

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

EL-SHIFA PHARMACEUTICAL	)	
INDUSTRIES COMPANY, and	)	
SALAH EL DIN AHMED MOHAMMED IDRIS	)	Case Number: 1:01CV00731
	)	JUDGE: Richard W. Roberts
	)	DECK TYPE: General Civil
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant,	)	
	)	

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS’  
MOTION TO ALTER JUDGEMENT**

Defendant United States of America, by and through its undersigned counsel, respectfully submits this Memorandum in Opposition to Plaintiffs’ Motion to Alter the Court’s Memorandum Opinion and Order of November 29, 2005. Plaintiffs’ Motion was filed without compliance with this Court’s Local Rule 7(m), which requires counsel for the moving party to confer with opposing counsel prior to filing any nondispositive motion. More to the point, plaintiffs have failed to meet the stringent standards governing relief under Rule 59(e), Fed. R. Civ. P., pursuant to which their Motion is filed. With respect to both their defamation claim (Count Three) and so-called “law of nations” claim (Count Four), plaintiffs blatantly misstate the record on which this Court determined it lacked subject matter jurisdiction. In addition, Plaintiffs ignore the import of the political question doctrine, which likewise compels dismissal of those claims. Instead, Plaintiffs improperly seek to utilize their Motion to Alter Judgment as a vehicle to

reargue points which the Court has already rejected and to argue new theories which could have been presented before the Court issued its decision dismissing the case. For all these reasons, Plaintiffs' Motion should be denied.

**Standards Governing Motions to Alter or Amend Judgment  
Pursuant to FRCP 59(e).**

The reconsideration and amendment of a final order under Rule 59(e) of the Federal Rules of Civil Procedure is an extraordinary measure. *Niedermeier v. Office of Baucus*, 153 F.Supp.2d 23, 28 (D.D.C. 2001) ("Motions under Fed.R.Civ.P. 59(e) are disfavored and relief from judgment is granted only when the moving party establishes extraordinary circumstances," citing *Anyanwutaku v. Moore*, 151 F.3d 1053, 1057 (D.C. Cir. 1998)). Relief can be granted under Rule 59(e) only when there is an intervening change of controlling law, new evidence becomes available, or there is a "need to correct a clear error or prevent manifest injustice." *Anyanwutaku*, 151 F.3d at 1057-58. "Rule 59(e) motions are not granted if the court suspects the losing party is using the motion as an instrumentality for arguing the same theory or asserting new arguments that could have been raised prior to final judgment." *Lightfoot v. District of Columbia* 355 F.Supp.2d 414, 421 (D.D.C. 2005); see also *Kattan by Thomas v. Dist. of Columbia*, 995 F.2d 274, 276, 301(D.C.Cir. 1993).

The tests for showing "clear error" or "manifest injustice" under Rule 59(e) are very demanding. Judge Lamberth discussed the "clear error" standard in *Piper v. U.S. Dept. of Justice*, 312 F.Supp.2d 17, 21 (D.D.C.,2004), one of the cases cited by plaintiffs:

Courts have generally not defined what constitutes "clear error" under Rule 59(e). See *Oneida Indian Nation of New York v. County of Oneida*, 214 F.R.D. 83, 98 (N.D.N.Y.2003). What can be learned from scarce case law on the subject is that clear error should conform to a "very exacting standard." *Id.* (quoting *Hopwood v.*

*Texas*, 236 F.3d 256, 272 (5th Cir.2000)). District courts should have "a clear conviction of error" before finding a final judgment was predicated on clear error. *Id.* (internal citation omitted). The Seventh Circuit declared that a final judgment must be "dead wrong" to constitute clear error. *Parts & Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 233 (7th Cir.1988).

*Accord Lightfoot*, 355 F.Supp.2d at 422 (*Kollar-Kotelly, J.*). The D.C. Circuit addressed the "manifest injustice" standard in *Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C.Cir. 2004), stating "manifest injustice does not exist where, as here, a party could have easily avoided the outcome, but instead elected not to act until after a final order had been entered." (internal quotations omitted); *see also Fox v. American Airlines, Inc.* 389 F.3d 1291, 1296, (D.C. Cir. 2004).

