majority holds that judicially-implied claims holding a contractor liable for U.S. soldiers' torts in war pose no justiciability concerns, which conflicts with multiple decisions by the Supreme Court and this Court.

4. **Whether dismissal of a detainee abuse case is required where the defendant is denied, on state secrets grounds, discovery of the intelligence-gathering "means and methods" approved and used on the detainee**. The majority's ruling conflicts with *El-Masri v. United States*, 479 F.3d 296, 306 (4th Cir. 2007).

As Judge Quattlebaum observed in his 17-page dissent, "[t]he jurisdictional flaws of this case have been apparent from day one." *Al Shimari v. CACI Premier Tech., Inc.*, 170 F.4th 162, 212 (4th Cir. 2026). Under our constitutional scheme, the power to create federal claims rests with Congress. And the ATS has no extraterritorial application. The majority's decision is irreconcilable with Supreme

Court ATS precedents and existing Circuit precedent, and erodes the separation of powers that lies at the core of our constitutional order. Rehearing or rehearing *en banc* is therefore appropriate.

II. BACKGROUND

This eighteen-year-old case has a "remarkable" history, with three state secrets invocations, two trials, five panel appeals, and one *en banc* rehearing. 170 F.4th at 212 n.1 (Quattlebaum, J., dissenting). Reduced to its essentials, CACI provided contract interrogators in wartime Iraq who were supervised by U.S. Army personnel.[2] Plaintiffs alleged they were abused at Abu Ghraib prison, but admitted that they were "not contending that the CACI interrogators laid a hand on the Plaintiffs." JA489. As relevant here, Plaintiffs asserted secondary-liability ATS claims for conspiracy to commit torture and cruel, inhuman, or degrading treatment ("CIDT"). JA618. Plaintiffs also asserted common-law claims, direct ATS claims, and ATS aiding-and-abetting claims that were dropped or dismissed. JA433, JA618, JA7621.

The United States invoked the state secrets privilege three times to deprive CACI of (1) the identities and backgrounds of military *and CACI* interrogators interacting with Plaintiffs, (2) interrogation plans showing the approaches

[2] JA633, JA6229-6232, JA6249-6256, JA7250, JA8166, JA8501-8502, JA8508-8509.

approved by the U.S. military for Plaintiffs' interrogations, and (3) detailed, contemporaneous interrogation reports describing such interrogations.[3]

At trial, the only conspiracy on which the district court instructed was between individual CACI interrogators *in Iraq* and U.S. soldiers who abused detainees *in Iraq*. JA7718-7719. After a $42 million verdict, the district court entered judgment. JA6479. The panel majority affirmed; Judge Quattlebaum dissented.

III. ARGUMENT

The majority decision "[d]isregard[s] [Supreme Court] precedent[s]," "create[s] a circuit split," and "affirms the judgment by expanding the jurisdiction of courts in [this] circuit to hear and recognize claims under the ATS beyond what any court has ever allowed." 170 F.4th at 212-13, 217 (Quattlebaum, J., dissenting). Rehearing is necessary to align this case with Supreme Court precedents.

A. The Propriety of Plaintiffs' Judicially-Implied Claims Merits Rehearing

The majority affirmed judicially-implied ATS claims that combine co-conspirator liability and *respondeat superior* liability to hold CACI liable, as an employer of alleged co-conspirators, for abuses committed by U.S. soldiers in a war zone. JA7718-7719. That holding rests on several errors.

[3] JA682-689, JA771, JA911-918, JA979, JA1065-1067, JA1377-1378.

To start, the majority holds that the test for *Bivens* claims, which "all but closed the door on *Bivens* remedies,"[4] does not apply to ATS. 170 F.4th at 186-87. But "the Supreme Court has told us a *Bivens*-like analysis is required" for ATS claims. 170 F.4th at 225 (Quattlebaum, J., dissenting). In *Jesner*, the Supreme Court recited the *Bivens* rule—"if there are sound reasons to think Congress might doubt the efficacy or necessity of a damages remedy, ... courts must refrain from creating the remedy in order to respect the role of Congress"—and held that "[n]either the language of the ATS nor the precedents interpreting it support an exception to these general principles in this context." 584 U.S. at 264 (omission in original).

