

No.

In the Supreme Court of the United States

ASTRAZENECA UK LIMITED, ET AL.,
PETITIONERS,

v.

JOSHUA ATCHLEY, ET AL.,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Anti-Terrorism Act gives U.S. nationals injured “by reason of an act of international terrorism” causes of action for direct liability against the perpetrators and aiding-and-abetting liability against persons who “knowingly provid[e] substantial assistance.” 18 U.S.C. § 2333(a), (d)(2). For aiding-and-abetting liability, the “act of international terrorism” must be “committed, planned, or authorized by ... a foreign terrorist organization” as designated by the Secretary of State. *Id.* § 2333(d)(2).

Petitioners are pharmaceutical and medical-device companies who supplied medical goods to the Iraqi Health Ministry. Respondents allege that a militia infiltrated the Ministry and diverted goods and payments to fund attacks that injured respondents. The D.C. Circuit held that these allegations pleaded an ATA aiding-and-abetting claim and proximate causation for direct liability. Thereafter, this Court held in *Twitter, Inc. v. Taamneh* that ATA aiding-and-abetting liability requires “conscious, voluntary, and culpable participation in” the “act of international terrorism that injured the plaintiffs.” 143 S. Ct. 1206, 1223, 1225 (2023).

The questions presented are:

1. Whether, in light of *Taamneh*, the Court should grant, vacate, and remand for further proceedings.
2. Whether plaintiffs plead proximate causation as required for ATA direct liability by alleging that defendants transacted with a foreign-government agency that was in turn infiltrated by the group that injured plaintiffs.
3. Whether a U.S.-designated foreign terrorist organization “plan[s]” or “authorize[s]” a specific attack—as required for ATA aiding-and-abetting liability—by providing general support or inspiration to a different group that carries out the attack.

PARTIES TO THE PROCEEDING

Petitioners were defendants in the district court and appellees in the D.C. Circuit. Petitioners 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 NV, Johnson & Johnson (Middle East) Inc., Ortho Biologics LLC, Pfizer Inc., Pfizer Pharmaceuticals LLC, Pfizer Enterprises SARL, Pharmacia & Upjohn Company LLC, and Wyeth Pharmaceuticals LLC.

Respondents were plaintiffs in the district court and appellants in the D.C. Circuit. Respondents are Joshua Atchley, Benny Atchley, Connie Atchley, Elissa Atchley, Katelyn Weatherford, John Aragon, Sr., Brian Beaumont, Dempsey Bennett, Doris Bennett, Darnell Bennett, Brandeaux Campbell, Angie Capra, Anthony Capra, Sr., Sharon Capra, Mark Capra, Victoria Capra, A.C., a minor, Jared Capra, S.C., a minor, Danielle Capra, Emily Capra, Jacob Capra, Joanna Capra, Joseph Capra, Julia-Anne Capra, Michael Capra, Rachel Lee, Sarah Johnson, Sally Chand, individually, and for the estate of Michael Chand, Sr., Michael Chand, Jr., Christina Mahon, Ryan Chand, Brenda Chand, Kara Connelly, Jean Dammann, Mark Dammann, Kevin Connelly, Jimmy Connolly, Melissa Doheny, Kathy Kugler, Robert Kugler, Amy Ritchie, Drew Edwards, Donielle Edwards, Alan Edwards, Brenda Edwards, Dane Edwards, Logan Edwards, Samantha Edwards, Ian Edwards, Hannah Edwards, Austin Emory, Brandon Emory, individually, and for the estate of Michael Adam Emory, L.E., a minor, Maria de la luz Villa,

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Bobby Emory, Carolyn Baldwin, for the estate of Kathy Louise Burns, Tanya Evrard, Jacob Harbin, Danny Harbin, Linda Harbin, Elijah Harbin, Esther Tate, Leasa Dollar, Eugene Delozier, Billy Johnson, Bridget Juneau, individually, and for the estate of William Juneau, Stephanie Juneau, William Kelso, John Kirby, Rebekah Kirby, Caren Klecker, Gregory Klecker, individually, and for the estate of Deborah Klecker, Leroy Lancaster, Michael Lukow, Bruce Lukow, Rikki Lukow, Kristen Kelley, Andrew Lukow, Joseph Lukow, Angela Robinson, Randall Thompson, Nathan McClure, Nikita McNeal, J.M., a minor, Joseph Mixson, John Mixson, Karon Mixson, Alicia Mixson, Richard Neiberger, Mary Neiberger, Eric Neiberger, individually, and for the estate of Christopher Neiberger, Ami Neiberger, Robert Neiberger, Anthony Donald Pellecchia, Anthony Pellecchia, Kathryn Ann Johnson, Daniel Price, Terri Overton, Steven Price, Carl Reiher, Shay Hill, for the estate of Alan, Rogers, Luis Rosa-Valentin, Luis Rosa-Alberty, M.R., a minor, Alex Rosa-Valentin, Iliana Rosa-Valentin, Elena Shaw, Emily Shaw, Casey Shaw, L.S., a minor, Erin Dructor, individually, and for the estate of Blake Stephens, Kathleen Stephens, Trent Stephens, Derek Stephens, Rhett Stephens, Summer Stephens, Brittani Hobson, Susan Arnold, individually, and for the estate of Ronald Tucker, David Arnold, Samantha Tucker, Daisy Tucker, Brandon Arnold, Rachelle Idol, James Vaughn, Jennine Vaughn, Clifford Vaughn, Michele White, individually, and for the estate of Delmar White, Shelby White, S.W., a minor, Robert White, Robert Winegar, Patricia Clavenna, Elyse Winegar, Mary Jagello, Robert Lloyd Winegar, Melissa Witte, William Witte, individually, and for the estate of Kevin Witte, William Zappa, Haekyung Zappa, Patsy Bell, Richard Landeck, Victoria Landeck, Jennifer Landeck, Carrie Thompson, individually, and for the estate of Sean Thomas, A.T., a minor, Daniel Thomas, Sr.,

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Diana Thomas, Daniel Thomas, Jr., David Thomas, Kelly Gillis, Melinda Flick, Michelle West, Madison West, Nistasha Perez, Michael Murphy-Sweet, Elizabeth Murphy-Sweet, Anona Gonelli, Robert J. Kuhlmeier, Theresa A. Kuhlmeier, Theresa A. Kuhlmeier, Edward Kuhlmeier, Thomas Kuhlmeier, John Kuhlmeier, David Kuhlmeier, Robert W. Kuhlmeier, Tanja Kuhlmeier, individually, and for the estate of Daniel Kuhlmeier, K.K., a minor, Donna Farley, Noel J. Farley, Barbara Farley, Brett Farley, individually, and for the estate of Steven Farley, Jessica Farley, Cameron Farley, Chris Farley, Vickie McHone, Noel S. Farley, David Farley, Carla Proffitt, Dawn Williamson, Leslie Hardcastle, individually, and for the estate of Joshua Reeves, J.R., a minor, James Reeves, W. Jean Reeves, Jared Reeves, Sherri Hoilman, Joni Little, Maria Lane, Mark Munns, Martha Stewart, Crista Munns, Bree Reuben, Casey Reuben, Ben Reuben, Patrick Reuben, Quinten Reuben, Linda Reuben, Francis Coté, Nancy Coté, Samantha Dunford, Maximillian Shroyer, Christopher Coté, individually, and for the estate of Jonathon Coté, Barbara Alexander, individually, and for the estate of Ronald Withrow, Johnny Alexander, Shawn Ryan, Sandra Ryan, A.R., a minor, Barb Thiede, Jason Ryan, Billy Ryan, Angie Ryan, Teresa Beckley, Grant Von Letkemann II, Kelly Von Letkemann, Scott Scurrah, Masina Tuliau, Jennifer Link, Jessica Rew, Sara Lilly, Ryan Hickman, E.H., a minor, Sharon Johnston, Judy Collado, individually, and for the estate of Jay Collado, Kaiya Collado, Maricel Murray, W. Ann Meuli, J.M., a minor, Bryan S. Shelton, individually, and for the estate of Randol Shelton, Darlene Shelton, Bryan T. Shelton, Amanda Shelton, Tammy Kinney, Tammie Denboer, Derek Gajdos, Sharonda Parlin, Cynthia Parlin, Maria Vidal, Jimmy Rundell, Robin Davidson, individually, and for the estate of Steven Packer, Christopher Packer, Danielle Packer, Jason Davidson, Zachary Davidson, Katherine

