No.

IN THE

Supreme Court of the United States

MARK SOKOLOW, ET AL.,

Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION AND PALESTINIAN AUTHORITY (AKA PALESTINIAN INTERIM SELF-GOVERNMENT AUTHORITY AND OR PALESTINIAN COUNCIL AND OR PALESTINIAN NATIONAL AUTHORITY),

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

KENT A. YALOWITZ
BARUCH WEISS
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
(212) 836-8000
Kent.Yalowitz@apks.com

THEODORE B. OLSON
Counsel of Record
MATTHEW D. MCGILL
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500
TOlson@gibsondunn.com

Counsel for Petitioners

QUESTION PRESENTED

In response to terror attacks on Americans by the Palestine Liberation Organization ("PLO"), Congress established in the Anti-Terrorism Act of 1992 a federal cause of action for U.S. nationals "injured … by reason of an act of international terrorism." 18 U.S.C. § 2333(a). Petitioners are American victims of terrorist attacks in Israel carried out by officers, employees, and agents of the Palestinian Authority and the PLO—which together function as the government of parts of the West Bank. Petitioners sued the Palestinian Authority and the PLO under the Anti-Terrorism Act and a jury returned a verdict for petitioners. The court of appeals vacated the judgment, holding that the Palestinian Authority and the PLO are "persons" protected by the Fifth Amendment's Due Process Clause and that due-process principles bar federal courts from asserting personal jurisdiction over the defendants for their acts of international terrorism because their attacks were not "sufficiently connected to the United States." The question presented is:

Whether the Fifth Amendment's Due Process Clause precludes federal courts from exercising personal jurisdiction in this suit by American victims of terrorist attacks abroad carried out by the Palestinian Authority and the PLO.

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs-appellees/cross-appellants below, are: Mark I. Sokolow, Rena M. Sokolow, Jamie A. Sokolow, Lauren M. Sokolow, Elana R. Sokolow, Dr. Alan J. Bauer, individually and as natural guardian of plaintiff Yehuda Bauer, Revital Bauer, individually and as natural guardian of plaintiff Yehuda Bauer, Yehonathon Bauer, Binyamin Bauer, Daniel Bauer, Yehuda Bauer, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer, Shmuel Waldman, Henna Novack Waldman, Morris Waldman, Eva Waldman, Rabbi Leonard Mandelkorn, Shaul Mandelkorn, Nurit Mandelkorn, Oz Joseph Guetta, Varda Guetta, Nevenka Gritz, individually, and as successor to Norman Gritz, and as personal representative of the Estate of David Gritz, Shayna Eileen Gould, Ronald Allan Gould, Elise Janet Gould, Jessica Rine, Katherine Baker, individually and as personal representative of the Estate of Benjamin Blutstein, Rebekah Blutstein, Richard Blutstein, individually and as personal representative of the Estate of Benjamin Blutstein, Larry Carter, individually and as personal representative of the Estate of Diane ("Dina") Carter, Shaun Choffel, Dianne Coulter Miller, Robert L. Coulter, Jr., Robert L. Coulter, Sr., individually and as personal representative of the Estate of Janis Ruth Coulter, Chana Bracha Goldberg, Eliezer Simcha Goldberg, Esther Zahava Goldberg, Karen Goldberg, individually, as personal representative of the Estate of Stuart Scott Goldberg, and as natural guardian of plaintiffs Yaakov Moshe Goldberg and Tzvi Yehoshua Goldberg, Shoshana Malka Goldberg, Tzvi Yehoshua Goldberg, minor, by his next friend and guardian Karen Goldberg, Yaakov Moshe

Goldberg, minor, by his next friend and guardian Karen Goldberg, and Yitzhak Shalom Goldberg.

Respondents, who were defendants-appellants/cross-appellees below, are the Palestine Liberation Organization and the Palestinian Authority (aka Palestinian Interim Self-Government Authority and or Palestinian Council and or Palestinian National Authority).

