No.

IN THE
Supreme Court of the United States

CACI PREMIER TECHNOLOGY, INC.,

Petitioner,

v.

SUHAIL NAJIM ABDULLAH AL SHIMARI; SALAH HASAN NUSAIF JASIM AL-EJAILI; ASA'AD HAMZA HANFOOSH AL-ZUBA'E,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN F. O'CONNOR
LINDA C. BAILEY
MOLLY B. FOX
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429 3000

THEODORE B. OLSON
Counsel of Record
AMIR C. TAYRANI
AARON SMITH
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955 8500
tolson@gibsondunn.com

Counsel for Petitioner
[*Additional counsel listed on signature page*]

QUESTION PRESENTED

Under 28 U.S.C. § 1291, the courts of appeals "have jurisdiction of appeals from all final decisions of the district courts." This Court has held that certain orders are immediately appealable under Section 1291 even though they do not terminate the litigation. These "collateral orders" include orders denying claims of absolute immunity, qualified immunity, and state sovereign immunity. In this case, the court of appeals dismissed petitioner's appeal of a ruling denying its claim of derivative sovereign immunity, which petitioner invoked in response to allegations that its employees—civilian contractors working as interrogators with the U.S. military—violated the Alien Tort Statute by conspiring with, or aiding and abetting, the U.S. military in the mistreatment of Iraqi detainees. According to the district court, petitioner is not entitled to derivative sovereign immunity because the United States has purportedly waived, by implication, its immunity for violations of *jus cogens* norms of international law. The court of appeals held that the district court's immunity ruling was nonfinal and therefore not within its jurisdiction under Section 1291.

The question presented is whether an order denying a federal contractor's claim of derivative sovereign immunity is an immediately appealable final order under the collateral-order doctrine.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties listed in the caption were parties to the proceedings below. In the district court, the United States was a third-party defendant adverse to petitioner CACI Premier Technology, Inc. The United States participated as an *amicus curiae* but not as a party in the proceedings before the United States Court of Appeals for the Fourth Circuit. Timothy Dugan, CACI International, Inc., and L-3 Services, Inc. were defendants in the district court but were not parties in the proceedings before the court of appeals. Taha Yaseen Arraq Rashid was a plaintiff in the district court but was not a party in the proceedings before the court of appeals. Respondent Asa'ad Hamza Hanfoosh Al-Zuba'e was a party in the proceedings below but, at an earlier point in the proceedings, was listed under the name Sa'ad Hamza Hantoosh Al-Zuba'e.

Pursuant to this Court's Rule 29.6, undersigned counsel state that CACI Premier Technology, Inc. is a privately held company. CACI Premier Technology, Inc.'s parent company is CACI, Inc. – FEDERAL, a privately held company. CACI Premier Technology, Inc.'s ultimate parent company is CACI International, Inc., a publicly traded company. No other publicly traded company owns 10% or more of CACI Premier Technology, Inc.'s stock.

RULE 14.1(b)(iii) STATEMENT

- *Al Shimari* v. *CACI Premier Tech., Inc.*, No. 19-1328 (4th Cir.) (judgment and opinion entered August 23, 2019; mandate issued October 21, 2019).
- *Al Shimari* v. *CACI Premier Tech., Inc.*, No. 1:08-cv-00827-LMB-JFA (E.D. Va.) (memorandum opinion entered March 22, 2019).
- *Al Shimari* v. *CACI Premier Tech., Inc.*, No. 15-1831 (4th Cir.) (judgment and opinion entered October 21, 2016; mandate issued November 14, 2016).
- *Al Shimari* v. *CACI Premier Tech., Inc.*, Nos. 13-1937, 13-2162 (4th Cir.) (judgment and opinion entered June 30, 2014; mandate issued July 22, 2014).
- *Al Shimari* v. *CACI Premier Tech., Inc.*, Nos. 09-1335, 10-1891, 10-1921 (4th Cir.) (judgment and opinion entered May 11, 2012; mandate issued June 29, 2012).
- *Al Shimari* v. *CACI Premier Tech., Inc.*, No. 09-2324 (4th Cir.) (judgment and order entered February 23, 2010; mandate issued March 17, 2010).

There are no additional proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

Page

TABLE OF APPENDICES

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner CACI Premier Technology, Inc. ("CACI") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's August 23, 2019 decision dismissing CACI's appeal for lack of jurisdiction (Pet. App. 1a–7a) is unpublished, but is available at 775 F. App'x 758. The Fourth Circuit's October 1, 2019 order denying rehearing en banc (Pet. App. 411a–12a) is unpublished. The district court's March 22, 2019 opinion denying CACI's motion to dismiss based on derivative sovereign immunity (Pet. App. 274a–348a) is published at 368 F. Supp. 3d 935.

JURISDICTION

The judgment of the court of appeals was entered on August 23, 2019. Pet. App. 1a–7a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§ 1291, 1350, and 2680 are reproduced in the Appendix. Pet. App. 413a–17a.

INTRODUCTION

This case presents a question of far-reaching legal and practical significance that has divided the lower courts: whether orders denying federal contractors' claims of derivative sovereign immunity can be immediately appealed under the collateral-order doctrine. The Fourth Circuit's holding that denials of derivative sovereign immunity are not immediately appealable deepens that existing circuit split. It also squarely conflicts with this Court's collateral-order precedent,

which establishes that orders denying absolute immunity, qualified immunity, and Eleventh Amendment immunity are all immediately appealable because those immunities are designed to insulate defendants not only from liability but also from the burdens of litigation itself. As the Second and Eleventh Circuits have recognized in authorizing immediate appeals from denials of derivative sovereign immunity, the same policies are implicated here.

