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

CHRISTOPHER G. MICHEL
K. WINN ALLEN
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave NW
Washington, DC 20004
(202) 389-5000

J. MATTHEW RICE
KIRKLAND & ELLIS LLP
150 3rd Avenue South
Nashville, TN 37201
(629) 222-0165

Counsel for Johnson & Johnson, Cilag GmbH International, Ethicon Endo-Surgery, LLC, Ethicon, Inc., Janssen Ortho LLC, Janssen Pharmaceutica NV, Johnson & Johnson (Middle East) Inc., and Ortho Biologics LLC

LISA S. BLATT
Counsel of Record
CHRISTOPHER N. MANNING
CHARLES L. MCCLOUD
MELISSA B. COLLINS
R. SHANE ROBERTS, JR.
JONATHAN M. ARTAL
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

Counsel for Defendants Pfizer Inc., Pfizer Holdings International Luxembourg (PHIL) SARL, Pharmacia & Upjohn Company LLC, Viatris Pharmaceuticals LLC, and Wyeth Pharmaceuticals LLC

Additional counsel on inside cover

JOHN B. BELLINGER III
DAVID J. WEINER
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000

ROBERT REEVES ANDERSON
ARNOLD & PORTER
KAYE SCHOLER LLP
1144 Fifteenth Street, Suite 3100
Denver, CO 80202
(303) 863-2325

LISA M. NOLLER
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, IL 60654
(312) 832-4500

Counsel for GE Healthcare USA Holding LLC, GE Medical Systems Information Technologies, Inc., and GE Medical Systems Information Technologies GmbH

SARAH E. HARRINGTON
DAVID M. ZIONTS
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6600

Counsel for F. Hoffmann-La Roche Ltd

DAVID W. BOWKER
CLAIRE M. BERGERON
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000

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

LARA SAMET BUCHWALD
NEIL H. MACBRIDE
DAVID B. TOSCANO
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Counsel for AstraZeneca Pharmaceuticals LP and AstraZeneca UK Limited

QUESTIONS PRESENTED

The Antiterrorism Act (ATA) 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 "culpably participate" in the perpetrator's terrorist act. *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 506 (2023); *see* 18 U.S.C. § 2333(a), (d)(2).

Petitioners (defendants below) are twenty-one of the world's largest pharmaceutical and medical-device companies. During the post-Saddam reconstruction of Iraq, they supplied medicines and medical goods to the U.S.-backed Iraqi Health Ministry at the request of the U.S. government, which was eager to rebuild the Iraqi healthcare system. Plaintiffs allege that a militia infiltrated the Ministry and diverted goods and payments into its coffers, and that the militia then committed attacks that injured plaintiffs. Although plaintiffs never alleged that defendants' goods directly contributed to any specific attacks or that defendants intended to aid any attacks, the D.C. Circuit allowed plaintiffs to pursue ATA claims for both direct liability and aiding-and-abetting liability for every act of terrorism the militia committed across Iraq over a span of six years.

The questions presented are:

1. Whether the ATA authorizes liability for aiding and abetting acts of terror based on aid that is (1) neither tied to any specific attack nor systemic and pervasive and (2) provided without any desire to help the attacks succeed.

2. Whether the ATA's proximate cause requirement authorizes direct liability for acts of terror based on allegations that defendants transacted with a foreign-government agency that performed legitimate functions.

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 (NYSE: JNJ), 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. (NYSE: PFE), 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, 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., 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, 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, Adrianne 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

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, Christopher 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, 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

Fritz, Kristen Bledsoe-Fritz, Nancy Fuentes, individually, and for the estate of Daniel Fuentes, Armando Fuentes, Tatyana Fuentes, Julio Fuentes, Emma McGarry, D.F., a minor, Samantha Gage, individually, and for the estate of Joseph Gage, M.G., a minor, Luis Garza, Breanna Gasper, individually, and for the estate of Frank Gasper, Jamie Barnes, Randall Geiger, individually, and for the estate of Wayne Geiger, Kimberley Geiger, Jesseca Tsosie, Anthony Gerber, Linda Gibson, individually, and for the estate of Brennan Gibson, John Gibson, Stephanie Webster, Sean Elliott, Travis Gibson, Tyler Ginavan, Christopher Golembe, Kathryn Head, Miguel Gonzalez, Joel Gorbutt, Kevin Graves, individually, and for the estate of Joseph Graves, Courtnay Gray, individually, and for the estate of Brenton Gray, Cayden Gray, John Greer, Stephanie Sander, Christopher Greer, Joseph Greer, Carl Greer, Charles Gregston, Ashley Houppert, individually, and for the estate of James Gudridge, Robert Haaf, Monica Haaf, J.A.H., a minor, Mary Haaf, James Haaf, Ashley Sims, Michael Habsieger, Brenda Habsieger, individually, and for the estate of Andrew Habsieger, Amber Habsieger, for the estates of Jacob Habsieger, Derek Hadfield, Ashley Hadfield, Robert Hadfield II, Kristi Hadfield, Jennifer Roton, Kelli Hake, individually, and for the estate of Christopher Hake, G.H., a minor, Denice York, Russel York, Jennifer York, Jason York, Peter Hake, Jill Hake, Keri Hake, Zachary Hake, Skylar Hake, Jessica Williams, individually, and for the estate of James Hale, J.H., a minor, J.H., a minor, J.H., a minor, Jerral Hancock, Stacie Tscherny, J.H., a minor, A.H., a minor, Savannah Tscherny, Jeffrey Harper, Sean Harrington, Paul Harris, Anne Harris, David Wade Hartley, individually, and for the estate of Jeffery Hartley, David Wayne Hartley, Kaylie Hartley, Nannette Byrne-Haupt, Lynn Forehand, individually, and for the estate of Ryan Haupt, Lance Haupt, Rhonda Haupt, Tifany 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 Manganella, 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 Kennith 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, 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, Wilette 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 Pearcy, Laird Pearcy, Anne Pearcy, Jody Striker, Karyn McDonald, Andrew Pearcy, Patrick Pearcy, 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, 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 Durkacs, 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

AstraZeneca UK Limited—a private limited company organized under the laws of England and Wales, with its principal place of business in Cambridge, United Kingdom—is a biopharmaceutical company focusing on the discovery, development, manufacturing and commercialization of medicines. AstraZeneca UK Limited is an indirectly wholly-owned subsidiary of AstraZeneca PLC. AstraZeneca PLC is a public company organized under the laws of England and Wales and is publicly traded on the New York Stock Exchange and London Stock Exchange under the ticker AZN. On information and belief, no other publicly held company owns 10% or more of the voting interest in AstraZeneca UK Limited.

AstraZeneca Pharmaceuticals LP—a limited partnership organized under the laws of the State of Delaware with its principal place of business in Wilmington, Delaware—is a biopharmaceutical company focusing on the discovery, development, manufacturing and commercialization of medicines. AstraZeneca Pharmaceuticals LP is an indirectly wholly-owned subsidiary of AstraZeneca PLC. AstraZeneca PLC is a public company organized under the laws of England and Wales and is publicly traded on the New York Stock Exchange and London Stock Exchange under the ticker AZN. On information and belief, no other publicly held company owns 10% or more of the voting interest in AstraZeneca Pharmaceuticals LP.

F. Hoffmann-La Roche Ltd—a Swiss corporation with its principal place of business in Basel, Switzerland—is a healthcare company focusing on the discovery, development, and delivery of pharmaceutical medicines and medical diagnostics for improved disease management and patient care. F. Hoffmann-La Roche Ltd is a wholly owned subsidiary of Roche Holding Ltd. Roche Holding Ltd is publicly traded on the Swiss Stock Exchange under the ticker ROG. On information and belief, no publicly held company owns 10% or more of the voting interest in Roche Holding Ltd.

