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3:04-CV-01143 AL RAWI V. TITAN CORPORATION

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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 SALEH, an individual; SAMI ABBAS AL
20 RAWI, an individual; MWAFAQ SAMI
21 ABBAS AL RAWI, an individual; AHMED,
22 an individual; ISMAEL, an individual;
23 NEISEF, an individual; ESTATE OF
24 IBRAHIEM, the heirs and estate of an
25 individual; RASHEED, an individual; JOHN
26 DOE NO. 1; JANE DOE NO. 2; A CLASS
27 OF PERSONS SIMILARLY SITUATED,
28 KNOWN HEREINAFTER AS JOHN and
JANE DOES NOS. 3-1050,

Plaintiffs,

v.

TITAN CORPORATION, a Delaware
Corporation; ADEL NAKHLA, a Titan
employee located in Abu Ghraib, Iraq; CACI
INTERNATIONAL INC., a Delaware
Corporation; CACI INCORPORATED-
FEDERAL, a Delaware Corporation; CACI
N.V., a Netherlands corporation; STEPHEN
A. STEFANOWICZ, and JOHN B. ISRAEL,

Defendants.

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

Case No. 04-CV-1143 R (NLS)

REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
MOTION OF DEFENDANTS CACI
INTERNATIONAL INC, CACI, INC. -
FEDERAL, AND CACI N.V. TO
TRANSFER VENUE

DATE: FEBRUARY 7, 2005

TIME: 2:00 P.M.

CTRM: 5

CASE NO. 04CV1143 R (NLS)

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14 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).....3

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16 *Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787, 2000 WL 246599 (N.D. Cal.
17 Mar. 1, 2000).....2, 5

18 *Williams v. Bowman*, 157 F. Supp. 2d 1103 (N.D. Cal. 2001)2

1 **I. INTRODUCTION**

2 As Plaintiffs conceded in their opposition to the CACI Defendants' transfer motion, "[a]t
3 issue in this suit, essentially, are the policies of the defendant corporations and the United States
4 government in interrogating and detaining detainees." Pl. Opp. to Transfer Motion ("Pl. Opp.")
5 at 14. In addition to showing why Plaintiffs' claims present nonjusticiable political questions
6 and are preempted by federal law, Plaintiffs' characterization of their lawsuit reinforces that this
7 case should be transferred to the Eastern District of Virginia (or, in the alternative, to the District
8 of Columbia). Evidence bearing on the manner in which the United States government's policies
9 regarding the detention and interrogation of detainees by military and civilian personnel are
10 much more accessible in the Eastern District of Virginia than in this District.
11

12
13 Plaintiffs seek to avoid this undeniable fact by offering the Court a highly suspect laundry
14 list of potential witnesses that Plaintiffs claim are located throughout the country. However,
15 Plaintiffs provide not the slightest glimpse of what these supposed witnesses have to offer as
16 evidence, and cannot overcome that most of the key witnesses and evidence is subject to
17 compulsory process issued from the Eastern District of Virginia and not by this Court. This case
18 should proceed in the district that will preside over disputes concerning the availability of
19 Defense Department witnesses and documents in the event that the case proceeds beyond the
20 motion to dismiss stage. Because it is by far the most convenient forum for obtaining non-party
21 witnesses and documents, the Court should transfer this action to the Eastern District of Virginia.
22
23

24 **II. PLAINTIFFS' CHOICE OF FORUM IS NOT ENTITLED TO DEFERENCE**

25 **A. "Substantial" Deference is Only Applicable When the Plaintiff Resides in**
26 **the Chosen Forum**

27 Plaintiffs incorrectly argue that their selection of this forum is entitled to "substantial"
28 deference. See Pl. Opp. at 3-4. However, the deference, if any, to which a plaintiff's choice of

1 forum is due depends on case-specific factors, most notably whether the plaintiff resides in the
2 forum and whether the operative facts occurred in the forum. *Carolina Cas. Co. v. Data Broad.*
3 *Corp.*, 158 F. Supp. 2d 1044, 1048 (C.D. Cal. 2001) (citing *Decker Coal Co. v. Commonwealth*
4 *Edison Co.*, 805 F.2d 834, 843 (9th Cir 1986)). Under the facts of this case, Plaintiffs' forum
5 selection is not entitled to deference.
6

