

Center for Constitutional Rights

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://ccrjustice.org/home/blog/2015/09/23/torture-not-political-question>

Public Facing Advocacy Writing

The CCR blog

This week the Center for Constitutional Rights appealed the dismissal of [Al Shimari v. CACI](#), a case brought in 2008 on behalf of four Iraqi civilians against private military contractor CACI Premier Technology, Inc. (CACI) for its role in their torture at the infamous Abu Ghraib prison. In the latest turn in this seven-year legal battle, a district judge [ruled](#) in June that what our clients endured was unreviewable by a court under the political question doctrine.

At Abu Ghraib, our clients were subjected to brutal treatment, including electric shocks, sexual violence, forced nudity, broken bones, and deprivation of food, water, and oxygen. They were ultimately released from the prison without charge. U.S. military investigators have directly implicated CACI employees in these heinous acts. After nearly eight years of litigation, however, accountability for CACI's role in these abuses remains elusive.

The political question doctrine arises out of the separation of powers, holding that courts are only able to decide legal questions, while purely political questions are the responsibility of other branches of government and thus remain beyond the judiciary's jurisdiction. A standard formulation of the doctrine suggests that the military's decision to attack a particular target on the battlefield during wartime will likely be unreviewable by the courts because military logistics fall within the president's domain, and because there are not clear judicial criteria (what the courts call judicially manageable standards) available to judge the wisdom or correctness of the military's decision to strike. Nevertheless, it is clear that not all military judgments are beyond judicial review, particularly since the political question doctrine is meant to be interpreted narrowly and does not limit courts from hearing cases with controversial issues or political elements.

In this case, the district judge concluded that the political question doctrine required the dismissal of our clients' torture claims because he found that interrogations in Iraq were directed by the military and that all of CACI's conduct was essentially direct military action; as such, the court found that a suit against CACI would therefore be an impermissible lawsuit against the military even though the conduct in question violated U.S. and international law. The district court further held that our clients' allegations of torture, war crimes, and cruel and inhuman treatment could not be resolved without questioning sensitive military judgments, implying that the U.S. government could have ordered CACI interrogators to brutalize our clients. Disturbingly, the district court also proceeded to refer to a cloud of ambiguity surrounding the definition of torture, relying on former Deputy Assistant U.S. Attorney General John Yoos' self-serving and deeply flawed conclusion that anti-torture provisions may not apply to enemy combatants. That ambiguity, the court concluded, made it somehow impossible to decide whether the appalling treatment our clients endured constituted torture.

The district court maintained that the military exercised complete control over CACI, in spite of substantial evidence to the contrary. Despite the formal structures of supervision between the military and CACI, overwhelming evidence presented in this case demonstrates that there was in fact a command vacuum at Abu Ghraib, which permitted CACI interrogators to assume positions of authority to order military police including Ivan Frederick and Charles Graner, who were court-martialed for their actions to torture and abuse detainees.

The court's dismissal comes despite the assertion of the U.S. government itself that our clients' torture-related claims are within the jurisdiction of the court, and findings by U.S. military investigators that several CACI employees directed the abuse of prisoners in order to soften them up for interrogations. The district court's expansion of the political question doctrine threatens to create a system in which CACI, a for-profit corporation, remains immune from civil liability, while CACI's co-conspirators (including Graner and Frederick) were subject to [criminal sanctions](#) by the military for their corresponding role in torture and abuse committed against prisoners at Abu Ghraib.

The district judge's dismissal is emblematic of a worrying trend of courts relying on an increasingly sweeping application of the political question doctrine to military contractors at the expense of accountability. Our latest filing asks the Fourth Circuit Court of Appeals to address this overbroad application of the political question doctrine, and in so doing, to ensure that torture is not a political question or a viable policy option of the military or contractors, but is rather recognized as unambiguously unlawful conduct under domestic and international law.

[View the discussion thread.](#)

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