

In the Supreme Court of the United States

No. 22A_____

ASTRAZENECA UK LIMITED, ET AL., APPLICANTS

v.

JOSHUA ATCHLEY, ET AL.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

To the Honorable John G. Roberts, Jr.
Chief Justice of the United States
and Circuit Justice for the District of Columbia Circuit

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for applicants¹ respectfully request a 60-day extension of time, to July 2, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. Pursuant to Rule 30.1 of this Court, the petition would then be due on the next business day, July 3, 2023. The court of appeals denied rehearing en banc on February 2, 2023. *Infra*, App.62a. Unless extended, the time for filing a petition

¹ Applicants are: AstraZeneca UK Limited, AstraZeneca Pharmaceuticals LP, GE Healthcare USA Holding LLC, GE Medical Systems Information Technologies, Inc., GE Medical Systems Information Technologies GmbH, F. Hoffmann-La Roche Ltd, Genentech, Inc., Hoffmann-La Roche Inc., Johnson & Johnson, Cilag GmbH International, Ethicon Endo-Surgery, LLC, Ethicon, Inc., Janssen Ortho LLC, Janssen Pharmaceutica N.V., Johnson & Johnson (Middle East) Inc., Ortho Biologics LLC, Pfizer Inc., Pfizer Enterprises SARL, Pfizer Pharmaceuticals LLC, Pharmacia & Upjohn Company LLC, and Wyeth Pharmaceuticals LLC.

for a writ of certiorari will expire on May 3, 2023. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents important questions of statutory interpretation involving the Anti-Terrorism Act (ATA).

The ATA provides U.S. nationals injured “by reason of an act of international terrorism” with a civil cause of action against the perpetrators of that act as well as “any person who aids and abets, by knowingly providing substantial assistance, ... such an act.” 18 U.S.C. § 2333(a), (d)(2). Aiding-and-abetting liability, however, attaches only when a group designated by the Secretary of State as a “foreign terrorist organization” “committed, planned, or authorized” the relevant “act of international terrorism.” *Id.* § 2333(d)(2).

The decision below reversed the dismissal of a complaint alleging that some of the world’s largest pharmaceutical and medical-device manufacturers and suppliers committed or aided and abetted acts of international terrorism. In doing so, the D.C. Circuit created at least two circuit splits: The court held that transactions with a foreign-government agency could support proximate causation for direct liability, contrary to the holdings of four other circuits. And the court held that a designated terrorist organization “plan[s] or authorize[s]” every attack carried out by a different, non-designated group that the designated group trained or inspired, contrary to the holdings of three other circuits.

Moreover, the D.C. Circuit’s decision contributed to the circuits’ broader confusion over how to interpret the ATA’s requirement that aiders and abettors “knowingly provid[e] substantial assistance” to the “act of international terrorism” that injured the plaintiff. *Id.* The proper interpretation of that language is currently before this Court in *Twitter, Inc. v. Taamneh*, No. 21-1496 (argued Feb. 22, 2023). Like the Ninth Circuit in *Taamneh*, the D.C. Circuit watered down the ATA’s requirement that defendants “knowingly provid[e] substantial assistance.” *See generally* PhRMA Amicus Br. 8-17, *Taamneh*, No. 21-1496 (documenting similar errors in the two circuit decisions).

2. In October 2017, plaintiffs filed this lawsuit, alleging that 21 major pharmaceutical and medical-device companies committed or aided and abetted acts of international terrorism. Plaintiffs or their family members were allegedly injured during the Iraq War while fighting the militia Jaysh al-Mahdi. Jaysh al-Mahdi is not a U.S.-designated foreign terrorist organization but allegedly received training, weapons, and religious inspiration from Hezbollah, a designated terrorist group. Plaintiffs allege that Jaysh al-Mahdi supporters infiltrated the Iraqi Health Ministry in the mid-2000s and diverted Ministry resources to attacks on U.S. military personnel.

In furtherance of U.S.-government efforts to rebuild war-torn Iraq, some defendants sold medicine and medical goods to the Iraqi Health Ministry during that period. Other defendants manufactured these goods or their components. Plaintiffs allege—and defendants deny—that some defendants bribed Ministry officials, sometimes in the form of free medical goods. Plaintiffs allege that these transactions either were themselves acts of international terrorism or that defendants knowingly provided substantial assistance to acts of international terrorism.