Genentech, Inc.—a Delaware corporation with its principal place of business in South San Francisco, California—is a biotechnology company dedicated to discovering and developing medicines for people with serious and life-threatening diseases. Genentech, Inc. is a wholly owned subsidiary of Roche Holdings, Inc. Roche Holdings, Inc.'s ultimate parent, Roche Holding Ltd, is publicly traded on the Swiss Stock Exchange under the ticker ROG. On information and belief, no publicly held company owns 10% or more of the voting interest in Roche Holding Ltd.

Hoffmann-La Roche Inc.—a New Jersey corporation with its principal place of business in Branchburg, New Jersey—operates as a research and development center whose primary business activity is the licensing of its U.S. patents. Hoffmann-La Roche Inc. is a wholly owned subsidiary of Roche Holdings, Inc. Roche Holdings, Inc.'s ultimate parent, Roche Holding Ltd, is publicly traded on the Swiss Stock Exchange under the ticker ROG. On information and belief, no publicly held company owns 10% or more of the voting interest in Roche Holding Ltd.

GE Healthcare USA Holding LLC is a healthcare company focused on providing healthcare technologies in medical imaging, digital solutions, patient monitoring and diagnostics, and performance enhancement solutions. GE Healthcare USA Holding LLC is owned by GE Medical Systems Information Technologies, Inc., which is not publicly traded.

GE Medical Systems Information Technologies GmbH manufactures and provides medical electronic equipment and systems for the diagnosis and monitoring of patients requiring critical care. 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. manufactures and provides medical electronic equipment and systems for the diagnosis and monitoring of patients requiring critical care. GE Medical Systems Information Technologies, Inc. is a wholly owned indirect subsidiary of GE HealthCare Technologies Inc. GE HealthCare Technologies Inc. is publicly traded on the NASDAQ exchange under the ticker GEHC. Upon information and belief, no publicly held company 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.

Johnson & Johnson is a healthcare company incorporated in New Jersey. Cilag GmbH International, Ethicon Endo-Surgery, LLC, Janssen Ortho LLC, and Ortho Biologics LLC are indirect subsidiaries of Johnson & Johnson. Ethicon, Inc. and Johnson & Johnson (Middle East) Inc. are wholly owned subsidiaries of Johnson & Johnson. Janssen Pharmaceutica NV is a subsidiary of Johnson & Johnson and Johnson & Johnson International, which is a wholly owned subsidiary of Johnson & Johnson. Johnson & Johnson is publicly traded on the New York Stock Exchange under the ticker JNJ, and, on information and belief, no publicly held corporation owns 10% or more of its stock.

Pfizer Inc. is a corporation incorporated in Delaware. Pfizer Inc. is publicly traded on the New York Stock Exchange under the ticker PFE, and, on information and belief, no publicly held corporation owns 10% or more of Pfizer Inc.'s voting shares.

Pfizer Enterprises SARL merged with and into Pfizer Holdings International Luxembourg (PHIL) SARL, a limited liability company (société à responsabilité limitée) existing under the laws of Luxembourg. At the time of the merger, Pfizer Holdings International Luxembourg (PHIL) SARL was an indirect wholly-owned subsidiary of Pfizer Inc. Subsequently, on June 29, 2026, Pfizer Holdings International Luxembourg (PHIL) SARL merged with and into Pfizer Pharmaceuticals Global B.V. Pfizer Pharmaceuticals Global B.V. is organized under the laws of the Netherlands and is an indirect wholly-owned subsidiary of Pfizer Inc. Pfizer Inc. is publicly traded on the New York Stock Exchange under the ticker PFE, and, on information and belief, no publicly-held corporation owns 10% or more of Pfizer Inc.'s voting shares.

Pfizer Pharmaceuticals LLC has since been renamed Viatris Pharmaceuticals LLC and is a limited liability company organized in Delaware. Viatris Pharmaceuticals LLC is an indirect wholly-owned subsidiary of Viatris Inc. Viatris Inc. is publicly traded on the NASDAQ exchange under the ticker VTRS, and, on information and belief, no publicly-held corporation owns 10% or more of Viatris Inc.'s voting shares.

Pharmacia & Upjohn Company LLC is a limited liability company organized in Delaware. Pharmacia & Upjohn Company LLC is an indirect wholly owned subsidiary of Pfizer Inc. Pfizer Inc. is publicly traded on the New York Stock Exchange under the ticker PFE, and, on information and belief, no publicly-held corporation owns 10% or more of Pfizer Inc.'s voting shares.

Wyeth Pharmaceuticals LLC (fka Wyeth Pharmaceuticals Inc.) is a limited liability company organized in Delaware. Wyeth Pharmaceuticals LLC is an indirect wholly-owned subsidiary of Pfizer Inc. Pfizer Inc. is publicly traded on the New York Stock Exchange under the ticker PFE, and, on information and belief, no publicly-held corporation owns 10% or more of Pfizer Inc.'s voting shares.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Atchley v. AstraZeneca UK Limited*, No. 20-7077 (D.C. Cir. Jan. 23, 2026) (reversing grant of motion to dismiss)
- *AstraZeneca UK Limited v. Atchley*, No. 23-9 (S. Ct. June 24, 2024) (granting petition for writ of certiorari, vacating judgment, and remanding for further consideration in light of *Twitter v. Taamneh*, 598 U.S. 471 (2023))
- *Atchley v. AstraZeneca UK Limited*, No. 20-7077 (D.C. Cir. Jan. 4, 2022) (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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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

Defendants 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 on remand from this Court (Pet.App.1a-40a) is reported at 165 F.4th 592. The court of appeals' prior opinion (Pet.App.42a-105a), subsequently vacated by this Court (Pet.App.41a), is reported at 22 F.4th 204. The district court's opinion (Pet.App.106a-135a) is reported at 474 F. Supp. 3d 194.

JURISDICTION

The court of appeals entered judgment on January 23, 2026. Pet.App.1a. The court of appeals denied rehearing en banc on April 23, 2026. Pet.App.137a. On July 20, 2026, the Chief Justice extended the time to file a petition until August 21, 2026. 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 D.C. Circuit has again greenlit a sprawling lawsuit that seeks to recast sales of life-saving medicine and medical equipment by twenty-one of the world's leading drug and medical-device manufacturers as aiding and abetting terrorism and, even more absurdly, as actual acts of international terrorism. Defendants made these sales to the Iraqi Ministry of Health at the encouragement of the U.S. government, which itself supported the Ministry financially. Plaintiffs are U.S. servicemembers, contractors, and their families. They allege that the militia Jaysh al-Mahdi committed attacks that injured them during the Iraq War. But plaintiffs have not sued Jaysh al-Mahdi; they instead sued defendants under the Antiterrorism Act (ATA). Plaintiffs allege that defendants sold medicines and medical goods and paid commissions to the Iraqi Ministry of Health, and that Jaysh al-Mahdi agents at the Ministry diverted those goods and payments to support militia operations. Plaintiffs seek treble damages against defendants for "act[s] of international terrorism." 18 U.S.C. § 2333(a), (d)(2).

After the D.C. Circuit's original decision, and at the urging of the United States, this Court granted, vacated, and remanded with instructions to apply this Court's ATA aiding-and-abetting decision in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023). *Taamneh* held that the "conceptual core" of ATA aiding-and-abetting liability is that defendants "consciously and culpably participated in" the "act of international terrorism that injured the plaintiffs" "so as to help make it succeed." 598 U.S. at 493, 497 (cleaned up). That requires (1) a "concrete nexus" between a defendant's aid and the specific attacks against plaintiffs, unless the defendants' aid was "systemic" and "pervasive," *id.* at 501-02, and (2) the defendants must have "provided … aid" with the "intent[]" to help the terror attacks succeed, *id.* at 506.