Finally, a Rule 59(e) motion is a non-dispositive motion for purposes of the meet and confer requirement of Rule 7 (m) of the Local Rules of the U.S. District Court for the District of Columbia. *Niedermeier v. Office of Baucus*, 153 F.Supp.2d 23, 27 (D.D.C.,2001). Accordingly, a Rule 7 (m) conference is required before such a motion can be filed. *Id.*

## Argument

### 1. Plaintiffs' Motion Was Filed in Violation of the Local Rules of this Court.

Prior to filing the Motion to Alter Judgment plaintiffs' counsel failed to meet and confer with counsel for the United States as required by Rule 7 (m) of the Local Rules of the U.S. District Court for the District of Columbia.<sup>1</sup> There is no question but that a conference with

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<sup>1</sup> Rule 7(m) provides:

(m) DUTY OF COUNSEL TO CONFER ON NONDISPOSITIVE MOTIONS.

Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either

opposing counsel must take place before a Rule 59(e) motion can be filed. In *Niedermeier*, the court (Hogan, J.) held that a Rule 59(e) motion squarely falls within the rule, stating, “plaintiff’s counsel is hereby on notice that a meet and confer session is required under Local Civil Rule 7.1(m) regardless of whether or not plaintiff’s counsel personally believes it would be productive.” *Id.* at 27. The court went on to note that the rule “would be meaningless if a party could ... file any nondispositive motion they chose without meeting and conferring, and later argue that a [Local Civil Rule 7.1(m)] argument is moot simply because the motion is later opposed,” *Id.*, quoting *Alexander v. FBI*, 186 F.R.D. 197, 199 (D.D.C.1999) Because plaintiff’s counsel failed to meet and confer as required by Local Rule 7(m) prior to filing their Motion to Alter Judgment, that motion should be denied.

## **2. Plaintiffs’ Motion Fails to Meet the Standards for Relief under Rule 59(e).**

Plaintiffs’ motion also should be denied because they have failed to meet the stringent standards for relief under Rule 59(e). They have not established either clear error or manifest injustice. Instead, they have misstated the record on which the Court dismissed the case, and then attempted to present new theories that should have been litigated before the Court ruled on the Motion to Dismiss or reargued old theories already presented.

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in person or by telephone, in a good faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. A party shall include in its motion a statement that the required discussion occurred, and a statement as to whether the motion is opposed.

### A. Plaintiffs' Defamation Claim (Count 3)

In challenging the Court's dismissal of their defamation claim under the Administrative Procedures Act (APA) plaintiffs blatantly misstate the record. Their brief falsely asserts:

**The complaint does not suggest that the statements or the decision not to retract them are attributable in any way to the President.**

Pl. Mem. at 5 (emphasis added). Based on this assertion plaintiffs proceed to argue that "the Court must view [their defamation claim] as a claim that concerns only agency rather than presidential action, which occurred well after the attack and addressed issues that were no part of the decision to destroy the plant." *Id.*

Contrary to their assertion, the Complaint alleges that the President himself defamed plaintiffs by making public statements falsely linking them to Osama bin Laden, international terrorist organizations, and the manufacture of chemical weapons. Specifically, in Count 3 of their Complaint plaintiffs allege (emphasis added):

102. **The President** and other senior officials of the United States made statements to the press linking Mr. Idris and El-Shifa to Osama bin Laden, international terrorist organizations and the production of chemical weapons.

103. These statements were made with knowledge and intent that they would be republished by news media in the United States and throughout the world.

104. These statements were false. Mr. Idris and El-Shifa do not support Mr. bin Laden or any international terrorist organization, they have no links to Mr. bin Laden or any terrorist organization, and they have no connection to chemical weapons.

Given that its key premise is demonstrably false, plaintiffs' challenge to the dismissal of their defamation claim under the APA must fail. It is well established that presidential decisions are

not subject to review under the APA. *E.g., Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992) (“presidential actions are not subject to review pursuant to the APA”); *Tulare County v. Bush*, 185 F.Supp. 2d 18, at 28-29 (D.D.C. 2001), *aff’d* 306 F.3d 1138 (D.C. Cir.), *cert. denied*, 540 U.S. 813 (2003); *see also Dalton v. Specter*, 511 U.S. 462, 470 (1994).

