Supreme Court, U.S.
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No. ______

In The
Supreme Court of the United States

ANNETTE CARMICHAEL, Individually, and as Guardian for KEITH CARMICHAEL, an incapacitated adult,
Petitioners,

v.

KELLOGG, BROWN & ROOT SERVICES, INC., HALLIBURTON ENERGY SERVICES, INC. and RICHARD IRVINE,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a private military contractor in Iraq should be afforded *de facto* immunity under the political question doctrine for catastrophically injuring a U.S. soldier in an automobile wreck during a routine convoy.

2. Whether a U.S. soldier catastrophically injured in Iraq during a routine convoy can recover against a private military contractor when the civilian driver who caused the wreck was unqualified and overworked.

RULE 29.6 DISCLOSURE

Respondents Kellogg, Brown & Root Services, Inc. and Halliburton Energy Services, Inc. are publicly-traded companies.

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Annette Carmichael, Individually, and as Guardian for Keith Carmichael, an incapacitated adult, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decision of the Court of Appeals is reported at 572 F.3d 1271 and is reproduced in the Appendix herein at 1a-56a. The decision of the U.S. District Court for the Northern District of Georgia is reported at 564 F. Supp. 2d 1363 and is reproduced in the Appendix at 57a-77a.

JURISDICTION

The judgment of the court of appeals was issued on June 30, 2009. Pet. App. 1a. Petitioner's timely petition for rehearing and rehearing on en banc was denied on September 11, 2009. Pet. App. 80a. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The relevant constitutional provision involved is U.S. Const., art. III, § 2, cl. 1. Pet. App. 82a-83a.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

This case concerns the question of whether the U.S. Court of Appeals for the Eleventh Circuit properly expanded the political question doctrine to afford a

private military contractor *de facto* immunity from suit for negligently injuring a U.S. soldier during a routine convoy, where none of the claims raised in the suit require the court to second guess or reexamine any military decision. The case arises from the negligence of Richard Irvine, an employee of Kellogg, Brown & Root Services, Inc. ("KBR"), when Irvine negligently drove his tanker truck off the road in a fuel convoy in Iraq and rolled it over onto Army Sgt. Keith Carmichael, leaving Sgt. Carmichael in a persistent vegetative state. Although Petitioners have not blamed the military in any way and none of Petitioners' claims implicate any military decision, Respondents have tried to bootstrap a political question into the case and thereby obtain effective immunity for Sgt. Carmichael's catastrophic injuries by arguing that military decisions, such as the choice of route for the convoy, were the supervening or concurrent causes of Sgt. Carmichael's injuries. Respondents argued, and the Eleventh Circuit agreed, that the political question doctrine prohibits a jury from even considering whether military decisions were the concurrent or supervening cause of the wreck. No case before has ever given such an expansive reading to the political question doctrine.

The political question doctrine prohibits courts from deciding political questions, such as whether the war is proper, not from hearing cases against private companies that involve facts tangentially related to political decisions. The political question doctrine does not give civilian contractors *de facto* tort immunity for careless driving. Nor does it give civilian contractors *de facto* tort immunity for negligently hiring an unqualified driver and overworking that driver.

KBR's own business documents and investigation of the incident found Irvine to have caused the incident and reprimanded him. The parties have conducted extensive discovery in this case and none of the witnesses or voluminous documents indicate that the Army did anything to cause the incident. To the contrary, the record demonstrates the incident was solely caused by Irvine's simple negligence when he drove off a roadway and rolled Defendants' tanker truck onto Sgt. Carmichael. None of the other drivers drove off the road that day. The first time Army decisions were blamed for the wreck was when they were raised in this case to attempt to create a political question defense.

At the time of the incident, a convoy of tanker trucks operated by KBR was transporting military fuel from Camp Anaconda to Al Asad. Sgt. Carmichael was riding on Mr. Irvine's tanker truck to provide security. Although the military decided when the convoys were to be arranged, the routes travelled, and a military commander rode in the lead vehicle and set the general speed of the convoy, KBR selected the drivers for the convoy, dictated where to place each driver in the convoy, and was vested with authority to remove any driver KBR supervisors deemed to be unfit. (Court of Appeals Record - R3-98-73; R3-103-126-27).

