

**ORAL ARGUMENT NOT YET SCHEDULED****No. 20-7077**

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IN THE  
**United States Court of Appeals**  
**For the District of Columbia Circuit**

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JOSHUA ATCHLEY, ET AL.,

*Plaintiffs-Appellants,*

v.

ASTRAZENECA UK LIMITED, ET AL.,

*Defendants-Appellees.*

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Appeal from the United States District Court for the District of Columbia  
Case No. 1:17-cv-02136 – The Honorable Richard J. Leon

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**BRIEF FOR AMICI CURIAE IRAQ RECONSTRUCTION EXPERTS**  
**JANE GREEN, JAMES K. HAVEMAN JR.,**  
**ANDREW LIEPMAN, PHILIP MUDD, AND MAX PRIMORAC**  
**IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), amici certify as follows:

- A. Parties and amici.** All parties, intervenors, and amici appearing in the district court and before this Court are listed in the Brief for Plaintiffs-Appellants and the Brief for Defendants-Appellees.
- B. Ruling under review.** Reference to the ruling under review appears in the Brief for Defendants-Appellees.
- C. Related cases.** Amici adopt the statement of related cases set forth in the Brief for Defendants-Appellees.

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## INTEREST OF AMICI CURIAE<sup>1</sup>

Amici are former U.S. Government officials who had leading roles in the formulation and implementation of U.S. Government policy in Iraq, including its reconstruction, after the fall of Saddam Hussein. They served at the State Department, at the Defense Department, and in the Intelligence Community. Some served on the ground in Iraq, working with the Coalition Provisional Authority and the interim and then the elected Government of Iraq to stand up functioning government institutions. Others served as leading intelligence experts regarding Iraq, guiding policymakers with careful analysis of the challenges facing Iraqi reconstruction.

Amici have personal knowledge of matters at the heart of this litigation, including the policy of the United States in Iraq following the fall of the Saddam regime, the difficult decisions faced by the U.S. Government in seeking to implement that policy, and the role played by private sector companies in U.S. efforts to rebuild Iraq. Amici believe this lawsuit, if allowed to proceed, will hamper

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<sup>1</sup> Pursuant to D.C. Circuit Rule 29(b), amici state that all parties to this appeal consented to the filing of this amicus brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici state that (i) no party's counsel authored this brief in whole or in part; (ii) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no person other than amici or their counsel contributed money that was intended to fund preparing or submitting the brief.

the foreign policy of the United States and our Government's ability to execute it in the most troubled parts of the world.

Two amici were senior U.S. Government officials on the ground in Iraq charged with supporting and standing up key components of a functioning Iraqi government after the fall of Saddam Hussein.

**James K. Haveman Jr.** was a Department of Defense official who served as the Coalition Provisional Authority's most senior official on Iraqi health policy from 2003 to 2004 and administered the policy of the United States with regard to the provision of healthcare in Iraq. The Coalition Provisional Authority named him Acting Minister of Health. When the Coalition Provisional Authority installed an interim Iraqi government, Mr. Haveman became Senior Advisor to the interim government's Minister of Health. Before his work in Iraq, Mr. Haveman was Director of the Michigan Department of Community Health, administering a multi-billion-dollar budget and more than 6000 employees providing healthcare coverage for more than 3 million Michigan residents.

**Max Primorac** was Deputy Director of the U.S. Department of State's Iraq Reconstruction & Management Office, where he served on the ground in Iraq and managed \$2 billion in United States Government assistance programs for the reconstruction of Iraq. From 2007 to 2008, he served as Senior Adviser for Stabilization & Transition at the State Department, supervising the State

Department's support for the Iraq reconstruction effort. From 2017 to 2021, he served in multiple senior roles in the United States Agency for International Development, where he had direct responsibility for U.S. efforts to build infrastructure and government capacity in struggling and war-torn parts of the world.

Three amici are long-standing members of the Intelligence Community, who advised U.S. Government policymakers and military leaders on political and sectarian divisions in Iraq and on how best to stand up a stable and functioning government for the Iraqi people.