A straightforward application of that high bar on remand should have led to dismissal. It is undisputed that the 588-page complaint contains no allegation tying any of defendants' transactions with the Ministry of Health to any of the attacks against plaintiffs, nor did the D.C. Circuit conclude that defendants' alleged aid was systemic and pervasive. And no one contends that defendants transacted with the Ministry with the intent to help Jaysh al-Mahdi attacks succeed. Nonetheless, the D.C. Circuit held plaintiffs' allegations establish a causal nexus sufficient to impose liability for every Jaysh al-Mahdi attack across the nation of Iraq over a six-year period. To the D.C. Circuit, defendants' conduct created a foreseeable risk of terror attacks because "money is fungible," and defendants' transactions with the Ministry required no showing of intent because they were allegedly "unusual." Pet.App.23a, 26a.

In so holding, the D.C. Circuit sharply split with the Second Circuit, which, applying *Taamneh*, rejected a remarkably similar claim asserted by servicemembers injured by attacks in Afghanistan. The Second Circuit rejected the claim because it lacked (1) a "discernable nexus between the [defendants' aid] and the attacks *committed against Plaintiffs*," and (2) an '"intent to further [a terrorist organization's] terrorist activities."' *Ashley v. Deutsche Bank Aktiengesellschaft*, 144 F.4th 420, 444 (2d Cir. 2025) (emphasis added) (second alteration in original). In direct contrast to the decision below, the Second Circuit "reject[ed]" the "theory" that general aid to a group's coffers satisfies the nexus requirement because "money is fungible." *Id.* (citation omitted). Further confirming the conflict, the Second Circuit refused to deem allegations of unusual conduct sufficient when such conduct does not indicate a defendant's intent to help the attacks succeed, even when the allegations involve conduct like "money laundering" that is illegal for non-terrorism-specific reasons. *Id.* at 445. This square split cannot be left to fester, because these two circuits hear the vast majority of ATA cases, and the ATA's generous venue provision makes forum shopping easy.

Beyond creating a circuit split, the D.C. Circuit disregarded the United States' views in a case that fundamentally takes aim at U.S. policy in Iraq and risks undermining the federal government's ability to promote its foreign-policy priorities. As the government told this Court, any suggestion that a foreseeable connection between aid and attacks is a sufficient nexus "misunderstands the role of foreseeability under … the ATA." U.S. Br. 15 n.1, *AstraZeneca UK Limited v. Atchley*, No. 23-9 (U.S. May 21, 2024). Yet the D.C. Circuit doubled down on that misunderstanding, finding a nexus because Jaysh al-Mahdi's attacks were the "predictable" "fallout" from the alleged transactions with the U.S.-backed Ministry. Pet.App.25a.

In addition, the D.C. Circuit's holding that plaintiffs adequately pleaded defendants' *direct* liability independently warrants review. As a threshold matter, a holding that plaintiffs fail to allege aiding-and-abetting liability would foreclose plaintiffs' claim for direct liability. In any event, the court of appeals disregarded the ATA's direct-liability requirement that plaintiffs' injuries occur "by reason of" defendants' acts, *i.e.*, that defendants proximately caused plaintiffs' harm. *Id.* § 2333(a). That language demands a direct link between the defendant's actions and the plaintiff's injury. But the D.C. Circuit, in conflict with the Second and Seventh Circuits, held that an *indirect* link—doing business with a government agency allegedly infiltrated by a terrorist-affiliated militia—was enough. *See Rothstein v. UBS AG*, 708 F.3d 82, 97 (2d Cir. 2013); *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 393 (7th Cir. 2018).

Defendants denounce terrorism and hold great respect for plaintiffs' military service and sacrifices. But the D.C. Circuit's holdings send a chilling message to businesses and humanitarian nonprofits: Avoid assisting troubled countries where help is needed most—even when called on by the U.S. government—or risk treble-damages liability in U.S. courts. This Court should grant certiorari to prevent the D.C. Circuit's misinterpretation of the ATA from jeopardizing important U.S. foreign-policy objectives.

A. Factual Background

1. Between 2003 and 2005, the United States poured $24 billion into rebuilding Iraq. C.A.J.A. 662 (GAO report); U.S. Br. 4. At least $866 million went directly to Iraq's healthcare sector, including its Ministry of Health. C.A.J.A. 663 (GAO report); *see also* C.A.J.A. 668 (State Department report), 674 (USAID report), 699 (same); Third Am. Compl. (TAC) ¶ 113, D.C.Dkt. 124; U.S. Br. 4. The Ministry was "a sprawling bureaucracy" that employed "every public-sector doctor, pharmacist, nurse, and medical technician in Iraq" and "import[ed] and distribut[ed] [medical] goods to satisfy the orders placed by individual healthcare providers." TAC ¶¶ 72, 119.

U.S.-taxpayer money alone could not repair Iraq. The United States accordingly "encouraged private investment in those reconstruction efforts," U.S. Br. 4, including through "Iraqi Ministry contracts" for "medical supplies," C.A.J.A. 683, 685.

Defendants answered that call. The complaint alleges that some defendants supplied medicines or medical equipment to the Ministry, while others manufactured those goods or their ingredients. These goods included cancer medications, antibiotics, baby heart monitors, and X-ray machines. TAC ¶¶ 191, 238, 284, 312.

2. The United States also sought to build democracy in Iraq by funding and supporting elections. *See id.* ¶ 54; U.S. Br. 4. As is typical in parliamentary democracies, the winning parties in Iraq were 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 from 2005 to 2008. *Id.* ¶¶ 68, 104.

Like other major Iraqi political groups at the time, the Sadrists had an associated militia, Jaysh al-Mahdi. C.A. Iraq Reconstruction Experts Br. 15-16. Although plaintiffs acknowledge that the Ministry continued to perform legitimate healthcare functions like distributing medical goods, *e.g.* TAC ¶ 119, plaintiffs claim that 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." TAC ¶¶ 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.

Plaintiffs allege that they or their family members were injured or killed in over 300 Jaysh al-Mahdi attacks across Iraq between 2005 and 2011. *Id.* ¶¶ 1, 16; Pet.App.129a.

B. Procedural History

1. Plaintiffs sued in 2017, seeking treble damages under the ATA. Plaintiffs do "not allege that [defendants] directly channeled resources to" Jaysh al-Mahdi. U.S. Br. 19 (cleaned up). Plaintiffs instead allege that, consistent with the Health Ministry's "standard bid instructions," defendants offered the Ministry discounts on medicine and medical equipment by providing "free goods" on top of the paid-for quantity. TAC ¶ 120. And, plaintiffs allege,

defendants paid a "religious tax" or "commissions" to Ministry officials. *Id.* ¶ 142. Plaintiffs characterize these free medical goods and payments as "bribes," *id.* ¶ 4, though they acknowledge that such discounts and commissions were "standard practice" in every large contract with the Ministry, *id.* ¶ 142, and common across the Middle East, *id.* ¶ 118. These free goods and resources were then "misappropriated by Jaysh al-Mahdi agents within the Ministry," plaintiffs allege, and used to fund terror attacks. U.S. Br. 19; TAC ¶¶ 105, 128.

Plaintiffs claim that defendants are therefore directly liable for acts of international terrorism on the theory that defendants' alleged transactions amount to criminal material support of terrorism or terrorist financing. TAC ¶¶ 3208-21 (asserting claims under 18 U.S.C. § 2333(a)). Plaintiffs also brought two aiding-and-abetting claims. *Id.* ¶¶ 3181-89. Plaintiffs acknowledge that defendants transacted with the Ministry "to grow their market share in Iraq," *id.* ¶ 115—not to support terrorism. But Plaintiffs allege that defendants "knew or recklessly disregarded" that transactions with the Ministry would "finance Jaysh al-Mahdi." *Id.* at 81 (capitalization altered).

