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

MOTION OF APPELLANT CACI PREMIER TECHNOLOGY, INC. TO HOLD IN ABEYANCE ITS PETITION FOR REHEARING OR FOR REHEARING *EN BANC*

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I. INTRODUCTION

On March 12, 2026, a panel of this Court, over Judge Quattlebaum's 17-page dissent, affirmed the judgment against Appellant CACI Premier Technology, Inc. ("CACI") in this case. CACI has timely moved for rehearing or rehearing *en banc*. ECF-109. By this motion, CACI respectfully requests that the Court hold its petition for rehearing or rehearing *en banc* in abeyance pending a decision by the U.S. Supreme Court in *Cisco Systems, Inc. v. Doe I*, No. 24-846. *Cisco* will be argued before the Supreme Court on April 28, 2026, and a decision is expected by the end of the Supreme Court's Term.

As explained below, *Cisco* raises the allowability of judicially-implied claims brought against the defendants under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350. The judgment against CACI rests entirely on judicially-implied ATS claims. The Supreme Court's decision in *Cisco* is expected to impact, if not control, the resolution of CACI's appeal. Holding CACI's rehearing petition in abeyance until after the Supreme Court decides *Cisco* will allow the Court to consider the petition with the benefit of the Supreme Court's ruling and reasoning in *Cisco*. It also likely would conserve judicial resources and result in a quicker final resolution of this case. For these reasons, CACI respectfully requests that the Court hold its petition for rehearing or rehearing *en banc* in abeyance until the Supreme Court decides *Cisco*.[1] Plaintiffs oppose the relief sought herein.

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[1] Mindful that Circuit Rule 40(c) provides that the deadline for a petition for rehearing is "strictly enforced," and allows extensions only upon "the death or serious illness of counsel" or "an extraordinary circumstance wholly beyond the

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II. BACKGROUND

This case arises out of CACI's provision of contract interrogators in support the U.S. Army's intelligence-collection efforts at Abu Ghraib prison in Iraq in 2003-2004. Plaintiffs alleged they were abused at Abu Ghraib prison and originally asserted twenty common-law and ATS claims against CACI. Plaintiffs dismissed their common-law claims, leaving only judicially-implied claims brought solely under ATS's jurisdictional grant. The district court dismissed Plaintiffs' direct ATS claims alleging tortious conduct by CACI or its employees, and, at trial, entered judgment for CACI on Plaintiffs' ATS aiding-and-abetting claims. This left only claims seeking to hold CACI secondarily liable for torts committed by U.S. soldiers, as the employer of individual CACI employees who allegedly conspired with those soldiers. After a $42 million verdict, the district court entered judgment.

In the district court and before the panel in this appeal, CACI asserted that the district court lacked authority to judicially imply Plaintiffs' secondary-liability ATS claims. The district court rejected CACI's position, as did the panel majority over Judge Quattlebaum's vigorous dissent. *Al Shimari v. CACI Premier Tech., Inc.*, 170 F.4th 162, 182-88 (4th Cir. 2026) (majority opinion); *id.* at 220-27 (Quattlebaum, J., dissenting). CACI moved for rehearing or rehearing *en banc* and simultaneously filed this motion.

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control of counsel," CACI concluded that filing its petition by the deadline set forth in Rule 40 and moving to have its petition held in abeyance was a more appropriate course than seeking an extension to file its petition until after a decision issues in *Cisco*.

In *Cisco*, the defendants were sued under the ATS and the Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350 note, for allegedly aiding and abetting the Chinese government's torture and abuse of members of the Falun Gong religious movement. The Ninth Circuit reversed dismissal of the plaintiffs' claims, and the defendants petitioned the Supreme Court for a writ of *certiorari*. As it relates to the ATS, Cisco sought review of the following question: "Whether the [ATS] allows a judicially-implied private right of action for aiding and abetting."[2] Importantly, Cisco's lead argument as to why no aiding-and-abetting claims are allowed under the ATS is that no new judicially-implied claims of any type are available under the ATS's jurisdictional grant.[3]

At the Supreme Court's invitation, the United States filed a *certiorari*-stage brief in *Cisco* in which it took the position that aiding-and-abetting claims are unavailable under the ATS. The United States urged that "civil aiding and abetting is a rule of secondary liability that makes a person liable for having assisted another's commission of the actual tort" and "the decision whether such a new form[] of liability should be imposed under the ATS on an entire category of actors is a question for Congress, not [the courts], to decide."[4] The United States

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[2] Cisco Cert. Pet. at i, *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S. filed Jan. 31, 2025). Cisco also sought review on the question of whether the TVPA permits a claim for aiding and abetting, which the Supreme Court granted, and on the required *mens rea* for an aiding and abetting claim under the ATS if such a claim is allowed, which the Supreme Court denied.

[3] *Id.* at 15-17; Cisco Merits Br. 17-27, *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S. filed Feb. 18, 2026); Cisco Reply Br. 3-7 (U.S. filed Apr. 15, 2026).

[4] U.S. *Cert.*-stage Br. 16, *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S. filed

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also filed a merits-stage *amicus* brief in *Cisco* stating that it agrees with Cisco that "the Court's post-*Sosa*[5] jurisprudence demonstrates that courts may not create any new ATS actions."[6] Oral argument in *Cisco* is scheduled for April 28, 2026, and a decision is expected by the end of this Supreme Court Term.