In addition, the following were defendants before the district court but were not parties before the court of appeals: Mohammed Sami Ibrahim Abdullah, Majid Al-Masri, Hussein Al-Shaykh, Mahmoud Al-Titi, Yasser Arafat, Abdel Karim Ratab Yunis Aweis, Nasser Mahmoud Ahmed Aweis, Ahmed Taleb Mustapha Barghouti, Marwin Bin Khatib Barghouti, Esatate of Said Ramadan, deceased, Estate of Mazan Faritach, deceased, Estate of Mohammed Hashaika, deceased, Estate of Muhanad Abu Halawa, deceased, Estate of Wafa Idris, deceased, Faras Sadak Mohammed Ghanem, Mohammed Abdel Rahman Salam Masalah, Munzar Mahmoud Khalil Noor, Hassan Abdel Rahman, Kaira Said Ali Sadi, Nasser Jamal Mousa Shawish, Sana'a Muhammed Shehadeh, and Toufik Tirawi.

TABLE OF CONTENTS

TABLE OF APPENDICES

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Regulations

Legislative Materials

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioners Mark Sokolow et al. ("petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The court of appeals' opinion is reported at 835 F.3d 317 (2d Cir. 2016). Pet. App. 1a. The court of appeals' order denying rehearing (*id.* at 139a) is unreported. The relevant opinions and orders of the district court (*id.* at 52a, 75a, 81a, 82a, 124a, 131a) are unreported, but three of its relevant orders are available at 2015 WL 10852003 (S.D.N.Y. Oct. 1, 2015), 2014 WL 6811395 (S.D.N.Y. Dec. 1, 2014), and 2011 WL 1345086 (S.D.N.Y. Mar. 30, 2011).

JURISDICTION

The court of appeals entered its judgment on August 31, 2016, and denied a timely petition for rehearing and rehearing en banc on October 19, 2016. Pet. App. 139a. Justice Ginsburg extended the time for filing a petition for a writ of certiorari until March 3, 2017. No. 16A617. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced at Pet. App. 143a.

STATEMENT

International terrorism constantly threatens American citizens and interests. The year 2015 alone witnessed more than 11,700 terrorist attacks worldwide.[1] And every year, some of the millions of Americans who travel, study, or reside abroad are killed and injured by terror attacks outside the United States.[2] This case is about Congress's power to protect Americans from that global threat.

Nearly 25 years ago, Congress enacted the Anti-Terrorism Act, 18 U.S.C. § 2331 *et seq.*, as part of the Nation's "comprehensive legal response to international terrorism." H.R. Rep. No. 102-1040, at 5 (1992). Adopted in response to the overseas murder of an American citizen by the Palestine Liberation Organization ("PLO"), the Act aims to "ensure that … a remedy will be available for Americans injured abroad by senseless acts of terrorism." *Statement by President George Bush Upon Signing S. 1569*, 28 Weekly Comp. Pres. Docs. 2112 (Oct. 29, 1992). It does so by granting any U.S. national injured by "international terrorism"—defined to include terrorist acts that occur outside the United States—the ability to sue those responsible in federal court and obtain treble damages. 18 U.S.C. §§ 2331(1)(C), 2333(a). That intentionally

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[1] National Consortium for the Study of Terrorism and Responses to Terrorism, *Annex of Statistical Information: Country Reports on Terrorism 2015* 4 (June 2016), https://www.state.gov/documents/organization/257738.pdf (all internet sites last visited March 2, 2017).

[2] *See* National Consortium for the Study of Terrorism and Responses to Terrorism, *American Deaths in Terrorist Attacks* 1 (Oct. 2015), https://www.start.umd.edu/pubs/START_AmericanTerrorismDeaths_FactSheet_Oct2015.pdf.

broad private remedy enables terrorism victims to obtain meaningful relief and helps deter future terrorist acts by disrupting terrorist groups' finances.

The court of appeals' decision in this case eviscerates this crucial component of the political branches' antiterrorism policy, and its holding would sharply curtail Congress's legislative authority in the terrorism context and beyond. This case involves the paradigmatic circumstance Congress designed the Anti-Terrorism Act to address. Petitioners are victims (or estates of victims) of gruesome public bombings and shootings carried out in Israel by the Palestinian Authority and the PLO—which together function as the government of parts of the West Bank—and by U.S.-designated terrorist organizations materially supported by those entities. Petitioners sued the Palestinian Authority and PLO in federal court. After a trial, a jury found that defendants, through their officers or organizations they materially supported, executed the attacks.