2. The district court dismissed the complaint. Pet.App.136a. On direct liability, the court held that plaintiffs failed to plead proximate causation, *i.e.*, a "sufficient link between the defendant's conduct and the plaintiff's injuries." Pet.App.124a (quoting *Crosby v. Twitter, Inc.*, 921 F.3d 617, 623 (6th Cir. 2019)). "Even accepting plaintiffs' allegations that [Jaysh al-Mahdi] co-opted the Ministry," the involvement of a sovereign government agency that "did not 'exist solely to perform terrorist acts'" prevented any causal connection between defendants and the attacks. Pet.App.126a-127a (quoting *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 392 (7th Cir. 2018)).

The court independently rejected the aiding-and-abetting claims because plaintiffs did not plead that defendants "knowingly provid[ed] substantial assistance" to an "act of international terrorism." Pet.App.132a (quoting 18 U.S.C. § 2333(d)(2)) (alteration in original). "At most," plaintiffs alleged "general support to" Jaysh al-Mahdi, not substantial assistance to any particular attack. Pet.App.133a-134a. Nor did plaintiffs allege that defendants "intended to help" Jaysh al-Mahdi commit attacks. Pet.App.134a.

3. The D.C. Circuit reversed. Pet.App.105a. On direct liability, the court held that plaintiffs adequately alleged that defendants proximately caused plaintiffs' injuries. Pet.App.79a. In the court's view, it sufficed that defendants' 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.81a-82a.

The court noted other circuits' decisions rejecting proximate causation where the defendants transacted with foreign states that supported terrorism. Pet.App.82a-83a. 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.83a.

The court also held that plaintiffs stated an aiding-and-abetting claim. Pet.App.78a-79a. The court held that plaintiffs adequately alleged that defendants knowingly provided substantial assistance to Jaysh al-Mahdi, and rejected the argument that plaintiffs needed to allege intent to aid terrorism. Pet.App.68a, 73a-75a, 78a-79a.

The D.C. Circuit denied rehearing en banc. Pet.App.139a.

4. After the court of appeals' decision, this Court decided *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023). The Court held that to be liable for aiding and abetting under the ATA, a defendant must have "consciously and culpably participated in [the] wrongful act" that injured the plaintiff "so as to help make it succeed." *Id.* at 493 (cleaned up). "[I]t is not enough," *Taamneh* held, "that a defendant have given substantial assistance to" the "enterprise" that committed the tort. *Id.* at 495.

Distilling those principles, *Taamneh* set out a two-step framework for ATA aiding-and-abetting liability. First, a plaintiff must identify a definable "nexus between the defendant's acts and the tort" that injured the plaintiff. *Id.* at 503, 506. Absent such a nexus, "a showing of pervasive and systemic aid [to the terrorist group] is required to ensure that defendants actually aided and abetted each tort of that enterprise." *Id.* at 506. Second, the plaintiff must establish that the defendant's participation in the tort was "culpable." *Id.* Those two elements are complementary: "[T]he more attenuated the nexus, the more courts should demand that plaintiffs show culpable participation through intentional aid that substantially furthered the tort." *Id.*

5. Defendants sought certiorari, urging the Court to grant, vacate, and remand (GVR) for reconsideration in light of *Taamneh*. Pet. 13-16, *AstraZeneca UK Limited v. Atchley*, No. 23-9 (U.S. June 30, 2023). Alternatively, defendants requested plenary review of the D.C. Circuit's holdings that a U.S.-designated foreign terrorist organization "planned or authorized" the attacks at issue and that defendants proximately caused plaintiffs' injuries. *Id.* at 16-23.

In response to this Court's call for the views of the Solicitor General, the United States recommended a GVR. U.S. Br. 11. The government concluded that

Taamneh "could affect the outcome of [plaintiffs'] aiding-and-abetting claims in several ways." *Id.* at 13. For one, the government determined that the D.C. Circuit had failed to "trace a 'definable nexus' between the funds and medical goods [defendants allegedly] supplied to the Ministry" and "the attacks that injured [plaintiffs]." *Id.* at 14 (quoting *Taamneh*, 598 U.S. at 503). As the United States explained, *Taamneh* does not allow courts to find a definable nexus based on "[t]he foreseeability of an attack." *Id.* at 15 n.1. The D.C. Circuit also "did not address whether [plaintiffs'] allegations meet the demanding standard" of pervasive-and-systemic aid. *Id.* at 15. On culpability too, the government faulted the court's analysis, explaining that to the extent no "close nexus" exists, the court should have "require[d] a greater showing" of "intentional aid that substantially furthered the tort." U.S. Br. 14 (quoting *Taamneh*, 598 U.S. at 506).

As to the other questions presented, the United States concluded that "plenary review is not warranted at this time." U.S. Br. 21 (capitalization altered). The government noted, though, defendants' "reasonabl[e]" assertion "that if their actions lacked a sufficiently close nexus to support aiding-and-abetting liability, plaintiffs necessarily will be unable to demonstrate the proximate causation required for direct liability." *Id.*

This Court granted, vacated, and remanded. Pet.App.41a.

6. On remand, the D.C. Circuit again held that plaintiffs' claims for aiding-and-abetting liability could proceed. As to nexus, the court "recognize[d]" that plaintiffs' allegations do not "trace" defendants' aid to any of the "specific attacks" at issue here. Pet.App.37a. But the court deemed general "financial assistance" to Jaysh al-Mahdi sufficient because "money is fungible" and attacks

in the region were "predictable." Pet.App.23a, 25a (cleaned up).

The court also reaffirmed its culpability holding. The court held that to establish culpability, plaintiffs need not allege intent to aid terrorism, even where, as here, the nexus is indirect. Pet.App.25a, 27a, 37a. The court concluded that plaintiffs can establish culpability by alleging "affirmative" or "unusual" conduct like bribery, even if that conduct does not suggest that defendants intended to aid any attacks. *See* Pet.App.27a, 32a-33a.

The court also reinstated its proximate-causation holding for direct liability. Pet.App.38a. Defendants had argued that plaintiffs' failure to allege aiding-and-abetting liability under *Taamneh* necessarily implied that they fell short of the higher bar for direct liability. Because the court disagreed about aiding-and-abetting liability, it rejected this argument. Pet.App.38a.

7. Defendants sought rehearing en banc, which the court of appeals denied on April 23, 2026. Pet.App.137a.

REASONS FOR GRANTING THE PETITION

The D.C. Circuit's decision blows through the guardrails *Taamneh* places on ATA liability and splits from every other circuit to consider the questions presented. The result is to expose the world's largest drug and medical device manufacturers to liability for terrorism for supplying drugs and medical devices to a foreign health ministry at the U.S. government's encouragement. That shocking and deeply flawed result should not stand.

Taamneh demands a discernable nexus between a defendant's conduct and the specific attacks that injured the plaintiff. But the D.C. Circuit—in direct conflict with the Second Circuit—held that a defendant's undifferentiated transactions with a government agency create a nexus to attacks across an entire nation over the course of multiple years, even without a showing of pervasive-and-systemic aid. Compounding its error, the D.C. Circuit weakened *Taamneh*'s "culpability" standard to require mere knowledge that fungible aid *could* flow into a militia's coffers, coupled with supposedly "unusual" conduct. Again, that splits from the Second Circuit and defies this Court's instruction that a defendant must participate in the wrong "as something that they wished to bring about." *Taamneh*, 598 U.S. at 498 (cleaned up). Indeed, in direct contravention of *Taamneh*, the D.C. Circuit brushed aside that exact language as supposedly limited to the "criminal field" and "entirely inappropriate" in the ATA context. Pet.App.28a (citation omitted). This Court should grant certiorari to resolve these conflicts on aiding-and-abetting liability.

The D.C. Circuit's direct-liability holding also warrants review. As a threshold matter, reversing on aiding-and-abetting liability would necessarily warrant reversing on direct liability. In any event, the direct-liability holding is badly mistaken and the subject of its own circuit conflict. To reach its far-fetched conclusion that the world's largest pharmaceutical companies could be directly liable for terrorism, the court of appeals loosened the ATA's direct-liability standards and accepted attenuated allegations despite the presence of a sovereign intermediary with legitimate functions, splitting from the Second and Seventh Circuits.