**Jane Green** served as chief intelligence advisor to Ambassador L. Paul Bremer, Administrator of the Coalition Provisional Authority in Iraq, from 2003 to 2004. Thereafter, she had a leading role in the Intelligence Community's Iraq Group, providing key intelligence analysis to U.S. policymakers seeking to quell the non-international armed conflict in Iraq and to stabilize the country and its new government.

**Andrew Liepman** served in the Central Intelligence Agency's Directorate of Intelligence from 1982 to 2012. From 2006 to 2012, he was Deputy Director for Intelligence and then Principal Deputy Director of the National Counterterrorism Center.

**Philip Mudd** served in the Central Intelligence Agency from 1985 to 2005. In 2001, Mr. Mudd was detailed from the CIA to serve as the Director for Gulf

Affairs on the White House National Security Council. In 2002, he became second-in-charge of counterterrorism analysis in the CIA's Counterterrorism Center; he became Deputy Director of CTC in 2003. From 2005 to 2010, he served in the Federal Bureau of Investigation's National Security Branch.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Amici are State Department, Defense Department, and Intelligence Community officials who administered or advised on U.S. policy in Iraq, including its reconstruction. All served alongside our Nation's brave troops and many other courageous U.S. civilian personnel, facing the most difficult of circumstances. Amici have great sympathy for the American servicemembers and contractors who were killed or injured during the long armed conflict in Iraq and for their families.

Amici seek to participate in this matter for a very limited purpose. Amici have observed some of the assertions made in this case about the state of affairs in Iraq, specifically regarding whether support should have been provided to Iraq's Ministry of Health. Amici submit this brief to describe the policy of the United States regarding Iraq's Ministry of Health in the wake of the Saddam regime. Amici also address the troubling implications of this lawsuit for the U.S. Government's future capacity to implement its policy objectives in similarly difficult parts of the world.

After the fall of Saddam Hussein, it was the policy of the United States to provide funding and support for the Iraqi Government and its Ministries, including

the Ministry of Health. The Ministry of Health was the only healthcare system available to the Iraqi people. The United States faced a choice: Provide support to the Ministry of Health and help it deliver healthcare as best it could—or risk the greater chaos and loss of life that could result if the Iraqi people were provided no or substantially less effective healthcare. The U.S. Government provided hundreds of millions of dollars in funds under U.S. Government control, along with U.S. personnel and advisors, to the Ministry to improve its capacity to deliver life-saving healthcare to the Iraqi people. The U.S. Government also established Iraq reconstruction programs, funded with tens of billions of dollars, many of which assisted the Ministry of Health.

The U.S. Government actively encouraged the private sector to provide equipment and pharmaceuticals to the Ministry of Health. Without the support of international healthcare equipment and pharmaceutical companies, the Iraqi healthcare system would have been further compromised and Iraqi civil society, already at the breaking point, further strained.

The United States Government relies on the private sector to carry out billions of dollars in humanitarian, development, and other critical programs in Africa, Asia, the Middle East, and Latin America. This partnership is even more critical as our Nation responds to the many economic dislocations created by the pandemic. If private sector companies were subject to liability for having answered the call to

support U.S. Government policy during the reconstruction of Iraq, then the U.S. Government would be far less likely to find willing private sector partners to continue to work with the United States in the many countries we seek to stabilize and to transition into peaceful members of the international community. To the extent the allegations in this case are that international healthcare companies supported the Iraqi Ministry of Health, the same could be said of the United States Government, other sovereign countries partnering with the United States, and international organizations. Private companies should not be liable for implementing U.S. Government policy, solely because they lack the immunity of the U.S. Government, foreign governments, and international organizations.

## **ARGUMENT**

### **I. The United States Government Decided to Provide Financial and Material Support to Iraq's Ministry of Health**

Before the fall of Saddam Hussein, healthcare for the vast majority of Iraq was centralized in the Ministry of Health. The Saddam-era government was modeled after the Soviet Union, and the Ministry of Health was no exception. Among the Ministry's shortcomings was its shameful history of discriminating against the majority Shi'ite community in Iraq, long persecuted by the Sunni-dominated Saddam regime.

In 2003, a coalition led by the United States invaded Iraq and removed Saddam Hussein from power. The United States established the Coalition

Provisional Authority. It focused on removing Saddam loyalists from the governmental structure and working with the remaining officials to focus on serving all the citizens of Iraq.