Crow, K.E.C., a minor, K.A.C., a minor, Candace Hudson, David Bush, Jonathan Contreras, Sr., Carlos Contreras, Cesar Contreras, Hernan Contreras, Noel Contreras, Dannyel Contreras, Norma Contreras, Theresa Inouye, Jerry Inouye, Julie Payne, individually, and for the estate of Cameron Payne, K.P., a minor, A-L.P., a minor, Denise Jackson, Aundra Craig, Joyce Craig, T.M.C., a minor, Jonathan Craig, Michael Cook, Andre Brown, Valencia Cook, Debra Cook-Russell, Nashima Craig, Arifah Hardy, Matthew Craig, Tony Botello, Tausolo Aieti, Poloka Aieti, Imo Aieti, Lisi Aieti, Christopher Bouten, Erin Bouten, Jordan Brackett, Brandon Bybee, Mark Cashman, Brian Casey, Brittany Hogan, Shelley Casey, Richard Casey, Johnny Castillo, Michael Dunn, Andrew Fukuzawa, Francisco Gietz, Abelino Gomez, Patrick Hanley, Edward Hanley, Katherine Hanley, Cecelia Hanley, Benjamin Johnson, Tamala Johnson, Greg Johnson, Brandon Johnson, Brooke Plumb, C. Richard Looney, Martha Looney, Barry McDonald, Matthew Mergele, Jareth Payne, Lucas Sassman, Melissa Sassman, Jeremy Smith, Donald Spencer, Jared Stevens, Derrick Stinnett, Brandi Stinnett, Laurie Manylightnings, for the estate of Leland Thompson, Patrick Tutwiler, Crystal Tutwiler, Ryan Wilson, Jami Wilson, Joshua Wold, Celeste Yantis, Presley Alexander, E.W., a minor, Herbert Gill, James Gmachowski, Joshua Grzywa, Neysa Grzywa, Kurtiss Lamb, Lisa Lamb, Jose Lopez, J.L., a minor, David McIntosh, Donald McIntosh, Tyler Norager, Shalee Norager, M.N., a minor, Jason Robinson, Frances Robinson, E.R., a minor, William Weatherly, Michael Weatherly, Jarrod Lagrone, Christopher Halski, Virginia Billiter, Eric Billiter, Adrienne Kidd, Daniel Dudek, Margaret Dudek, Sarah Dudek, Andrew Dudek, Katie Woodard, Chelsea Adair, individually, and for the estate of James Adair, A.A., a minor, Matthew Adamson, R.A., a minor, Karar

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Alabsawi, Rosemarie Alfonso, individually, and for the estate of Carlo Alfonso, K.B., a minor, Kousay Al-Taie, individually, and for the estate of Ahmed Al-Taie, Nawal Al-Taie, Hathal Taie, Jake Altman, Nadja Altman, J.A., a minor, Maira Alvarez, individually, and for the estate of Conrad Alvarez, K.A., a minor, A.A., a minor, C.A., a minor, Cheryl Anaya, Carmelo Anaya Jr., Trista Moffett, individually, and for the estate of Michael Anaya, Cathy Andino, individually, and for the estate of Edwin Andino, II, Veronica Pena Andrade, Veronica D. Andrade, Roberto Andrade, Sr., individually, and for the estate of Roberto, Andrade, Jr., Matthew Andreas, Nicholas Anna, Monica Arizola, Roberto Aaron Arizola, Roberto Arizola, Sr., Cecilia Arizola, Ricardo Arizola, Danny Arizola, Trey Bailey, McKenzie Bailey, Samantha Balsley, individually, and for the estate of Michael Balsley, L.R-W., a minor, Afonso Bandhold, Henry Bandhold, Jr., Mariana Bandhold, Laurel Barattieri, individually, and for the estate of Guy Barattieri, Patricia Wheatley, Cody Barham, Todd Barnum, Dustin Bauer, T.H., a minor, S.B., a minor, K.B., a minor, Kari Carosella, individually, and for the estate of Justin Bauer, Jeremy Bauer, Jacob Bauer, Connie Haddock, Gregory Bauer, David Baxter, Jr., Nicole Baxter, David Baxter, Sr., Brian Beem, Elizabeth Beem, Kelly Beem, Kaitlyn Beem, Cassandra Beem, Joseph Beem, Matthew Benson, Daniel Benson, Carol Benson, B.B., a minor, C.B., a minor, Melissa Benson, Brentyn Bishop, John Blickenstaff, Pam Jones, Trista Carter, Adrianne Blickenstaff, A.B., a minor, C.B, a minor, M.B., a minor, Misty Blickenstaff, Jared Blickenstaff, Denise Vennix, Jeremy Blohm, individually, and for the estates of Alan Blohm and, Christopher Blohm, Kiana Blohm, Paula Bobb-Miles, individually, and for the estate of Brandon Bobb, Johnny Miles, Sr., Racquel Miles, Johnny Miles, Jr., Evan Bogart, Lani Bogart, Douglas Bogart, Cana Hickman, Christo-

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pher Bogart, John Botts, Dara Botts, Elizabeth Cunningham, Steve Botts, Jennifer Botts, Mario Bowen, Michelle Klemensberg, Andrew Bradley, Constance Brian, individually, and for the estate of Brian Brian, Amber Hensley, Michael Briggs, Takarra Briggs, M.D.R. II, a minor, M.J.B., a minor, M.J.B., a minor, Joshua Brooks, Daniel Brooks, Elizabeth Masterson, individually, and for the estate of Joshua Brown, Taylor Brown, individually, and for the estate of Scott Brown, Alan Burks, individually, and for the estate of Peter Burks, Jackie Hlastan, Georgia Burks, Alison McRuiz, Sarah Phillips, Zachary Burks, Larry Cabral, Jr., Jasmyn Rauda, individually, and for the estate of Roland Calderon, Benjamin Carrington, Terry Carter, Linda Carter, Shaun Chandler, Juleonna Chandler, Elizabeth Chism, individually, and for the estate of Johnathan Chism, Danny Chism, Vanessa Chism, Julie Chism, Ann Christopher, individually, and for the estate of Kwesi Christopher, Thomas Coe II, Heather Coe, V.T.C., a minor, Alejandro Contrerasbaez, Jessica Contrerasbaez, Peter Pasillas, J.C., a minor, A.C., a minor, Joshua Cope, Philip Cope, Erica Owens, Jacob Cope, Linda Cope, Jonathan Cope, L.C., a minor, Kathy Crabtree, individually, and for the estate of Daniel Crabtree, M.C., a minor, Debra Wigbels, Judy Crabtree, Joshua Craven, Holly Craven, Meaghun Crookston, Leesha Crookston, individually, and for the estate of Duncan Crookston, John Daggett, Colleen Czaplicki, Kendall Rasmusson, Louis Dahlman, Lucas Dahlman, Amber Dahlman, Kay Stockdale, Ayla Davis, E.D., a minor, Guy Davis, Teresita Davis, Christopher Davis, Maria Calle, individually, and for the estate of George Delgado, Cynthia Delgado, Anthony Demattia, Philip Derise, Loramay Diamond, individually, and for the estate of Sean Diamond, Sally Wiley, James Wiley, Jason Diamond, Taylor Diamond, Madison Diamond, A.D., a minor, Sean R. Diamond, Kendrick Dixon, Kadaivion Dixon, Daniel Dixon,

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individually, and for the estates of Robert Dixon and Ilene, Dixon, David Dixon, Gretchen Lang, L.R., a minor, M.R., a minor, Shawn Donnery, Tonya Dressler, individually, and for the estate of Shawn Dressler, Ardith Dressler, Melissa Dressler, Tanya Dressler, Daniel Dressler, James Dressler, Kenneth Drevnick, individually, and for the estate of Daniel Drevnick, Dennis Dunn, Sharon Smith, individually, and for the estate of Terrence Dunn, Timothy Duvall, Jr., Tammy Eakes, John Eakes, Joshua Eckhoff, Julia Edds, individually, and for the estate of Jonathan Edds, Barry Edds, Joel Edds, Angeline Jackson, individually, and for the estate of Cody Eggleston, Kaytrina Jackson, Shilyn Jackson, Timothy Elledge, individually, and for the estate of Michael Elledge, Edward Elliott, individually, and for the estate of Daniel Elliott, Leroy Esco Jr., Taryn Esco, L.E., a minor, A.P., a minor, Keyondra Perrin, Stephanie Zobay, individually, and for the estate of Stephen Everhart, Russell C. Falter, John Sackett, Marjorie Falter, David Lucas, Michael Lucas, Linda Falter, Russell J. Falter, individually, and for the estate of Shawn Falter, Timothy Lucas, Marsha Novak, Andrew Lucas, Anthony Farina, Kathleen Pirtle, Carrol Alderete, individually, and for the estate of Clay Farr, Anthony Alderete, Matthew Fieser, Jackie Farrar-Finken, Caroline Finken, Emilie Finken, Joan Henscheid, Mark Finken, Jean Pruitt, Richard Finken, David Finken, Alan Finken, Peter Finken, James Fleming, III, Mark Fletcher, Norman Forbes IV, Lonnie Ford, individually, and for the estate of Joshua Ford, Linda Mattison-Ford, Jessica Matson, Helen Fraser, Richard Fraser, individually, and for the estate of David Fraser, Richard Lee, Charlotte Freeman, individually, and for the estate of Brian Freeman, I.F., a minor, G.F., a minor, Fred Frigo, Noala Fritz, individually, and for the estates of Jacob Fritz and Lyle Fritz, Ethan Fritz, Daniel Fritz, Scott