This Court's intervention is needed. 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. Yet under the ATA's liberal venue provisions, the D.C. Circuit's law will functionally serve as the law of the land.

I. The D.C. Circuit's Aiding-and-Abetting Holding Warrants Review

A. The Decision Below Creates a Clear Circuit Split Over the ATA's Aiding-and-Abetting Standard

To plead an ATA aiding-and-abetting claim, plaintiffs must (1) identify a definable "nexus between the defendant's acts and the tort" (*i.e.*, the "act of international terrorism") and (2) establish the defendant's participation in the terrorist act was "culpable"—that the defendant "participated in the wrongful act so as to help make it succeed." *Taamneh*, 598 U.S. at 493, 506 (cleaned up). On both measures, the decision below starkly split with the Second Circuit. Left unresolved, these conflicts will create a clear incentive for plaintiffs to forum shop and take advantage of the D.C. Circuit's lesser standard for pleading, and ultimately proving, ATA claims.

1. Nexus. The Second and D.C. Circuits flatly disagree on the ATA's nexus requirement.

a. The Second Circuit requires a "discernable nexus between the [defendants' aid] and the attacks *committed against Plaintiffs*." *Ashley v. Deutsche Bank Aktiengesellschaft*, 144 F.4th 420, 444-45 (2d Cir. 2025) (emphasis added). "[L]iability only attaches for aiding and abetting a particular terrorist attack." *Id.* at 448. The Second Circuit "reject[s]" the "theory" that, because "money is fungible," plaintiffs can circumvent that nexus requirement by simply tying a defendant's aid to a group's conduct generally. *Id.* (citation omitted). Such a "fungibility theory," the Second Circuit explained, would violate *Taamneh*'s holding that "substantial support" to a terrorist organization does not establish a nexus with specific attacks. *Id.* (citation omitted).

When plaintiffs have not tied the defendants' aid to the specific attacks, the Second Circuit permits aiding-and-abetting liability only if plaintiffs establish that defendants' aid to the terrorist enterprise was "pervasive, systemic, and culpable." *Id.* at 445.

The D.C. Circuit, however, expressly disclaims that plaintiffs must allege that "particular" aid by defendants supported specific "attack[s] that injured plaintiffs." Pet.App.22a. Instead, the D.C. Circuit holds that undifferentiated assistance to a group generally—by "do[ing] business" with the group and making "payments" that help "financ[e]" its "campaign"—is sufficient to plead the requisite nexus to the specific attacks "that harmed [the] plaintiffs." Pet.App.20a-22a. The reason? Because "[m]oney is fungible." Pet.App.23a (citation omitted). It is therefore enough in the D.C. Circuit that a defendant's resources foreseeably flowed to a militia's coffers. *See* Pet.App.25a.

b. To see how differently these rules play out in practice, compare the Second Circuit's decision in *Ashley* to the decision below.

Ashley involved a suit by victims of "terrorist attacks in Afghanistan between 2011 and 2016." 144 F.4th at 427. Seeking redress under the ATA, the plaintiffs sued several banks for allegedly laundering money for entities "with an apparent or possible connection to" the terrorists who committed the attacks. *Id.* at 444. As the Second Circuit recognized, the laundered money "was likely to end up" in terrorist hands, which made it "possible" the money was "used to facilitate bombings in Afghanistan during the relevant time." *Id.* at 444-45. Nonetheless, the Second Circuit held those allegations insufficient. *Id.* at 445. Without a tie to the specific attacks, the Second Circuit required that the plaintiffs establish "pervasive, systemic, and culpable aid," a "high bar" that the plaintiffs' money-laundering allegations could not meet. *Id.*

The allegations in this case are remarkably similar to those in *Ashley*: As there, plaintiffs here allege that defendants transacted with one group (the Iraqi Ministry of Health) with apparent ties to the wrongdoer (Jaysh al-Mahdi). TAC ¶¶ 104, 114, 142. And as in *Ashley*, plaintiffs here contend that it was foreseeable that the aid could be used for terrorist attacks. *Id.* ¶¶ 117, 180. To be sure, *Ashley* rejected those plaintiffs' contention that the attacks were a "foreseeable" result of the defendants' money laundering. 144 F.4th at 444. But the Second Circuit's point was that fungibility does not make it foreseeable that general aid to an enterprise will flow to specific attacks widely spanning geography and time. *Id.* The D.C. Circuit, in contrast, embraced that very logic.

Because the D.C. Circuit has the opposite nexus rule to the Second Circuit, the D.C. Circuit reached the opposite result. While the D.C. Circuit acknowledged that plaintiffs' allegations failed to tie defendants' aid to any of the "specific attacks" at issue here, Pet.App.25a, 37a, that did not matter. It was sufficient that defendants' aid to the Ministry could have foreseeably flowed to support Jaysh al-Mahdi's general violent conduct in Iraq. *See id.*

The D.C. Circuit also held, unlike the Second Circuit in *Ashley*, that plaintiffs' nexus theory did not require a showing of pervasive-and-systemic aid. Pet.App.23a-25a. That requirement attaches when a plaintiff's nexus theory would permit liability for "a broad category of misconduct," rather than for specific torts tied to specific aid. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 292 (2025). The D.C. Circuit deemed the allegations here sufficiently "circumscribed temporally and geographically"—never mind that they span the entire nation of Iraq over a six-year period—to avoid that requirement. Pet.App.24a-25a. But *Ashley* required the plaintiffs to establish pervasive-and-systemic aid in precisely the same circumstances: where the plaintiffs' theory reached every attack committed across a nation over six years. 144 F.4th at 427, 445; TAC ¶ 1.

There can be no doubt that this case would have come out differently in the Second Circuit. But rather than justify its contrary approach, the D.C. Circuit simply ignored *Ashley*, declining even to cite it despite defendants' having brought it to the court's attention. *See* C.A. Rule 28(j) Letter (July 24, 2025).

2. Culpability. On culpability as well, the Second and D.C. Circuits sharply disagree over the ATA's aiding-and-abetting standard.

a. In the Second Circuit, a showing of culpability always requires intent to support terrorism. *Ashley* holds that an ATA aiding-and-abetting "claim requires 'intent to further [a terrorist organization's] terrorist activities.'" 144 F.4th at 444 (citation omitted) (alteration in original). That rule resolved the case. *Ashley* held there was no culpability because "the complaint does not support the inference that the Banks' money laundering operations were designed or performed with the intent to aid" terrorism. *Id.* at 445. Money laundering is of course culpable in the abstract, but "culpably execut[ing] financially suspect transactions writ large" did not plausibly suggest that the banks "actively sought to associate themselves" with the terrorists' operations. *Id.*

Not so in the D.C. Circuit. The decision below rejected what the court described as "a specific intent requirement" for aiding-and-abetting liability. Pet.App.27a. Instead, the D.C. Circuit held, a plaintiff can establish culpability without such intent by pointing to "affirmative" or "unusual" transactions with an entity allegedly linked to terrorism, even though that entity was the U.S.-backed

Ministry of Health. Pet.App.27a, 33a. The purported unusualness stemmed from the allegation that the transactions were "illegal under both U.S. and Iraqi law," Pet.App.32a—which is of course equally true of the money laundering alleged in *Ashley*. Unlike the Second Circuit, however, the D.C. Circuit found it immaterial whether the allegedly unusual transactions generated any inference whatsoever of intent to further terrorist activity. Pet.App.31a-34a.

b. This split, too, was unquestionably outcome-determinative. Plaintiffs have never contended that defendants had any intent to aid terrorism. And the Second Circuit flatly requires "intent to further … terrorist activities," even when plaintiffs allege affirmative, unusual, and illegal transactions like money laundering. *Ashley*, 144 F.4th at 444 (citation omitted). Indeed, the Second Circuit in *Ashley* denied liability even though the bank there continued to provide services to a terrorist-linked company after "members of the U.S. military" allegedly urged the bank "to stop providing banking services" and "save American lives." *Id.* at 429-30, 440. A specific warning from "members of the U.S. military" is far more serious and indicative of culpability than the D.C. Circuit's credited potpourri of "propaganda posters," "investigative reporting," and "corporate security group" research indicating a tie between the U.S.-backed Ministry and Jaysh al-Mahdi. Pet.App.29a-30a.