On July 22, 2003, the Coalition Provisional Authority appointed the Iraqi Governing Council, which took charge of filling empty ministerial positions in the Iraqi government and drafting a transitional constitution. The emerging Iraqi Government structure was similar to that of any parliamentary system that required a coalition of parties to form a governing majority. The Coalition Provisional Authority accepted this structure and focused on instilling democratic practices, to be codified by a new constitution, and on transforming Iraq's centrally planned economy into a free market system.

An important early challenge for the Coalition Provisional Authority was ensuring that the Iraqi Ministry of Health could provide healthcare for the people of Iraq. This was a humanitarian imperative. Compared against other countries, Iraq scored among the lowest in life expectancy and among the highest in deaths caused by diseases wholly treatable by modern medical technology. Moreover, the absence of healthcare would only foment additional civil unrest, which would further threaten the stability of the country, the implementation of U.S. policy, and the safety of U.S. personnel in Iraq. Private companies were an integral part of U.S. Government efforts to modernize the Ministry, from building health clinics, to

promoting administrative and procurement reforms, to delivering critical medical equipment, supplies, and pharmaceuticals.

Building another network for healthcare, outside the Ministry of Health, was not a meaningful option. Prior to the fall of Saddam Hussein, Iraqi citizens received their healthcare either from Ministry of Health hospitals, from (for a smaller portion of the population) hospitals run by the Iraqi military, or from (for Saddam's closest confederates) five well-equipped hospitals in Baghdad. The Coalition Provisional Authority's Office of Reconstruction and Humanitarian Assistance transferred control of the Iraqi military hospitals and the five Saddam-related Baghdad hospitals to the Ministry of Health. By 2003, the Ministry of Health operated 240 hospitals and 1200 medical clinics throughout Iraq and had more than 110,000 employees. Almost all these hospitals were in horrible condition, and the United States Government dedicated substantial resources to improving them. Amici are not aware of any policymaker that encouraged setting aside the infrastructure of the Ministry of Health and standing up some alternative healthcare system. Nothing could replace the Ministry's vast infrastructure and have any hope of providing healthcare to the Iraqi people in the near term.<sup>2</sup>

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<sup>2</sup> The Plaintiffs appear to recognize this. Third Amended Complaint ¶ 72 ("Because of Iraq's system of socialized medicine, every public-sector doctor, pharmacist, nurse, and medical technician in Iraq was employed by MOH").

This was not just the judgment of the Coalition Provisional Authority and the United States Government; it was the judgment of non-governmental organizations and other foreign governments seeking to provide humanitarian healthcare assistance to the Iraqi people. The United Nations, the World Health Organization, the World Bank, the International Monetary Fund, the Italian Red Cross, Save the Children United Kingdom, Catholic Relief Services, Samaritan's Purse, and numerous other non-governmental organizations committed significant funds and personnel to support the Ministry of Health. They understood, as the United States Government did, that the best way to care for the Iraqi people was to work within Ministry of Health hospitals to improve the delivery of care, not to set up their own facilities. The United States Government, its foreign government allies, and non-governmental organizations all recognized that the success of the Iraqi Ministry of Health was a humanitarian and regional security imperative. The well-being of the Iraqi people, and the stability of Iraq, depended on it.

In 2004, the Coalition Provisional Authority transitioned authority to an interim Iraqi Government, which passed authority to an elected Iraqi Government in 2005. The 2005 elections resulted in a parliamentary majority for the United Iraqi Alliance, which itself was a fragile combination of various Shi'ite political factions. As is the normal practice in parliamentary systems, the leaders of the various factions that comprised the United Iraqi Alliance allocated the leadership positions of Iraqi

government ministries among themselves, based on the amount of political clout that each faction brought to the governing coalition. One major participant in the United Iraqi Alliance—the political party of the “Sadrist” led by Muqtada al-Sadr—sought and received the leadership position of the Ministry of Health as a result of this agreement. *See, e.g.*, Rayburn & Sobchak, *The U.S. Army in the Iraq War Vol. 1* at 556 (2019) (the Sadrist had more support in parliament than the prime minister’s own party, and, “[a]s a result, the Sadrist gained cabinet posts as the Ministers of Health, Transportation, and Agriculture”). The U.S. Government’s credibility with the newly chosen Iraqi government would have been severely undermined if it had picked and chosen which ministries to assist based on whom the Iraqis had chosen to lead each ministry.