The Second Circuit set aside that jury verdict for lack of personal jurisdiction, applying an unprecedented standard that effectively renders unconstitutional heartland applications of the Anti-Terrorism Act. The court held that the Fifth Amendment's Due Process Clause bars personal jurisdiction over the defendants—even in this suit based on proven acts of international terrorism against Americans—absent a showing that the attackers "specifically targeted" U.S. citizens or had the "specific aim" of targeting the United States. Pet. App. 42a, 45a. That holding essentially nullifies the Anti-Terrorism Act by erecting a nearly insuperable obstacle to relief for American victims of terrorism abroad. And it defeats Congress's aim of ensuring that "*any* U.S. national injured … by

an act of international terrorism [is able] to bring a civil action in a U.S. District Court," H.R. Rep. No. 102-1040, at 5 (emphasis added), effectively limiting the Act to suits based on terrorist attacks aimed "*specifically*" at U.S. citizens or territory.

The court of appeals' rationale, moreover, would constrict the geographical scope of Congress's legislative authority in other contexts. Congress's power to legislate extraterritorially is unquestioned. But the decision below calls into serious doubt Congress's ability to create effective remedies to *enforce* such legislation—as Congress has done both for terrorism and in other areas—threatening to curtail the effective scope of Congress's prescriptive jurisdiction.

These grave consequences of the Second Circuit's decision alone warrant this Court's review. The court of appeals' departure from first principles and this Court's teachings amplify the need for intervention. The decision below erred at the outset by extending due-process protections to the Palestinian Authority and PLO, which together function as the government of a foreign territory. The Fifth Amendment's Due Process Clause by its terms protects only "persons." This Court's precedents compel the conclusion that foreign governments such as the Palestinian Authority and PLO—like other governmental entities—are not "persons" within the Clause's meaning. The Second Circuit nevertheless deemed both entities entitled to due-process protections solely because the Executive has *declined* to *recognize* those governments as *sovereigns*. But nothing in the Fifth Amendment's text or history or this Court's case law justifies according greater constitutional safeguards to foreign governments that this Nation has *not* recognized than

those it *has*. If allowed to stand, that reasoning ironically could interfere with the presidential foreign-policy decisions it purports to respect, skewing the Executive's analysis by making the availability of relief to private parties under federal law hinge on diplomatic recognition.

The Second Circuit further strayed from the Constitution and this Court's precedents by distorting applicable personal-jurisdiction standards. The court of appeals conflated the standards applicable to suits governed by the Fourteenth Amendment—developed to impose limits on *state* power—with the principles applicable under the Fifth Amendment in this *federal*-court case concerning *federal* power. Under any plausible standard, it is not "unfair" or "unreasonable" (*Asahi Metal Indus. Co.* v. *Super. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 116 (1987)) for Congress to authorize federal courts to assert personal jurisdiction over governmental entities that commit acts of terror against Americans and sponsor U.S.-designated terrorist organizations.

Because the court of appeals grounded its ruling in constitutional principles, the political branches are powerless to correct this serious error and prevent its destructive consequences. Only this Court can vindicate the proper extent of the political branches' constitutional authority. This case—a rare personal-jurisdiction appeal where the underlying merits were tried successfully to a verdict—provides the perfect vehicle for doing so.

The petition should be granted.

1. To protect Americans from the global threat of terrorism, Congress has created a network of legislative measures that aim to deter terrorist acts.