B. The Question Presented Is Critically Important and Cleanly Presented

1. This Court should resolve the question presented now. Liability for aiding and abetting terrorism cannot turn on the forum in which a plaintiff chooses to sue. Disuniformity concerns are already at their apex here, because defendants' review of all complaints alleging ATA violations filed since 2021 has shown that over seventy-

five percent of ATA suits are filed in either the Second or D.C. Circuits.

Further percolation is unnecessary and unlikely. The two circuits most likely to see ATA suits have already weighed in with opinions extensively ventilating the standard for aiding-and-abetting liability. Additional circuit-level decisions will not meaningfully improve this Court's review. And in any event, the ATA's generous venue rules, which permit suit where just one plaintiff or defendant resides, *see* 18 U.S.C. § 2334(a), create a strong incentive for future plaintiffs to file in D.C., depriving other circuits of the opportunity to weigh in. Nor are any of the splits likely to resolve themselves. The D.C. Circuit has twice denied rehearing en banc in this case and the Second Circuit denied rehearing in *Ashley*. *Supra* pp. 10, 12; Order Denying Rehearing En Banc, *Ashley v. Deutsche Bank Aktiengesellschaft*, No. 23-132 (2d Cir. 2025), ECF No. 222.

2. This case is an ideal vehicle to address the circuits' divergent standards. The D.C. Circuit acknowledged that plaintiffs' suit could not overcome a nexus rule that required establishing a tie to the specific attacks. *See supra* pp. 11-12. And neither plaintiffs nor the D.C. Circuit have ever contended that defendants sought to help Jaysh al-Mahdi's attacks succeed.

This case also presents an exceedingly common fact pattern in ATA aiding-and-abetting cases, making it a highly appropriate candidate for clarifying the boundaries of *Taamneh* and the ATA's requirements. Many ATA complaints follow the same structure: A defendant transacts with an entity whose funds go to both legitimate and illegitimate purposes; some of the entity's illegitimate expenditures end up in the hands of rogue groups; then those rogue groups commit or contribute to acts of terrorism.[1] This Court should end the confusion over how such cases should play out.

3. Leaving the D.C. Circuit's regime in place would drastically expand ATA liability and risk thwarting some of the United States' most important foreign-policy priorities.

The government has repeatedly stated, including in a brief in this case, that encouraging "private investment in regions experiencing humanitarian crises" is a "foreign policy priorit[y]." U.S. Br. 20 n.2. The D.C. Circuit's sweeping theory of ATA liability, however, threatens to stymie those foreign-policy efforts. Private actors are unlikely to lend a hand when doing so exposes them to liability for terrorist attacks. Nongovernmental organizations, too, will "be less likely to engage in intergovernmental efforts if they fear those activities will subject them to private suits." *See Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 638 (2021); C.A. Charity & Sec. Network Br. 5-6, 9-10.

Consider Venezuela, where the President has declared that revitalizing the oil industry is critical to "major foreign policy objectives of the United States." Exec. Order No. 14373, 91 Fed. Reg. 2045 (2026). The government has accordingly "invite[d] American and other aligned companies to play a constructive role in supporting economic recovery."[2] But under the D.C. Circuit's loosened nexus and culpability requirements, a company heeding

[1] *See, e.g.*, *Zobay v. MTN Grp. Ltd.*, 695 F. Supp. 3d 301, 317-21 (E.D.N.Y. 2023); *Ofisi v. BNP Paribas, S.A.*, 77 F.4th 667, 670-71 (D.C. Cir. 2023); *O'Sullivan v. Deutsche Bank AG*, 2019 WL 1409446, at *5-6 (S.D.N.Y. Mar. 28, 2019).

[2] *Actions to Implement President Trump's Vision for Venezuelan Oil*, U.S. Dep't of State (Feb. 13, 2026), https://tinyurl.com/2w8ch455.

the President's call could face ATA liability for the activities of Tren de Aragua, a designated foreign terrorist organization that is known to divert or "extort[]" money from legitimate businesses.[3]

The ATA's limits on aiding-and-abetting liability play an important role in ensuring predictability for private actors conducting business abroad. Indeed, concrete nexus and intent requirements give third parties reliable markers to distinguish partners from pariahs and avoid transactions that could trigger crushing liability. But under the D.C. Circuit's approach, liability can now spring from (1) an arm's-length transaction with (2) a sovereign government agency that (3) performs legitimate functions but (4) is infiltrated by a rogue militia that then (5) diverts funds to attacks. By deeming a concrete nexus and intent unnecessary, the court of appeals has made it impossible for private parties to predict the downstream consequences of their foreign business. The result is to erect flashing "Do Not Enter" signs over areas like Lebanon, Yemen, and Iran, where diplomatic and humanitarian priorities may soon require private investment, even though Hezbollah operates in Lebanon, the Houthis in Yemen, and the IRGC in Iran. In all these places and more, the D.C. Circuit's decision means the safest course for private actors will be to simply rebuff government requests to send aid abroad. *See* C.A. Charity & Sec. Network Br. 15-18.

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[3] *See Treasury Targets Money Laundering Network Supporting Venezuelan Terrorist Organization Tren de Aragua*, U.S. Dep't of the Treasury (Dec. 3, 2025), https://tinyurl.com/28r4a867.

C. The D.C. Circuit's Aiding-and-Abetting Holding Is Wrong

The D.C. Circuit erred in holding that defendants' transactions with Iraq's Ministry of Health—undertaken without any desire to aid terrorism—permit ATA liability for attacks by Jaysh al-Mahdi.

Nexus. No nexus links defendants' transactions with an Iraqi government agency to a militia's attacks on plaintiffs. As this Court held in *Taamneh*, a defendant does not create a nexus with specific attacks by offering "substantial assistance … to [an attacker's] activities in general." 598 U.S. at 503. Rather, "the question is whether defendants gave substantial assistance to [the attacker] with respect to the [specific] attack." *Id.*

The complaint here falls well short of that bar. As the court of appeals acknowledged, the complaint does not "trac[e] defendants' support to any specific attack injuring any plaintiff." Pet.App.25a. Indeed, on the complaint's own telling, defendants provided only a tiny fraction of the Ministry's multi-billion-dollar budget. *See* TAC ¶¶ 172-73, 198, 221, 261, 291, 318. Most defendants allegedly conveyed "several million dollars per year in value," primarily in the form of drugs and medical devices like X-ray, MRI, and ultrasound machines—not guns, bullets, or grenades. TAC ¶¶ 198, 221, 261, 291, 318. The United States likewise reads the complaint as alleging an attenuated nexus: The transactions "with the Ministry" "indirectly provided financial support to Jaysh al-Mahdi" because Jaysh al-Mahdi "diverted" resources from the Ministry. U.S. Br. 4, 6.

The D.C. Circuit did not read the allegations differently. Instead, the court held that "provid[ing] … assistance" that foreseeably aided Jaysh al-Mahdi's general activities in the "vicinity" (*meaning the entire nation of*

Iraq) sufficed to establish a nexus to the particular "attacks that injured" plaintiffs. Pet.App.25a. But that approach circumvents *Taamneh*'s requirement of a connection between the aid and the "specific wrongful acts." 598 U.S. at 494; *see also id.* at 497, 503, 506. As this Court emphasized, "it is not enough … that a defendant have given substantial assistance to a transcendent 'enterprise'"; instead, "a defendant must have aided and abetted … the commission of the actionable wrong." *Id.* at 495.