7 In every case cited by Plaintiffs as requiring substantial deference to their chosen forum,
8 the plaintiff either resided in the district or significant operative facts occurred there. *See Decker*
9 *Coal Co.*, 805 F.2d 834 at 843 (action filed by Montana resident in the District of Montana
10 regarding the supply of coal to a mine operating in Montana); *Aquatic Amusement Assocs., Ltd.*
11 *v. Walt Disney World Co.*, 734 F. Supp. 54, 56-57 (N.D.N.Y. 1990) (action filed by forum
12 resident where the litigants had several meetings in the district).¹ None of these cases involved
13 an action remotely similar to the facts here, where a collection of non-residents seek to maintain
14 their action in a district where not even one significant fact occurred in the district. Where the
15 plaintiffs are not residents of the district and the operative facts did not occur in the district,
16 courts routinely transfer cases to a more appropriate district. *See, e.g., Carolina Cas. Co.*, 158 F.
17 *Supp. 2d* at 1050; *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1110 (N.D. Cal. 2001); *Geo F.*
18 *Martin Co. v. Royal Ins. Co. of Am.*, 2004 WL 1125048 at *6 (N.D. Cal. May 14, 2004).
19
20
21

22 Plaintiffs similarly fail in their effort to distinguish cases holding that a foreign plaintiff's
23 forum selection is not entitled to deference and that any deference ordinarily due a plaintiff's
24 forum selection is further diminished when the plaintiff purports to sue on behalf of hundreds of
25

26 ¹ *See also Resnick v. Rowe*, 283 F. Supp. 2d 1128 (D. Haw. 2003) (action concerning sale
27 of Hawaiian property); *Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787, 2000 WL
28 246599 (N.D. Cal. Mar. 1, 2000) (action brought by California resident); *Climax Portable*
Machine Tools, Inc. v. Durango Assoc., Inc., No. 90-1296, 1991 U.S. Dist. LEXIS 2281 (D. Or.
Feb 13, 1991) (action brought by Oregon resident).

1 unnamed putative class members. See CACI Br. 9-10. For example, Plaintiffs suggest that the
2 Court's refusal to defer to the plaintiff's selected forum in *Piper Aircraft Co. v. Reyno*, 454 U.S.
3 235, 265-66 (1981), applies only where a foreign plaintiff seeks to benefit by suing under United
4 States law. Pl. Opp. at 6. However, the *Piper* Court's language belies such a construction:
5

6 [The] distinction between resident or citizen and foreign plaintiffs is fully
7 justified. . . . When the home forum has been chosen, it is reasonable to
8 assume that this choice is convenient. When the plaintiff is foreign, however,
9 this assumption is much less reasonable.

10 *Id.* at 266.

11 Similarly, in *Koster v. Lumbermens Mut. Cas. Ins. Co.*, 330 U.S. 518, 522 (1947), the
12 Court declined to defer to the named plaintiff's choice of forum because it was convenient only
13 for the named plaintiff and not the rest of the plaintiff class. Plaintiffs try to distinguish *Koster*
14 essentially by arguing that most of the putative class members reside in Iraq and therefore have
15 no convenient forum at all in this country. Pl. Opp. at 5. That only weakens Plaintiffs'
16 argument, as neither the named Plaintiffs nor the class members they would like to represent
17 have any tangible connection to this district. As strangers to this district, Plaintiffs' choice of
18 this forum is not entitled to deference in assessing the CACI Defendants' transfer motion.
19

20 **B. There Are No "Meaningful" Connections Between This Case and California**

21 Plaintiffs' argument that there is a meaningful connection between their claims and this
22 district is merely the unsupported argument of counsel, as the record is devoid of even one
23 significant act or omission that occurred in this district. Indeed, Plaintiffs rely on *Los Angeles*
24 *Memorial Coliseum Comm'n v. National Football League*, 89 F.R.D. 497 (C.D. Cal. 1981), for
25 the proposition that a plaintiff's forum selection is entitled to deference when the district has a
26 "strong connection to this case," (Pl. Opp. at 6), a case that only highlights the lack of connection
27 between Plaintiffs' claims and this district. In *Los Angeles Memorial Coliseum*, the plaintiff not
28