Plaintiffs' claims are also unallowable because ATS jurisdiction extends to "a tort only." 28 U.S.C. § 1350. Conspiracy claims are not torts but impose secondary liability for *others' torts*. *Beck v. Prupis*, 529 U.S. 494, 503 (2000). Plaintiffs' claims are thus outside the ATS's jurisdictional grant. 170 F.4th at 227 (Quattlebaum, J., dissenting). The Supreme Court condemned judicially-implied secondary-liability claims where Congress *has* created a statutory claim for the primary conduct, as "[o]rdinarily, when Congress intends to impose secondary liability, it does so expressly." *Cox Commc'ns, Inc. v. Sony Music Ent.*, 146 S. Ct.

[4] *Dyer v. Smith*, 56 F.4th 271, 277 (4th Cir. 2022). *Dyer* relied on *Egbert*, 596 U.S. at 492-94, which held *Bivens* claims unavailable for "a new category of defendants," in the national-security context, or where "an alternative remedial structure" exists.

959, 967 (2026). If anything, judicially-implied secondary-liability claims are even less defensible when Congress has not enacted a claim for the primary tort.

Finally, Congress's enactment of the TVPA, a statutory claim for torture and "the only cause of action under the ATS created by Congress rather than the courts"[5] bars courts from implying a broader claim than Congress enacted. The TVPA permits claims only against natural persons, *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 451 (2012); only for acts under color of *foreign law*; and has no secondary-liability provision. 28 U.S.C. § 1350 note. Any residual common-law power that federal courts might possess does not include creating work-arounds to imply claims broader than what Congress enacted. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011); *Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981).

The Supreme Court's forthcoming decision in *Cisco*, to be argued April 28, 2026, also will impact, if not control, this case. CACI advised the panel of *Cisco*'s *certiorari* grant on January 12, 2026. Cisco and the United States assert that no claims of any type may be judicially implied under the ATS.[6] If the Supreme Court agrees—or agrees that, at a minimum, secondary liability is not available under the ATS—that decision will require dismissal here. Indeed, *Cisco* likely will impact this case no matter the basis on which it is decided. Respectfully, an

[5] *Jesner*, 584 U.S. at 265 (plurality opinion)

[6] Cisco Br. at 17-27 (Feb. 18, 2026), U.S. Br. at 13-18 (Feb. 25, 2026), *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S.).

efficient approach would be to hold this petition until the Supreme Court decides *Cisco*, likely by the end of the current Supreme Court Term, so this Court can evaluate its impact.

B. The Majority's Extraterritoriality Ruling Warrants Rehearing

The majority's extraterritoriality ruling also conflicts with Supreme Court and other federal appellate decisions. It injects case-by-case uncertainty into the presumption against extraterritoriality, a canon critical to "preserving a stable background against which Congress can legislate with predictable effects." *Morrison v. Nat'l Austrl. Bank Ltd.*, 561 U.S. 247, 261 (2010).

1. Abu Ghraib Prison Was Never a U.S. Territory

As Judge Quattlebaum recognized in dissent, the majority "break[s] new ground" and "create[s] a circuit split" by holding that, for the year coinciding with Plaintiffs' allegations, Iraqi prisons were functionally U.S. territories to which the presumption against extraterritoriality is inapplicable. 170 F.4th at 217. This conflicts with decisions by other Circuits and misapplies Supreme Court *habeas* precedents.

In *Adhikari*, 845 F.3d at 197, the Fifth Circuit rejected the majority's *de facto* U.S. territory theory, holding that U.S. military control from 2003-2011 over Al Asad airbase in Iraq did not render it domestic for ATS purposes. And in *Al Maqaleh v. Gates*, 605 F.3d 84, 97 (D.C. Cir. 2010), the D.C. Circuit rejected the majority's theory even in the more far-reaching *habeas* context, holding that the writ did not extend to Bagram airbase in Afghanistan.

Relying on *Rasul v. Bush*, 542 U.S. 466, 480 (2004), the majority "decline[d] to follow" the Fifth and D.C. Circuits, holding instead that "the temporary nature" of U.S. occupation was not "dispositive." 170 F.4th at 176. But *Rasul* was grounded in "the historical reach of the writ of habeas corpus," a Constitution-based right extending outside the forum if "the custodian can be reached by service of process." 542 U.S. at 478-79, 481 (internal quotations omitted). By contrast, ATS has no constitutional component and no extraterritorial application. *Kiobel*, 569 U.S. at 124.