Nor is there merit to plaintiffs’ new argument that because “courts in this circuit have indicated a willingness to consider claims against the government for specific relief against defamatory statements ...,” (Pl. Mem. at 3.), the Court should enter “[a]n order requiring the United States to issue a retraction in the form of a press release ... that [plaintiffs] are connected to Osama bin Laden, terrorist groups, or the production of chemical weapons.” Complaint at 31, Prayer for Relief 3. This argument was not presented prior to the issuance of this Court’s decision dismissing plaintiff’s defamation claim and, therefore is improper under Rule 59(e). *E.g. Kattan, supra.*<sup>2</sup>

It fails, moreover, because it never comes to grip with the requirements of the APA.<sup>3</sup> As this Court properly noted in the course of discussing plaintiffs’ “law of nations” claim, “[t]he APA ... provides for judicial review only of final agency action,” *citing Tulare, supra.* Mem. Op. at 10. The term “final agency action” is one with particular legal meaning:

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<sup>2</sup> *Piper v. U.S. Dept. of Justice* 312 F.Supp.2d 17, 21 (D.D.C. 2004) (“Rule 59(e) motions are not granted if the court suspects the losing party is using the motion as an instrumentality of arguing the same theory or asserting new arguments that could have been raised prior to final judgment.”);

<sup>3</sup> In a footnote to their brief plaintiffs offer a partial summary of the arguments raised by the United States on the APA issue. Pl. Mem. at 2, n.2. That summary is incomplete. *See* U.S. Mem. in Support of Motion to Dismiss at 21 - 28. The arguments defendants raised during the briefing of the Motion to Dismiss apply to the new arguments plaintiffs raise in this motion.

The Supreme Court has established a two-part test to determine when an agency action is reviewable as "final." First, the action under review "must mark the 'consummation' of the agency's decisionmaking process--it must not be of a merely tentative or interlocutory nature." .... Second, the action must "be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'

*National Ass'n of Home Builders v. Norton* , 415 F.3d 8 , 13 (D.C. Cir. 2005) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)); accord, *Tulare*, 185 F.Supp.2d at 28. If either element is missing, the matter is not "final agency action."

The allegedly defamatory statements regarding plaintiffs did not determine "rights or obligations," nor did "legal consequences flow" from them. See generally, *Illinois Citizens Committee for Broadcasting v. F.C.C.* 515 F.2d 397, 402 (D.C. Cir. 1975) (Speech by FCC Chariman "is not a decisional pronouncement affecting legal rights and obligations...."). Indeed, it is unclear whether agency publicity can ever constitute "agency action." See generally, *Hearst Radio v. FCC*, 167 F.2d 225, 227 (D.C. Cir. 1948) (term "agency action" "obviously does not cover an act such as publication of" a false and injurious report).<sup>4</sup> It is absolutely clear that even if agency publicity does qualify as "agency action," it must still be "final agency action" to be reviewable under the APA. *National Ass'n of Home Builders, supra*; and *Tulare, supra*.<sup>5</sup>

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<sup>4</sup> *Hearst Radio* was criticized in *Industrial Safety Equipment Association, Inc. v. Environmental Protection Agency*, 837 F.2d 1115, 1119-20 (1988) (dismissed as unripe challenges to agency statements that did not "impose an obligation, determine a right or liability or fix a legal relationship."); and *Impro Products, Inc. v. Block*, 722 F.2d 845, 849 (1986) (suit barred by limitations). It is clear those criticisms were *dicta* because each case was dismissed on other grounds.