The U.S. Government thus continued to facilitate funding of the Ministry of Health and its activities. *See, e.g.*, Third Amended Complaint ¶ 113 (referring to “[t]he U.S. government’s aid programs interfacing with MOH” and “U.S.-funded health projects”); JA\_\_ - \_\_ (Dep’t of State, Report on Iraq Relief and Reconstruction (Apr. 2005)); JA\_\_ - \_\_ (U.S. Agency for Int’l Dev., Reconstruction Weekly Update (Jan. 20, 2006)). U.S. Government personnel continued to work alongside Ministry officials to enhance strategic planning, accounting and finance skills, and healthcare outcomes.

The U.S. Government—including two of the amici officials—also continued to encourage healthcare companies to provide medical devices, equipment, and pharmaceuticals to the Ministry of Health. The U.S. Government’s effort to persuade these companies to participate was not easy. Companies repeatedly responded that the region was unstable, violent, and not worth the risks to the safety of their own personnel. But U.S. Government officials persisted, underscoring that advanced equipment and pharmaceuticals were essential to a functioning Iraqi healthcare system.

The U.S. Government decided to support the Ministry of Health, despite the Ministry’s shortcomings and limitations. The Ministry had been grossly mismanaged and was operated largely for the benefit of Saddam-regime loyalists for decades. These issues were not unique to the Ministry of Health; all Iraqi ministries in the wake of the Saddam regime faced similar challenges. The U.S. Government knew that Iraq, like many other countries that receive U.S. support, had a history of governmental corruption. As part of the U.S. Government’s commitment to addressing the problem of corruption, the Coalition Provisional Authority established a Commission on Public Integrity and had numerous personnel directed exclusively to anti-corruption efforts. *See, e.g.*, Coalition Provisional Authority Order No. 55: Delegation of Authority Regarding the Iraq Commission on Public Integrity 1-2 (2004); U.S. Department of State Office of Inspector General, Report

of Inspection: Inspection of Rule-of-Law Programs, Embassy Baghdad 45 (2005) (describing the Commission and “a system of inspectors general in each of 29 Iraqi government ministries and government agencies”); Dobbins et al., *Occupying Iraq: A History of the Coalition Provisional Authority* xxxi (2003) (the Coalition Provisional Authority “gave high priority to anticorruption measures”). After the transition to an interim and then elected Iraqi Government, the State Department established the Anti-Corruption Coordination Office in the U.S. Embassy in Iraq. It was dedicated to developing and implementing anti-corruption safeguards within Iraqi government ministries, along with anti-corruption training for Iraqi Government officials and staff. Congress also established, and U.S. Government policymakers worked closely with, the Office of Special Inspector General for Iraq Reconstruction, designed to detect and stop the misuse of U.S. Government funds in Iraq. The U.S. Government decided to perform this important anti-corruption work simultaneously with providing support to Iraqi Government ministries, including the Ministry of Health, so that these ministries could continue to function while changes were made.

The U.S. Government made a considered and deliberate decision to support Iraq’s Ministry of Health. The United States could not hope to rebuild Iraq and ensure the provision of healthcare to its people without dealing with influential political groups who were part of the governing coalition, even if their interests were

not fully aligned with our own. As is often the case when the United States seeks to further its policy objectives in difficult parts of the world, the assistance of private sector entities was central to that policy.

## **II. The Ministry of Health's Primary Purpose Was to Provide Healthcare to the Iraqi People**

The United States Government decided to provide hundreds of millions of dollars in support to the Iraqi Ministry of Health, and to encourage healthcare companies to supply the Ministry, because it was essential to providing healthcare to the Iraqi people. A recurring theme in the Appellants' brief is that the Ministry of Health had little to do with providing healthcare and was instead just a front for a militia arm associated with the Sadrists, Jaysh al-Mahdi. Put most succinctly, the Appellants claim that "[a]lthough the Ministry in theory was supposed to offer free medical care to all Iraqis, it actually functioned more as a terrorist organization than a health organization." App. Br. at 25. As the Appellants would have it, somehow the Ministry's primary function was to fund and support Jaysh al-Mahdi and its attacks on U.S. troops. App. Br. at 28. Throughout their brief, the Appellants contend that the Ministry was the alter ego of Jaysh al-Mahdi and that dealing with the Ministry was somehow the same as dealing with Jaysh al-Mahdi itself.