This "extraordinary case presenting issues that touch on the most sensitive aspects of military operations and intelligence" is an ideal opportunity for the Court to bring clarity to this important area. Pet. App. 169a (Wilkinson, J., dissenting). CACI is a private company that assisted the United States with vital intelligence-gathering in a time of war. Yet, it now faces the prospect of having to defend itself at trial—the very burden from which derivative sovereign immunity is designed to shield contractors—in a suit alleging that it violated the Alien Tort Statute by conspiring with, and aiding and abetting, the U.S. military in the alleged mistreatment of Plaintiffs during their detention at Abu Ghraib prison in Iraq. The district court held as a matter of law that CACI is not entitled to immunity because the United States has supposedly waived, by implication, its sovereign immunity for claims alleging violations of so-called *jus cogens* norms of international law. The Fourth Circuit held that it lacked jurisdiction to hear CACI's appeal of that ruling because, in its view, orders denying derivative sovereign immunity are nonfinal.

The ramifications of the Fourth Circuit's decision extend far beyond CACI. The military relies heavily on private contractors to provide essential operational

support. The expanding role of contractors in supporting U.S. military operations worldwide has spawned ever-increasing amounts of litigation against contractors for conduct performed under military direction. The burdens and risks posed by that litigation underscore the importance of affording contractors the right to invoke derivative sovereign immunity in suits where the United States itself would be immune from suit—as well as the opportunity to challenge erroneous denials of that immunity through immediate appellate review.

Absent derivative sovereign immunity, private contractors "working alongside [government employees] could be left holding the bag—facing full liability for actions taken in conjunction with government employees who enjoy immunity for the same activity." *Filarsky* v. *Delia*, 566 U.S. 377, 391 (2012). And absent an immediate right to appeal denials of derivative sovereign immunity, contractors will be compelled to incur the expense and risk of defending themselves at trial without any ability to vindicate their immunity from suit. That barrier to meaningful appellate review will inevitably deter the private sector from partnering with the military in times of war.

Moreover, proceeding to trial in this case, and others like it, would place the judiciary in a supervisory role over highly sensitive issues of military strategy, operations, and intelligence that are well outside of the judicial purview—compounding the threat to military readiness and national security and raising serious separation-of-powers concerns.

Because CACI's rights cannot be restored—and the unwarranted judicial interference with military affairs cannot be repaired—through a post-judgment appeal, this Court should grant review and make clear

that, like police officers invoking qualified immunity, judges and prosecutors invoking absolute immunity, and States invoking sovereign immunity, government contractors are entitled to immediate review of rulings denying their claims of derivative sovereign immunity.

STATEMENT

1. In 2003, the U.S. military took control of Abu Ghraib, a prison facility located in an active war zone near Baghdad, Iraq. Court of Appeals Joint Appendix ("CA.JA.") 1263–64. The United States used the facility to detain criminals, enemies of the provisional government, and others thought to possess information regarding Iraqi insurgents. Pet. App. 226a. Because of a shortage of trained military interrogators, the United States hired civilian contractors to interrogate detainees. CACI was one of those civilian contractors. CA.JA.1264; *see also* CA.JA.1337–407.

Plaintiffs—respondents in this Court—are Iraqi nationals who allege they were detained by the U.S. military in the Abu Ghraib prison. CA.JA.186. They brought claims against CACI (but not the United States) under the Alien Tort Statute, 28 U.S.C. § 1350, and various common-law theories, seeking damages for injuries they allegedly sustained from abuse during their detention. Plaintiffs initially alleged that CACI employees directly mistreated and abused them and that U.S. military personnel did the same pursuant to a conspiracy with CACI employees. Plaintiffs thereafter dismissed with prejudice a number of their direct liability claims against CACI, CA.JA.271, and the district court dismissed the remaining direct liability claims, CA.JA.1189. Accordingly, Plaintiffs' only remaining claims allege that

CACI violated the Alien Tort Statute when its employees purportedly conspired with, or aided and abetted, U.S. military personnel who mistreated Plaintiffs. As Plaintiffs confirmed, "this is a conspiracy and aiding and abetting case" now; they "are not contending that the CACI interrogators laid a hand on the plaintiffs." CA.JA.1060.

2. CACI's first motion to dismiss was premised on multiple grounds, including preemption and derivative absolute official immunity. The Fourth Circuit held that federal law preempted Plaintiffs' claims. Pet. App. 225a, 229a–36a. On rehearing en banc, a divided Fourth Circuit rejected the panel's decision, holding in a 2012 opinion—referred to in this petition as *Al Shimari I*—that it lacked appellate jurisdiction. *Id.* at 122–23a. As relevant here, the en banc court concluded that, although "fully developed rulings denying" other kinds of immunity "are immediately appealable, . . . denials based on sovereign immunity (or derivative claims thereof) may not be." *Id.* at 96a n.3; *see also id.* at 114a–23a. Judges Wilkinson, Niemeyer, and Shedd dissented. *See id.* at 126a–222a.

Judge Wilkinson emphasized that the "jurisdictional ruling is wrong" and that "these are not routine appeals that can be quickly dismissed through some rote application of the collateral order doctrine." Pet. App. 126–27a (Wilkinson, J., dissenting). The "collateral order doctrine," Judge Wilkinson explained, enables an appellate court to "confront in a timely manner issues presenting grave, far-reaching consequences." *Id*. at 168a. Underlying that doctrine is the "eminently reasonable conclusion that immunities from suit should be recognized sooner rather than later." *Id*. According to Judge Wilkinson, the majority's "dismissal of these appeals gives individual district courts

the green light to subject military operations to the most serious drawbacks of tort litigation," contrary to "decades of Supreme Court admonitions warning federal courts off interference with international relations." *Id*. at 128a.

Judge Niemeyer expressed many of the same concerns in his dissent, reasoning that the Fourth Circuit "undoubtedly ha[d] appellate jurisdiction *now* to consider" the "immunity issues" "under the well-established principles" of this Court's collateral-order precedent. Pet. App. 179a (Niemeyer, J., dissenting). In Judge Niemeyer's view, "[i]f there ever were important, collateral decisions that would qualify under" this Court's decision in *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), "as reviewable final decisions, the district courts' denials of immunity in these cases are such decisions." Pet. App. 180a. "[O]nly the Supreme Court," he concluded, "can now fix our wayward course." *Id*. at 178a.