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Tiffany Thompson, Sabrina Cumbe, Christopher Heidling, Stanley Heidling, Terra Rhoads, Jessica Heinlein, individually, and for the estate of Charles Heinlein, Jr., Charles Heinlein, Sr., Lanita Herlem, individually, and for the estate of Bryant Herlem, Ernesto Hernandez III, Laura Hernandez, Ernesto Hernandez IV, N.H., a minor, Ernesto Hernandez II, Endi Herrera, Jonathan Heslop, David Eugene Hickman, individually, and for the estate of David, Emanuel Hickman, Veronica Hickman, Devon Hickman, Russel Hicks Sr., individually, and for the estate of Corey Hicks, Russel Hicks Jr., James Hochstetler, Leanne Hochstetler, J.H., a minor, Kyle Marshall, Gregory Hogancamp, Joshua Holladay, Shirley Atkinson, Crystal Hastings, Robin Honeycutt, Janice Kwilos-Edmunds, Robert Hunt, A.H., a minor, M.H., a minor, Boonchob Prudhome, Max Hurst, individually, and for the estate of David Hurst, Lillian Hurst, Christopher Hurst, Mark Hurst, Eric Hurst, Dwayne Hurst, Devin Hurst, Sierra Hurst, Tara Hutchinson, Linda Gress, Dominick Iwasinski, Tracy Taylor, individually, and for the estate of Kenneth Iwasinski, Amanda Taylor, Margarita Aristizabal, individually, and for the estate of Alfred, Jairala, J.J., a minor, Sebastian Niuman, Jerrald Jensen, Olney Johnson, Brandon Josey, Christopher Joyner, Anne Joyner, Necole Smith, Cory Kenfield, Evan Kirby, Steven Kirby, Marcia Kirby, Andrew Kirchoff, Randall Klingensmith, Jeanette Knapp, individually, and for the estate of David Knapp, Lawrence Kruger, individually, and for the estate of Eric Kruger, Douglas Kruger, Kristy Kruger, E.K., a minor, C.K., a minor, David Kube, individually, and for the estate of Christopher Kube, Jonathan Kube, Jessica Kube, Jennifer Kube, Jason Kube, Donna Kuglics, individually, and for the estate of Matthew Kuglics, Les Kuglics, Daniel Kulicka, Dan Laird, Angela Laird, Jordan Laird, Hunter Laird, C.L., a minor, Matthew Lammers, Alicia Lammers, Stacy Pate, Barbara Lammers, Gary

Lammers, Christopher Landry, Roady Landtiser, Tyler Latham, Suzzettee Lawson, individually, and for the estate of Isaac Lawson, C.L., a minor, Darren Leslie, Christopher Levi, Beau Levine, individually, and for the estate of Hunter Levine, Jessica Levine, Olivia Levine, Donna Lewis, individually, and for the estate of Jason Lewis, G.L., a minor, J.L., a minor, J.L., a minor, Jean Mariano, Anthony Lill, individually, and for the estate of Eric Lill, Kortne Jones, Skye Otero, M.L., a minor, Cody Lill, Shelley Smith, individually, and for the estate of Kyle Little, William Little, Brenda Little, Kira Sikes, William Little, Jr., Kyle Lloyd, Rigoberto Lopez-Garcia, Daniel Luckett, Konrad Ludwig, Adam Magers, John Maine, David Mangarella, Luigi Marciante, individually, and for the estate of Luigi Marciante Jr., Maria Marciante, Enza Balestrieri, Stephanie Marciante, L.M., a minor, Donnie Marion, individually, and for the estate of Adam Marion, Pamela Marion, Edward Mariscal, Gina Marshall-Rickford, individually, and for the estate of Bradley Marshall, Tanner Marshall, Wesley Marshall, Gerrald Marshall, Francis Marshall, Kimberly Mayo, Rebecca Oliver, individually, and for the estate of Virgil Martinez, Daniel Oliver, Kimberlee Austin-Oliver, Deborah Noble, individually, and for the estate of Charles Matheny, IV, Charles Matheny, III, David Noble, Michelle Benavidez, individually, and for the estate of Kenneth Mayne, Daniel Benavidez, Sr., Daniel Benavidez, Jr., Christina Biederman, Jennifer Morman, Lori McCoy, individually, and for the estate of Gregory McCoy, Logan McCoy, T.M., a minor, Tabitha McCoy, individually, and for the estate of Steve McCoy, L.M., a minor, R.M., a minor, Katherine McRill-Fellini, individually, and for the estate of Robert, McRill, Brian Coke, Ronald McRill, Daniel Menke, individually, and for the estate of Jonathan Menke, Paula Menke, Nichole Lohrig, Matthew Menke, Tim Merrill, individually, and for the estate of Jason Merrill, Sue Merrill, Alyssa Merrill, Amber Piraneo,

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Ashlea Lewis, Christopher Miller, Joseph Miller, Kimberly Miller, Dana Svenson, Shannon Millican, individually, and for the estate of Johnathon Millican, Paul Millican, Michael Mills, M.M., a minor, M.M., a minor, Michael Mock, individually, and for the estate of Willsun Mock, Manuel Molina, Josue Molina, individually, and for the estate of Joshua Molina, Maria Molina, Samuel Montalbano, Andrew Moores, Glenn Morris, individually, and for the estate of Daniel Morris, Luke Murphy, Willette Murphy, Randolph Nantz, II, Wayne Newby, individually, and for the estate of Nicholas Newby, Theresa Hart, Nathan Newby, Flor Fuentes, individually, and for the estate of Daniel Newsome, Tyler Ogden, Sheryl Chen, Jerrin Ogden, Jose Olguin, individually, and for the estate of Randell Olguin, Jennie Morin, Anita Baker, Janet Rios, Patrick O'Neill, Jared Osburn, Timothy O'Sullivan, Michael Owen, Laurie Miller, R.O., a minor, Gilbert Paiz, Jr., Eddie Jo Palinsky, individually, and for the estate of Jerry Palinsky, Jr., Jerry Palinsky II, Adina Palinsky, Jerry Palinsky, Sr., Kathleen Hoke, Joel Palinsky, Karaleen Herb, Cheyenne Flagg, William Parker, Dixie Flagg, individually, and for the estate of Richard Parker, Meghan Parker-Crockett, Michael Pasco, Nicholas Paupore, Maria Paupore, Cody Paupore, Mailey Paupore, Colin Percy, Laird Percy, Anne Percy, Jody Striker, Karyn McDonald, Andrew Percy, Patrick Percy, Merlese Pickett, individually, and for the estate of Emanuel Pickett, Harry Cromity, Marlen Pickett, Kemely Pickett, Vivian Pickett, Kyshia Sutton, Brenna Corbin, Lowell Keith Thompson, Lisa Thompson, individually, and for the estate of Joshua Plocica, Peggy Portwine, individually, and for the estate of Brian Portwine, Holly Burson, individually, and for the estate of Jerome Potter, Mariah Coward, individually, and for the estate of Aaron Preston, Dmitri Quist, Douglas Ragone, D.R., a minor, David Ragone, Barbara Ragone, Daniel Ragone, Denise Smith,

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Judas Recendez, Jason Regester, Carmen Billedeaux, Lois Richard, Joseph Richard Jr., Nathan Richards, Steven Richards, John Stearns, individually, and for the estates of Michelle Ring and Shirley, Stearns, Marc Stearns, Erik Roberts, E.C.R., a minor, Robin Roberts, James Roberts, Cara Roberts, Colin Roberts, Manuel Roman, Marco Roman, Maria Murphy, Estrella Villanueva, Manuel Roman, Sr., Thalia Roman, Aracellys Roman, Jamilex Roman, Julie Rosenberg, individually, and for the estate of Mark Rosenberg, Jason Rzepa, Cassandra Rzepa, C.R., a minor, K.R., a minor, Brian Saaristo, Barbara Liimatainen, Cheryl Saaristo, Brian Saaristo, Jr., Leah Saaristo, Nanette Saenz, individually, and for the estate of Carlos Saenz, Frances Castro, Brian Schar, Joshua Schichtl, Mark Schichtl, Kayla Nelson, Kristie Nelson, Jim Schumann, individually, and for the estate of Jason Schumann, Benjamin Schumann, Rachel Gillette, individually, and for the estate of Stephen Scott, Shannon Shumate, Lauren Shumate, L.S., a minor, L.S., a minor, John Sklaney, III, Judy Huenink, individually, and for the estate of Benjamin Slaven, Sean Slaven, Chastity Laflin, Nicole Landon, Misti Fisher, Ronald Sloan, Christopher Smith, James Smith, Patricia Smith, Michael Smith, individually, and for the estate of Timothy Smith, Jared Sowinski, Austin Sowinski, Diane Sowinski, individually, and for the estate of Nicholas Sowinski, Raymond Spencer, Sr., individually, and for the estate of Raymond, Spencer, Jr., Sylvia Spencer, Bradley Starcevich, individually, and for the estate of Lucas Starcevich, Glenda Starcevich, Trenton Starcevich, Angel Mayes, individually, and for the estate of Antonio Stiggins, Donald Mayes, Shaun Stiltner, William Stout, Callie McGee, Tamara Stout, Stephanie Benefield, Audrey Barber, individually, and for the estate of Brandon Stout, Tracy Anderson, Jeffrey Anderson, Elizabeth Islas, Andrew Anderson, Adam Stout, Travis Strong, Taylor Heston, Anthony Durkaacs,