The Appellants' account is squarely contrary to the situation on the ground in Iraq and to the policy and informed understanding of the United States Government. To the contrary, the Ministry of Health's primary function was to provide effective

healthcare to the Iraqi people, including the Shi'ite majority who had been tragically underserved by the Ministry under Saddam Hussein.<sup>3</sup> This focus arose not just from charitable motives of the Ministry's leaders, but from a desire to take political credit for providing badly needed healthcare to the Iraqi people in the intense competition for voters' affections that accompanied a growing Iraqi democracy.

Of all the many political factions in Iraq, the Sadrist movement had the most powerful populist platform of serving the needs of all Iraqis, not a select few. Once Sadr's political movement became part of the Iraqi government, executing well on the provision of healthcare was very important to the movement, especially as numerous political leaders were vying for the loyalty of Shi'ite voters. For the Shi'ite population, government-provided healthcare was a critical political issue, as the Ministry under Saddam had ignored them, focusing its resources almost exclusively on the Sunni minority. Failing to turn this situation around, and to begin actually providing governmental healthcare to Shi'ite communities, would have been the end of any aspiring Shi'ite politician granted a leading role in the Ministry of Health. Beyond political calculation, the Sadr movement seemed ideologically committed to correcting shortfalls in the provision of healthcare to the Shi'ite

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<sup>3</sup> This reality does find its way into some of the Appellants' papers below, including the Third Amended Complaint at ¶¶ 2, 72.

population. There were many reasons why the Sadr political movement needed to provide, and focused on actually providing, healthcare to the Iraqi people.

If the primary objective of Sadr's political movement in seeking a significant role in a ministry were to siphon funds for Jaysh al-Mahdi's battlefield operations, there were several other ministries with greater financial resources and opportunities for profit and less responsibility to provide services directly to the Iraqi people. The Ministry of Oil, in which the Supreme Council for the Islamic Revolution in Iraq (associated with the Badr brigades) sought a principal role, is a prime example. Few ministries, however, provided an opportunity *directly* to provide a service then acutely needed by the Iraqi people. So, it was in Sadr's interests to make sure that the Ministry was executing on the effective, or at least improved, delivery of healthcare. The successful delivery of public healthcare—and the substantial political benefits that came with it—was the principal objective of the Sadr political faction in seeking to lead the Ministry of Health.

The reality of post-Saddam Iraq was that every powerful political faction also had an associated militia, and the Sadrist political movement was no exception. These militias all battled with each other. Some groups also turned their armed forces on American troops, as the United States Government helped the newly elected Iraqi government stand on its own. As the United States Government had recognized on numerous occasions, the armed conflict in Iraq continued into a

deadly civil war, in which the militias of various factions in Iraq and the United States were combatants. *See, e.g.*, International Committee of the Red Cross, Iraq Post 28 June 2004: Protecting Persons Deprived of Freedom Remains a Priority (Aug. 5, 2004) (“hostilities in Iraq between armed fighters on one hand opposing the Multinational Force (MNF-I) and/or the newly established authorities on the other, amount[ed] to a non-international armed conflict”); President George W. Bush, State of the Union Address, 2008 WL 218919, at \*7 (Jan. 28, 2008) (“When we met last year, militia extremists—some armed and trained by Iran—were wreaking havoc in large areas of Iraq”); Dep’t of Defense, Report to Congress: Measuring Stability and Security in Iraq 14-16 (Mar. 2, 2007) (“Violent opposition to the [Iraqi government] and Coalition forces comes from a variety of groups with political, religious, ethnic, or criminal objectives. . . . Although much of the violence is attributable to sectarian friction, each of the violent factions is driven by its own political power relationships, and the factions are often hostile to one another.”). As Plaintiffs and their amici acknowledge, Jaysh al-Mahdi was a vigorous participant and well-organized armed force in this armed conflict with U.S. forces and other militias. *Accord* Third Amended Complaint ¶¶ 14, 61-62.