3. On remand, the district court dismissed Plaintiffs' Alien Tort Statute claims because they turned on extraterritorial application of the law to Plaintiffs' alleged mistreatment in Iraq. *See* Pet. App. 53a–54a. The Fourth Circuit reversed and directed the district court to address the political question doctrine. *Id*. at 45a–46a. The district court then dismissed based on that doctrine, but the Fourth Circuit vacated its ruling and remanded for further discovery. *Id*. at 13a.

When the case returned again to the district court, Plaintiffs abandoned a number of their claims of direct abuse by CACI as well as their common-law claims, and the district court dismissed the remaining claims of direct abuse, *see* CA.JA.271, 1189, leaving only Plaintiffs' conspiracy and aiding-and-abetting claims under the Alien Tort Statute. CACI then filed

a third-party complaint against the United States, seeking reimbursement from the government for any damages ultimately awarded against it. CA.JA.1120–33. The United States moved to dismiss CACI's claims based on sovereign immunity, invoking both the foreign-country exception and the combatant-activities exception to the Federal Tort Claims Act. U.S. Mem. in Support of Mot. to Dismiss 6, *Al Shimari*, No. 1:08-cv-00827 (E.D. Va. filed Mar. 14, 2018) (Dkt. 697); *see also* 28 U.S.C. § 2680(j), (k); Pet. App. 417a. The United States later moved for summary judgment on separate grounds. U.S. Mem. in Support of Mot. for Summ. Judgment, *Al Shimari*, No. 1:08-cv-00827 (E.D. Va. filed Feb. 15, 2019) (Dkt. 1130). CACI, in turn, moved to dismiss Plaintiffs' claims on the basis of derivative sovereign immunity. *See* CACI Mem. in Support of Mot. to Dismiss, *id*. (E.D. Va. filed Feb. 28, 2019) (Dkt. 1150).

The district court permitted limited discovery by CACI. But CACI's efforts to build a record supporting its defenses were repeatedly frustrated. The United States, through then-Secretary of Defense James Mattis, invoked the state secrets privilege to withhold the identities of soldiers and civilians who interrogated Plaintiffs—including CACI's own personnel—and to withhold documents detailing certain approved interrogation plans and interrogation reports. CA.JA.1235–36, 1267, 1302–03, 1420, 1438–40. The district court upheld these assertions of the state secrets privilege by the United States. *See* CA.JA.1304–05. CACI was also restricted to pseudonymous depositions of the interrogators by telephone, where the permissible questions were strictly limited to avoid revealing the deponents' identities. CA.JA.2846–54, 4486–99.

4. The district court denied the government's motion to dismiss on the basis of sovereign immunity. In an unprecedented ruling, the district court concluded that "the United States does not retain sovereign immunity for violations of *jus cogens* norms of international law," Pet. App. 335a—*i.e.*, rules of the "highest status" in international law, *id.* at 324a. The court rejected the government's argument that any "waiver of immunity must be 'express,'" holding instead that "no such categorical rule exists." *Id.* at 301a n.6. The court reasoned that U.S. law has always incorporated international law and that as international law evolved to recognize *jus cogens* norms, American law evolved with it to include "a federal common law right derived from international law that entitles individuals not to be the victims of *jus cogens* violations." *Id.* at 316a. And once the district court found a right, it further held that "there must be a remedy available to the victims." *Id.* at 317a.

To provide the remedy, the court concluded that the United States had "*impliedly* waived any right to claim sovereign immunity with respect to *jus cogens* violations," Pet. App. 317a–18a (emphasis added), despite this Court's admonition that any "waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text and will not be implied," *Lane* v. *Pena*, 518 U.S. 187, 192 (1996) (citation omitted). The court derived that implication from the United States' decision to "join[ ] the community of nations and accept[ ] the law of nations," to ratify the Convention Against Torture, to "participat[e] in the Nuremberg trials and the parallel development of peremptory norms of international law," and to "hold[ ] itself out as a member of the international community." Pet. App. 317a, 328a.

After denying the government's motion to dismiss based on sovereign immunity, the district court also denied CACI's motion to dismiss "based on a claim of 'derivative sovereign immunity.'" Pet. App. 339a–40a. The court concluded that, "[b]ecause [it] has ruled that sovereign immunity does not protect the United States from claims for violations of *jus cogens* norms, the first prong of the derivative sovereign immunity test is not met, and CACI's Motion to Dismiss based on a theory of derivative immunity will be denied." *Id.* at 340a. The court went on to observe that, "[e]ven if" the United States had sovereign immunity, derivative sovereign immunity was "not guaranteed" because contractors do not share the government's immunity in *all* circumstances. *Id.* at 340a–41a. But it did not actually decide any questions regarding the scope of contractors' derivative sovereign immunity "because the United States does not enjoy sovereign immunity for these kinds of claims," *id.* at 342a, which eliminated the need to reach those issues.

Finally, the district court granted the government's motion for summary judgment, concluding that a contract closeout agreement between the government and CACI released CACI's claims against the government. Pet. App. 342–48a.

5. CACI appealed "the district court's order denying it derivative sovereign immunity," but the Fourth Circuit "dismiss[ed] because [it] lack[ed] jurisdiction." Pet. App. 4a. That conclusion, the court explained, "follow[ed] from the reasoning of [its] prior en banc decision" in *Al Shimari I*, where the court had held that "'fully developed rulings' denying 'sovereign immunity (or derivative claims thereof) may not' be immediately appealable." *Id.* (quoting *id.* at 96a n.3). The court went on to reason, in the alternative, that "even if a

denial of derivative sovereign immunity may be immediately appealable, our review is barred here because there remain continuing disputes of material fact with respect to CACI's derivative sovereign immunity defenses." *Id.* at 4a–5a.

Judge Quattlebaum "reluctantly" concurred in the judgment. In contrast with the majority's categorical reading of the en banc court's jurisdictional holding as foreclosing *all* collateral-order appeals of denials of derivative sovereign immunity, Judge Quattlebaum read the decision in *Al Shimari I* as permitting an immediate appeal from the denial of derivative sovereign immunity where "the appeal involves an 'abstract issue of law' or a 'purely legal question.'" Pet. App. 6a (Quattlebaum, J., concurring in judgment) (quoting *id.* at 117a–18a). Judge Quattlebaum emphasized that the Fourth Circuit's "narrow interpretation of the collateral order doctrine in this case has taken us down a dangerous road" by "allow[ing] discovery into sensitive military judgments and wartime activities" and by "open[ing] the door to an order that the United States has no sovereign immunity for claims that our military activities violated international norms—whatever those are." *Id.* at 6a–7a.