<sup>5</sup> None of the cases plaintiffs cite held that agency publicity was final agency action. See generally, *Pl. Mem.* at 3-4. Indeed, the most recent of those cases noted that, "No court has ever found a press release to be a final agency action under the APA." *Trudeau v. Fed. Trade Comm.*, 384 F.Supp.2d 281, 289 (D.D.C. 2005), *appeal docketed. Industrial Safety Equipment; Impro*

*Hearst Radio* was recently cited with approval in an opinion by Judge (now Chief Justice) Roberts, *Independent Equipment Dealers Ass'n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004), a case which turned on the definition of "final agency action." That case involved a letter in which EPA stated that it did not concur in a proffered interpretation of a regulation. Plaintiffs contended that by sending the letter EPA had amended its regulations. Judge Roberts acknowledged *Bennett v. Spear's* two part test for "final agency action:"

This line of argument becomes more understandable when one considers the dual requirements for "final agency action": (1) that the action be final -- *i.e.*, not tentative or interlocutory; and (2) that the action be one from which "rights or obligations have been determined" or from which "legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168, 137 L.Ed.2d 281 (1997) (internal quotation omitted). [ 372 F.2d at 426 .]

He concluded that the letter did not meet this test because it had no legal consequences:

Here, common sense, basic precepts of administrative law, and the Administrative Procedure Act itself all point to the conclusion that the EPA Letter to IEDA is not reviewable agency action.

The answer seems obvious once we examine the concrete impact the EPA Letter had on IEDA and its members -- in short, none whatsoever. ... The Letter neither announced a new interpretation of the regulations nor effected a change in the regulations themselves. The Letter was purely informational in nature; it imposed no obligations and denied no relief. Compelling no one to do anything, the letter

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*Products; Community for Creative Non-Violence v. Pierce*, 814 F.2d 663, 665,(D.C. Cir. 1987) (court "d[id] not reach the question of whether promulgation and issuance of the Report constitutes 'agency action' reviewable under the APA."). *See also* cases cited by plaintiff discussed in footnote 5.

None of these cases involve circumstances at all like those presented here. Each arose from regulatory agency activity. None involved national security issues. In this case there is no specific statutory authorization for review and the United States does not concede the matters plaintiffs seek to have recited.

had no binding effect whatsoever -- not on the agency and not on the regulated community. [*Id.* at 427.]

Accordingly, the court lacked jurisdiction to grant relief under the APA.

Applying this analysis to plaintiffs' new argument establishes that their defamation claim does not fall within the APA's jurisdiction. The retraction by press release which they seek would not have legal consequences. Nor, for that matter, did the contested statements themselves. That the alleged statements had practical consequences such as causing embarrassment or business difficulties does not meet the standard. "[I]f the practical effect of the agency action is not a certain change in the legal obligations of a party, the action is non-final for the purpose of judicial review." *National Ass'n of Home Builders v. Norton* 415 F.3d 8, 15, citing *DRG Funding Corp. v. Sec'y of Housing and Urban Dev.*, 76 F.3d 1212, 1214 (D.C.Cir.1996); accord, *Independent Equipment Dealers Ass'n v. EPA*, 372 F.3d at 428 ("[P]ractical consequences,' such as the threat of 'having to defend itself in an administrative hearing should the agency actually decide to pursue enforcement,' are insufficient to bring an agency's conduct under our purview," citing, *Reliable Automatic Sprinkler Co., Inc. v. Consumer Product Safety Com'n* 324 F.3d 726, 732 352 (D.C. Cir. 2003)). Because the requested press release would have no legal consequences, the failure to issue it is not a "final agency action" and, therefore, not subject to APA review.

Plaintiffs' defamation claim is also barred by the political question doctrine. The relief plaintiffs seek is an Order from the Court requiring the Executive Branch to issue a press release which, in practical effect, would be a statement announcing that President Clinton was mistaken when he determined that plaintiffs' plant was a chemical weapons-related facility. In its

Memorandum Opinion the Court identified factors from *Baker v. Carr*, 369 U.S. 186, 211 (1962), which are directly applicable to this claim.

With the complaint viewed as essentially challenging President Clinton's decision that El-Shifa was a threat to the nation's security, the second element articulated in *Baker* is also applicable because no judicially discoverable and manageable standards exist for a judicial assessment of that decision. [Id. 14.]

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[C]ourts play no role in evaluating the reliability or the truthfulness of the executive's own intelligence, nor do courts substitute their judgment for the executive's in weighing or evaluating the information used in coming to a policy decision. See *El-Shifa Pharm. Indus., Inc. v. United States*, 378 F.3d 1346, 1365 (Fed.Cir. 2004)(noting 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") .... [Id. at 15.]