The Appellants, however, conflate Iraqi political movements and their militias. They assume that, if a political faction had a significant role in a ministry, that faction’s militia must have controlled that ministry and used it exclusively as a

funding mechanism for its violent ends. That uncareful generalization may be necessary for the Appellants to succeed in the courts, but it is not how the political situation in Iraq worked.

As an initial matter, it was impossible for any political faction—much less any associated militia arm—to suddenly take total control of any Iraqi ministry. The experience of the Ministry of Health makes this clear. The Ministry was a sprawling bureaucracy. It had *more than 100,000 employees, 240 hospitals, and 1200 other clinics*. The 2005 parliamentary compromise likely involved those associated with the Sadr political movement filling a few dozen leadership positions. But no amount of leadership pressure could convert the activities of 100,000 employees from the provision of healthcare to the self-serving objectives of new management. As for pictures of certain Sadrist leaders appearing in Ministry office buildings meaning that they had fully converted the Ministry to their own personal ends (*see App. Br. at 7*), one wonders whether the same inference would be taken from changing pictures of U.S. political leaders in federal buildings.

In any event, for the Ministry of Health in particular, Muqtada al-Sadr could not allow the Ministry's public health activities to be distracted or its resources diverted to Jaysh al-Mahdi. If the Ministry and the Sadrists had failed to deliver healthcare to the Iraqi people, al-Sadr's political fortunes would suffer, and he would

have betrayed his own principles. The Sadrist political movement was acutely aware of these realities.

### **III. Imposing Liability on the Private Sector Would Further Complicate the Difficult Task of Reconstructing Failed States in the Future**

The United States Government is forced to make difficult decisions in the course of pursuing U.S. policy in countries beset with corruption and violence. This is especially true where the United States seeks to rebuild countries with diminished governmental capacity. Under such conditions, there are no perfect choices—just choices that are better than others.

Amici regularly helped assess the best way to use U.S. resources to rebuild troubled countries like post-Saddam Iraq. That task sometimes entails supporting, financially or otherwise, institutions in those countries. It is often impossible for the U.S. Government to do this critical work without the support of private sector companies in the United States and other allied democracies. So, once the United States makes the decision to support a governmental institution like Iraq's Ministry of Health, and to encourage private sector companies to do the same, imposing liability on the private sector for having done so would amount to an end-run attack on the foreign policy of the United States.

It goes without saying that the threat of such liability would deter the private sector from offering its crucial support for U.S. policy initiatives in these difficult parts of the world when the U.S. Government again seeks their assistance in the

future. That outcome would harm both the policy interests of the United States and the citizens of troubled countries who desperately need critical supplies, such as the pharmaceuticals and medical devices that were manufactured or supplied by the Defendants in this case.

Several amici witnessed their government colleagues return again and again to private sector companies, requesting them to take the risk of entering a dangerous region and to provide leading medical technology and pharmaceuticals to the Iraqi Ministry of Health. Persuading international companies to assist was not easy. To the extent that liability follows private sector decisions to bolster the foreign policy decisions of the U.S. Government, and to support ministries of foreign sovereign governments as the U.S. Government urges, amici's successors confronting the next similar crisis will face an even more complicated task.

## CONCLUSION

This litigation seeks to stretch the Anti-Terrorism Act well past its breaking point by seeking to hold companies from the United States and allied nations liable for answering the call of the U.S. Government to provide vital assistance in one of the most troubled regions of the world. This Court should affirm the judgment of the district court.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION**

I hereby certify under Fed. R. App. P. 29(a)(4)(G) that this brief complies with the type-volume limitations of Rule 29(a)(5). It contains 4,366 words, not counting sections excluded by the Federal Rules and Local Rules (counted using Microsoft Word).

/s/ Michael J. Edney  
Michael J. Edney

**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2021, a true and correct copy of this document was filed and served electronically upon counsel of record registered with the Court's CM/ECF system.

/s/ Michael J. Edney  
Michael J. Edney