The Fourth Circuit denied CACI's petition for rehearing or rehearing en banc. Pet. App. 412a.[1]

---

[1] A divided panel also denied CACI's motion to stay the mandate, with Judge Quattlebaum voting to grant the motion. Order, No. 19-1328 (Oct. 11, 2019). The Chief Justice thereafter denied CACI's stay application "without prejudice to applicants filing a new application after seeking relief in the district court." Order, No. 19A430 (Oct. 23, 2019). CACI then filed a motion for a stay in the district court, which granted a stay pending the outcome of proceedings in this Court. *See* Order, No. 1:08-cv-00827 (Nov. 1, 2019) (Dkt. 1320).

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision exacerbates an existing circuit split about the appealability of rulings denying contractors' claims of derivative sovereign immunity. It also necessarily implicates a second circuit split on the antecedent question whether rulings denying the *United States'* claims of sovereign immunity are immediately appealable collateral orders. The Fourth Circuit decisively sided with those courts that have rejected the immediate appealability of rulings denying contractors' claims of derivative sovereign immunity, *see*, *e.g.*, *Martin* v. *Halliburton*, 618 F.3d 476, 479 (5th Cir. 2010), and the United States' claims of sovereign immunity, *see*, *e.g.*, *Pullman Constr. Indus., Inc.* v. *United States*, 23 F.3d 1166, 1169 (7th Cir. 1994). In so doing, it parted ways with multiple circuits that permit immediate appeals of those rulings. *See*, *e.g.*, *McMahon* v. *Presidential Airways, Inc.*, 502 F.3d 1331, 1139–40 (11th Cir. 2007) (derivative sovereign immunity); *In re World Trade Ctr. Disaster Site Litig.*, 521 F.3d 169, 191–92 (2d Cir. 2008) (derivative sovereign immunity and sovereign immunity).

The Fourth Circuit also contravened this Court's collateral-order precedent, which establishes that rulings denying claims of absolute immunity, qualified immunity, and state sovereign immunity are all immediately appealable. *See*, *e.g.*, *Nixon* v. *Fitzgerald*, 457 U.S. 731, 742 (1982) (absolute immunity). Under those decisions, the district court's ruling denying CACI's claim that derivative sovereign immunity shields it from suit is an immediately appealable collateral order because the ruling is "effectively unreviewable on appeal from a final judgment," "conclu-

sively determine[d] the disputed question," and involves an issue "separable from" the merits. *Mitchell* v. *Forsyth*, 472 U.S. 511, 527 (1985). The Fourth Circuit nevertheless held that CACI must incur the substantial burdens of defending itself at trial before seeking review of the district court's immunity ruling in a post-judgment appeal—at which point it will be impossible to vindicate CACI's right to immunity from suit.

If the Fourth Circuit's decision is permitted to stand, it will chill federal contractors' willingness to provide vital services to the U.S. military and permit district courts and juries to second-guess the judgments of the U.S. military and the Executive and Legislative Branches about "the most sensitive aspects of military operations and intelligence." Pet. App. 169a (Wilkinson, J., dissenting). To avoid "'hamper[ing] the war effort'" and "undermining the private-public cooperation and discipline necessary for the execution of military operations," *id.* at 171a, the Court should grant review and make clear that federal contractors have an immediate right to appellate review of adverse immunity rulings.

I. THE FOURTH CIRCUIT'S DECISION DEEPENS EXISTING CONFLICTS ABOUT THE APPEALABILITY OF RULINGS DENYING CLAIMS OF DERIVATIVE SOVEREIGN IMMUNITY AND SOVEREIGN IMMUNITY.

Under 28 U.S.C. § 1291, courts of appeals have jurisdiction over appeals "from all final decisions of the district courts." This Court has adopted a "practical" construction of Section 1291 that recognizes the "authority of the Courts of Appeals" to exercise "appellate jurisdiction over a narrow class of decisions that do

not terminate the litigation, but are sufficiently important and collateral to the merits that they should nonetheless be treated as final." *Will* v. *Hallock*, 546 U.S. 345, 347 (2006) (internal quotation marks omitted). These collateral orders are "immediately appealable" because they "finally determine claims of right separable from, and collateral to, rights asserted in the action," and are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

The Fourth Circuit's holding that the collateral-order doctrine does not extend to federal contractors' claims of derivative sovereign immunity directly conflicts with the decisions of other circuits regarding the doctrine's applicability to contractors' claims of derivative sovereign immunity and to the United States' claims of sovereign immunity.

A. The Fourth Circuit's Decision Conflicts With Other Circuits' Derivative Sovereign Immunity Decisions.

Both the Second and Eleventh Circuits have held that rulings denying contractors' claims of derivative sovereign immunity are immediately appealable under the collateral-order doctrine.

In *McMahon* v. *Presidential Airways, Inc.*, 502 F.3d 1331 (11th Cir. 2007), the Eleventh Circuit held that a federal contractor's "claim to derivative *Feres* immunity qualifies as a collateral order." *Id.* at 1339. The contractor in that case invoked "a theory of derivative sovereign immunity" that allegedly "entitled [the contractor] to the government's *Feres* immunity," which provides that "the government is immune from

claims brought by soldiers for their service-related injuries." *Id.* at 1337, 1339; *see also Feres* v. *United States*, 340 U.S. 135, 146 (1950). The Eleventh Circuit explained that the "government's *Feres* immunity from soldiers' service-related tort claims is justified, in part, by the need to avoid judicial interference with military discipline and sensitive military judgments." *McMahon*, 502 F.3d at 1339. The contractor therefore had "stated a substantial claim to a true immunity from suit, such that an erroneous denial would be 'effectively unreviewable on appeal from a final judgment,'" which justified an immediate appeal under the collateral-order doctrine. *Id.* at 1340 (quoting *Sell* v. *United States*, 539 U.S. 166, 176 (2003)).

