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## Landmark case against Marine in Iraq detainee death opens

3 hours ago

RIVERSIDE, California (AFP) — A former US Marine ignored clear rules for handling prisoners and ordered the killing of four unarmed Iraqis during 2004 fighting in Fallujah, prosecutors told a court here Thursday.

Jose Nazario, 28, disregarded US Marine Corps training that prisoners must be protected at all times, shooting dead two of the captives himself before ordering two subordinates to kill the others, prosecutors said.

The allegations came in opening statements of a trial that has made US legal history. It is the first time that a military veteran has been tried by a civilian jury for actions that occurred during combat.

Nazario, who had left the Marines by the time he was arrested last year, denies charges of voluntary manslaughter, assault with a dangerous weapon and discharging a firearm during a crime of violence.

US attorney Charles Kovats said Nazario, a former Marine Corps sergeant, shot dead the detainees during house-to-house searches conducted as part of "Operation Phantom Fury" in Fallujah on November 9, 2004.

"They were unarmed, they were un-resisting, they had their hands up," Kovats told a jury of nine women and three men.

"But rather than take them prisoner as he was trained to do, he shot and killed two of the men and ordered his subordinates to kill two more of them," Kovats said.

Kovats said all Marines received training in the laws of war during boot camp, which included two key rules, to "allow people to surrender, and not to kill or torture detainees."

In witness testimony Thursday, a military instructor told the court Marines deployed to Iraq had been told the necessity of following the laws of war in order to occupy "the moral high ground."

"We set the standard that in order to win we must set the moral high ground," Major Dan Schmidt said. "We must be the good guys. You're either a professional warrior or you're just a brawler on the streets."

Two other Marines involved in the alleged killings, Ryan Weemer and Jermaine Nelson, have since been charged with unpremeditated murder and dereliction of duty and face courts martial.

Both Weemer and Nelson have been granted immunity to testify at the trial. They refused to do so during a grand jury hearing for Nazario and were held in contempt. Weemer and Nelson are due to

testify on Friday.

The case came to light after Weemer, 25, underwent a background screening for a job in the US Secret Service in 2006.

Asked if he had ever taken part in an unjustified killing, Weemer told his interviewer: "That actually did happen, to be honest."

The revelation triggered an investigation by the US Naval Criminal Intelligence Service which saw Nazario's squad mates questioned.

Lawyers for Nazario have said the case will set a dangerous precedent by allowing jurors with no military background to pass judgment on decisions taken during the heat of battle.

If Nazario is convicted, it could lead to hesitation among troops, putting themselves and fellow soldiers at risk, his defense argued.

Nazario's defense lawyer Kevin McDermott told jurors they were hearing a case of "historic importance."

He said when Marines rolled into Fallujah for a bloody, climactic battle with insurgents in 2004, they were operating against an enemy who doesn't "play fair, who didn't have rules."

"The insurgents had one ploy in mind from the beginning. To kill as many Marines as possible," McDermott said.

The fierce nature of the fighting in Fallujah forced Marines to "toss out" prior rules of engagement as soon as they entered the city," McDermott said, adding that there was not a shred of physical evidence against Nazario.

"The government is attempting to make you convict a man when they have no physical evidence of a crime," McDermott said. "They won't even be able to tell you who the victims were. They have no identity, no fingerprints, no DNA."