Irvine testified that while driving in the convoy his driving responsibilities for KBR were the same as if he was driving back home. (R3-98-99-100). He was supposed to avoid obstacles in the roadway, avoid any thing that could cause him to crash or stop, and he was supposed to keep the truck on the road and not allow it to roll over. (R3-98-98-99). Irvine testified that while in the convoy he would not even talk to the

military commander. (R3-98-96). Irvine admitted that he was supposed to exercise proper precautions while driving and should not drive off the road or drive too fast. (R3-98-99). He admitted that while driving through the curve at issue he was personally responsible for deciding when to apply the brakes, how to steer the truck, and at what speed to go through it. (R3-98-206-10). Irvine admitted that if he had felt like he was going too fast, he should have applied his brakes. (R3-98-163). He testified that he had discretion to speed up or slow down as necessary in order to safely negotiate the curve. (R3-98-163, 174).

KBR supervisors Stonebraker and Brockett testified that there is nothing the military does to lock in the speed of each individual truck and that it is the responsibility of each individual KBR driver to safely drive his vehicle in the convoy and to safely brake and maneuver through turns or around hazards. (R3-98-206-07; R3-103-45, 48). Stonebraker testified it was Irvine's responsibility to slow his vehicle to an appropriate speed and steer the truck through the curves properly. (R3-103-79; R3-100-53).

On the convoy in question, Irvine was sixth in line. (R3-98-92). Stonebraker was in the first convoy truck as KBR's convoy supervisor. (R3-98-176; R3-103-29). The incident occurred on a blacktop road in a series of S-curves. (R3-98-169; R3-103-35; R3-99-29). According to the only eyewitness to the rollover, when Irvine approached the second curve, he drove the truck too far over to the right-hand side of the road and went off the road, which caused the tanker to slide and then roll over. (R5-97-Ex. 17, pp. 11, 14, 16, 17, 26, 97). No other convoy driver drove off the roadway. (R3-98-102; R3-99-45; R5-97-Ex. 17, p. 22; R3-100-50; R5-97-Ex.

17, p. 26). According to the sole eyewitness, there was no reason for Irvine to drive off the roadway. (R5-97-Ex. 17, p. 27). When Irvine tried to get the truck back on the roadway, the tires hit the edge of the roadway and then the tanker flipped. (R5-97-Ex. 17, p. 17, 26, 97). Irvine even admitted that since the truck in front of him made it safely through the curve, then he should have too. (R3-98-210).

KBR's own internal investigation found the wreck was caused by Irvine traveling at an "excessive speed while negotiating a curve [and] not paying attention to surroundings." (R5-97-Ex. 4). None of KBR's documents, incident reports or drivers indicated that any decision made by the military caused the rollover incident in any way.

When KBR's Post Accident Review Board ("PARB") recommended that Irvine serve a short suspension and then return to driving duties, Art Lange, KBR's Deputy Project Manager, determined that the punishment was insufficient and mandated that Irvine permanently be removed from driving duties. (R3-100-38-39). Lange testified that he doubted Irvine's skills as a driver and could not in good conscience allow Irvine to continue to drive for KBR. (R3-100-29-30, 32-33). KBR's final report concluded that the "root cause" of the rollover incident "was speed in excess and failure to control the vehicle." (R3-101-47; R3-100-42; R5-97-Ex. 7). As evidence that Irvine had discretion to slow down through the curve, Irvine testified that the next time he drove through the S-curves, he drove very slow to look at the rollover site. (R3-98-108). The testimony of Irvine and his KBR supervisors make it clear that Irvine had discretion to slow his vehicle through the curve, was responsible to do whatever was

necessary to safely negotiate the curve, and was not qualified to drive.

KBR convoy supervisor Stonebraker testified that while driving on a convoy, KBR's drivers have to follow the rules of the road, such as not following too closely, and they should be aware of their surroundings. (R3-103-19). According to Stonebraker, when carrying fuel, there are additional considerations when making turns because of the fuel shift. (R3-103-21). The driver should slow down before the turn and never brake in a turn because breaking could cause the driver to lose control of the vehicle. (R3-103-21). Stonebraker testified that it was his responsibility, not the Army's, to radio the KBR driver and have him correct spacing if the driver slowed and disrupted the appropriate spacing. (R3-103-47).