Congress has criminalized acts of international terrorism themselves, *e.g.*, 18 U.S.C. §§ 2332a, 2332f, 2332h, 2332i, as well as financial and other material support of international terrorist organizations, *e.g.*, *id.* §§ 2332d, 2339A, 2339B. These statutes have resulted in numerous federal criminal charges and successful prosecutions of foreign terrorists.[3]

Another critical piece of Congress's "comprehensive legal response to international terrorism" (H.R. Rep. No. 102-1040, at 5) is its authorization in the Anti-Terrorism Act of private suits by victims of international terrorism. The Act was adopted in 1992, largely in response to the PLO's murder of U.S. citizen Leon Klinghoffer aboard an Italian cruise ship. H.R. Rep. No. 102-1040, at 5. Klinghoffer's family was able to sue in U.S. court, but only because his murder at sea fell under admiralty jurisdiction and the PLO "had assets and carried on activities in New York." *Ibid.* Congress worried that "[a] similar attack occurring on an airplane or in some other locale might not have been subject to civil action in the U.S." *Ibid.* Congress thus created in the Act both a cause of action for, and exclusive federal-court jurisdiction over, suits by "[a]ny national of the United States" injured by acts of "international terrorism" against those responsible, and provided for automatic treble damages. 18 U.S.C. §§ 2333(a), 2338.

The Act's private right of action and automatic treble damages "send[] a strong warning to terrorists to keep their hands off Americans and an eye on their

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[3] *See*, *e.g.*, Judgment, *United States* v. *Naseer*, No. 10-cr-00019-RJD-4 (E.D.N.Y. 2016); Plea Agreement, *United States* v. *Warsame*, No. 11-cr-00559 (S.D.N.Y. 2011); Superseding Indictment, *United States* v. *Trabelsi*, No. 06-cr-00089 (D.D.C. 2007).

assets." *Antiterrorism Act of 1990: Hearing on S. 2465 Before the Subcomm. on Courts and Admin. Practice of the S. Comm. on the Judiciary*, 101st Cong. 92-108 (1990) (statement of Sen. Grassley). As the United States said in a Statement of Interest filed in the district court in this case, the statute "reflects our nation's compelling interest in combatting and deterring terrorism at every level," and "compensation of victims at the expense of those who have committed or supported terrorist acts contributes to U.S. efforts to disrupt the financing of terrorism and to impede the flow of funds or other support to terrorist activity." D.C. Dkt. 953-1.

For the Act to accomplish those compelling government objectives, Congress recognized that it had to "remove the jurisdictional hurdles in the courts confronting [terrorism] victims." *Antiterrorism Act of 1991: Hearing on H.R. 2222 Before the Subcomm. on Intellectual Property and Judicial Admin. of the H. Comm. on the Judiciary*, 102d Cong. 10 (1992) (letter from Sen. Grassley). To that end, Congress deliberately gave the Anti-Terrorism Act broad extraterritorial reach. The Act provides a cause of action *only* to victims of "*international* terrorism," 18 U.S.C. § 2333(a)—defined as "violent acts or acts dangerous to human life" that either "occur *primarily outside the territorial jurisdiction of the United States*" or "transcend national boundaries"; that would be crimes under federal or any State's law; and that "appear to be intended" either to "affect the conduct" or "influence the policy of" a "government," or to "intimidate or coerce a civilian population." *Id.* § 2331(1)(A)-(C) (emphasis added).

Congress also recognized that the service-of-process rules embodied in Federal Rule of Civil Procedure

4 do not "take into account the unusual mobility of terrorists, their organizations, and their financiers." S. Rep. No. 102-572, at 45 (1992). Accordingly, to further collapse jurisdictional barriers, Congress authorized nationwide service of process for suits under the Act: A victim of international terrorism may serve process anywhere in the United States where the defendant "resides, is found, or has an agent." 18 U.S.C. § 2334.

Through these combined features, Congress intended the Act to "open[] the courthouse door to victims of international terrorism," and to "extend[] the same jurisdictional structure that underg[ir]ds the reach of American criminal law to the civil remedies that it defines." S. Rep. No. 102-572, at 45.