Nor is the D.C. Circuit correct that a nexus exists because "attacks against U.S. citizens were the predictable" result of transacting with the Ministry. Pet.App.25a. As the United States has already explained in this case, that view "misunderstands the role of foreseeability under the common law and the ATA, as explained in *Taamneh*." U.S. Br. 15 n.1. Plaintiffs must still show that each defendant aided and abetted the principal tort. *Taamneh*, 598 U.S. at 497. The "foreseeability of [the principal] attack is not a substitute" for that showing. U.S. Br. 15 n.1.

The D.C. Circuit discerned a nexus on the theory that a terrorist group's "money is fungible." Pet.App.23a (cleaned up). If bare fungibility sufficed, though, then aiding an attacker's "activities in general" would permit liability—a standard this Court has flatly rejected. *Taamneh*, 598 U.S. at 503. Moreover, as the Second Circuit has explained, a "fungibility" theory would recast the ATA as a supercharged material-support statute and nullify the careful limits Congress placed on ATA aiding-and-abetting liability. *See Ashley*, 144 F.4th at 444.

Finally, the D.C. Circuit flouted this Court's precedents in concluding that the nexus theory here does not require a showing of pervasive-and-systemic aid. That requirement is triggered when a nexus theory would hold a defendant liable for "a broad category of misconduct" by a principal. *Smith & Wesson*, 605 U.S. at 292. General liability for a militia group's attacks from 2005 through 2011 across the nation of Iraq, TAC ¶ 1, surely fits the bill.

Indeed, the nexus theory here sweeps at least as broadly as two other theories that this Court held required pervasive-and-systemic aid. In *Smith & Wesson*, the Mexican government's nexus theory covered years of gun trafficking across Mexico and so required a showing of "pervasive, systemic, and culpable assistance." 605 U.S. at 294 (citation omitted). Likewise in *Taamneh*, although the plaintiffs brought claims only for injuries caused by "the Reina nightclub attack," those plaintiffs' "*theory*" about online incitement would have permitted victims of other ISIS attacks to bring similar claims, so the plaintiffs had to clear the pervasive-and-systemic bar. 598 U.S. at 484, 501 (emphasis added).

Applying the pervasive-and-systemic standard here would have made short work of plaintiffs' claims. That standard demands a "near-common enterprise" that "begins to blur with conspiracy liability." *Taamneh*, 598 U.S. at 496, 502 (citation omitted). The court here never suggested—and nothing in the complaint supports—that defendants served as de facto co-conspirators in a terror campaign.

Culpability. The court of appeals likewise erred in failing to require allegations indicating that defendants provided the alleged aid so as to help Jaysh al-Mahdi's attacks succeed. As *Taamneh* holds, the "conceptual core" of ATA aiding-and-abetting liability is "that the defendant consciously and culpably participated in a wrongful act *so as to help make it succeed*." 598 U.S. at 493 (emphasis added) (cleaned up). Allegations that a defendant "knew they were playing some sort of role in [the wrongdoer's] enterprise" are insufficient. *Id.* at 497. Yet the D.C. Circuit expressly rejected a requirement that defendants specifically intend to aid Jaysh al-Mahdi's attacks, instead focusing on defendants' supposed knowledge of a link between Jaysh al-Mahdi and the Ministry. Pet.App.27a-28a.

Strikingly, the D.C. Circuit brushed aside the requirement that an aider-and-abettor must have "participate[d] in [the wrongful activity] as in something that he wishe[d] to bring about." Pet.App.27a-28a (citation omitted) (alterations in original). To the D.C. Circuit, that is just a criminal law standard "entirely inappropriate" in a civil case. Pet.App.28a (citation omitted). But that cannot be squared with *Taamneh*, which dismissed a civil ATA case because the allegations did not suggest that the defendants "participated in [the terrorist attack] as something that they wished to bring about." 598 U.S. at 498 (cleaned up).

The D.C. Circuit's reliance on knowledge is especially misguided given *Taamneh*'s admonition that "the more attenuated the nexus, the more courts should demand that plaintiffs show culpable participation through *intentional aid* that substantially furthered the tort." *Id.* at 506 (emphasis added). Despite acknowledging that any nexus here was "indirect"—*i.e.*, attenuated—the court refused to require any such showing. Pet.App.37a; *see also* U.S. Br. 6 (recognizing that the allegations here are of "indirectly" funding Jaysh al-Mahdi).

The D.C. Circuit's reasons for doing so do not withstand scrutiny. *First*, the court attempted to draw a distinction between cases of passive assistance and cases where a defendant "aids and abets by 'affirmative assistance.'" Pet.App.27a (citation omitted). But that distinction has no basis in *Taamneh*, which nowhere suggested that its discussion of intent turned on whether aid is affirmative.

Second, the D.C. Circuit suggested that intent is unnecessary when a plaintiff alleges "unusual" assistance to a tortfeasor. Pet.App.31a-33a. The court grounded that theory in *Taamneh*'s observation that providing "routine services … in an unusual way" "may" in some circumstances show culpability. 598 U.S. at 502. But tellingly, the illustrative example *Taamneh* provided involved "unusual" conduct that indicated a desire to help the tortious acts succeed. *See Direct Sales Co. v. United States*, 319 U.S. 703, 706-07 (1943), *cited in Taamneh*, 598 U.S. at 502. As this Court recently put it, the unusual conduct in *Direct Sales* was relevant because it indicated that the defendant and wrongdoer "join[ed] both mind and hand" regarding the ultimate tort. *See Smith & Wesson*, 605 U.S. at 293, 298 (quoting *Direct Sales*, 319 U.S. at 713) (alteration in original); *accord Ashley*, 144 F.4th at 442-43.

Here, by contrast, plaintiffs have never alleged defendants intended to aid terrorism. To the contrary, plaintiffs allege that any "bribes" furthered only the goal of ensuring the Ministry would purchase defendants' medicine and healthcare technology. TAC ¶¶ 115, 157. And as the United States has confirmed, the alleged transactions "generally [occurred] pursuant to standard conditions," U.S. Br. 19, after the government "encouraged" defendants to contract with the Ministry, U.S. Br. 4, a government entity supported by the United States. The court of appeals thus erred in giving talismanic significance to what it deemed "unusual" aid without regard to whether that unusualness evinced intent to bring about the unlawful conduct, as in *Direct Sales*.[4]

[4] Regardless, the alleged free medicine and commissions were hardly "unusual"—on the complaint's own telling, such terms were "standard," TAC ¶¶ 134, 142, and common both before and after defendants' allegedly unlawful conduct, *id.* ¶¶ 49-50, 120.

II. The D.C. Circuit's Direct Liability Holding Warrants Review

The D.C. Circuit's outlier holding that *indirect* connections between a defendant's aid and a third-party's acts can establish proximate causation for ATA direct liability independently cries out for review. Since defendants' alleged acts are too remote for aiding-and-abetting liability, it follows that they are too remote for direct liability—a point the United States deemed "reasonabl[e]," U.S. Br. 21. In any event, the direct-liability holding is fundamentally flawed and the subject of its own circuit conflict.

ATA direct liability attaches only when plaintiffs' injuries occur "by reason of" defendants' acts. 18 U.S.C. § 2333(a). It is undisputed that this provision requires plaintiffs to establish that defendants proximately caused their injuries. Pet.App.37a-38a, 56a-57a; *Crosby*, 921 F.3d at 623 (collecting cases). Yet the panel vitiated this requirement by holding that the world's leading pharmaceutical and medical-supply companies proximately caused militants' attacks on U.S. servicemembers by providing medical supplies to a U.S.-supported foreign government that performed legitimate functions. No other circuit would agree—for good reason.

1. a. The D.C. Circuit split from the two other circuits that have considered the standard for proximate causation when defendants allegedly transact with governments that fund terrorism. Unlike the court below, the Second and Seventh Circuits require allegations that defendants' money actually or necessarily flowed to the specific terrorist attacks at issue when a sovereign intermediary performed some legitimate government functions.