KBR's safety department assesses the driver's ability to safely operate the vehicle from their testing before drivers are assigned to a convoy. (R3-103-126). On the morning of a convoy, if one of the drivers is physically ill or unfit to drive, it is the KBR convoy commander's responsibility to pull the driver off the convoy. (R3-103-126-27). According to Stonebraker, as convoy supervisor, he is responsible for ensuring that the drivers can safely operate their vehicles and for conducting the convoy in a safe and professional manner on the date at issue. (R3-103-131).

On the day of the incident, May 22, 2004, the KBR drivers went through the convoy preparation process with nothing out of the ordinary occurring. (R3-103-34). According to Irvine, the weather was pretty clear, with good visibility and not a lot of wind and nothing out of the ordinary happened before the wreck. (R3-

98-87-88-92). The convoy did not encounter any hostile activity prior to the wreck. (R3-103-52; R3-99-19).

Irvine testified that he had driven the route at issue previously, so the S-curves were no surprise. (R3-98-81-82, 92). According to Irvine, as he drove the truck into the S-curves, first he turned to the left and was getting ready to turn back to the right to go around the next curve when the truck overturned. (R3-98-102; R3-103-69). The five trucks in front of Irvine took the turn successfully. (R3-98-103; R3-103-141). Irvine admitted that if the truck in front of him made it through the S-curve safely, then he should have also. (R3-98-210).

With regard to the pace of the military vehicles, Stonebraker testified that as the KBR convoy supervisor, if he felt the military vehicle leading the convoy drove through the curves at a speed that was too fast for a tanker, he should slow down his truck. (R3-103-170). Stonebraker testified that a KBR driver should not let any other vehicle dictate or control how he maneuvers his vehicle, and he should drive his truck according to what is safe. (R3-103-170-71).

KBR supervisor Holmes Brockett also testified that KBR drivers are responsible for taking curves at the appropriate speed and keeping the vehicle on the roadway. (R3-99-35, 36). Brockett further testified that driver errors, such as control of the vehicle and leaving the roadway, are the KBR driver's responsibility. (R3-99-43). According to Stonebraker, it is KBR's policy that every employee is a safety officer and any employee has the right to stop work due to safety concerns. (R3-103-119-120). A KBR

employee could stop doing something if they were concerned about their own safety. (R3-103-120).

None of KBR's documents, incident reports or drivers directly indicated that any decision made by the Army contributed to the rollover incident in any way. In fact, the "contributing factors" listed in Defendant KBR's Incident Report for the May 22, 2004 wreck are "driver not paying attention to surroundings" and "excessive speed while negotiating curve." (R5-97-Ex. 4). Yet another document, KBR's Written Counseling Form provided to Irvine, indicated that "the root cause of this infraction is you lost control of your vehicle in a curve which caused your vehicle to roll over." (R5-97-Ex. 8). Irvine testified that he understood that the finding of "excessive speed," indicated that he should have been going slower prior to the wreck. (R3-98-132). The Written Counseling Form also indicated that Irvine was an inexperienced driver as it relates to this case. (R5-97-Ex. 8) (emphasis added). It is only in KBR's legal papers seeking to dismiss the case that they for the first time allege that decisions made by the Army in any way contributed to the incident. After the investigation, KBR permanently removed Irvine from driving tanker trucks, and he was reassigned to a non-driving job. (R3-98-114, 189, 198; R3-103-91).

There is also evidence that KBR negligently hired and retained Irvine. Initially, Mr. Irvine applied for a job at KBR but was turned down because he failed a medical exam. (R3-98-30, 32-33). Approximately one month later, KBR sent Irvine through the screening process again and this time hired him. (R3-98-38-39). The time cards completed by Irvine indicate that he worked an extraordinary number of hours in the weeks

leading up to the rollover. Irvine was sixty-six years old on the date at issue, and his time cards indicated that for the week of May 9 through May 13, he worked 12 hour days. (R3-98-191). Although Irvine claimed that a lot of time on the card was probably bunker time at night, he submitted a time card to KBR for 99.5 hours of pay that week. *Id.* Similarly, for the week of the incident, Irvine's time cards show he worked a total of 86 hours that week before the incident, and on the day of the wreck he worked another 12 hours. (R3-98-192-93). Irvine's work schedule and oversight of his hours of service were all within the control of Defendant KBR.