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Deborah Beavers, individually, and for the estate of John Sullivan, David Iverson, individually, and for the estate of Nicole Suveges, Allen Swinton, Temika Swinton, T.R.S., a minor, T.M.S., a minor, Tyreasha Bryant, Linda Pritchett, John Takai, Mae Takai, Jonamae Takai, Niana Takai, K.T., a minor, I.T., a minor, Brian Taylor, Michelle Taylor, individually, and for the estate of David Taylor, Jr., J.D.J.T., a minor, Phyllis Taylor, John Taylor, Edward Terry, Sr., Edward Terry, Jr., Glenndon Terry, Mark Thomsen, Ardell Thomsen, Ralph Thomsen, Corey Schlenker, individually, and for the estate of William Thorne, Joey Robinson, Marvin Thornsberry, Cynthia Thornsberry, L.T., a minor, M.T., a minor, N.T., a minor, A.B., a minor, Timothy Tiffner, individually, and for the estate of Benjamin Tiffner, Judith Tiffner, Joshua Tiffner, Seth Tiffner, Sarah Crosby, Philip Trimble, Janet Schoonover, Andrew Trimble, Richard Trimble, Ladonna Langstraat, John Trimble, Charlotte Teetsel, Kayeleen Luloff, John Tully, individually, and for the estate of Michael Tully, Marilyn Tully, Heather Farkas, Slade Tully, John Tully, II, Nancy Umbrell, individually, and for the estate of Colby Umbrell, Mark Umbrell, individually, and for the estate of Colby Umbrell, John Vacho, individually, and for the estate of Carol Vacho, Ashley Leslie, Mary Jane Vandegrift, individually, and for the estate of Matthew, Vandegrift and John Vandegrift, Andres Vazquez, Barbara Palacio-Vazquez, A.V., a minor, M.G.V., a minor, J.B.V., a minor, Marisel Vazquez, Maria Vazquez, individually, and for the estate of Omar Vazquez, Travis Vendela, Marianne Vendela, Jose Vera, Carol Polley, Keith Veverka, Douglas Veverka, Ronald Veverka, Sandra Soliday, Lisa Ramaci, individually, and for the estate of Steven Vincent, Isabell Vincent, individually, and for the estate of Charles Vincent, Christopher Violette, Michelle Wager, Bryan Wagner, Margaret Wakeman, David Wakeman, individually, and for the estate of Dustin

Wakeman, William Wakeman, Justin Waldeck, Billy Wallace, Stefanie Wallace, Austin Wallace, Devon Wallace, C.W., a minor, Jeremy Wallace, Lindsay Young, individually, and for the estate of Brett Walton, Sydney Walton, Patrick Ward, Jarrett Ward, Kyle Welch, Joshua Wells, Lydia Lantrip, Billie Wells, Jr., David Lantrip, Jr., J.W., a minor, Mark Whetzel, Jennifer Whetzel, Dianna Whetzel, Jennifer White, individually, and for the estate of Lucas White, Wesley Williamson, James Wilson, Victor Wise, II, Beverly Wolfer, individually, and for the estate of Stuart Wolfer, David Woodard, D.W., a minor, Gina Wright, John Robert Young, Sharon Debrabander, Dennis Debrabander, Nicole Debrabander, Joella Pratt, Ricky Zhorne, Jr., and Benjamin Zibutis.

Gary Huffman, Karen Huffman, Torie Murphy, the Estate of Jason Huffman, and Lori Silveri were also plaintiffs in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioners 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.

Petitioner GE Healthcare USA Holding LLC is owned by GE Healthcare IITS LLC and Petitioner GE Medical Systems Information Technologies, Inc., neither of which are publicly traded. Petitioner 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.

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

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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.

Petitioners 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. Petitioner 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 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.

Petitioner Pfizer Enterprises SARL has merged into Pfizer Holdings International Luxembourg (PHIL) SARL, a wholly owned subsidiary of Petitioner Pfizer Inc. Petitioners 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. Petitioner Pfizer Pharmaceuticals LLC is an indirect, wholly owned subsidiary of Viatrix Inc. Viatrix Inc. is a publicly held company. Upon information and belief, no publicly held corporation owns 10% or more of Viatrix 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.

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STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Atchley v. AstraZeneca UK Limited*, No. 20-7077 (D.C. Cir. Jan. 4, 2021) (reversing grant of motion to dismiss)
- *Atchley v. AstraZeneca UK Limited*, No. 17-cv-2136 (D.D.C. July 17, 2020) (granting motion to dismiss)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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In the Supreme Court of the United States

ASTRAZENECA UK LIMITED, ET AL.,
PETITIONERS,

v.

JOSHUA ATCHLEY, ET AL.,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully 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.

OPINIONS BELOW

The court of appeals' opinion (Pet.App.3a-66a) is reported at 22 F.4th 204. The district court's opinion (Pet.App.67a-96a) is reported at 474 F. Supp. 3d 194.

JURISDICTION

The court of appeals entered judgment on January 4, 2022. Pet.App.3a. The court of appeals denied rehearing en banc on February 2, 2023. Pet.App.1a. On April 6, 2023, the Chief Justice extended the time to file this petition to July 2, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 2333 provides in relevant part:

(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney’s fees.

* * *

(d) LIABILITY.—

* * *

(2) LIABILITY.—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.

STATEMENT

The decision below greenlit a sprawling lawsuit that seeks to recast sales of life-saving medicine and medical equipment to the Iraqi government—sales the U.S. government encouraged—as aiding and abetting terrorism, and even terrorism itself. Respondents—U.S. service-members, contractors, and their families—allege that the militia Jaysh al-Mahdi committed attacks that injured them during the Iraq War. But respondents have not sued Jaysh al-Mahdi; they instead sued petitioners, 21 of

the world's largest pharmaceutical and medical-device companies, under the Anti-Terrorism Act (ATA). Respondents allege that petitioners sold medical goods and paid commissions to the Iraqi Health Ministry and that Jaysh al-Mahdi agents at the Ministry diverted those goods and payments to support militia operations. Respondents now seek treble damages against petitioners for directly committing or aiding and abetting “act[s] of international terrorism.” 18 U.S.C. § 2333(a), (d)(2).

Petitioners denounce terrorism and honor respondents for their military service and sacrifices. But as this Court recently confirmed in *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023), the ATA does not make global companies indemnitors for every attack whenever those companies have some alleged connection to the perpetrators. This Court routinely grants certiorari, vacates, and remands for further proceedings when there is a reasonable probability that an intervening decision of this Court casts doubt on a key premise of the decision below. This case manifestly clears that bar: *Taamneh* offered this Court's first-ever articulation of the ATA's liability standards—standards that differ markedly from the D.C. Circuit's approach.

As *Taamneh* holds, the “conceptual core” of ATA aiding-and-abetting liability is that defendants “consciously and culpably participated in” the specific “act of international terrorism that injured the plaintiffs” “so as to help make it succeed.” *Id.* at 1223, 1225 (cleaned up). *Taamneh* therefore rejected ATA liability where no “allegations suggest[ed] that defendants culpably associated themselves with the ... attack, participated in it as something that they wished to bring about, or sought by their action to made it succeed.” *Id.* at 1226 (cleaned up). The D.C. Circuit never applied that test. Respondents' complaint neither ties petitioners' alleged assistance to any

specific attack nor alleges petitioners “culpably participated” in a specific attack, much less one they wanted to “succeed.”

The D.C. Circuit analyzed aiding-and-abetting liability at too high a level of generality by accepting allegations of indirect, general support to the attackers as sufficient to state a claim—the same error the Ninth Circuit made in *Taamneh*. And the D.C. Circuit downplayed petitioners’ undisputed lack of intent to support terrorism—another error the Ninth Circuit made in *Taamneh*. Instead, the D.C. Circuit mechanically applied a six-factor test for aiding and abetting based on *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983)—yet another pitfall *Taamneh* cautioned against.

If the Court does not vacate the judgment below and remand in light of *Taamneh*, the Court should grant plenary review to address two errors in the D.C. Circuit’s expansive interpretation of ATA liability. *First*, the D.C. Circuit disregarded the ATA’s requirement for direct liability that plaintiffs’ injuries occur “by reason of” defendants’ acts, *i.e.*, that defendants proximately cause plaintiffs’ harm. 18 U.S.C. § 2333(a). As this Court has repeatedly held in other contexts, proximate causation demands a direct link between the defendant’s actions and the plaintiff’s injury. But the D.C. Circuit relied on allegations that petitioners *indirectly* injured respondents by doing business with a government agency allegedly infiltrated by a terrorist-affiliated militia. That holding creates a 4-1 split with the Second, Sixth, Seventh, and Ninth Circuits, which all reject similarly attenuated theories of ATA causation.