2. Petitioners are members of eleven American families, who themselves or whose loved ones were killed or injured in seven terrorist attacks carried out in Israel between 2001 and 2004. Pet. App. 5a & n.2, 9a-11a. Those attacks were perpetrated by "security" officers and other agents of respondents: the Palestinian Authority and the PLO. *Id.* at 9a-11a.

a. The Palestinian Authority and PLO, though technically distinct entities, together function as the government of parts of the West Bank. Pet. App. 7a-9a. The Palestinian Authority—which consists of an executive, legislative, and judicial branch—is the domestic government of that territory. *See Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* ch. 2, Sept. 28, 1995, 36 I.L.M. 551. The PLO, in turn—which is funded exclusively by the Palestinian Authority—conducts foreign affairs. C.A. App. 1371. The United States does not recognize the Palestinian Authority and PLO—or any other government—as having sovereign control over the West

Bank. *See* Br. in Opp. 4-5 n.3, *Zivotofsky* v. *Kerry*, No. 13-628 (Feb. 21, 2014), 2014 WL 718600.

Nonetheless, the Palestinian Authority and PLO undisputedly constitute, and present themselves as, a foreign government. As they explained to the court of appeals, "[t]he PLO and the [Palestinian Authority] function as Palestine's government." Resp. C.A. Br. 7 (capitalization omitted). The Palestinian Authority and PLO also interact with the United States as a foreign government. They employ "foreign agents" in the United States who are registered with the Department of Justice under the Foreign Agents Registration Act, 22 U.S.C. § 611, as agents of the "Government of a foreign country" or "foreign government."[4] They have received over a billion dollars in "government-to-government assistance" from the United States.[5] And they maintain a mission in Washington, D.C., which they use to influence U.S. policy regarding Palestinian-Israeli relations. Pet. App. 7a-8a.

b. The Palestinian Authority and PLO have frequently sought to further their political agenda by engaging in terrorism. They carried out one particularly deadly terror campaign in Israel in the early 2000s,

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[4] Exhibit A to Registration Statement of the Palestinian Authority Pursuant to the Foreign Agents Registration Act, https://www.fara.gov/docs/2165-Exhibit-AB-20141114-57.pdf; Exhibit A to Registration Statement of the Palestine Liberation Organization Pursuant to the Foreign Agents Registration Act, https://www.fara.gov/docs/5244-Exhibit-AB-19980318-ERXH6004.pdf.

[5] Pub. L. No. 113-235, § 7031, 128 Stat. 2130 (2014); 80 Fed. Reg. 36580, 36583 (2015) (including Palestinian Authority in a list of "governments that receive U.S. assistance"); Jim Zanotti, Cong. Research Serv., *U.S. Foreign Aid to the Palestinians* 13-15 (Dec. 16, 2016), https://fas.org/sgp/crs/mideast/RS22967.pdf.

known as the "Second Intifada" (or "al Aqsa Intifada"), which consisted of numerous bombings and shootings committed by the Palestinian Authority's and PLO's "security" officers or agents. Pet. App. 9a. The goal of that terror campaign was to pressure Israel to withdraw from disputed territories, both through direct violence against Israel and by interfering with U.S. "strategic interests in the region" in the hope of pressuring the United States to take "urgent and immediate action to stop Israeli practices against the Palestinian People." Trial Ex. 175 (D.C. Dkt. 907-3).

Many attacks during this terror campaign injured or killed Americans, including petitioners here. In 2002, for example, a Hamas operative supported by the Palestinian Authority bombed the Frank Sinatra Cafeteria on the campus of the Hebrew University in Jerusalem, killing five Americans. Pet. App. 11a; C.A. App. 6925. That same year, a Palestinian Authority intelligence officer orchestrated a suicide bombing on a street in Jerusalem, injuring one American man, and permanently disabling the man's seven-year-old son. Pet. App. 10a; C.A. App. 6021, 6025-26.

Officers and agents of the Palestinian Authority and PLO were convicted of orchestrating, or were killed executing, many of the attacks. *E.g.*, D.C. Dkt. 927-24, 927-27. The Palestinian Authority and PLO have rewarded the surviving officers with generous salaries and promotions, and have provided "martyr" payments to families of the suicide terrorists to honor their attacks. *See* C.A. App. 4375, 85, 5230-31.

3. In 2004, petitioners—American victims of seven of these terrorist attacks—sued the Palestinian Authority and PLO in the Southern District of New York, seeking civil damages under the Anti-Terrorism Act. Pet. App. 9a, 11a. In accordance with the Act's

nationwide-service-of-process provision, petitioners served process on the chief representative of the Palestinian Authority and PLO in Virginia. *Id.* at 12a; 18 U.S.C. § 2334(a).