III. ARGUMENT

The Court should hold CACI's Petition for Rehearing or Rehearing *En Banc* in abeyance until after the Supreme Court decides *Cisco* because the decision in *Cisco* is substantially certain to at least impact, if not control, the resolution of this appeal. One of the principal issues in this appeal is whether Plaintiffs' secondary-liability claims against CACI may be judicially implied under the ATS. *Cisco* will decide whether the secondary-liability claims in that case—aiding and abetting torture and other international law violations—may be judicially-implied under the ATS. In *Cisco*, Cisco's and the United States' lead arguments are that the aiding-and-abetting claims against Cisco fail because no claims of any type may be judicially implied under the ATS beyond the three international torts the First Congress may have considered when enacting the ATS—attacks on ambassadors, violation of safe conducts, and piracy. *Sosa*, 542 U.S. at 724. If the Supreme Court were to rule for *Cisco* on this basis, it would control the result of this appeal.

Dec. 9, 2025) (alterations in original) (internal quotations and citations omitted).

[5] *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

[6] U.S. Merits Br. 9, *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S. filed Feb. 25, 2026).

Similarly, the United States' *certiorari*-stage brief argues that the claims against Cisco fail because secondary-liability claims, which impose liability on a non-tortfeasor for another's torts, may not be judicially implied under the ATS, which confers jurisdiction for "a tort only." 28 U.S.C. § 1350. Relying on *Jesner v. Arab Bank*, 584 U.S. 241, 264-65 (2018), the United States contends that "the decision whether such a new form[] of liability should be imposed under the ATS on an entire category of actors is a question for Congress, not [the courts], to decide."[7] A Supreme Court decision in Cisco's favor on this basis also would be dispositive here, as conspiracy, like aiding and abetting, is a rule of secondary liability extending liability to a party that is not the tortfeasor. *Beck v. Prupis*, 529 U.S. 494, 503 (2000); *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 494 (2023).

Moreover, even if the ATS aspect of the Supreme Court's decision in *Cisco* is confined to aiding-and-abetting claims, the Court's analysis likely would provide further guidance on the required framework for evaluating judicially-implied ATS claims. In CACI's appeal, the panel majority and dissent diverge sharply on whether a *Bivens*-like analysis is required for judicially-implied ATS claims. *Compare Al Shimari*, 170 F.4th at 186-87 (*Bivens* analysis inapplicable in ATS context) *with id.* at 225 (Quattlebaum, J., dissenting) ("[T]he Supreme Court has told us a *Bivens*-like analysis is required" for ATS claims). *Cisco* likely will shed

[7] U.S. *Cert.*-stage Br. 16, *Cisco Sys., Inc. v. Doe I*, No. 24-856 (U.S. filed Dec. 9, 2025) (alterations in original) (internal quotations and citations omitted).

light on this legal question even if the Court's ultimate holding is limited to aiding-and-abetting claims.

For these reasons, the Court will be in a superior position to assess the advisability of rehearing or rehearing *en banc* if it has the benefit of the Supreme Court's decision in *Cisco* when it decides CACI's petition. This Court has regularly reaped the benefit of holding appeals in abeyance pending forthcoming guidance from the Supreme Court. Just since January 1, 2024, CACI has identified eight cases in which this Court expressly noted that it held an appeal in abeyance to await potentially-dispositive decisions by the Supreme Court.[8]

Moreover, any delay associated with holding this case in abeyance will likely be modest and, in the long run, result in a quicker final resolution of this appeal. *Cisco* will be argued on April 28, 2026, and a decision is expected this Term. That minor delay is outweighed by the countervailing benefit that the Court will have the Supreme Court's guidance in *Cisco* as it evaluates CACI's petition, as well as the parties' views on *Cisco*'s impact if the Court permits post-*Cisco* submissions to address the decision.

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[8] *See United States v. Smithers*, 92 F.4th 237, 245 (4th Cir. 2024); *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 218 (4th Cir. 2024); *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 160 (4th Cir. 2024); *United States v. Nutter*, 137 F.4th 224, 228 (4th Cir. 2025); *United States v. Curtis*, No. 18-4907, 2024 WL 1281335, at *2 (4th Cir. Mar. 26, 2024); *United States v. Browning*, No. 23-4038, 2025 WL 1823952, at *1 n* (4th Cir. July 2, 2025); *United States v. Whitted*, No. 23-4522, 2025 WL 3187997, at *1 (4th Cir. Nov. 14, 2025); *United States v. Youngblood*, No. 24-4505, 2026 WL 226853, at *2 n.1 (4th Cir. Jan. 28, 2026).

If the Court declines to hold CACI's petition in abeyance and denies rehearing before the Supreme Court decides *Cisco*, there is a reasonable likelihood that the Supreme Court would respond to a CACI *certiorari* petition by remanding the case to this Court for reconsideration in light of *Cisco*. That process would delay final resolution of this case by months, as CACI prepares and files its petition for writ of *certiorari*, Plaintiffs respond (if they choose), and the Supreme Court considers the *certiorari* petition, with possible further delay if the Supreme Court were to request the Solicitor General's views. This potential delay would be avoided if CACI's petition for rehearing is held in abeyance so that if either party ultimately seeks Supreme Court review, the Supreme Court will know that this Court's final decision was informed by the decision in *Cisco*.[9]

IV. CONCLUSION

The Court should grant CACI's motion.

[9] CACI acknowledges that it moved for expedited resolution of this appeal. ECF-7. But CACI filed its motion to expedite on January 21, 2025, before Cisco sought a writ of *certiorari*. Now that the Supreme Court has granted review of a case that could control the result here, speed and efficiency are better served by a final decision in this case that takes into account the Supreme Court's decision in *Cisco*.

Respectfully submitted,

/s/ John F. O'Connor

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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 motion 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 1,892 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