1 only resided in the district, but the claims arose out of a football team's relocation to the district
2 and the alleged injury occurred in the district. *Id.* at 500. By contrast, the present action
3 involves claims by non-residents alleging that they suffered injuries in Iraq, and there is not a
4 single fact alleged on a basis other than "on information and belief" that supposedly occurred in
5 this district. *See* SAC ¶¶ 101-158. Indeed, the corporate defendants obtained their relevant
6 contracts with the United States from offices in the Eastern District of Virginia, and any high-
7 level policymaking decisions concerning detention or interrogation procedures, to the extent they
8 occurred in this country, likely were made either in the Eastern District of Virginia or the District
9 of Columbia. Thus, there is no "strong connection" between the alleged facts and this district.
10

11
12 Other than the fact that Titan's corporate headquarters is in this district and defendant
13 John Israel's ordinary home of record apparently is in California,² Plaintiff's remaining
14 argument that this case has a substantial California connection is that large populations of Arab-
15 Americans and military personnel reside in this district. *Pl. Opp.* at 4. Of course, Plaintiffs have
16 not provided the Court with one scintilla of evidence that the average Arab-American or military
17 "man on the street" has anything relevant to offer to this case, particularly as compared to the
18 high-ranking government officials located in the Eastern District of Virginia who are specifically
19 alleged to have formed a "torture conspiracy" with Defendants.
20

21
22 **III. THE INTERESTS OF JUSTICE FAVOR TRANSFER TO THE EASTERN
DISTRICT OF VIRGINIA**

23 Plaintiffs' opposition does nothing to change the fact that the relevant interests of justice
24 favor transfer of this action to the Eastern District of Virginia, where the court would have
25

26 ² Of course, the location of Titan's headquarters is of limited importance given that the
27 Titan office that obtained the contract to provide translators in Iraq is in the Eastern District of
28 Virginia. *See* The Titan Corporation's Response to Transfer Motion at 1-3. Moreover, even if
Mr. Israel's home of record ordinarily might make this district more convenient for him, a point
he has not argued, the CACI Defendants' understanding is that Mr. Israel is currently in Iraq.

1 subpoena power over government officials as well as over documents in the possession or
2 control of the Department of Defense.

3 **A. The Eastern District of Virginia is a More Convenient Forum for the Parties**

4 Plaintiffs concede that this district is no more convenient for them than the Eastern
5 District of Virginia. Pl. Opp. at 12 (“It is inconvenient to travel from Iraq to anywhere in the
6 United States.”) On the other hand, it is clearly more convenient for Defendants to litigate in
7 Virginia. The CACI Defendants are all located in the Eastern District of Virginia, as is the Titan
8 office that obtained the contract to provide translators in Iraq. Defendant Steven Stefanowicz is
9 alleged to be a resident of Pennsylvania and Defendant Adel Nakhla is alleged to be a resident of
10 Maryland, both locations significantly closer to the Eastern District of Virginia than this Court.
11 While Defendant John Israel allegedly is a domiciliary of California, the CACI Defendants’
12 understanding is that he has been redeployed to Iraq, making this district no more accessible than
13 the Eastern District of Virginia. Thus, the convenience of the parties favors transfer to Virginia.

14 **B. The Eastern District of Virginia is a More Convenient Forum for Non-Party**
15 **Witnesses**

16 As Plaintiffs concede, one of the most important factors in determining whether to grant a
17 motion to transfer is the convenience for non-party witnesses. Pl. Opp. at 8. Such an analysis
18 requires consideration of “not only the number of witnesses, but also *the nature and quality of*
19 *their testimony.*” *Royal Queentex Enters.*, 2000 WL 246599, at *6 (emphasis added). The high-
20 ranking government officials who, by Plaintiffs’ reckless and unsupported account, supposedly
21 masterminded a “torture conspiracy,” are located in the Eastern District of Virginia, as are the
22 Defendants’ offices that oversaw the government contracts that placed CACI interrogators and
23 Titan translators in Iraq.