Similarly, in *In re World Trade Center Disaster Site Litigation*, 521 F.3d 169 (2d Cir. 2008), the Second Circuit exercised "collateral order jurisdiction to determine" whether sovereign immunity under the Stafford Act—which provides the United States with "immunity from suit" for certain claims related to disaster relief—"may extend derivatively to non-federal entities working in cooperation with federal agencies." *Id.* at 192–93; *see also* 42 U.S.C. § 5148. "To deny an interlocutory appeal in that circumstance," the court reasoned, "would be contrary to the policy concerns first set forth [in this Court's decision] in *Cohen*" because it "could well result in 'a trial that would imperil a substantial public interest.'" *In re World Trade Ctr.*, 521 F.3d at 192 (quoting *Will*, 546 U.S. at 353).

The Fourth and Fifth Circuits have reached the exact opposite conclusion about the appealability of rulings denying derivative sovereign immunity. In *Martin* v. *Halliburton*, 618 F.3d 476 (5th Cir. 2010), the Fifth Circuit held that it "lack[ed] jurisdiction to review the district court's denial of Defendants' claim

of derivative sovereign immunity" in a case arising out of the defendants' role as government contractors providing "logistical support to the United States Army in Iraq." *Id.* at 478, 485. The court unequivocally declared that "a denial of derivative sovereign immunity is not subject to immediate review under the collateral order doctrine." *Id.* at 485 (alteration and internal quotation marks omitted); *see also Houston Cmty. Hosp.* v. *Blue Cross & Blue Shield of Tex., Inc.*, 481 F.3d 265, 281 (5th Cir. 2007) (holding that a ruling denying a private insurer's claim of derivative sovereign immunity was not an immediately appealable collateral order).

The Fourth Circuit exacerbated that existing conflict in the decision below when it dismissed CACI's appeal of the district court's ruling denying derivative sovereign immunity because, in the Fourth Circuit's view, even "'fully developed rulings' denying 'sovereign immunity (or derivative claims thereof) may not' be immediately appealable." Pet. App. 4a (quoting *id.* at 96 n.3). If CACI's appeal had been brought in the Second Circuit or Eleventh Circuit, there would have been jurisdiction to review the district court's ruling. But the Fourth Circuit dismissed CACI's appeal because it "ha[s] never held" that "a denial of sovereign immunity or derivative sovereign immunity is immediately reviewable on interlocutory appeal." *Id.*

B. The Fourth Circuit's Decision Conflicts With Other Circuits' Sovereign Immunity Decisions.

The pressing need for this Court's review is amplified by a separate split in the circuits on the antecedent question whether rulings denying the *United States'* invocation of sovereign immunity are immediately appealable.

In dismissing CACI's appeal, the Fourth Circuit made clear that its reasoning applied with equal force to appeals by the United States of "a denial of sovereign immunity." Pet. App. 4a. The Seventh and Ninth Circuits are in agreement with the Fourth Circuit; they have both held that rulings denying claims of sovereign immunity by the United States are not immediately appealable.

In *Pullman Construction Industries, Inc.* v. *United States*, 23 F.3d 1166 (7th Cir. 1994), the Seventh Circuit dismissed the United States' interlocutory appeal of a ruling denying sovereign immunity because, "[f]ar from asserting a right not to be a litigant," the United States, in the Seventh Circuit's view, was "asserting a defense to the payment of money," which is insufficient to give rise to an immediately appealable collateral order. *Id.* at 1169. The Ninth Circuit explicitly endorsed that position in *Alaska* v. *United States*, 64 F.3d 1352 (9th Cir. 1995), where it dismissed the United States' interlocutory appeal on the ground that "federal sovereign immunity is not best characterized as a right not to stand trial altogether." *Id.* at 1355 (internal quotation marks omitted).

The Second Circuit, in contrast, has expressly rejected that reasoning, explaining that it was "not convinced that" the Seventh Circuit's opinion in "*Pullman* or its progeny counsel us to disregard the statements of the Supreme Court that sovereign immunity encompasses a right not to be sued." *In re World Trade Ctr.*, 521 F.3d at 191 (citing *FDIC* v. *Meyer*, 510 U.S. 471, 475 (1994)). Similarly, the D.C. Circuit has held that "federal sovereign immunity is an immunity from suit" and that the denial of sovereign immunity in a criminal contempt proceeding was immediately

appealable. *In re Sealed Case*, 192 F.3d 995, 999 (D.C. Cir. 1999).

The "apparent split in the circuits over whether denials of claims of federal sovereign immunity may ever qualify for interlocutory review," *Oscarson* v. *Office of Senate Sergeant at Arms*, 550 F.3d 1, 2–3 (D.C. Cir. 2008), compounds the reasons for granting certiorari in this case, which provides the Court with the opportunity to resolve *both* whether rulings denying derivative claims of sovereign immunity are immediately appealable collateral orders and the antecedent question whether rulings denying the government's own invocations of immunity are immediately appealable. Indeed, if the Court decides that CACI has a right to an immediate appeal of the order denying its claim of *derivative* sovereign immunity, then it will have necessarily decided that the United States also has a right to an immediate appeal of orders denying its own claims of sovereign immunity.

There should be a nationally uniform rule governing the appealability of rulings denying claims of sovereign immunity and derivative sovereign immunity. If the current fractured legal landscape is permitted to persist, it is certain to foster forum-shopping by encouraging plaintiffs to file suit in those jurisdictions that do not provide a right of immediate appeal to the United States and its contractors. This Court should grant review to ensure that the availability of an immediate appeal for government contractors—and for the government itself—does not turn on the plaintiff's strategic selection of the litigation forum.

II. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S COLLATERAL-ORDER PRECEDENT.