REASONS FOR GRANTING THE WRIT

I. NO APPELLATE COURT HAS EVER BEFORE DISMISSED A CASE AGAINST A PRIVATE ENTITY ON POLITICAL QUESTION GROUNDS

Based upon Petitioners' research, no court before has dismissed a case against a private entity on political question grounds. Whether the political question doctrine should be expanded to grant private military contractors *de facto* immunity from suit when they negligently injure U.S. soldiers is an important question. The United States military is using private contractors to an extent unprecedented in prior conflicts, and the decision of the Eleventh Circuit grants the civilian contractors expansive protection from suit for their negligence. Lower courts need guidance from this Court as to how the political question doctrine applies to the relationship between private military contractors and soldiers. Only this Court can settle such an issue. The Eleventh Circuit

has effectively ruled that a civilian contractor driver does not have a duty to operate his vehicle non-negligently if he is transporting military goods.

II. JURY DETERMINATION OF WHETHER KBR AND IRVINE WERE NEGLIGENT DOES NOT REQUIRE THE REEXAMINATION OF ANY MILITARY DECISION.

This Court held in *Marbury v. Madison* that "[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803). Thus "[t]he nonjusticiability of a political question is primarily a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 210, 82 S. Ct. 691 (1962). The political question doctrine "is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government ...." *United States v. Munoz-Flores*, 495 U.S. 385, 394, 110 S. Ct. 1964 (1990). There are six formulations which may indicate that a political question exists:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] a lack of judicially discoverable and manageable standards for resolving it; [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [5] an unusual need for

> unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. at 217. This Court has cautioned, however, that the doctrine "is one of 'political questions,' not one of 'political cases.'" *Baker v. Carr*, 369 U.S. 186, 218, 82 S. Ct. 691 (1962).

The Eleventh Circuit held that Petitioners' suit raises a political question under *Baker's* first factor because, the court stated, in order to determine whether KBR or Irvine was negligent, the court would have to review sensitive military judgments and decisions. Pet. App. 16a. It is clear from the court's opinion and the facts of the case, however, that no such review is required. Under the first *Baker* factor, the political question doctrine bars only judicial *review* or *reexamination* of decisions constitutionally committed to a coordinate branch. *Baker v. Carr*, 369 U.S. 186, 217 (1962). It does not bar the adjudication of cases that may touch on political issues but that do not require the court to review or reexamine a political question.

Contrary to the plain meaning of the words "review" and "reexamine," the Eleventh Circuit held that a court cannot consider whether decisions made by the military were concurrent or supervening causes of the automobile wreck, because to do so would be to review or reexamine the merits of those military decisions. Pet. App. 16a-27a. The court goes on to say that in order to avoid the review of military decisions, Petitioners must show that the sole cause of Sgt.

Carmichael's injuries was the negligence of KBR and Irvine. Pet. App. 24a. The Eleventh Circuit's analysis is incorrect and represents an expansion of the political question doctrine beyond that conceived in any prior case.

First, "review" means "[t]o reexamine judicially..." or to "consider[] for purposes of correction." Black's Law Dictionary 1320 (6th Edition 1990). This case does not require the review of any military decision. Second, on a motion to dismiss, the court should not consider the merits of Petitioners' claims.[1] Petitioners do not have to prove at this stage of the proceedings that Respondents were the sole proximate cause of the wreck. The political question doctrine bars judicial review or reexamination of the merits of the alleged concurrent or supervening causes, e.g., route selection; it does not bar a jury from determining whether military decisions were concurrent supervening causes of the wreck. This is an unprecedented expansion of the political question doctrine, which effectively grants military contractors in Iraq and Afghanistan broad immunity for negligently injuring soldiers and others.