1 Plaintiffs seek to obfuscate the concentration of relevant non-party witnesses in the
2 Eastern District of Virginia by offering a highly misleading laundry list of potential witnesses
3 who are supposedly located throughout the United States. Plaintiffs, however, offer neither facts
4 to show that the witnesses on their laundry list have any relevant testimony to provide nor an
5 argument to support an inference that mere service in Guantanamo Bay³ or Iraq renders one an
6 important witness in the trial of this action. Indeed, based on the admission of Plaintiffs'
7 counsel, it appears that Plaintiffs compiled their laundry list of potential witnesses merely by
8 searching for addresses on the Internet and in newspapers for persons identified as having served
9 at Guantanamo Bay or in Iraq, or as being employees of Defendants. See Pyle Decl. ¶ 24 n.2.⁴
10 The fact that persons who served at Guantanamo Bay or Iraq, but with no known evidence to
11 provide, might be located throughout the United States cannot overcome the indisputable fact
12 that the non-parties who supposedly masterminded and/or implemented Plaintiffs' fanciful
13 "torture conspiracy" are highly concentrated in the Eastern District of Virginia.
14

15
16 Even if the Court were to credit Plaintiffs' laundry list, that list is flawed and incomplete.
17 At least thirty-six of the listed witnesses are identified as employees of CACI or Titan, which
18 (according to Plaintiffs' brief) renders their location irrelevant. Pl. Opp. at 12-13. Further,
19 Plaintiffs' witness "list" is deliberately skewed. Plaintiffs' recitation of witnesses includes five
20 high ranking officers of Titan who are located in California, the district in which Plaintiffs would
21
22

23
24 ³ No CACI entity has had any involvement in providing interrogators to Guantanamo
25 Bay, Cuba, and Plaintiffs have provided no evidence to the contrary, which makes plaintiffs'
focus on Guantanamo Bay in its witness list somewhat puzzling.

26 ⁴ Plaintiffs have also offered Declarations from their own purported expert witnesses,
27 Marney Mason and Peter Bauer, indicating that they would to travel to California to testify at
28 trial. Even if a party could affect the merits of a transfer motion through the location of the
purported experts it retains, the fact remains that neither of these witnesses lives in California
and neither has stated an unwillingness to travel to the Eastern District of Virginia for trial.

1 like the case to stay, but omits the equivalent officers of CACI Defendants, who are located in
2 the Eastern District of Virginia. See Pyle Decl. ¶ 24. Similarly, Plaintiffs inexplicably omit
3 from their list of potential witnesses the high-ranking government officials, such as Secretary of
4 Defense Donald Rumsfeld and Undersecretaries of Defense Douglas Feith and Steven Cambone,
5 who, according to Plaintiffs' RICO Case Statement, supposedly conspired with Defendants to
6 torture Iraqis. The reason for this omission is obvious: these witnesses are employed at the
7 Pentagon, and listing them would undercut Plaintiffs' opposition. Putting aside Defendants and
8 their employees, Plaintiffs have identified a grand total of *two* potential witnesses located in
9 California, both enlisted military personnel, neither of whom has any identified evidence to
10 provide. Thus, the subpoena power of *this* Court would be of little use to the parties even if the
11 Court were to credit Plaintiffs' highly suspect recitation of potential trial witnesses.

14 Beyond the presence of high-level government officials in the Eastern District of
15 Virginia, it bears mention that the military police unit that was most implicated in the abuses at
16 Abu Ghraib prison is headquartered in Cresaptown, Maryland, which is just outside the reach of
17 the Eastern District of Virginia's subpoena power. As a result, many members of that unit can
18 be expected to reside within the Eastern District of Virginia, or at least within its subpoena
19 power. Indeed, two of the military policemen referred to courts-martial as a result of the abuses
20 at Abu Ghraib, SPC Sabrina Harman and SPC Megan Ambuhl, reside within the Eastern District
21 of Virginia, and a third, SGT Javal Davis, resides well within the Eastern District of Virginia's
22 subpoena power. O'Connor Decl. ¶¶ 2-3. Thus, the non-party witnesses likely to have relevant
23 evidence – from the Secretary of Defense to the privates and corporals who worked at Abu
24 Ghraib prison on a daily basis – are concentrated in and around the Eastern District of Virginia,
25 making that district a more convenient forum for non-party witnesses.