3. In July 2020, the district court dismissed the complaint. *Atchley v. AstraZeneca UK Ltd.*, 474 F. Supp. 3d 194, 200 (D.D.C. 2020). The court rejected plaintiffs' direct-liability theory for lack of proximate causation. *Id.* at 209. The Health Ministry's "intervening role" severed any "causal chain." *Id.* at 210.

On aiding-and-abetting liability, the court rejected liability because Jaysh al-Mahdi is not a designated foreign terrorist organization. *Id.* at 211. Hezbollah's alleged "general support" to Jaysh al-Mahdi did not transform every Jaysh al-Mahdi attack into one "planned" or "authorized" by Hezbollah. *Id.* In the alternative, the court rejected aiding-and-abetting liability for lack of knowing substantial assistance, given that defendants did not "assum[e] a role in ... terrorist activities." *Id.* at 214 (citation omitted).

The court additionally dismissed all claims against the non-U.S. defendants for lack of specific personal jurisdiction. *Id.* at 203.

4. In January 2022, the D.C. Circuit reversed. App.60a. On direct liability, the court held that plaintiffs adequately alleged proximate causation. App.36a. The court deemed irrelevant whether defendants were “one step removed from the terrorists.” App.42a (citation omitted).

On aiding-and-abetting liability, the court first held that the complaint adequately alleged that Hezbollah “planned or authorized” every Jaysh al-Mahdi attack despite being “more in the background” for the vast majority. App.18a. In the court’s view, the “provision of weaponry, training,” or even “religious authority” amounted to planning or authorizing each specific attack. App.22a-23a. The court then held that plaintiffs had adequately alleged that defendants “knowingly provid[ed] substantial assistance to Jaysh al-Mahdi.” App.35a.

The court also held that the complaint adequately pleaded specific jurisdiction over the non-U.S. defendants. App.45a.

Highlighting the circuit splits created by the panel’s decision, defendants petitioned for rehearing en banc. The U.S.-based defendants sought review of the panel’s interpretation of the ATA, while the non-U.S. defendants separately petitioned for review of the panel’s reversal of their dismissal based on personal jurisdiction. The en banc court ordered plaintiffs to respond to both petitions and, on February 2, 2023, denied rehearing.

5. Counsel for applicants respectfully request a 60-day extension of time to July 2, 2023, within which to file a petition for a writ of certiorari. Because July 2 is a Sunday, the petition would then be due on July 3, 2023, pursuant to this Court’s Rule 30.1. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 6.1(a)(4), at 6-10 (11th ed. 2019).

This case presents significant and complex issues regarding the proper interpretation of the ATA. In a single case, over 1,250 plaintiffs have joined claims against 21 defendants, which are located in 5 countries and represented by 6 law firms. Preparing the petition will require significant coordination between defendants and their various counsel, who will need to review and approve any petition.

At the same time, this Court is likely to offer its first-ever interpretation of the ATA in *Taamneh* before the end of the current Term. Extending the time to file a petition for certiorari until July 2 would likely permit applicants to take into account this Court's ruling in preparing their petition, obviating the need for supplemental briefing whenever the Court issues its decision in *Taamneh*. An extension would thus benefit all parties and the Court by avoiding cumulative filings. Additional time is therefore needed to prepare and print the petition in this case.

KANNON K. SHANMUGAM
 PAUL, WEISS, RIFKIND, WHARTON &
 GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

*Counsel for Applicants Johnson &
 Johnson, Cilag GmbH International,
 Ethicon EndoSurgery, LLC, Ethicon,
 Inc., Janssen Ortho LLC, Janssen
 Pharmaceutica NV, Johnson & John-
 son (Middle East) Inc., and Ortho Bio-
 logics LLC*

BETH S. BRINKMANN
 COVINGTON & BURLING LLP
One City Center
850 Tenth Street, N.W.
Washington, DC 20001

*Counsel for Applicant F. Hoffmann-
 La Roche Ltd*

DAVID W. BOWKER
 WILMER CUTLER PICKERING HALE
 AND DORR LLP
2100 Pennsylvania Ave., N.W.
Washington, DC 20037

*Counsel for Applicants Genentech, Inc.
 and Hoffmann-La Roche, Inc.*

Respectfully submitted,

/s/ Lisa S. Blatt

LISA S. BLATT
Counsel of Record
 WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

*Counsel for Applicants Pfizer Inc., Pfizer
 Enterprises SARL, Pfizer Pharmaceuti-
 cals LLC, Pharmacia & Upjohn Com-
 pany LLC, and Wyeth Pharmaceuticals
 LLC*