In every negligence case, the standard of care is that of a reasonably prudent person under like circumstances. *See, e.g., Thurman v. Applebrook Country Dayschool, Inc.*, 278 Ga. 784, 787, 604 S.E.2d 832 (2004). The jury looks at the circumstances that existed at the time of the incident and determines whether in the face of those circumstances, the defendant acted in a reasonably prudent manner.

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[1] The dissent correctly pointed out that the court should not consider the merits of Petitioners' claims. Pet. App. 53a.

Here, the jury would look at the circumstances which existed at the time Irvine drove into the curve and determine whether under those circumstances he acted reasonably. The jury could conclude that given the Army's choice of route, given the time for the convoy selected by the Army, and given other Army decisions, Irvine was not negligent for driving off the road. But the jury would not have to review the merits of any Army decision. The jury instead would be asked whether KBR and Irvine exercised ordinary care under the circumstances.

Juries in negligence actions routinely consider as evidence circumstances of which they do not review the merits. For example, in a case where a wreck occurs in the rain, the defendant may argue that the rain was a supervening cause of the wreck. The jury does not review whether it should have been raining that day; it instead determines whether the driver acted as a reasonably prudent person driving in the rain. As an example more analogous to this case, in a case where a wreck occurs in an intersection, the defendant may contend that the proximate cause of the wreck was the negligent design of the intersection. The municipality may be immune from suit for its design choices just as the Army here would be immune from suit for its route selection. But the jury in that case could still consider whether the design of the intersection - as part of the circumstances then existing - was a supervening cause of the wreck, just as the jury here could consider whether military decisions were supervening causes of Irvine running off the road. Neither of those scenarios requires the jury to review or reexamine those circumstances.

The political question doctrine was developed to "prevent the judicial branch from deciding 'political questions,' controversies that revolve around policy choices and value determinations constitutionally committed for resolution to the legislative or executive branches." *Aktepe v. United States*, 105 F.3d 1400, 1402 (11th Cir. 1997) (*citing Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 230, 106 S. Ct. 2860 (1986)). It does not prevent the introduction into evidence of political decisions.

In other cases where courts dismissed a plaintiff's negligence claims pursuant to the political question doctrine, the plaintiff challenged decisions made by the political branches, which required a reexamination of those decisions. For example, in *Aktepe v. United States*, 105 F.3d 1400 (11th Cir. 1997), the plaintiffs were members of the Turkish Navy who were injured during military exercises when their ship was struck by missiles fired from a U.S. ship. The suit was against the U.S. military, questioning military decisions. The Eleventh Circuit properly held that the case was nonjusticiable because it would require the Court to decide political questions, such as how a reasonably prudent military force would conduct a training exercise.

The *Aktepe* decision is readily distinguishable from the present case. First, *Aktepe* was a suit directly against the Navy, not a civilian for-profit contractor. Second, *Aktepe* involved two nations engaged in a NATO military exercise and dealt with the relationship between the United States and its allies, which is a matter of foreign policy. *Id.* at 1403. Third, there were no judicially discoverable and manageable standards for resolving the dispute because a court is

not equipped to determine how a reasonably prudent military force would conduct the exercise. *Id.* at 1404. Fourth, the case would require the Court to make an initial policy decision of a kind reserved for military discretion. As an example, the Court stated, it would be unable to conclude that the Navy behaved negligently when it decided not to advise the missile team that the firing was a drill, without making a policy determination regarding the necessity of simulating actual battle conditions. *Id.* Fifth, "adjudicating the case would express a lack of respect for the political branches of government by subjecting their discretionary military and foreign policy decisions to judicial scrutiny ...." *Id.* The present case would not require the court or jury to answer any similar question. This case would require the jury only to decide whether Irvine acted reasonably under the circumstances, or whether KBR negligently hired or retained Irvine, a decision made before Irvine ever left the United States.

