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# Ex-Marine Faces Civil Trial

## Charged in Killing Of Unarmed Iraqis

By **Chelsea J. Carter** **The Associated Press**

IRVINE, Calif. — A former Marine sergeant facing the first federal civilian prosecution of a military member accused of a war crime says there is much more at stake than his claim of innocence on charges that he killed unarmed detainees in Fallujah, Iraq.

In the view of Jose Luis Nazario Jr., U.S. troops may begin to question whether they will be prosecuted by civilians for doing what their military superiors taught them to do in battle.

Nazario is the first military service member who has completed his duty to be brought to trial under a law that allows the government to prosecute defense contractors, military dependents and those no longer in the military who commit crimes outside the United States.

"They train us, and they expect us to rely back on that training. Then when we use that training, they prosecute us for it?" Nazario said during an interview Saturday with The Associated Press.

"I didn't do anything wrong. I don't think I should be the first tried like this," said Nazario, whose trial begins Tuesday in Riverside, east of Los Angeles.

If Nazario, 28, is convicted of voluntary manslaughter, some predict damaging consequences on the battlefield.

"This boils down to one thing in my mind: Are we going to allow civilian juries to Monday-morning-quarterback military decisions?" said Nazario's attorney, Kevin McDermott.

Others say the law closes a loophole that allowed former military service members to slip beyond the reach of prosecution. Once they complete their terms, troops cannot be prosecuted in military court.

Scott Silliman, a law professor and executive director of the Center on Law, Ethics and National Security at Duke University, says it has little to do with questioning military decisions and everything to do with whether a service member committed a crime.

"From a legal point of view, there is no difference in law between war and peace," he said.

The Military Extraterritorial Jurisdiction Act law was written in 2000 and amended in 2004 primarily to prosecute civilian contractors who commit crimes while working for the U.S. overseas. One of the authors contends prosecuting former military personnel was "not the motivation."

"I don't fault the Department of Justice for using what legal authority they have if a clear criminal act has been committed. But I do think that it would be preferable for crimes committed on active duty be prosecuted by court martial rather than in civilian courts," said Sen. Jeff Sessions, R-Ala.

"I think maybe what it says is we need to rethink the question of military personnel who are subject to

prosecution.”

Telephone messages for a spokesman in the U.S. attorney’s office in Los Angeles seeking comment were not returned.

Nazario, of Riverside, is charged with one count of voluntary manslaughter on suspicion of killing or causing others to kill four unarmed detainees in November 2004 in Fallujah, during some of the fiercest fighting of the war. He also faces one count of assault with a deadly weapon and one count of discharging a firearm during a crime of violence.

If convicted of all charges, he could face more than 10 years in prison.

The case came to light in 2006, when Nazario’s former squadmate, Sgt. Ryan Weemer, volunteered details to a U.S. Secret Service job interviewer during a lie-detector screening that included a question about the most serious crime he ever committed. Weemer was ordered this month to stand trial in military court on charges of unpremeditated murder and dereliction of duty in the killing of an unarmed detainee in Fallujah. He has pleaded not guilty.

According to a Naval Criminal Investigative Service criminal complaint, several Marines allege Nazario shot two Iraqi men who had been detained while his squad searched a house. The complaint claims four Iraqi men were killed during the action.

The complaint states that the squad had been taking fire from the house. After the troops entered the building and captured the insurgents, Nazario placed a call on his radio.

“Nazario said that he was asked, ‘Are they dead yet?’ ” the complaint states. When Nazario responded that the captives were still alive, he was allegedly told by the Marine on the radio to “make it happen.”

Nazario later received the Navy-Marine Corps Commendation Medal with a “V” for valor for combat and leadership in Fallujah.

Though Nazario and his attorneys declined to discuss the facts of the case with the AP, the former Marine has always maintained his innocence.



NAZARIO: First to be tried under new U.S. law