In 2007, the Palestinian Authority and PLO moved to dismiss for lack of personal jurisdiction. Pet. App. 11a-12a. In 2011, after the parties had conducted jurisdictional discovery, the district court denied respondents' motion. *Id.* at 52a. The court held that it had general personal jurisdiction over respondents based on their extensive presence in the United States. *Id.* at 60a-74a.

The case proceeded to trial before a jury in 2015. Pet. App. 15a. The jury found that officers of the Palestinian Authority acting within the scope of their employment planned and perpetrated several of the terror attacks. *Id.* at 35a, 89a, 91a, 93a, 97a, 100a. The jury further found that the Palestinian Authority and PLO knowingly provided material support to two organizations that executed some of the attacks—Hamas and the Al-Aqsa Martyrs Brigades—which the U.S. government had officially designated as "threat[s] [to] the security of United States nationals or the national security of the United States" (8 U.S.C. § 1189(a)(1)(C)). Pet. App. 36a, 94a-95a, 97a-98a, 100a. The jury awarded the plaintiffs $218.5 million in compensatory damages, which was automatically trebled to $655.5 million, as the Anti-Terrorism Act requires. *Id.* at 16a; 18 U.S.C. § 2333(a).

4. The Palestinian Authority and PLO appealed, arguing (as relevant) that the Fifth Amendment's Due Process Clause precluded the district court from exercising personal jurisdiction over them. The Second Circuit agreed and set aside the verdict, vacating the

district court's judgment with instructions to dismiss the case. Pet. App. 16a-51a.

The Second Circuit first held that the Palestinian Authority and PLO are "persons" within the meaning of the Fifth Amendment and are therefore entitled to due-process protections. Pet. App. 19a-20a. The court acknowledged that "*sovereign* states are *not* entitled to due process protection." *Id.* at 20a (emphases added). But it reasoned that the Palestinian Authority and PLO—both undisputedly governmental entities—*are* "persons" protected by due process because "neither … is *recognized* by the United States as a sovereign state." *Ibid.* (emphasis added) (citing *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2088 (2015)).

The Second Circuit then held that due-process principles barred the district court from asserting personal jurisdiction over the Palestinian Authority and PLO. Pet. App. 23a-51a. The court recognized that the Fifth Amendment's Due Process Clause controlled this case, but it nevertheless deemed Fourteenth Amendment standards applicable, based on prior circuit precedent (which it declined to revisit) that the due-process inquiry "is the same under the Fifth Amendment and the Fourteenth Amendment in civil cases." *Id.* at 23a.

Applying Fourteenth Amendment due-process case law, the Second Circuit then concluded that the district court had neither general nor specific personal jurisdiction in this case. The district court could not assert general personal jurisdiction over the Palestinian Authority and PLO, the Second Circuit decided, because they are not "at home" in the United States. Pet. App. 25a-32a.

Specific personal jurisdiction was also lacking, the court concluded. Relying on this Court's decisions in

Walden v. *Fiore*, 134 S. Ct. 1115 (2014) and *Calder* v. *Jones*, 465 U.S. 783 (1984), the court held that respondents' terrorist acts were not "expressly aimed" at the United States within the meaning of this Court's precedents because the attacks were not "specifically targeted [at] United States citizens" and the attackers did not have the "specific aim" of "targeting the United States." Pet. App. 42a, 45a-51a. In the court's view, respondents' "mere knowledge" that Americans were being killed and injured in the attacks—and might continue to be killed and injured—was not a sufficient connection to the United States to support jurisdiction. *Id.* at 39a. The court also rejected plaintiffs' argument that, by materially supporting U.S.-designated terrorist organizations and concurrently using their terror campaign to influence U.S. policy, the defendants "aimed their conduct at U.S. interests." *Id.* at 42a, 45a-49a.