This Court "repeatedly ha[s] stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter* v. *Bryant*, 502 U.S. 224, 227 (1991) (citing *Anderson* v. *Creighton*, 483 U.S. 635, 646 n.6 (1987); *Malley* v. *Briggs*, 475 U.S. 335, 341 (1986); *Davis* v. *Scherer*, 468 U.S. 183, 195 (1984); *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982); *Mitchell*, 472 U.S. at 526). The Fourth Circuit's decision contravenes the principles established in this Court's collateral-order jurisprudence by relegating claims of derivative sovereign immunity by federal contractors (and sovereign immunity by the United States) to an unwarranted second-class status in which erroneous denials of immunity can only be remedied *after* a final judgment on the merits.

The Court has held that rulings denying claims of a number of types of immunity are immediately appealable under the collateral-order doctrine. In *Nixon* v. *Fitzgerald*, 457 U.S. 731 (1982), for example, the Court held that denials of government officials' claims of absolute immunity "are appealable under the *Cohen* criteria." *Id*. at 742. The decision did not break new ground, but instead built upon previous decisions holding that denials of claims of immunity under the Speech and Debate Clause and the Double Jeopardy Clause are immediately appealable. *Id.* (citing *Helstoski* v. *Meanor*, 442 U.S. 500 (1979); *Abney* v. *United States*, 431 U.S. 651 (1977)).

The Court has continued to build on that line of precedent in subsequent cases considering the appealability of orders denying immunity. In *Mitchell* v. *Forsyth*, the Court held that a "district court's denial of a

claim of qualified immunity, to the extent it turns on an issue of law," is immediately appealable because, absent immediate appeal, the "essential attribute" of qualified immunity—an "entitlement not to stand trial under certain circumstances"—would be lost. 472 U.S. at 525, 530. The "consequences" of an absence of appellate review, the Court emphasized, were "not limited to liability for money damages," but extended to the costs of trial, distraction from duties, inhibition of action, and deterrence from public service—none of which could be remedied by a post-judgment appeal. *Id.* at 526.

The Court subsequently applied the principles of *Nixon* and *Mitchell* in *Puerto Rico Aqueduct & Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993), where it held that "the same rationale ought to apply to claims of Eleventh Amendment immunity" asserted by entities alleging that they are arms of the State, *id.* at 144, 147. The Court explained that the Eleventh Amendment's "withdrawal of jurisdiction effectively confers [on States] an immunity from suit" in federal court and that, "[o]nce it is established that a State and its 'arms' are, in effect, immune from suit[,] . . . it follows that the elements of the *Cohen* collateral order doctrine are satisfied." *Id.* at 144; *see also Osborn* v. *Haley*, 549 U.S. 225, 238–39 (2007) (order denying federal employee immunity under the Westfall Act is immediately appealable).

The Fourth Circuit's decision is incompatible with the principles established by these opinions because, like orders denying absolute immunity, qualified immunity, and state sovereign immunity, orders denying claims of derivative sovereign immunity satisfy each of *Cohen*'s collateral-order criteria: they are "ef-

fectively unreviewable on appeal from a final judgment," "conclusively determine the disputed question," and involve a claim "separable from . . . rights asserted in the action." *Mitchell*, 472 U.S. at 527.

A. Effectively Unreviewable

A denial of derivative sovereign immunity is effectively unreviewable on appeal from a final judgment because derivative sovereign immunity is an immunity from suit.

This Court has made clear that "sovereign immunity shields the Federal Government and its agencies from suit." *Meyer*, 510 U.S. at 475; *see also United States* v. *Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic" under the principle of sovereign immunity "that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."). The fundamental principle that the "United States, as sovereign, is immune from suit save as it consents to be sued," *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941), has well-settled underpinnings. Nearly two hundred years ago, this Court described the "universally received opinion" that "no suit can be commenced or prosecuted against the United States"—much less litigated to final judgment—without explicit consent. *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 411–12 (1821); *see also* The Federalist No. 81 (Alexander Hamilton) ("It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.").

Thus, like state sovereign immunity (as well as absolute and qualified immunity), federal sovereign immunity is "jurisdictional," *Meyer*, 510 U.S. at 475, not a "mere defense to liability," *Mitchell*, 472 U.S. at 526. It is immunity from all of the burdens, risks, and

distractions that accompany litigation. And, as with those other forms of immunity, the only way to vindicate the United States' immunity from suit in the face of an erroneous order denying immunity is to afford the government an immediate right to appeal. *See In re World Trade Ctr.*, 521 F.3d at 191. A post-judgment appellate decision reversing the denial of sovereign immunity comes too late.

Federal contractors possess this same immunity when they perform services pursuant to a contract with the United States. This Court has repeatedly recognized the importance of "[a]ffording immunity not only to public employees but also to others acting on behalf of the government." *Filarsky* v. *Delia*, 566 U.S. 377, 390 (2012); *see also Yearsley* v. *W.A. Ross Constr. Co.*, 309 U.S. 18, 20–21 (1940) (if the government "validly conferred" authority on a private contractor, "there is no liability on the part of the contractor for executing [the government's] will"). Accordingly, sovereign immunity protects both the United States and private contractors acting on its behalf from the burdens of litigation—a right that would be irredeemably lost if adverse immunity rulings could not be reviewed until after trial.

The Fourth Circuit's decision, however, means that denials of derivative sovereign immunity are never appealable before final judgment. Thus, while an officer denied qualified immunity for a wrongful arrest would be entitled to an immediate appeal of that decision, a government contractor denied derivative sovereign immunity for actions taken in a war zone under the direction of the U.S. military must wait for the end of trial to appeal. That discrepancy has no basis in common sense or in this Court's precedent.

B. Conclusively Determined

The decision below "conclusively determine[d] the disputed question" whether CACI is entitled to derivative sovereign immunity. *Mitchell*, 472 U.S. at 527.

"The denial of a defendant's motion for dismissal or summary judgment on the ground of qualified immunity easily meets th[is] requirement[ ]." *Mitchell*, 472 U.S. at 527. The denial of CACI's motion to dismiss on the ground of derivative sovereign immunity does so just as easily. The district court decided as a matter of law that the United States waived its sovereign immunity for *jus cogens* violations and that CACI therefore could not be derivatively immune from suit. Pet. App. 340a. That ruling "finally and conclusively determine[d] the defendant's claim of right not to stand trial on the plaintiff[s'] allegations." *Mitchell*, 472 U.S. at 527 (emphasis omitted); *see also P.R. Aqueduct*, 506 U.S. at 145 ("Denials of . . . claims to Eleventh Amendment immunity purport to be conclusive determinations that [States] have no right not to be sued in federal court.").