As the Federal Circuit stated in rejecting plaintiffs' argument there:

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.

*El-Shifa Pharm. Indus., Inc. v. United States*, 378 F.3d 1346, 1365 (Fed.Cir. 2004), cert. denied

\_\_\_ U.S. \_\_\_, 125 S.Ct. 2963 (2005). Accordingly, the Court lacks jurisdiction over plaintiffs' defamation claim.

#### **B. Plaintiffs' "Law of Nations" Claim (Count 4)**

Plaintiffs criticize the Court's conclusion that their "law of nations" claim must be dismissed because the APA does not waive "sovereign immunity from challenges to presidential decisions." Memorandum Opinion at 10-11. They assert:

The Court's analysis is ... clearly erroneous because the action placed at issue by

this claim is not the President's decision to target El-Shifa but the subsequent failure to compensate Plaintiffs for their property, as required by international law, after it became apparent that it was not a terror-related chemical weapons facility. [Pl. Mem. at 6.]

That assertion is, at best, misleading.

Contrary to the suggestion in plaintiffs' brief, the Complaint makes clear that their "law of nations" claim relates to and challenges the President's decision to authorize the use of military force to destroy the plant. For example, Paragraph 116 of the Complaint, the last paragraph in their Count 4, states:

116. A declaration that the destruction of the Plant violated the law of nations would help to restore the reputation of Mr. Idris and El-Shifa, and improve their ability to engage in pharmaceutical and other business activities in countries throughout the world.

Similarly, their Prayer for Relief seeks:

4. A declaration that the United States attack on the El-Shifa pharmaceutical plant violated the law of nations. [Complaint at 31, Prayer for Relief, Paragraph 4.]

Additionally, in their brief opposing the Motion to Dismiss plaintiffs set forth a summary of the redress they sought. After discussing the first three counts of their Complaint they state:

Finally, the complaint seeks a declaration that the attack on the plant violated the law of nations. [Pl. Opp. Mem. at 8.]

Because "the action placed at issue" by plaintiffs throughout this litigation is not the one they say the Court failed to address, their argument is baseless.

Moreover, Plaintiffs' contention that they only seek a declaration that the United States' refusal to pay compensation violated international law ignores the fact that the basis for compensation would be the presidential decision to use military force to destroy plaintiffs' plant.

President Clinton stated the basis for that action.<sup>6</sup> His decision, and its legal consequences, cannot be avoided by clever pleading. *See* Memorandum Opinion at 8, *citing Fisher Bros. Sales, Inc. v. United States*, 46 F.3d 279, 286 (3d Cir.1995). The President's decision cannot be challenged indirectly by pursuing those who implement government policy. *See, e.g., Tulare County*, 185 F.Supp.2d at 28 -29 ("Any argument suggesting that this action is agency action would suggest the absurd notion that all presidential actions must be carried out by the President him or herself .... The court refuses to give the term 'presidential action' such a confusing and illogical interpretation.").

Plaintiffs' argument that the Court should grant declaratory relief, apparently now framed as a statement that the CIA violated international law when it failed to compensate plaintiffs for their plant, fails for several additional reasons. First, it was not raised in plaintiffs' opposition to the Motion to Dismiss.<sup>7</sup> Accordingly, it is not properly presented in a Rule 59(e) motion. *E.g. Kattan, supra*. Second, plaintiffs have cited no authority establishing that they have a legally

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<sup>6</sup> *See* Exhibit 1 to the Motion to Dismiss, containing: Letter to Congressional Leaders Reporting on Military Action Against Terrorist Sites in Afghanistan and Sudan (August 21, 1998); Letter to Congressional Leaders on Terrorists Who Threatened To Disrupt the Middle East Peace Process (August 20, 1998); The President's Radio Address (August 22, 1998); Remarks in Martha's Vineyard, Massachusetts, on Military Action Against Terrorist Sites in Afghanistan and Sudan (August 20, 1998); and the Address to the Nation on Military Action Against Terrorist Sites in Afghanistan and Sudan (August 20, 1998). 2 Public Papers of the President, William J. Clinton, 1998, pp. 1460, 1461, 1463-65 (1998).

