

No. 23-9

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In the Supreme Court of the United States

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ASTRAZENECA UK LIMITED, ET AL.,  
PETITIONERS,

v.

JOSHUA ATCHLEY, ET AL.,  
RESPONDENTS.

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

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**SUPPLEMENTAL BRIEF FOR PETITIONERS**

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Pharmaceutica NV, Johnson  
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Inc., and Ortho Biologics LLC*

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## **CORPORATE DISCLOSURE STATEMENT**

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

Petitioner GE Healthcare USA Holding LLC is owned by Petitioner GE Medical Systems Information Technologies, Inc., which is not publicly traded. Petitioner GE Medical Systems Information Technologies GmbH is wholly owned by GE Healthcare Holding Germany GmbH, which is not publicly traded. GE Healthcare USA Holding LLC and GE Medical Systems Information Technologies GmbH's ultimate parent is GE HealthCare Technologies Inc. GE Medical Systems Information Technologies, Inc. is a wholly owned indirect subsidiary of GE HealthCare Technologies Inc. GE HealthCare Technologies Inc. is a publicly held company. Upon information and belief, no publicly held corporation owns 10% or more of its stock. Upon information and belief, no other publicly held company owns 10% or more of the stock in GE Healthcare USA Holding LLC, GE Medical Systems Information Technologies GmbH, or GE Medical Systems Information Technologies, Inc.

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

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

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

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

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The government’s brief confirms that this case easily satisfies the standard for a grant-vacate-remand (GVR) order. *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), “change[d] or clarifie[d] the governing legal principles in a way that could possibly alter” the D.C. Circuit’s decision. U.S. Br. 11 (citation omitted). A GVR is therefore appropriate for the lower courts to assess whether the complaint adequately alleges that petitioners “consciously, voluntarily, and culpably participated” in specific “acts of international terrorism” “so as to help make [them] succeed,” as *Taamneh* requires and the D.C. Circuit never considered. U.S. Br. 12, 20 (citation omitted). Indeed, the government goes further, underscoring (at 16) that the D.C. Circuit “made similar

errors” to those that led this Court to reverse in *Taamneh*.

With respect to the proximate-causation and foreign-terrorist-organization questions, the government (at 21-23) notably does not endorse the D.C. Circuit’s analysis but presents those questions as “fact[] specific” and not warranting plenary review “at this time.” Nonetheless, the government (at 21) deems “reasonabl[e]” petitioners’ point that the lack of a sufficient nexus for aiding-and-abetting liability will necessarily defeat direct liability. Pet. 16. The government (at 15 n.1) rejects respondents’ view that the Anti-Terrorism Act (ATA) makes defendants liable for all “foreseeable” attacks. And the government (at 23) notes that a decision rejecting respondents’ aiding-and-abetting claims for lack of knowing and substantial assistance could obviate further review of whether a foreign terrorist organization committed, planned, or authorized the at-issue attacks. Those points underscore serious doubts about the merits that should prompt the lower courts to dismiss this case on remand.

If the Court does not GVR, plenary review is appropriate and urgently needed. The decision below creates two critically important circuit splits. On direct liability, the D.C. Circuit split with four other circuits by holding that *indirect* support to attackers can satisfy the ATA’s proximate-causation requirement. Pet. 17-19. And on aiding-and-abetting liability, the D.C. Circuit split with three other circuits by holding that a U.S.-designated foreign terrorist organization’s generalized support and encouragement to a non-designated group means that the designated organization necessarily “plan[s] or authorize[s]” *every* attack the non-designated group carries out. Pet. 20-22.

Both splits carry serious foreign-policy consequences, as recent events underscore. Pet. 23-25. The government (at 20 n.2) emphasizes that encouraging “private investment in regions experiencing humanitarian crises” is a “foreign policy priorit[y].” For example, the President has urged the international community to “commit resources to support the people of Gaza in the immediate aftermath of this crisis ... and establish a reconstruction mechanism to sustainably meet Gaza’s long-term needs.” Joe Biden, Opinion, *The U.S. Won’t Back Down from the Challenge of Putin and Hamas*, Wash. Post, Nov. 18, 2023. The D.C. Circuit’s decision risks chilling such private investment, even to a U.S.-backed program, anywhere plaintiffs might plausibly allege that aid could foreseeably be diverted to terrorism. Chamber Br. 18-23.