1 **C. The Eastern District of Virginia is a More Convenient Forum for Access**
2 **to Relevant Evidence**

3 Given Plaintiffs' absurd allegation of a torture conspiracy between Defendants, the
4 Department of Defense, the CIA, and the National Security Agency, the CACI Defendants have
5 demonstrated that documents in the possession of these government agencies are subject to the
6 subpoena power of the Eastern District of Virginia. The CACI Defendants further noted that the
7 regularity with which the Eastern District of Virginia handles national security cases, and the
8 presence of an established SCIF facility, makes that court more convenient in terms of access to
9 sensitive government documents concerning United States policies and activities in Iraqi
10 detention facilities. CACI Br. at 13-14. In their opposition, Plaintiffs make no attempt to argue
11 that documentary evidence is readily accessible from this district, nor could they plausibly make
12 such an assertion. Instead, Plaintiffs disingenuously suggest that the evidence in this case is
13 unlikely to contain classified and confidential information, as if the United States government
14 will willingly produce the documents in its possession without the need for significant discovery
15 litigation and without a need to adhere to security measures in reviewing such documents.
16
17

18 It is inconceivable that discovery into Plaintiffs' claims of a high-level governmental
19 conspiracy, if it proceeded beyond the motion to dismiss stage, would not involve efforts to
20 obtain discovery of sensitive and classified documents concerning the United States' conduct
21 with respect to detainees in Iraq. Indeed, Plaintiffs have repeatedly represented that they will
22 need substantial discovery in order to identify the location of certain detention facilities in Iraq,
23 as well as into the identity of various actors in Iraq, matters that would require review of
24 sensitive materials not made public by the United States. Similarly, the CACI Defendants – and
25 presumably the Plaintiffs – lack access to the United States military's interrogation records,
26
27 documents that would be necessary to determine which, if any, of the Plaintiffs were even
28

1 interrogated by CACI personnel. The fact that this case, if it proceeds to discovery, likely will
2 involve substantial litigation over documents in the possession of the Defense Department and
3 other agencies located in or around the Eastern District of Virginia, and the fact that the U.S.
4 District Court in Alexandria, Virginia, has a SCIF in place for ready review of sensitive
5 government materials, strongly supports transfer of this action to the Eastern District of Virginia.
6

7 **IV. THE EASTERN DISTRICT OF VIRGINIA IS MORE CONVENIENT THAN THE**
8 **DISTRICT OF COLUMBIA**

9 Although the CACI Defendants have argued that this case should alternatively be
10 transferred to the District of Columbia, the Eastern District of Virginia remains the most
11 convenient forum for the trial of this action. Most fundamentally, the *only* factor that would
12 favor the District of Columbia over the Eastern District of Virginia is the existence of a similar
13 action proceeding in the District of Columbia. However, the plaintiffs in the District of
14 Columbia action have made it clear that they do not desire to proceed in conjunction with the
15 plaintiffs in this action, and have vowed to opt out of any class that ultimately might be certified
16 in this action. Therefore, the existence of a similar lawsuit in the District of Columbia does not
17 make that district more convenient than the Eastern District of Virginia.
18

19
20 In addition, all of the CACI Defendants are located in the Eastern District of Virginia, as
21 is the Titan office responsible for the contracts at issue. The most relevant non-party government
22 witnesses are also headquartered in Northern Virginia, including the Department of Defense and
23 Central Intelligence Agency. As described above, the Eastern District of Virginia routinely
24 handles matters the issues to classified information and national security that are likely to be
25 raised over the course of the case. Finally, although urging the Court not to consider relative
26 court docket congestion, Plaintiffs' concede that the Eastern District of Virginia has the fastest
27 time in the country for the disposition of civil cases. The CACI Defendants' have a distinct
28

1 interest in clearing their names in the most expeditious manner possible. Of the districts to
2 which transfer would be appropriate, transfer to the district with the nation's least congested
3 docket best serves the parties' interest in a swift resolution of this action.

4
5 **V. CONCLUSION**

6 For the foregoing reasons, the Court should grant the CACI defendants' motion to
7 transfer this case to the U.S. District Court for the Eastern District of Virginia, or in the
8 alternative to the U.S. District Court for the District of Columbia.

9 Respectfully submitted,

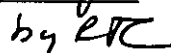
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