JOHN B. BELLINGER, III
 ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, DC 20001

*Counsel for Applicants GE Healthcare
 USA Holding LLC, GE Medical Systems
 Information Technologies, Inc., and GE
 Medical Systems Information Technolo-
 gies GmbH*

PAUL S. MISHKIN
 DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

*Counsel for Applicants AstraZeneca
 Pharmaceuticals LP and AstraZeneca
 UK Limited*

APRIL 3, 2023

CORPORATE DISCLOSURE STATEMENT

Applicants AstraZeneca UK Limited and AstraZeneca Pharmaceuticals LP are wholly owned indirect subsidiaries of AstraZeneca PLC. AstraZeneca PLC is a publicly held company. Upon information and belief, no publicly held corporation owns 10% or more of its stock. No other publicly held company owns 10% or more of the stock in AstraZeneca UK Limited or AstraZeneca Pharmaceuticals LP.

Applicant GE Healthcare USA Holding LLC is owned by GE Healthcare IITS LLC and Applicant GE Medical Systems Information Technologies, Inc., neither of which are publicly traded. Applicant GE Medical Systems Information Technologies GmbH is wholly owned by GE Healthcare Holding Germany GmbH, which is not publicly traded. GE Healthcare USA Holding LLC and GE Medical Systems Information Technologies GmbH's ultimate parent is GE HealthCare Technologies Inc. GE Medical Systems Information Technologies, Inc. is a wholly owned indirect subsidiary of GE HealthCare Technologies Inc. GE HealthCare Technologies Inc. is a publicly held company, and General Electric Corporation holds 10% or more of its stock. Upon information and belief, no other publicly held company owns 10% or more of the stock in GE Healthcare USA Holding LLC, GE Medical Systems Information Technologies GmbH, or GE Medical Systems Information Technologies, Inc.

Applicants Cilag GmbH International, Ethicon Endo-Surgery, LLC, and Ortho Biologics LLC, are indirect subsidiaries of Applicant Johnson & Johnson. Applicants Ethicon, Inc., Janssen Ortho LLC, and Johnson & Johnson (Middle East) Inc. are wholly owned subsidiaries of Johnson & Johnson. Applicant Janssen Pharmaceutica NV is an indirectly

wholly owned subsidiary of Johnson & Johnson. Johnson & Johnson is a publicly held corporation. Upon information and belief, no publicly held corporation owns 10% or more of its stock. No other publicly held company owns 10% or more of the stock in Ethicon Endo-Surgery, LLC, Janssen Ortho LLC, Janssen Pharmaceutica NV, Ortho Biologics LLC, Ethicon, Inc., or Johnson & Johnson (Middle East) Inc.

Applicants Genentech, Inc. and Hoffmann-La Roche Inc. are wholly owned subsidiaries of Roche Holdings, Inc. Roche Holdings, Inc.'s ultimate parent, Roche Holding Ltd, is publicly traded. Applicant F. Hoffmann-La Roche Ltd is a wholly owned subsidiary of Roche Holding Ltd. Upon information and belief, no publicly held company owns 10% or more of La Roche Holding Ltd's stock. No other publicly held company owns 10% or more of the stock in Genentech, Inc., Hoffmann-La Roche Inc., or F. Hoffmann-La Roche Ltd.

Applicant Pfizer Enterprises SARL has merged into Pfizer Holdings International Luxembourg (PHIL) SARL, a wholly owned subsidiary of Applicant Pfizer Inc. Applicants Pharmacia & Upjohn Company LLC and Wyeth Pharmaceuticals LLC are indirect, wholly owned subsidiaries of Pfizer Inc. Pfizer Inc. is a publicly held company. Upon information and belief, no publicly held corporation owns 10% or more of Pfizer Inc.'s voting shares. Applicant Pfizer Pharmaceuticals LLC is an indirect, wholly owned subsidiary of Viatris Inc. Viatris Inc. is a publicly held company. Upon information and belief, no publicly held corporation owns 10% or more of Viatris Inc.'s voting shares. No other publicly held company owns 10% or more of the stock of Pfizer Enterprises SARL, Pharmacia & Upjohn Company LLC, Wyeth Pharmaceuticals LLC, or Pfizer Pharmaceuticals LLC.

APRIL 3, 2023

/s/ Lisa S. Blatt
LISA S. BLATT