Second, the D.C. Circuit misinterpreted a distinct aspect of the ATA’s aiding-and-abetting provision, creating a separate 3-1 split. The ATA cabins aiding-and-abetting liability to acts of international terrorism “committed,

planned, or authorized” by foreign terrorist organizations specially designated by the Secretary of State. *Id.* § 2333(d)(2). Such a designated organization had no direct involvement in the vast majority of the attacks at issue here, which Jaysh al-Mahdi—an Iraqi militia the State Department affirmatively declined to designate—carried out. Yet the D.C. Circuit endorsed respondents’ theory that Hezbollah (a designated foreign terrorist organization) planned or authorized *every* Jaysh al-Mahdi attack because Hezbollah allegedly provided Jaysh al-Mahdi with general support and encouragement. By contrast, the Sixth, Ninth, and Eleventh Circuits all hold that designated organizations’ general support and encouragement does not equal planning or authorizing specific attacks.

Together, the D.C. Circuit’s holdings send a chilling message to businesses and nonprofits: Avoid troubled countries where help is needed most, or risk treble-damages liability in U.S. courts. Whether through a grant-vacate-remand order or plenary review, this Court’s intervention is needed to prevent the D.C. Circuit’s misinterpretation of the ATA from jeopardizing important U.S. foreign-policy objectives.

A. Factual Background

1. Decades of neglect by Saddam Hussein’s regime left Iraq’s government-run healthcare system in shambles. C.A. Joint Appendix (C.A.J.A.) 663 (GAO report). According to one provisional government official: “When we took over in April [2003], it was a total system collapse. . . . The Health Ministry was literally on fire.” Jeffrey Gettleman, *Chaos and War Leave Iraq’s Hospitals in Ruin*, N.Y. Times, Feb. 14, 2004.

Between 2003 and 2005, the United States poured \$24 billion into rebuilding Iraq. C.A.J.A.662 (GAO report). At

least \$866 million went directly to Iraq’s healthcare sector, including its Ministry of Health. C.A.J.A.663 (GAO report), 668 (State Department report), 674 (USAID report), 699 (same); *see* Third Am. Compl. (TAC) ¶ 113 (acknowledging “U.S. government[] aid programs interfacing with [the Ministry]”). Despite the Ministry’s history of corruption, TAC ¶¶ 47-52, Iraq’s system of “socialized medicine,” *id.* ¶ 72, made working with the Ministry unavoidable in rehabilitating Iraq’s healthcare system. The Ministry was “a sprawling bureaucracy” that employed “every public-sector doctor, pharmacist, nurse, and medical technician” and “import[ed] and distribut[ed] [medical] goods to satisfy the orders placed by individual healthcare providers.” *Id.* ¶¶ 72, 119.

U.S.-taxpayer money alone could not repair Iraq. In May 2005, the U.S. Department of Commerce encouraged “the business community to facilitate economic recovery through reconstruction contracts, private investments and other business opportunities,” including “Iraqi Ministry Contracts” for “medical supplies.” C.A.J.A.683, 685; *cf. Wye Oak Tech., Inc. v. Republic of Iraq*, 24 F.4th 686, 692-93 (D.C. Cir. 2022) (noting U.S.-government-encouraged work by U.S. contractors to assist Iraqi Ministry of Defense).

Petitioners answered that call. The complaint alleges that some petitioners supplied medicines or medical equipment to the Ministry, while others manufactured those goods or their ingredients. For example, petitioners supplied the Iraqi government with cancer medications, antibiotics, and X-ray machines. TAC ¶¶ 191, 238, 284, 312.

2. The United States also sought to build democracy in Iraq. *Id.* ¶ 54. Iraq held its first post-Saddam election in January 2005 with American funding and support. *See* GAO, *U.S. Assistance for the January 2005 Elections*

(Sept. 7, 2005), <https://bit.ly/3kx0NMp>. The Iraqi people chose a coalition of Shi'ite parties. Kenneth Katzman, *Elections, Government and Constitution, in Iraq at the Crossroads* 69, 71 (Amy V. Cardosa ed., 2007). As is typical in parliamentary democracies, the winning parties allocated cabinet seats. *See* TAC ¶ 68. The Health Ministry post went to the Sadrist Trend, a party aligned with Muqtada al-Sadr, a Shi'ite religious leader who opposed U.S. involvement in Iraq. *Id.* The Sadrists held that post until a 2008 cabinet reshuffle. *Id.* ¶ 104.

Like other major Iraqi political groups at the time, the Sadrists had an associated militia, Jaysh al-Mahdi. C.A. Reconstruction Experts Br. 15, 2021 WL 1599307. Respondents claim Jaysh al-Mahdi exploited the Sadrists' electoral success and co-opted the Health Ministry to fund militia operations. Jaysh al-Mahdi agents, including doctors, nurses, and pharmacists, allegedly "infiltrated" the Ministry such that it "functioned more as a terrorist apparatus than a health organization." *Id.* ¶¶ 3, 86, 102, 221. These agents allegedly "took advantage of [the Ministry's] lack of any modern logistics system" to "loot[] [its] inventory," including massive MRI machines. *Id.* ¶¶ 3, 107, 178. And because "individual Sadrist officials" paid a religious tax to "Sadr and Jaysh al-Mahdi," a share of commissions paid to these officials allegedly ended up in Jaysh al-Mahdi's pocket. *Id.* ¶¶ 143-44.

Respondents allege that they or their family members were injured or killed in over 300 Jaysh al-Mahdi attacks across Iraq. *Id.* ¶ 16; Pet.App.90a. Respondents allege that Jaysh al-Mahdi alone carried out over 275 of those attacks, with Hezbollah (a U.S.-designated foreign terrorist organization) "more in the background." Pet.App.21a. Respondents identify 22 attacks in which Hezbollah operatives allegedly participated. Pet.App.21a.

Despite these attacks on U.S. forces, respondents acknowledge the Executive made “a strategic diplomatic decision” not to designate Jaysh al-Mahdi as a foreign terrorist organization. TAC ¶ 355. In the checkerboard of post-Saddam Iraqi politics, the United States needed “flexibility ... to engage with the Sadrists if and when doing so would serve the national interest.” *Id.*

B. Procedural History

1. In October 2017, respondents sued petitioners, seeking treble damages under the ATA. Respondents alleged that, consistent with the Health Ministry’s “standard bid instructions,” petitioners offered the Ministry discounts on medicine and medical equipment by providing “free goods” on top of the paid-for quantity. *Id.* ¶ 120. And, respondents alleged, petitioners paid a “religious tax” or “commissions” to Ministry officials. *Id.* ¶ 142. Respondents characterized these free medical goods and payments as “bribes.” *Id.* ¶ 4.

Respondents claimed that petitioners were therefore directly liable for committing “act[s] of international terrorism” on the theory that that petitioners’ alleged transactions amounted to criminal material support of terrorism or terrorist financing. TAC ¶¶ 3208-21 (citing 18 U.S.C. §§ 2331(1), 2333(a), 2339A, 2339C). Respondents also brought an aiding-and-abetting claim, contending that petitioners “knowingly provid[ed] substantial assistance” to Jaysh al-Mahdi’s alleged acts of international terrorism. *Id.* ¶ 3187 (citing 18 U.S.C. § 2333(d)(2)).

Respondents acknowledged that petitioners transacted with the Ministry “to grow their market share in Iraq,” TAC ¶ 115—not to support terrorism. But respondents alleged that petitioners “knew or recklessly disregarded” that transactions with the Ministry would

“finance Jaysh al-Mahdi.” *Id.* ¶ 187 (capitalization altered). For example, respondents alleged that petitioners had warning of Jaysh al-Mahdi’s infiltration based on news reports; armed men, militia flags, and pictures of al-Sadr at Ministry headquarters; and “the common understanding on the Iraqi street.” *Id.* ¶¶ 180-82.

2. The district court dismissed the complaint. Pet.App.68a. On direct liability, the court held that respondents failed to plead proximate causation, *i.e.*, a “sufficient link between the defendant’s conduct and the plaintiff’s injuries.” Pet.App.85a (quoting *Crosby v. Twitter, Inc.*, 921 F.3d 617, 623 (6th Cir. 2019)). Respondents alleged that the supplier petitioners transacted with an “independent intermediary”—a “sovereign entity,” not a terrorist group. Pet.App.86a (citation omitted). “Even accepting [respondents’] allegations that [Jaysh al-Mahdi] co-opted the Ministry,” the involvement of a sovereign government agency “defeated causation.” Pet.App.87a. Respondents’ complaint confirmed that the Ministry provided medical care to Iraqis and “did not ‘exist solely to perform terrorist acts,’” preventing any causal connection between petitioners and the attacks. Pet.App.88a (quoting *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 392 (7th Cir. 2018)).

On the aiding-and-abetting claims, the court recognized that liability attaches only to attacks “committed, planned, or authorized” by U.S.-designated foreign terrorist organizations. Pet.App.89a-90a (quoting 18 U.S.C. § 2333(d)(2)). Because the State Department had not so-designated Jaysh al-Mahdi—the group that committed, planned, and authorized the vast majority of at-issue attacks—no aiding-and-abetting liability could attach. Pet.App.90a. The court rejected respondents’ argument that Hezbollah (a designated organization) “planned” or

“authorized” all of the attacks by “recruiting and training” Jaysh al-Mahdi members or “exerting ‘religious authority’ over” Jaysh al-Mahdi. Pet.App.91a. The ATA’s “plain text” limits liability to where the designated organization “decide[s] on and arrange[s] ... in advance” the specific attack or “give[s] official permission or approval” therefor. Pet.App.91a (citation omitted). Here, as to over 90% of the 300-plus attacks, Hezbollah allegedly offered only “general support,” not specific planning or authorization. Pet.App.91a.

