

issues of fact" and "grow[ing] out of the same event or transaction" as this action.¹

Before the Court is the United States' Motion to Dismiss which explains, *inter alia*, that the Court lacks subject matter jurisdiction in this case because the action involves nonjusticiable political questions. *See, inter alia*, Mem. in Support of Defendant's Motion to Dismiss (filed June 1, 2001) at 28-34. In its *El-Shifa* opinion the Federal Circuit stated, "the decision of the Court of Federal Claims to dismiss the complaint because it raises a nonjusticiable political question is affirmed." *Id.* at 43.² The Federal Circuit reasoned, *inter alia*:

In essence then, the appellants are contending that the President failed to assure himself with a sufficient degree of certainty that the Plant was in fact a chemical weapons factory, despite his declaration to the contrary that the information he possessed in 1998 indicated al-Qaeda was using it to manufacture chemical weapons ingredients. The appellants would have the Court of Federal Claims in the first instance, and this court on appeal, provide them with an opportunity to test that contention, and in the process, require this court to elucidate the constitutional standards that are to guide a President when he evaluates the veracity of military intelligence.

We are of the opinion that the federal courts have no role in setting even minimal standards by which the President, or his commanders, are to measure the veracity of intelligence gathered with the aim of determining which assets, located beyond the shores of the United States, belong to the Nation's friends and which belong to its enemies. In our view, the Constitution envisions that the political branches, directly accountable to the People, will adopt and promulgate measures designed to ensure that the President makes the right decision when, pursuant to his role as Commander-in-Chief, he orders the military to destroy private property in the course of exercising his power to wage war.

Id. at 32-33.

¹ Subsequently, on April 17, 2001, plaintiffs filed with this Court a copy of the Complaint they had filed in the Court of Federal Claims. *See* Notice of Filing, Docket Entry 4.

² The United States previously filed with this Court copies of the Court of Federal Claims' March 14, 2003 Opinion dismissing that case and the Court of Federal Claims' Order of April 14, 2003, denying plaintiffs' motion for reconsideration. *See* Docket entries 32 and 33.

Respectfully submitted,
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CERTIFICATE OF SERVICE

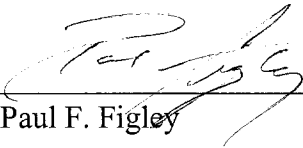
I hereby certify that on August 20, 2004, I caused a copy of the foregoing
NOTICE OF SUPPLEMENTAL AUTHORITY, to be served via first-class U.S. mail, postage
prepaid, on the following individuals.

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