In the Second Circuit, merely alleging transactions with a state that funds terrorism does not establish proximate causation under the ATA because states still have "many legitimate agencies, operations, and programs to fund." *Rothstein v. UBS AG*, 708 F.3d 82, 97 (2d Cir. 2013). Accordingly, 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. *Id.* The plaintiffs alleged that Iran "established, … controlled, funded and operated" Hezbollah, which it "used" to "carry out thousands of terrorist attacks" in Israel where the plaintiffs were injured. *Id.* at 85-87. But these allegations fell short of establishing a "proximate causal relationship between the cash transferred by [the bank] to Iran and the terrorist attacks" that injured the plaintiffs. *Id.* at 97.

The Seventh Circuit agrees. "[A] sovereign's affirmative choice to engage in a wrongful act will usually supersede a third party's choice to do business with that sovereign." *Kemper*, 911 F.3d at 393. So "[w]hen one of the links on a causal chain is a sovereign state," a plaintiff must plead "facts specifically connecting a defendant's actions to the ultimate terrorist attack." *Id.* at 393-94. That rule holds so long as the government is "involved in substantial non-terrorist activities" and does not "exist solely to perform terrorist acts." *Id.* at 392-93. As in the Second Circuit, allegations that a bank transacted with Iran, which in turn funded terrorist attacks, fell short of proximate cause because of Iran's "intervening acts." *Id.* at 393.

b. The decision below puts the D.C. Circuit on an island. The U.S.-backed Ministry plainly did not "exist solely to perform terrorist acts." *See id.* at 392. As plaintiffs here recognize, the Ministry was a "sprawling bureaucracy" that employed "every public-sector doctor, pharmacist, nurse, and medical technician in Iraq" and "import[ed] and distribut[ed] [medical] goods to satisfy the orders placed by individual healthcare providers." TAC ¶¶ 72, 119. Yet the court below did not require a "specific[] connect[ion]" between defendants' payments and the attacks that injured plaintiffs. *Kemper*, 911 F.3d at 393; *see Rothstein*, 708 F.3d at 97. The D.C. Circuit was wrong to distinguish this case on the grounds that the Ministry was a "single agency that had been overtaken by terrorists." Pet.App.83a. *Kemper* and *Rothstein* looked to the sovereign intermediary's functions, not its staffing. After all, governmental functions are the reason "many individual persons, businesses, and other sovereigns" transact with a state or state agency *even when* it is openly entwined with terrorism. *See Kemper*, 911 F.3d at 393-94 (discussing *Rothstein*, 708 F.3d at 97).

The government previously suggested that this issue did not warrant the Court's review "at this time," because the D.C. Circuit merely applied "generally accepted legal principles" to "particular and unusual allegations in this case—namely, that the Ministry was controlled by Jaysh al-Mahdi." U.S. Br. 22. But the Ministry's degree of connection to Jaysh al-Mahdi is irrelevant under the Second and Seventh Circuits' legitimate-function analysis.

2. The D.C. Circuit's error demands review. Again, the ATA's liberal venue provision allows plaintiffs to channel suits to D.C. as the lowest-common-denominator jurisdiction. And if plaintiffs' allegations here demonstrate "a direct relation" between defendants and terrorism, *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992), the floodgates are open. Any entities that deal with governments or organizations allegedly co-opted or fleeced by terrorists risk themselves being branded "terrorists." The safer course is to withhold help abroad altogether.

C.A. Chamber Br. 16-17; C.A. Charity & Sec. Network Br. 18.

The D.C. Circuit's holding also invites future courts to make delicate foreign-policy judgments that are often at odds with the U.S. government's—a task ill-suited to the judiciary. The U.S. government urged private companies to do business with the fledgling Iraqi government, U.S. Br. 4, but the court of appeals characterized Iraq's sovereign government agency as "function[ally] … a terrorist apparatus," Pet.App.6a. The U.S. government sought "flexibility … to engage with the Sadrists," TAC ¶ 355, and did not designate them or Jaysh al-Mahdi as foreign terrorists, U.S. Br. 19 & n.2, but the D.C. Circuit opened the door to direct liability for merely transacting with the Ministry. The risk of international discord is acute when a court sits in review of the policies and conduct of foreign states and officials. *See Nestlé*, 593 U.S. at 638-39. Doubly so when the court's conclusions contradict the U.S. government's, preventing "the Nation from speaking with one voice." *See Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 30 (2015).

3. The decision below is wrong. This Court has "repeatedly applied directness principles" to evaluate proximate causation. *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202-03 (2017). Proximate cause thus demands "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268. Without allegations of a specific connection, the independent actions of the Ministry defeat proximate cause here.

The D.C. Circuit's holding that the ATA's proximate-cause standard is satisfied when medical goods will "foreseeably" find their way into terrorist hands, Pet.App.82a, 85a, was plainly incorrect. In the context of a different statute that incorporates the common-law standard for proximate cause, this Court has explained that "foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of Am. Corp.*, 581 U.S. at 202. The same logic should apply here given the "interconnected[ness]" of government financing for legitimate and illegitimate public functions. *Id.* Otherwise, the ATA would unfairly give rise to "massive and complex damages litigation" for providers of international aid. *Id.* (quoting *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 545 (1983)).

Nor do mere allegations of transactions with the Ministry establish a direct connection to specific terrorist attacks. "[A] sovereign's affirmative choice to engage in a wrongful act will usually supersede a third party's choice to do business with that sovereign." *Kemper*, 911 F.3d at 393. The Ministry, with its "substantial non-terrorist activities," breaks any chain of proximate causation between defendants' transactions to benefit Iraq's healthcare system and Jaysh al-Mahdi's attacks. *Id.* So do the "independent criminal act[s]" of Ministry employees and militia operatives. *Id.* On these allegations, direct liability should not attach.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LISA S. BLATT
Counsel of Record
CHRISTOPHER N. MANNING
CHARLES L. MCCLOUD
MELISSA B. COLLINS
R. SHANE ROBERTS, JR.
JONATHAN M. ARTAL
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

Counsel for Defendants Pfizer Inc., Pfizer Holdings International Luxembourg (PHIL) SARL, Pharmacia & Upjohn Company LLC, Viatris Pharmaceuticals LLC, and Wyeth Pharmaceuticals LLC

CHRISTOPHER G. MICHEL
K. WINN ALLEN
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004
(202) 389-5000

J. MATTHEW RICE
KIRKLAND & ELLIS LLP
150 3rd Avenue South
Nashville, TN 37201
(629) 222-0165

Counsel for Johnson & Johnson, Cilag GmbH International, Ethicon Endo-Surgery, LLC, Ethicon, Inc., Janssen Ortho LLC, Janssen Pharmaceutica NV, Johnson & Johnson (Middle East) Inc., and Ortho Biologics LLC

SARAH E. HARRINGTON
DAVID M. ZIONTS
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6600

Counsel for F. Hoffmann-La Roche Ltd

JOHN B. BELLINGER III
DAVID J. WEINER
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000

ROBERT REEVES ANDERSON
ARNOLD & PORTER
KAYE SCHOLER LLP
1144 Fifteenth Street,
Suite 3100
Denver, CO 80202
(303) 863-2325

LISA M. NOLLER
FOLEY & LARDNER LLP
321 North Clark Street,
Suite 3000
Chicago, IL 60654
(312) 832-4500

Counsel for GE Healthcare USA Holding LLC, GE Medical Systems Information Technologies, Inc., and GE Medical Systems Information Technologies GmbH

DAVID W. BOWKER
CLAIRE M. BERGERON
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000

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

LARA SAMET BUCHWALD
NEIL H. MACBRIDE
DAVID B. TOSCANO
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Counsel for AstraZeneca Pharmaceuticals LP and AstraZeneca UK Limited

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