The court independently rejected the aiding-and-abetting claims because respondents did not plead that petitioners “knowingly provid[ed] substantial assistance” to an “act of international terrorism.” Pet.App.93a (quoting 18 U.S.C. § 2333(d)(2)). “At most,” respondents alleged “general support to” Jaysh al-Mahdi, not substantial assistance to any particular attack. Pet.App.94a-95a. Nor did respondents allege that petitioners “intended to help” Jaysh al-Mahdi commit attacks. Pet.App.95a.

3. The D.C. Circuit reversed. Pet.App.66a. On direct liability, the court held that respondents adequately alleged that petitioners proximately caused respondents’ injuries and remanded on whether respondents adequately alleged that petitioners committed acts of international terrorism. Pet.App.40a, 66a. In the court’s view, ATA plaintiffs establish proximate causation by pleading that defendants’ role in bringing about their injury was more than “mere fortuity.” Pet.App.41a (citation omitted). Here, the court held, it sufficed that petitioners’ alleged transactions with the Ministry “allowed [Jaysh al-Mahdi] to grow” and thus “foreseeabl[y]” caused Jaysh al-Mahdi’s campaign of attacks. Pet.App.42a-43a.

The court noted other circuits’ decisions rejecting proximate causation where the defendants transacted with foreign states that supported terrorism.

Pet.App.43a-44a. But the court reasoned that courts can disregard the foreign sovereign’s intervening role if plaintiffs allege the sovereign has been “overtaken by terrorists.” Pet.App.44a. Even if the Ministry were independent, the court reasoned that a “defendant’s position ‘one step removed’ from the terrorists does not defeat proximate causation” if the defendant’s money ends up with terrorists. Pet.App.47a (citation omitted).

The court also held that respondents stated an aiding-and-abetting claim. Pet.App.19a. The court held that U.S.-designated foreign terrorist organizations “plan[] or authorize[]” any attack committed by another group the designated organization trained or inspired. Pet.App.25a-26a. The court thus attributed every Jaysh al-Mahdi attack to Hezbollah even though Hezbollah was “more in the background” for over 90% of 300-plus attacks. Pet.App.21a. In the court’s view, Hezbollah “plan[ned]” every attack by allegedly providing Jaysh al-Mahdi generally with “weaponry, training, and knowledge.” Pet.App.25a. And Hezbollah “authorized” each attack by “issuing a *fatwa* declaring a religious duty to attack Americans” and winning the “allegiance” of al-Sadr and his supporters. Pet.App.26a.

The court further held that respondents adequately alleged that petitioners “knowingly provided substantial assistance to Jaysh al-Mahdi” generally, and did not need to allege knowing, substantial assistance to the specific attacks that injured respondents. Pet.App.39a; *see* Pet.App.37a. The court analyzed knowledge and substantiality separately. Pet.App.31a-37a. On knowledge, the court held that plaintiffs need allege only that defendants did not act “accidental[ly].” Pet.App.31a-32a. On substantiality, the court applied a six-factor test derived from *Halberstam*, 705 F.2d 472. Pet.App.31a. The court concluded that four factors favored respondents, one favored

petitioners, and one was neutral. Pet.App.32a-37a. For example, the court held that the “state of mind” factor favored respondents because petitioners allegedly acted with “general awareness that [they] supported ... terrorist acts.” Pet.App.34a. Accordingly, the court deemed petitioners’ alleged assistance “substantial.” Pet.App.37a.

Petitioners sought rehearing en banc on February 3, 2022, which the court of appeals denied on February 2, 2023. Pet.App.1a.

REASONS FOR GRANTING THE PETITION

Taamneh unanimously rejected a “boundless” reading of the ATA, 143 S. Ct. at 1220, and reversed a Ninth Circuit decision making many of the same analytical missteps the decision below made here. Because the D.C. Circuit rendered its decision without the benefit of *Taamneh*, this Court should grant certiorari, vacate the judgment below, and remand for further proceedings.

Alternatively, the Court should grant plenary review. The decision below created two significant circuit splits that thwart uniformity in the application of an important federal law and invite forum-shopping. *First*, the D.C. Circuit misconstrued the ATA’s direct-liability requirement that defendants proximately cause plaintiffs’ injuries, accepting attenuated allegations that would fail in the Second, Sixth, Seventh, and Ninth Circuits. *Second*, the D.C. Circuit split from the Sixth, Ninth, and Eleventh Circuits by diluting the requirement that aiding-and-abetting liability attaches only to attacks “committed, planned, or authorized” by designated foreign terrorist organizations.

This Court’s intervention is especially warranted because the D.C. Circuit’s holdings on both questions carry significant foreign-policy consequences—discouraging

humanitarian aid, international development, and global business that the U.S. government promotes.

I. This Court Should Grant, Vacate, and Remand in Light of *Taamneh*

This Court routinely grants, vacates, and remands when “intervening developments ... reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration.” *See Lawrence v. Chater*, 516 U.S. 163, 167 (1996). The paradigmatic example is when this Court issues an opinion “after the decision under review” that “change[s] or clarify[s] the governing legal principles in a way that could possibly alter the decision” below. *See Flowers v. Mississippi*, 579 U.S. 913, 913 (2016) (Alito, J., dissenting). That is what happened here: After the D.C. Circuit issued its opinion, this Court in *Taamneh* clarified the ATA’s legal requirements in ways that undoubtedly bear on that decision.

1. *Taamneh* thoroughly undercuts the D.C. Circuit’s analysis of respondents’ aiding-and-abetting claims—far exceeding the usual standard for granting, vacating, and remanding. In *Taamneh*, the Ninth Circuit allowed family members of a victim of an ISIS terrorist attack to bring ATA claims alleging that Facebook, Google, and Twitter aided and abetted ISIS attacks by failing to remove terrorist content from their websites. 143 S. Ct. at 1215, 1217. This Court unanimously reversed, holding that plaintiffs’ allegations fell “far short” of stating an ATA aiding-and-abetting claim and faulting the Ninth Circuit for “a series of missteps that, together, obscured the essence of aiding-and-abetting liability.” *Id.* at 1229-30. The opinion below reflects a litany of similar errors.

First, this Court held in *Taamneh* that the aiding-and-abetting analysis must focus “on assistance to the tort

for which plaintiffs seek to impose liability,” *i.e.*, the specific “act of international terrorism that injured the plaintiffs.” *Id.* at 1225, 1230. The Ninth Circuit therefore erred by looking for alleged “assistance to ISIS’ activities in general” instead of “focus[ing]” on the specific ISIS terrorist attack. *Id.* at 1229. The D.C. Circuit similarly erred by asking whether petitioners allegedly provided “substantial assistance to Jaysh al-Mahdi” generally, without focusing on aid to the specific attacks that injured respondents. Pet.App.39a; *see* Pet.App.37a.

Second, *Taamneh* cautioned against a “rigid[] focus[] on” the “facts” or “exact phraseology” of *Halberstam*, 705 F.2d 472, a D.C. Circuit case that the ATA’s statutory findings identify as “providing the proper legal framework for civil aiding and abetting ... liability.” 143 S. Ct. at 1218, 1223 (cleaned up). *Taamneh* instead instructed courts to follow the common law of aiding and abetting and ask whether “the defendant consciously and culpably participated in a wrongful act so as to help make it succeed.” *Id.* at 1223 (cleaned up).

Thus, the Ninth Circuit erred by treating *Halberstam*’s six factors as “a sequence of disparate, unrelated considerations without a common conceptual core.” *Id.* at 1229. Instead, the Ninth Circuit should have zoomed out and asked whether the defendants’ “participation” in the tort was “significant and culpable enough to justify attributing the principal wrongdoing to” them. *Id.*

Here too, the D.C. Circuit ticked through *Halberstam*’s six factors without asking that big-picture question. The court concluded that four factors favored respondents, one favored petitioners, and one was neutral, and thus deemed the alleged assistance substantial. Pet.App.32a-37a. On every factor, the court compared pe-

petitioners' alleged transactions with the Iraqi Health Ministry to Linda Hamilton's assistance to Bernard Welch's burglary enterprise in *Halberstam*. Pet.App.32a-37a. The decision below thus sidestepped the fundamental inquiry: whether petitioners "consciously and culpably participated" in the specific attacks that injured respondents. See 143 S. Ct. at 1223 (cleaned up).

Third, *Taamneh* held that the ATA's "knowingly providing substantial assistance" language does not create distinct knowledge and substantiality requirements. 143 S. Ct. at 1229. Instead, the statute directs "a single inquiry" considering knowledge and substantiality "in tandem" "to capture conscious and culpable conduct." *Id.* at 1222, 1229. The Ninth Circuit therefore erred by "separat[ing] the 'knowing' and 'substantial' subelements," instead of analyzing them together. *Id.* at 1229. The D.C. Circuit did the same, treating knowledge and substantiality as separate, distinct inquiries rather than asking whether those elements, in tandem, showed the requisite culpability. Pet.App.31a-37a.