Moreover, even if *habeas* cases applied to the ATS, *Boumediene* reinforced that *Rasul* turned on the "unique status" of Guantanamo Bay. *Boumediene*, 553 U.S. at 752. *Boumediene* did not disturb *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950), which held that the writ did not extend to prisons in post-war Germany, distinguishing those prisons where U.S. control "was neither absolute nor indefinite," *Boumediene*, 553 U.S. at 768, from Guantanamo Bay, where the United States "has maintained complete and uninterrupted control of the bay for over 100 years." *Id.* at 764; *id.* at 769 ("In every practical sense Guantanamo is not abroad; it is within the constant jurisdiction of the United States."). "There is just no comparison between Abu Ghraib and Guantanamo Bay"; "control over Abu Ghraib was neither unchallenged nor indefinite." 170 F.4th at 217 (Quattlebaum, J., dissenting).

The majority's decision has wide-ranging effects. Holding that Iraqi prisons were U.S. territory for extraterritoriality purposes would "compel the conclusion that federal laws generally applied" there and to similar territories across the globe.

Adhikari, 845 F.3d at 196 n.4. The United States has approximately 615 military installations in foreign countries throughout the world.[7]

2. The Presumption Against Extraterritoriality Does Not Recognize a "Universal Jurisdiction" Exception for Torture

Alternatively, the majority held that "universal jurisdiction" exists under the ATS for "torturers" for conduct "outside the territory of any other sovereign." 170 F.4th at 177-78. The majority cited *Kiobel*'s observation that pirates, whose offenses generally occurred on the high seas, "may well be a category unto themselves," 569 U.S. at 121, which the majority took to imply "that applying the ATS to piracy did not implicate the presumption against extraterritoriality." 170 F.4th at 177. From there, the majority analogized torture to piracy and created an exception to the presumption such that "universal jurisdiction appl[ies] to allow any country to prosecute pirates and torturers wherever found." *Id.* at 178. None of this can be squared with precedent. It also creates a standard—whether a foreign sovereign exercises *enough* control over its territory to trigger the presumption—that federal judges are ill-equipped to apply.

To start, Plaintiffs acknowledge CACI is not a "torturer," and CACI was held secondarily liable for others' torts. JA489. The alleged torturers' employer, the United States, is immune from answering for its soldiers' conduct. 170 F.4th at 189. Moreover, the majority cites *Kiobel*'s observation that pirates "may well be a

[7] World Population Review, *US Overseas Military Bases by Country 2026*, https://worldpopulationreview.com/country-rankings/us-overseas-military-bases-by-country (Apr. 20, 2026).

category unto themselves," 569 U.S. at 121, to hold just the opposite—that piracy *as well as any other international law violation a court analogizes to piracy* is a category unto itself.

That pirates may have been prosecutable wherever found does not mean that claims were ever available *under the ATS* for piracy outside the United States. 170 F.4th at 218-19 (Quattlebaum, J., dissenting). *Kiobel* does not support the majority's ruling; it prohibits claims "for violations of the law of nations *occurring outside the United States*." 569 U.S. at 124 (emphasis added); *see also Nestlé*, 593 U.S. at 633 (conduct relevant to ATS's focus must occur "in the United States"); *RJR Nabisco*, 579 U.S. at 337 (same). None of these precedents permits a lower-court exception for piracy, offenses that can be analogized to piracy, or conduct in a foreign land that a court believes is not under sufficient control of another sovereign.

Indeed, the temporary Coalition presence did not affect "the sovereignty and territorial integrity of Iraq." U.N. Security Council Res. 1483, at 1 (May 22, 2003), https://docs.un.org/en/S/RES/1483(2003). The majority notes that this resolution "reaffirm[ed] that the occupation would be temporary," but concludes that federal courts should decide whether a temporary occupation is enough to override the presumption against extraterritoriality. 170 F.4th at 176. Vesting sovereignty decisions in federal courts is unworkable and inappropriate, as "the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory." *Baker v. Carr*, 369 U.S. 186, 212 (1962).

3. Only Primary Tortious Conduct Occurring Within the United States Can Support Domestic Application of ATS

The majority acknowledges that if the presumption against extraterritoriality applies (and it does), the outcome turns on whether there was domestic conduct relevant to ATS's focus, which is conduct that "violates customary international law." 170 F.4th at 180. The majority also agrees that general corporate activity and operational decisions are insufficient to meet this standard. *Id.* But the majority expands customary international law to "far more conduct than merely the act of torture or CIDT," including hiring, facilitating security clearances, training, purported mishandling of reports of possible torture, and failure to prevent torture by U.S. soldiers. *Id.* at 180-81. This ruling transforms ATS from a jurisdictional grant for a narrow category of international norms, *Sosa v. Alvarez-Machain*, 542 U.S. 692, 731 (2004), into an unbounded expansion of federal jurisdiction over otherwise lawful corporate conduct so long as it can be tenuously linked to allegations of torture.