This conclusion is not altered by the Fourth Circuit's suggestion that there may be factual disputes bearing on the immunity question. In assessing the existence of an immediately appealable collateral order, appellate courts must review the particular "determination" made by the district court. *Johnson* v. *Jones*, 515 U.S. 304, 318 (1995). Here, the district court denied CACI's motion to dismiss on immunity grounds *as a matter of law* "[b]ecause th[e] Court ha[d] ruled that sovereign immunity does not protect the United States from claims for violations of *jus cogens* norms," Pet. App. 340a, not based on factual disputes as to whether CACI met the standard for invoking the United States' immunity. Thus, this Court can grant

review and reverse the Fourth Circuit's jurisdictional ruling without the need to undertake any assessment into the existence of factual issues because the district court's denial of immunity rests on a legal ruling—that the United States had impliedly waived its sovereign immunity. The Fourth Circuit's decision dismissing the appeal for lack of jurisdiction therefore squarely presents the question whether rulings denying claims of derivative sovereign immunity are ever appealable (even when they rest on purely legal grounds).[2]

In any event, this Court has already held that factual disputes are not a barrier to reviewing denials of state sovereign immunity as collateral orders. *See P.R. Aqueduct*, 506 U.S. at 147 (rejecting the plaintiff's position that "a distinction should be drawn between cases in which the determination of a State or state agency's claim to Eleventh Amendment immunity is bound up with factual complexities whose resolution requires trial and cases in which it is not"). There is no reason for erecting that already-rejected barrier to review in the context of federal sovereign immunity and contractors' derivative claims to that immunity.

---

[2] Moreover, the Fourth Circuit's reference to supposed factual disputes was plainly alternative reasoning. The Fourth Circuit's actual holding rested on the categorical proposition that rulings denying claims of derivative sovereign immunity are never subject to immediate appeal as collateral orders. *See* Pet. App. 5a n.* ("*Even if we assumed* that our jurisdiction would permit us to determine whether CACI would be entitled to derivative sovereign immunity if the plaintiffs succeed in proving their factual allegations, we would not, and do not, have jurisdiction over a claim that the plaintiffs have not presented enough evidence to prove their version of events.") (emphasis added).

C. Separate From The Merits

CACI's "claim of immunity is conceptually distinct from the merits of the plaintiff[s'] claim that [their] rights have been violated." *Mitchell*, 472 U.S. at 527–28. In deciding whether the district court correctly denied CACI's claim of derivative sovereign immunity, the Fourth Circuit "need not consider the correctness of" Plaintiffs' "version of the facts, nor even determine whether" the allegations state a plausible claim for relief. *Id*. Instead, all the Fourth Circuit would have to address is whether the United States waived its sovereign immunity for *jus cogens* violations. If it did not, then the district court's denial of CACI's claim of derivative sovereign immunity must be vacated because that ruling rested exclusively on the United States' supposed waiver of sovereign immunity. *See* Pet. App. 340a. "[D]eciding legal issues"—such as whether the United States has impliedly waived its sovereign immunity against claims for violations of international norms—is a "core responsibility of appellate courts, and requiring appellate courts to decide such issues is not an undue burden." *Plumhoff* v. *Rickard*, 572 U.S. 765, 773 (2014).

* * *

The Fourth Circuit's "narrow interpretation of the collateral order doctrine in this case" is impossible to reconcile with this Court's longstanding precedent. Pet. App. 6a (Quattlebaum, J., concurring in judgment). Because the district court's order denying CACI's claim of derivative sovereign immunity is effectively unreviewable on a post-judgment appeal, conclusively determined the immunity issue, and is separate from the merits, it falls squarely within the

class of orders that this Court has identified as immediately appealable under the collateral-order doctrine.

III. THE FOURTH CIRCUIT'S DECISION HAS PROFOUND IMPLICATIONS FOR GOVERNMENT CONTRACTORS, MILITARY OPERATIONS, AND THE SEPARATION OF POWERS.

The Fourth Circuit's decision has far-reaching consequences for CACI and other government contractors, for national security and military readiness, and for fundamental separation-of-powers principles.

Absent this Court's review, CACI will be compelled to incur the immense burdens of litigating this case through trial—the precise harm that contractors' derivative sovereign immunity is intended to prevent. In preparing for and defending itself at trial, the serious "consequences" that this Court has sought to guard against when recognizing other forms of immunity—the "costs" of trial, "distraction" from duties, and "deterrence of able people from public service"—will all be irreparably inflicted on CACI. *Mitchell*, 472 U.S. at 526. There would be no way to vindicate these interests through a post-judgment appeal reversing the district court's immunity ruling because CACI is entitled to immunity *from suit*, not simply immunity from liability.

The national-security setting in which this case arises will also significantly impair CACI's ability to defend itself at trial—increasing the likelihood of a substantial damages award and attendant pressure on CACI to settle before it can pursue a post-judgment appeal of the district court's immunity ruling. For example, the United States has not permitted any of the Plaintiffs to enter the country, which means that CACI may not be able to cross-examine its accusers in

front of the jury. And the identities of both CACI's own and the United States' interrogation personnel at Abu Ghraib are classified state secrets, which means that the interrogators' identities were withheld from the parties in discovery and will be unavailable to the jury at trial. CA.JA.1235–36, 1267, 1302–03. The state secrets pervading this litigation will severely hamper the development of CACI's defense and its examination of the individuals who actually participated in Plaintiffs' interrogations.