Fourth, *Taamneh* clarified the ATA's knowledge requirement, instructing courts to examine whether the defendant "conscious[ly] participat[ed] in the underlying tort." 143 S. Ct. at 1222. The Court approvingly cited common-law cases asking if the defendant "calculated and intended to produce" the tort or acted "with the intent of facilitating" its commission. *Id.* at 1221-22 (citations omitted).

In *Taamneh*, the Ninth Circuit erred by asking only "whether the defendants were 'generally aware' of their role in ISIS' overall scheme" instead of considering defendants' "state of mind" both as "to their actions and the tortious conduct." *Id.* at 1229. The D.C. Circuit made the same mistake. In analyzing petitioners' "[s]tate of mind"

for purposes of substantial assistance, the court asked only whether petitioners allegedly acted “with a general awareness” of supporting “terrorist acts.” Pet.App.34a. As in *Taamneh*, the court “should have given much greater weight to defendants’ ... undisputed lack of intent to support” terrorism. 143 S. Ct. at 1229-30; *supra* p. 8.

2. While *Taamneh* involved only an aiding-and-abetting claim, the Court’s decision also warrants reconsideration of the D.C. Circuit’s holding that respondents adequately pleaded proximate causation for direct liability. Aiding-and-abetting principles and proximate causation play similar roles, limiting liability for acts “too remote,” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014) (citation omitted), or “tangential” to the harm, *Taamneh*, 143 S. Ct. at 1220. If respondents’ injury is too distant from petitioners’ conduct to support aiding-and-abetting liability, that should, at minimum, cast serious doubt on the idea that petitioners can be directly liable for that same injury. Indeed, the D.C. Circuit found respondents’ direct-liability claims “more challenging.” Pet.App.40a.

In *Gonzalez v. Google LLC*, this Court vacated and remanded so that the Ninth Circuit could reexamine in light of *Taamneh* an ATA complaint containing both direct and aiding-and-abetting claims. 143 S. Ct. 1191, 1191-92 (2023). Here too, vacatur and remand would permit the D.C. Circuit to consider *Taamneh*’s impact on respondents’ direct-liability claims in the first instance.

II. Alternatively, the Court Should Grant Plenary Review

If this Court does not grant, vacate, and remand, the decision below warrants plenary review. The D.C. Circuit held that transactions with a sovereign government can proximately cause attacks multiple steps removed and that a U.S.-designated foreign terrorist organization

plans or authorizes every attack carried out by a different, non-designated group it supports or inspires. Accordingly, the D.C. Circuit concluded that respondents adequately pleaded proximate causation for ATA direct liability and stated an ATA aiding-and-abetting claim. The D.C. Circuit relied on allegations that petitioners supplied medical goods and commissions to the Iraqi Ministry of Health, which Ministry employees misappropriated to finance a non-designated group that received general support and encouragement from a designated foreign terrorist organization. Both holdings create circuit splits, are incorrect, and risk deleterious effects on international aid and development.

A. The D.C. Circuit’s Proximate-Causation Holding Warrants Review

This Court should review the D.C. Circuit’s holding that *indirect* connections can establish proximate causation for ATA direct liability.

1. ATA direct liability attaches only when plaintiffs’ injuries occur “by reason of” defendants’ acts. 18 U.S.C. § 2333(a). It is thus undisputed that direct-liability defendants must proximately cause plaintiffs’ injuries. Pet.App.40a; *Crosby*, 921 F.3d at 623 (6th Cir.) (so holding and collecting cases from the Second, Seventh, Ninth, and D.C. Circuits); see *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 267-68 (1992) (same for identical language in Sherman, Clayton, and RICO Acts). The D.C. Circuit’s decision creates a 4-1 split on whether that proximate-causation requirement demands a direct link between defendants and the attacks. The Second, Sixth, Seventh, and Ninth Circuits all require a direct link.

The Second and Seventh Circuits have rejected ATA liability in cases, like this one, involving business transac-

tions with foreign states that allegedly supported terrorism. The Second Circuit, for instance, has held that a bank that did business with Iran did not proximately cause terrorist attacks supported by Iran even though Iran (unlike the Iraqi Health Ministry) is a U.S.-designated sponsor of terrorism. *Rothstein v. UBS AG*, 708 F.3d 82, 97 (2d Cir. 2013). While payments to state sponsors of terrorism may well be “used for terrorism,” states still have “many legitimate agencies, operations, and programs to fund.” *Id.* Given Iran’s intervening role, there was no “proximate causal relationship between the cash transferred by [the defendant] to Iran and the terrorist attacks.” *Id.*

The Seventh Circuit agrees: “[A] sovereign state’s actions supersede other more tangential causes.” *Kemper*, 911 F.3d at 393. That court reasoned that “[w]hen one of the links on a causal chain is a sovereign state, the need for facts specifically connecting a defendant’s actions to the ultimate terrorist attack is especially acute.” *Id.* Iran’s “intervening acts” meant that a bank did not proximately cause terrorist attacks by transacting with Iran. *Id.*

More broadly, the Sixth and Ninth Circuits hold that proximate causation under the ATA requires directness. The Sixth Circuit, while also considering foreseeability and substantiality, “evaluate[s] proximate cause with a particular emphasis on the demand for some direct relation between the injury asserted and the injurious conduct alleged.” *Crosby*, 921 F.3d at 624 (citation omitted). And the Ninth Circuit holds that ATA plaintiffs must show “some direct relationship between the injuries ... suffered and the defendant’s acts.” *Fields v. Twitter, Inc.*, 881 F.3d 739, 744 (9th Cir. 2018).

The D.C. Circuit split from these circuits by finding proximate causation based on allegations that petitioners’

transactions with the Iraqi Health Ministry *indirectly* caused respondents' injuries. Rather than requiring a direct link between petitioners' conduct and alleged terrorism, the decision below relied on allegations that petitioners *indirectly* supported Jaysh-al-Mahdi attacks, including by selling medical goods that Jaysh al-Mahdi supporters in the Ministry later diverted to the black market. In the court's view, respondents merely needed to plead "some reasonable connection" between petitioners' acts and their injuries. Pet.App.41a (citation omitted).

The D.C. Circuit distinguished other circuits' cases involving sovereigns on the ground that the Iraqi Health Ministry was "overtaken by terrorists" and thus not an "independent intermediary." Pet.App.44a (citation omitted). But even respondents' complaint demonstrates that the Ministry did not "exist solely to perform terrorist acts"—other circuits' test for when a sovereign intermediary defeats proximate causation. *See Kemper*, 911 F.3d at 392. The complaint recognizes that the Ministry is a "sprawling bureaucracy" that employed "every public-sector doctor, pharmacist, nurse, and medical technician" and "import[ed] and distribut[ed] [medical] goods to satisfy the orders placed by individual healthcare providers." TAC ¶¶ 72, 119. In other circuits, the Ministry's "intervening acts," *Kemper*, 911 F.3d at 393, would preclude proximate causation.

2. The decision below is incorrect. This Court has "repeatedly applied directness principles" in evaluating proximate causation. *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 203 (2017). Proximate causation demands "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268.

The complaint here comes nowhere close to satisfying that directness requirement. Respondents allege that, first, the manufacturer petitioners provided medical

goods or ingredients to the supplier petitioners. TAC ¶¶ 188, 211, 245, 281, 310. Second, the supplier petitioners provided payments and medical goods to the Health Ministry. *Id.* ¶¶ 120-22, 128. Third, Jaysh al-Mahdi supporters who had infiltrated the Ministry “diverted” some of these goods and payments to Jaysh al-Mahdi. *Id.* ¶¶ 5, 107, 138, 142-44. Fourth, Jaysh al-Mahdi sold the goods on the black market to raise money. *Id.* ¶¶ 129-30, 168. Fifth, Jaysh al-Mahdi used that money to support militia operations, which were also financed by Iran and Hezbollah. *Id.* ¶¶ 8, 56, 374. Sixth, Jaysh al-Mahdi militants’ attacks injured plaintiffs. *Id.* ¶ 408. Respondents’ injuries are far too distant from petitioners’ allegedly unlawful conduct to support liability. *See Lexmark*, 572 U.S. at 133.

B. The D.C. Circuit’s Aiding-and-Abetting Holding Also Warrants Review

This Court should also review the D.C. Circuit’s holding that U.S.-designated foreign terrorist organizations plan or authorize every attack undertaken by groups they support or inspire.

1. The ATA limits aiding-and-abetting liability to “act[s] of international terrorism” “committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization” by the Secretary of State. 18 U.S.C. § 2333(d)(2). Thus, the Sixth, Ninth, and Eleventh Circuits ask whether a designated organization “committed, planned, or authorized” the specific “act of international terrorism” that injured the plaintiff. A designated organization’s general support or encouragement to the attackers does not suffice. The D.C. Circuit’s contrary holding creates a 3-1 split.