On proximate causation, the government (at 22) characterizes the D.C. Circuit’s decision as a fact-bound application of “generally accepted legal principles.” But four other circuits do not accept the D.C. Circuit’s legal principles, demanding some direct relation to terrorist attacks. Pet. 17-19. Under that standard, a sovereign state standing between the defendants and the attacks (here, Iraq’s Health Ministry) will defeat proximate causation. That directness requirement tracks this Court’s proximate-causation caselaw under other statutes. Pet. 19.

As the government (at 6) recognizes, the D.C. Circuit accepted allegations of “indirect[.]” assistance. “[R]espondents do not allege that petitioners ‘direct[ly] channel[ed]’ resources to a designated foreign terrorist organization.” U.S. Br. 19 (citation omitted). Instead, respondents allege that petitioners provided medical goods and payments to the Iraqi Health Ministry and its offi-

cials, “generally pursuant to standard conditions and express contracts with the Ministry in the service of the Ministry’s legitimate programs.” U.S. Br. 19. Individual Ministry officials then allegedly “misappropriated” those goods and payments for Jaysh al-Mahdi, which allegedly sold the goods and used the proceeds to support militia operations that ultimately injured respondents. U.S. Br. 19-20. That multistep causal reasoning defies this Court’s and other circuits’ demand for a direct link. Pet. 19-20.

Moreover, respondents’ theory of proximate causation rests on their equation of the Iraqi Ministry of Health with a “terrorist organization.” BIO 27 (quoting Pet.App.7a). The D.C. Circuit accepted that equivalency only by declining “to take judicial notice of U.S. government support for the Iraqi Ministry of Health during the period of Sadrism control.” Pet.App.47a. But the government (at 4) now confirms that the U.S. government spent billions rebuilding Iraq, including its “healthcare system,” and urged private companies like petitioners to do the same. The government also reaffirms the official government reports documenting such support that respondents (at 28) dismiss as “dubious internet research.” *Compare* U.S. Br. 4-5, *with* Pet. 5-6, 23 (citing same sources).

With respect to aiding-and-abetting liability, the government (at 23) appears to agree with petitioners that “general support or encouragement” does not satisfy the ATA’s requirement that a U.S.-designated foreign terrorist organization “commit[], plan[], or authorize[]” the at-issue attack. 18 U.S.C. § 2333(d)(2). Three circuits read that requirement the same way. Pet. 20-21. By contrast, the D.C. Circuit held that a designated terrorist organization’s general support and encouragement, like providing the attackers with “weaponry, training, and knowledge” and encouragement “to attack Americans,” makes that



organization responsible for every attack. Pet.App.25a-26a. The D.C. Circuit characterized respondents' complaint as "detail[ing]" Hezbollah's "deep and far reaching" coordination and support for Jaysh al-Mahdi." U.S. Br. 23 (quoting Pet.App.23a, 25a). But respondents have never alleged that Hezbollah planned or approved the vast majority of specific attacks in advance. Pet. 22-23; Cert. Reply 10-11. In three other circuits, those allegations would fail.

Ultimately, there should be no need for this Court to wade into the proximate-causation and foreign-terrorist-organization questions at this time. As the government's brief confirms, this case more than satisfies the usual standard for a GVR, and there is substantial reason to expect that a proper application of *Taamneh* will lead the lower courts to dismiss the complaint on remand. For now, it suffices that *Taamneh* clarifies the governing legal standards in a way that could potentially alter the decision below. This Court should GVR.

**CONCLUSION**

The petition should be granted, the court of appeals' judgment vacated, and the case remanded in light of *Taamneh*. Alternatively, the petition should be granted for plenary consideration.

Respectfully submitted,

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JUNE 4, 2024