That outcome is "foreclose[d]" by *Nestlé*'s bar against predicating ATS claims on general corporate activity. 170 F.4th at 219 (Quattlebaum, J., dissenting). In *Nestlé*, the plaintiffs alleged that the defendants "continued to provide financial support and technical farming aid" to their overseas partners even though they "knew their assistance would facilitate child slavery." *Doe v. Nestlé, S.A.*, 906 F.3d 1120, 1123 (9th Cir. 2018). But the Supreme Court held this U.S.-based "general corporate activity" did not convert a foreign tort into a domestic application of the ATS. *Nestlé*, 593 U.S. at 632.

The majority's analysis discounts that the district court dismissed Plaintiffs' claims alleging torts *by CACI*. JA618. There was no finding that CACI's domestic conduct violated customary international law. Because the majority's approach cannot be reconciled with *Nestlé*, rehearing is appropriate.

C. The Majority's Political Question Ruling Conflicts with Circuit Precedent

As explained in Section III.A, precedent bars Plaintiffs' judicially-implied claims, which arise in war, at a war-zone detention facility under constant enemy attack, and where the alleged tortfeasors are U.S. soldiers. These facts similarly implicate the political question doctrine.

"Article III courts best uphold their place in our constitutional system by deferring to their legislative and executive partners who possess 'textually demonstrable constitutional commitment[s]' of military authority." *Dorado-Ocasio v. Averill*, 128 F.4th 513, 521 (4th Cir. 2025) (quoting *Baker*, 369 U.S. at 217); *accord Lebron v. Rumsfeld*, 670 F.3d 540, 548 (4th Cir. 2012). For that reason, "[t]he strategy and tactics employed on the battlefield are clearly not subject to judicial review." *Tiffany v. United States*, 931 F.2d 271, 277 (4th Cir. 1991); *Wu Tien Li-Shou v. United States*, 777 F.3d 175, 181 (4th Cir. 2015) ("[S]electing the proper rules of military engagement is decidedly not our job.").

The majority treated *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326, 339 (4th Cir. 2014), as the only test for the justiciability of claims against contractors. 170 F.4th at 191. But *Burn Pit* concerned when the political question doctrine bars claims against a contractor *for its own tortious conduct in war*. While this case is

nonjusticiable under the *Burn Pit* test, it involves an even greater encroachment on the separation of powers—the authority of federal courts to decide whether *the United States* acted tortiously in prosecuting war and, if so, whether a private right of action should be available against third parties for U.S. soldiers' torts.

As Judges Niemeyer, Wilkinson, and Shedd agreed when the Court heard this case *en banc*, the "political question doctrine" bars Plaintiffs' claims. *Al Shimari v. CACI Int'l Inc.*, 679 F.3d 205, 268 (4th Cir. 2012) (Niemeyer, J., dissenting). The function of "detaining and interrogating" military prisoners falls "comfortably within the powers of the Commander-in-Chief." *Id.* At the time, the *en banc* Court declined to reach this issue because it lacked appellate jurisdiction. *Id.* at 224 (majority). No such obstacle exists here.

D. The Majority's State Secrets Ruling Conflicts with *El-Masri*

The district court's denial, on state secrets grounds, of the identities and backgrounds of Plaintiffs' interrogators and Army-approved plans and reports for Plaintiffs' interrogations permeated every aspect of this case and denied CACI a fair trial. In particular, the state secrets rulings:

1. Denied CACI a fair opportunity to challenge Plaintiffs' testimony. As the majority noted, some interrogators, testifying through pseudonymous telephonic depositions, denied abusing Plaintiffs, 170 F.4th at 198 n.20, but virtually all of them claimed no recollection of Plaintiffs and simply made blanket denials of abuse. JA6045-6049, JA6058-6062, JA6079-6082, JA6089-6093, JA6103-6112. The state secrets privilege deprived CACI and the jury of affirmative evidence regarding Plaintiffs' interrogations from any source other than Plaintiffs.

2. Undermined CACI's borrowed servant defense. Denying CACI Army-approved plans and reports from Plaintiffs' interrogations prevented a fair presentation of the extent of Army dominion and control, crucial facts for CACI's borrowed servant defense. *Estate of Alvarez v. Rockefeller Found.*, 96 F.4th 686, 693-94 (4th Cir. 2024).[8]

3. Prevented CACI from addressing employee training. The district court barred discovery of Plaintiffs' interrogators' qualifications but allowed Plaintiffs to present evidence that some CACI employees were not trained interrogators. JA4837, JA5740. Fairness dictated that CACI be allowed to show the qualifications of those *actually interacting* with Plaintiffs. And the majority's extraterritoriality ruling relies in part on domestic "hiring" by CACI supposedly in violation of international law, 170 F.4th at 181, but affirms denying CACI discovery of the qualifications of employees interacting with Plaintiffs.