The Sixth Circuit, for example, has rejected allegations that ISIS (a designated organization) planned or authorized an attack when it hatched a “plan” to “inspir[e]”

attacks by “radicaliz[ing] individuals through social media” and instructing them to “kill Americans ‘wherever you are.’” *Crosby*, 921 F.3d at 620-21. That was so even though ISIS’s plan succeeded—a man imbibed ISIS propaganda, “pledged allegiance to ISIS,” and committed a mass shooting. *Id.* at 621.

The Ninth Circuit agrees. Even where the attackers and the designated foreign terrorist organization have “some connection,” the designated organization must “authorize[] the attack beforehand.” *Gonzalez v. Google LLC*, 2 F.4th 871, 911 (9th Cir. 2021).¹ The court thus rejected allegations that ISIS planned or authorized a different mass shooting, even where the attackers swore “allegiance and loyalty” to ISIS’s leader and used tactics they may have learned from ISIS training materials. *Id.* at 884, 911-12.

The Eleventh Circuit takes the same approach. The designated organization must, at minimum, “kn[o]w about the attack beforehand.” *Colon v. Twitter, Inc.*, 14 F.4th 1213, 1222 (11th Cir. 2021). Thus, the Eleventh Circuit rejected liability where ISIS did not coordinate the attack in advance. *Id.* So it was irrelevant that the attacker “pledged allegiance to ISIS,” that ISIS deemed the attacker an “Islamic State fighter” for whom it took “direct responsibility,” or that ISIS “directly influenced [the shooter’s] actions on the night of the ... massacre.” *Id.* at 1219.

¹ The Ninth Circuit decided three ATA cases in a single opinion—*Gonzalez v. Google LLC*, *Taamneh v. Twitter, Inc.*, and *Clayborn v. Twitter, Inc.* While this Court granted certiorari and vacated and remanded in *Gonzalez*, 143 S. Ct. at 1192, and reversed in *Taamneh*, the relevant holding here is from *Clayborn*, in which no party sought certiorari. This holding therefore remains Ninth Circuit law.

The D.C. Circuit sharply split from these circuits. Instead of requiring that the designated foreign terrorist organization plan the specific attack, the court below held that if a designated organization provides others with “weaponry, training, and knowledge,” the designated organization “plan[s]” *all* attacks committed by those others. Pet.App.25a. Similarly, the D.C. Circuit held that a designated organization “authorize[s]” *all* attacks by a group over which it exerts “religious, personal, and operational authority.” Pet.App.26a. In short, the D.C. Circuit treated generalized support and encouragement from a designated foreign terrorist organization to a non-designated group as planning and authorizing *every* act of international terrorism the non-designated group later commits. No other circuit would accept that approach.

2. The D.C. Circuit’s decision contravenes the ATA’s text. Congress limited aiding-and-abetting liability to “act[s] of international terrorism committed, planned, or authorized by” U.S.-designated foreign terrorist organizations. 18 U.S.C. § 2333(d)(2). To “plan” means to “decide on and arrange in advance.” *New Oxford American Dictionary* 1337 (3d ed. 2010). To “authorize” means to “give official permission for.” *Id.* at 108. Both are transitive verbs: one must plan or authorize something. In the ATA, the object of “planned” and “authorized” is unmistakably the “act of international terrorism,” *i.e.*, the specific attack that injured the plaintiff. That attack-specific requirement tracks Congress’ overarching focus on “secondary liability for *specific* wrongful acts.” *See Taamneh*, 143 S. Ct. at 1224 (emphasis added).

To state a claim, plaintiffs must thus allege that the designated organization committed, “arrange[d] in advance,” or “g[a]ve official permission for” the specific attack that injured the plaintiffs. Here, respondents instead

allege that Hezbollah provided Jaysh al-Mahdi with “weaponry, training, and knowledge” for Jaysh al-Mahdi to plan its *own* attacks and that Hezbollah encouraged Jaysh al-Mahdi “to attack Americans in Iraq.” Pet.App.25a-26a. That is not Hezbollah planning or authorizing a specific “act of international terrorism.”

Respondents’ reading, which the D.C. Circuit adopted, “would erase” the foreign-terrorist-organization requirement from the statute. Pet.App.92a. That limitation offers clear notice of which groups are off-limits before imposing treble damages. The decision below bypassed Congress’ framework, transforming groups the Secretary of State has never designated into de facto foreign terrorist organizations for ATA purposes.

C. The Decision Below Risks Serious Foreign-Policy Consequences

Together, the D.C. Circuit’s holdings threaten legitimate companies and nonprofits with massive liability for supplying goods and services in the places most in need. The U.S. government often encourages private companies to rebuild troubled countries, as it did here. *See Economic and Financial Reconstruction in Iraq: Hearing Before the S. Banking Subcomm. on Int’l Trade & Fin.*, (Feb. 11, 2004) (testimony of E. Anthony Wayne, Ass’t Sec’y for Econ. & Bus. Affs.), <http://bit.ly/3nmVtvW>; C.A. Reconstruction Experts Br. 18. The D.C. Circuit’s “vast expansion” of liability against private parties that worked with a foreign government abroad “poses serious risks to the United States’ relations with foreign states.” *Cf.* U.S. Br. 18, *Am. Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028 (2008) (No. 07-919).

Under the D.C. Circuit’s expansive conception of proximate causation, organizations that operate in conflict zones now risk treble damages if they transact with

groups—or even sovereigns—that terrorists or their affiliates may have co-opted. That risk could make the cost of doing business in these areas “prohibitive.” C.A. Chamber Br. 28, 2021 WL 1117855. Companies may simply refrain from serving these regions. *See De-risking in the Financial Sector*, World Bank (Oct. 7, 2016), <http://bit.ly/3ZsijzO>.

Even before the D.C. Circuit’s decision, banks, for example, had already started discontinuing services in conflict regions, raising fears that previously legal transactions may be “driven underground” and that citizens of war-torn countries will be “cut off from the regulated financial system.” Thomas J. Curry, Comptroller of the Currency, Remarks Before the Institute of International Bankers 5-6 (Mar. 7, 2016), <https://bit.ly/40iYMD7>. If working with sovereigns with potential links to terrorism risks direct liability, other sectors could similarly withdraw.

The D.C. Circuit’s aiding-and-abetting holding is equally troubling. A U.S. foreign-terrorist-organization designation is stigmatic and consequential. Congress therefore vested the Secretary of State alone with the authority to designate foreign terrorist organizations based on the Secretary’s assessment of “the national security of the United States.” 8 U.S.C. § 1189(a)(1)(C).

Respondents acknowledge that the Secretary made the “strategic diplomatic decision” not to designate Jaysh al-Mahdi. TAC ¶ 355. Al-Sadr “wielded significant political clout” in Iraq, and the United States needed “flexibility ... to engage with the Sadrists if and when doing so would serve the national interest.” *Id.* By treating every Jaysh al-Mahdi attack as if it had been committed by Hezbollah, the D.C. Circuit effectively overruled the State Department’s diplomatic judgment and deemed Jaysh al-Mahdi a de facto foreign terrorist organization.

That outcome illustrates why “[t]he political branches, not the Judiciary, have the responsibility and institutional capacity to weigh foreign-policy concerns.” *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1403 (2018). The ATA’s foreign-terrorist-organization requirement cleanly delineates permissible and impermissible foreign partners. Companies and nonprofits can readily consult the State Department’s public list of designated organizations. But companies and nonprofits may have little idea who draws support—let alone religious inspiration—from designated organizations.

In conflict zones, the dividing line between terrorists and political actors can be hazy. In Yemen, for example, the Houthis both control most of the country and “received extensive training and material support from ... Hezbollah.” Bruce Riedel, *The Houthis After the Yemeni Cease-fire*, Brookings (Jan. 27, 2023), <https://bit.ly/3TqJbP3>. The United States lifted the Houthis’ foreign-terrorist-organization designation to alleviate “the world’s worst humanitarian crisis,” notwithstanding the Houthis’ Hezbollah ties. Antony J. Blinken, *Revocation of the Terrorist Designations of Ansarallah* (Feb. 12, 2021), <https://bit.ly/3L3WanP>. But under the D.C. Circuit’s reasoning, Hezbollah’s support may make the Houthis a de facto foreign terrorist organization for ATA purposes. That leaves companies and nonprofits guessing as to whether they can respond when the U.S. government calls for aid.

The ATA’s broad venue rules make the circuit splits on both questions especially untenable. ATA plaintiffs can sue in any district “where any plaintiff resides or where any defendant resides or is served, or has an agent.” 18 U.S.C. § 2334(a). Respondents pleaded venue here by identifying three plaintiffs (out of over 1,250) who reside in the District of Columbia. TAC ¶ 40. Absent this

Court's intervention, the D.C. Circuit's minority rules could govern virtually every ATA suit. One court of appeals should not set foreign policy for the Nation.

CONCLUSION

The petition for a writ of certiorari should be granted, the court of appeals' judgment vacated, and the case remanded for further consideration in light of *Taamneh*. Alternatively, the petition should be granted and the case set for briefing and argument.

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