There is no merit to Plaintiffs' suggestion that "it is not clear whether the Executive Branch disputes or agrees with Plaintiffs' claim that the plant was innocent private property." Pl. Mem. At 7. The United States has never altered its position on that issue.

<sup>7</sup> *Compare* Pl. Mem. at 6-8 *with* Pl. Opp. Mem. at 24-26. Plaintiffs' argument, "B. Plaintiffs' Defamation and Law-of-Nations Claims Fall with the Scope of the Waiver of Sovereign Immunity in the APA," begins on the third line of page 24 and ends on the second line of page 26.

enforceable right to compensation under international law, or that there is jurisdiction under APA to entertain such a challenge. *See Sanchez-Espinoza v. Reagan*, 770 F.2d 202 (D.C. Cir. 1985).<sup>8</sup>

Third, it is barred by the political question doctrine.

Plaintiffs acknowledge that, “The Court could not grant the declaratory relief requested by the law of nations claim if the claims tying the plant to terrorism and chemical weapons made by the Executive Branch at the time of the attack were true.” Pl. Mem. at 6. They ignore that President Clinton was the official who, under the Constitution was entrusted with responsibility for making that determination. Under the political question doctrine his decision on the matter resolves the question and is not an appropriate subject for judicial review.

In its Memorandum Opinion the Court identified *Baker v. Carr* factors applicable to this claim including, *inter alia*:

Finally, review of the President’s decision to bomb the plant and the underlying factual basis for it without any judicially manageable standards could involve a policy determination beyond the court’s discretion to make. A judicial inquiry into the reasonableness of the judgments made regarding the El-Shifa plant could mimic the executive’s role in commanding the country’s military forces, and could require an inappropriate second-guessing of executive branch decisions. *Industria Panificadora*, 763 F. Supp. at 1161 (noting that “an independent resolution would show a lack of respect due to a coordinate branch”). [Mem. Op. at 17.]

Plaintiffs’ ignore this analysis. Instead, they blatantly repeat an argument already made to

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<sup>8</sup> As then Judge Scalia stated in *Sanchez-Espinoza v. Reagan*, 770 F.2d at 209:

Whether or not the present litigation is motivated by considerations of geopolitics rather than personal harm, we think that as a general matter the danger of foreign citizens' using the courts in situations such as this to obstruct the foreign policy of our government is sufficiently acute that we must leave to Congress the judgment whether a damage remedy should exist.

the Court:

Plaintiffs have previously asserted that questions regarding the nature of the destroyed facility present straightforward issues of fact that can be proven and decided without consideration of Executive Branch conduct or intelligence. [Pl. Mem. at 7.]

Because this is an argument previously raised, it is plainly inappropriate under Rule 59(e). *See, e.g. Ciralsky*; and *Kattan, supra*.<sup>9</sup> Furthermore, it is wrong. The Federal Circuit flatly rejected it,

stating:

The appellants' desire for judicial review of the President's decision to target the Plant would most surely give way to the specter of field commanders vetting before the civil courts the intelligence on which they rely in selecting targets for destruction while simultaneously dealing with the exigencies of waging war on the battlefield. The Supreme Court has considered what such a state of affairs would mean for the military's ability to wage war and has stated that:

It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.

*Johnson v. Eisentrager*, 339 U.S. 763, 779, 70 S.Ct. 936, 94 L.Ed. 1255 (1950). These concerns apply with equal force here, given the appellants' desire to test the veracity of the information upon which the President claims to have relied in ordering the destruction of their property.

*El-Shifa Pharm. Indus., Inc. v. United States*, 378 F.3d at 1367.

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<sup>9</sup> *Rann v. Chao*, 209 F.Supp.2d 75, 78 (D.D.C. 2002) (“Finally, ‘[a] Rule 59(e) motion to reconsider is not simply an opportunity to reargue facts and theories upon which a court has already ruled,’ *New York v. United States*, 880 F.Supp. 37, 38 (D.D.C.1995).”)