The majority acknowledges that state secret rulings "disadvantaged CACI at trial." *Id.* at 198 n.20. But the majority concludes there is "a lack of cases within our Circuit defining the precise limit" of disadvantage mandating dismissal and, whatever that limit might be, CACI's was not enough. *Id.* at 200. But this Court's case law condemning these unfair procedures is clear.

[8] Denying CACI discovery of Army-approved interrogation plans also hindered CACI's ability to show the extent to which the Army approved Plaintiffs' treatment. Some of the treatment Plaintiffs alleged to constitute torture or CIDT, such as sleep management and stress positions, were among the detainee approaches authorized in the Army's Interrogation Rule of Engagement. JA6880-6881, JA7262-7263, JA8013. The district court ruled and instructed that whether the Army approved an approach was irrelevant. JA7718. But as observed in *Hencely v. Fluor Corporation*, uniquely federal interests can preclude common-law claims where "the challenged action can reasonably be considered the military's *own* conduct or decisions." No. 24-924, 2026 WL 1083331, at *7 (U.S. Apr. 22, 2026).

In *El-Masri*, this Court held that cases implicating state secrets may proceed if they "can be fairly litigated without resort to the privileged information." 479 F.3d at 306. And a case cannot be fairly litigated if "sensitive military secrets will be so central to the subject matter of the litigation that any attempt to proceed will threaten disclosure of the privileged matters." *Id.* (quoting *Sterling v. Tenet*, 416 F.3d 338, 348 (4th Cir. 2005)). Applying this standard, *El-Masri* affirmed dismissal of a detainee abuse case where state secrets prohibited discovery into the "means and methods" used to extract intelligence from the plaintiff. *Id.* at 309. CACI's situation is indistinguishable.

The majority acknowledges that denying CACI interrogation plans and reports "impacted CACI's defense qualitatively," but pointed to CACI's alternatives—pseudonymous telephone depositions from interrogators who did not remember Plaintiffs or their interrogations and cross-examination of Plaintiffs. 170 F.4th at 198. Pseudonymous interrogators' lack of memory highlights the need for records of what the Army actually approved for Plaintiffs' interrogations and what actually happened. While *El-Masri*'s "fairness" standard involves some element of judgment, its application in that case—dismissal of a detainee abuse case because state secrets barred disclosure of the "means and methods" used on the plaintiff—plainly controls here. Diametrically opposite results in cases involving the same basic facts undermine confidence in the judicial system and warrant rehearing.

IV. CONCLUSION

"[B]inding Supreme Court precedent" required reversing the judgment. 170 F.4th at 213, 227 (Quattlebaum, J., dissenting). Instead, the panel majority issued an "unprecedented" opinion that makes "federal courts … roving righters of the world's wrongs" and "risks interfering with" the political branches' "military responsibilities." *Id.* at 212, 223, 227. The Court should grant CACI's petition.

Respectfully submitted,

/s/ John F. O'Connor

John F. O'Connor
Linda C. Bailey
STEPTOE LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000 – telephone
(202) 429-3000 – telephone
joconnor@steptoe.com
lbailey@steptoe.com

Nina J. Ginsberg
GREENSPUN SHAPIRO
GINSBERG & YANG, P.C.
3955 Chain Bridge Road, 2nd Floor
Fairfax, Virginia 22030
(703) 352-0100 – telephone
njg@greenspunlaw.com

Counsel for Appellant CACI Premier Technology, Inc.

April 24, 2026

CERTIFICATE OF COMPLIANCE WITH RULE 40(d)(3)(A)

I, John F. O'Connor, hereby certify that:

1. I am an attorney representing Appellant CACI Premier Technology, Inc.

2. This brief is in Times New Roman 14-pt. type. Using the word count feature of the software used to prepare the brief, I have determined that the text of the brief (excluding the cover page, table of contents, table of authorities, certificates of compliance and service, and signature block) contains 3,810 words.

/s/ John F. O'Connor

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2026, I caused a true copy of the foregoing to be filed through the Court's electronic case filing system, which automatically serves a true copy of the foregoing on all counsel of record.

/s/ John F. O'Connor