Of course, the implications of the Fourth Circuit's decision extend far beyond CACI. Private contractors play a "critical role" in "supporting U.S. troops," comprising "50% or more of the total military force" since the early 2000s. Cong. Research Serv., *Dep't of Defense's Use of Contractors to Support Military Operations: Background, Analysis, and Issues for Congress* 1–2 (May 17, 2013). The "benefits of using contractors include freeing up uniformed personnel to focus on duties only uniformed personnel can perform" and "quickly delivering critical support capabilities tailored to specific military needs." Cong. Research Serv., *Defense Primer: DOD Contractors* 1 (Feb. 10, 2017). The U.S. government's growing reliance on contractors has generated increased private litigation arising out of contractors' support of the military and other government agencies, which, in turn, has increased the importance of, and litigation regarding, derivative sovereign immunity. *See*, *e.g.*, *Campbell-Ewald Co.* v. *Gomez*, 136 S. Ct. 663, 673 (2016); *Cunningham* v. *Gen. Dynamics Info. Tech., Inc.*, 888 F.3d 640, 643 (4th Cir. 2018); *In re KBR, Inc. Burn Pit Litig.*, 744 F.3d 326, 341 (4th Cir. 2014); *Martin*, 618 F.3d at 478; *McMahon*, 502 F.3d at 1339.

Compelling these essential private participants in the U.S. military's operations to defend themselves at trial against allegations of wartime actions taken under the military's direction—with no ability to pursue an immediate appeal of orders denying their claims of immunity—will consume contractors' finite resources and distract their attention away from their valuable work with the military. *See Filarsky*, 566 U.S. at 391 ("The public interest in ensuring performance of government duties free from the distractions that can accompany even routine lawsuits is also implicated when individuals other than permanent government employees discharge these duties."). Because private contractors "have freedom to select other work" that "will not expose them to liability for government actions," it is "more likely that the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts," *id.* at 390—as well as a meaningful opportunity to vindicate that immunity early in a case before the costs and burdens of litigation have become intolerable.

Moreover, conducting trials about military contractors' liability for wartime actions will necessarily require intrusive questions into, and second-guessing of, "the military judgments and decisions that are inextricably intertwined with the conduct of the military mission." *United States* v. *Johnson*, 481 U.S. 681, 691 (1987). That concern does not evaporate simply because the defendant is a private party. Judicial "inquiry into . . . civilian activities would have the same effect on military discipline as a direct inquiry into military judgments." *Id.* at 691 n.11.

This case starkly illustrates those dangers. Plaintiffs allege that CACI conspired with, and aided and

abetted, military personnel who committed violations of international norms. Pressing and defending against those claims will require inquiries into sensitive aspects of military operations and intelligence-gathering. Military personnel and CACI employees will likely be required to testify about the interrogation procedures that were in place at Abu Ghraib, who devised them, and how they were implemented. And military documents will need to be introduced to show what written interrogation policies existed and whether they were followed. "Even putting aside the risk of erroneous judicial conclusions (which would becloud military decisionmaking), the *mere process of arriving at* correct conclusions would disrupt the military regime." *United States* v. *Stanley*, 483 U.S. 669, 683 (1987) (emphasis added). That disruption would be entirely unavoidable if a prejudgment appeal of the immunity issue were unavailable, and entirely unnecessary if CACI indeed possesses derivative sovereign immunity.

There are also substantial separation-of-powers concerns raised whenever courts are permitted to sit in judgment over military decisionmaking, which underscores the importance of providing contractors with a right of immediate appeal to guard against such judicial incursions. *See Will*, 546 U.S. at 352–53 (application of the collateral-order doctrine is appropriate for cases involving a "particular value of a high order," including "honoring the separation of powers"). To assess the potential liability of private contractors accused of conspiring with the military to violate international norms, district courts and juries will be required to exercise supervisory powers over the military's intelligence-gathering procedures, interrogation techniques, and covert strategies for iden-

tifying terrorists. But the "power of oversight and control of military force" is granted to "elected representatives and officials," not the "Judicial Branch." *Gilligan* v. *Morgan*, 413 U.S. 1, 10–11 (1973); *see also Kiyemba* v. *Obama*, 561 F.3d 509, 520 (D.C. Cir. 2009) (Kavanaugh, J., concurring) (emphasizing that the "detention" of "combatants" is an issue dedicated to the "political branches" and that the "Judiciary is not suited to second-guess" those decisions) (internal quotation marks omitted). As this Court has "emphasized[,] . . . 'neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people.'" *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quoting *Boumediene* v. *Bush*, 553 U.S. 723, 797 (2008)).

In addition, Congress, not the courts, has the right to decide when the federal government (and federal government contractors) will be subject to suit for military actions in a war zone. If Congress decides to abrogate sovereign immunity against such claims, it must do so through *express* statutory command. *See*, *e.g.*, *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) ("[A] waiver of sovereign immunity must be 'unequivocally expressed' in statutory text."). Yet, under the Fourth Circuit's decision, no appellate court will have the opportunity to decide whether the district court correctly concluded that the United States *impliedly* waived sovereign immunity for violations of international norms until after CACI's derivative right to that immunity from suit has been irretrievably lost.

The "danger[s]" posed by this judicial interference with military affairs and Executive and Legislative Branch prerogatives are "precisely that which the collateral order doctrine is meant to forestall, namely the

expenditure of years of litigation involving a succession of national security concerns in cases that plainly should be dismissed at the very outset." Pet. App. 174a–75a (Wilkinson, J., dissenting).

CONCLUSION

The Fourth Circuit's opinion dismissing CACI's appeal "allow[s] discovery into sensitive military judgments," "open[s] the door" to imposing liability on the United States for violations of international norms, and denies a contractor that assisted the United States in a time of war a meaningful opportunity to vindicate its right to derivative sovereign immunity. Pet. App. 6a–7a (Quattlebaum, J., concurring in judgment). Because those are precisely the types of pernicious outcomes that the collateral-order doctrine is intended to prevent, the petition for a writ of certiorari should be granted.

Respectfully submitted.

JOHN F. O'CONNOR
LINDA C. BAILEY
MOLLY B. FOX
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429 3000

WILLIAM D. DOLAN, III
LAW OFFICES OF WILLIAM D. DOLAN III, PC
8270 Greensboro Drive
Suite 700
Tysons Corner, VA 22102
(703) 584 8377

THEODORE B. OLSON
Counsel of Record
AMIR C. TAYRANI
AARON SMITH
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955 8500
tolson@gibsondunn.com

Counsel for Petitioner

November 15, 2019