Another case that provides a clear example of the type of dispute the political question doctrine bars from courts is *Tiffany v. United States,* 931 F.2d 271 (4th Cir. 1991). There, the plaintiff filed suit against the United States alleging that the military negligently intercepted and collided with the plaintiff's decedent's aircraft, causing his death. The Fourth Circuit rightly held that negligence standards could not be applied to the military's defense of our national borders or airspace. The Court stated that "whether and under what circumstances to employ military force are decisions left to the executive and legislative branches of government." *Tiffany,* 931 F.2d at 277. In other words, it would be improper for the court to

attempt to decide what is a reasonably prudent intercept.

Plaintiffs here question decisions made by KBR and its employee Irvine, not decisions made by the military. Defendants seek to use their causation defenses to bootstrap a political question into the case in order to avoid responsibility. As it now stands, the United States taxpayers will pay for Sgt. Carmichael's care even though a private for-profit contractor negligently caused his injuries. This case only involves Plaintiffs' allegations regarding the manner in which Defendants carried out their duties and does not require any adjudication of the reasonableness of any decision made by the military.

III. THERE ARE JUDICIALLY DISCOVERABLE AND MANAGEABLE STANDARDS FOR RESOLVING THE CASE.

The Eleventh Circuit also held that there are no judicially discoverable and manageable standards for determining what a reasonable driver would do in a military convoy in Iraq. It should be well within the federal court's ability to apply negligence standards to a truck wreck, even one in Iraq. In fact, Defendant Irvine admits his driving was governed by the Federal Motor Common Carrier Regulations, which are very clear and manageable standards, and that it was his ultimate responsibility to safely negotiate the curve.

The determination a jury would make here is no more difficult than decisions juries make everyday. As an example, in neurosurgical malpractice cases juries have to determine what a reasonably prudent

neurosurgeon would do during brain surgery. Juries also sit in judgment in complex tax cases and complex contract cases. The jury's task here would be much easier than in those examples. It may be novel for a jury to determine standard of care for a driver on a fuel convoy in Iraq, but it is not unmanageable.

IV. THE DISSENT BELOW CORRECTLY STATED THAT PETITIONERS' NEGLIGENT SUPERVISION CLAIM WOULD NOT REQUIRE THE REEXAMINATION OF A MILITARY DECISION.

The dissent below noted that "Plaintiffs have sufficiently alleged a claim of negligent supervision based on their allegation that KBR breached the requisite duty of care by requiring [Irvine] to work unreasonably long hours, causing driver fatigue, which was a proximate cause of the injury." Pet. App. 48a. The dissent contended that KBR's liability for negligently allowing Irvine to become physically unfit to operate his truck could be submitted to a jury without implicating any military decision. Pet. App. 50a. The dissent argued that evidence that Irvine exceeded the allowable hours under the Federal Motor Carrier Safety Administration regulations raised a genuine issue of material fact as to whether driver fatigue was a contributing cause of the accident. Pet. App. 54a. Because deciding this issue would go to the merits of Plaintiffs' claim, the dissent correctly stated, the district court was required to find that jurisdiction exists and give Plaintiffs an opportunity to argue the merits of the claim to a finder of fact, at least under this theory. Pet. App. 54a-55a.

There is no evidence the military exercised any control over Irvine's hiring or work schedule. Irvine's time cards indicate that he worked an extraordinary number of hours in the weeks leading up to the rollover. Irvine was sixty-six years old on the date of the crash, and his time cards indicated that he worked 12 hour days for the week of May 9 through May 13. (R3-98-191). Although Irvine claimed that a lot of time on the card was probably bunker time at night, he submitted a time card to KBR for 99.5 hours of pay that week. *Id.* For the week of the incident, Irvine's time cards show he worked a total of 86 hours, and on the day of the wreck, he worked another 12 hours. (R3-98-192-93). Irvine's work schedule and oversight of his hours of service were all within the exclusive control of Defendant KBR.

There is no evidence that the military controlled Irvine's work hours or chose specific drivers for convoys. A jury could consider whether these actions by KBR were negligent and caused the accident, without reexamining any decision made by the military.

In short, this case in no way interferes in the business of the executive branch or in any way infringes on the separation of powers. Instead, it is only a personal injury suit against a private contractor for an automobile wreck.

CONCLUSION

This Court should grant the petition and exercise its jurisdiction.

Respectfully submitted,

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Dated: December 9, 2009