REASONS FOR GRANTING THE PETITION

The Second Circuit's decision afforded due-process protections to a foreign governmental perpetrator and sponsor of terror attacks that killed and injured Americans, and then determined that due-process principles prohibit the exercise of personal jurisdiction over such terrorists in the absence of proof that they "specifically targeted" American citizens or territory. If left in place, the decision would effectively render unconstitutional heartland applications of the Anti-Terrorism Act and imperil Congress's ability to craft effective remedies for a range of other unlawful conduct abroad.

That is reason enough for this Court to grant the petition. But the case for review is even stronger here because the court's decision is based upon two fundamental misapprehensions of the scope of the Fifth

Amendment's Due Process Clause: first, that the Clause protects foreign governments *at all* and, second, even if the Clause *does* apply to foreign governments, that due process precludes a federal court from exercising personal jurisdiction over a foreign government that executes and sponsors terror attacks against Americans. Those conclusions contravene the text and purpose of the Fifth Amendment's Due Process Clause as well as this Court's precedents. Reversal on either ground by this Court would preserve the Anti-Terrorism Act and vindicate the full scope of Congress's power to protect Americans abroad.

I. THE DECISION BELOW EVISCERATES THE ANTI-TERRORISM ACT AND UNDERMINES CONGRESS'S ABILITY TO PROVIDE FOR THE ENFORCEMENT OF FEDERAL LAW ABROAD.

The Second Circuit's decision, if allowed to stand, will nullify heartland applications of the Anti-Terrorism Act and will prospectively curtail Congress's ability to provide relief to American victims of international terrorism. Its holding also would effectively limit Congress's prescriptive jurisdiction by disabling Congress from creating effective remedies for conduct abroad that violates U.S. laws in other settings. Those consequences mark this case as one of exceptional importance that warrants this Court's review.

A. The Second Circuit's Decision Creates A Practically Insuperable Barrier To Suits Under The Anti-Terrorism Act.

The Second Circuit's decision directly imperils a vital piece of federal antiterrorism legislation, and undermines Congress's power to fight terrorism in general. The Anti-Terrorism Act is a critical component of Congress's "comprehensive legal response to international terrorism." H.R. Rep. No. 102-1040, at 5. Its

cause of action provides concrete relief to terrorism victims and deters international terrorism by "interrupt[ing]," and "at least imperil[ing], the flow of money" to terrorists. S. Rep. No. 102-572, at 22. The decision below, however, makes that means of relief and deterrence unavailable in precisely the cases Congress designed the Act to target.

Congress enacted the Anti-Terrorism Act to ensure that perpetrators and promoters of terrorist attacks that injure Americans can be brought to justice in federal court *regardless* of where the attacks occur. H.R. Rep. No. 102-1040, at 1. That is precisely what the Act does. It provides relief to U.S.-national victims of "international terrorism," 18 U.S.C. § 2333(a), specifically defined to include "violent acts" that would be crimes if committed in this country but that "occur primarily *outside* the territorial jurisdiction of the United States" or that "transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum," *id.* § 2331(1)(C) (emphasis added). By its terms and by design, the Act thus expressly "provides extraterritorial jurisdiction over terrorist acts abroad against United States nationals," to ensure that "*any* U.S. national injured … by an act of international terrorism [is able] to bring a civil action in a U.S. District Court." H.R. Rep. No. 102-1040, at 1, 5 (emphasis added).

The Act's history poignantly confirms Congress's intention. A major impetus for the Act was the PLO's murder of U.S. citizen Leon Klinghoffer aboard an Italian cruise ship in 1985. H.R. Rep. No. 102-1040, at 5. Congress feared that, unlike Klinghoffer's fam-

ily—which was able to sue because their suit happened to fall within the court's admiralty jurisdiction—many future American terrorism victims would be shut out of U.S. courts altogether. *See ibid.* The Act was Congress's remedy to that unacceptable result. *Ibid.*

This case exemplifies the scenario in which Congress intended the Act to provide recourse. Petitioners, U.S.-national victims of international terrorism and their family members, sought relief from the perpetrators and sponsors of the terrorist attacks. A jury found that the defendants (respondents) are liable and assessed damages. Up to that point, the Act thus worked precisely as intended—simultaneously affording otherwise-unavailable relief for American victims of international terrorism while deterring financial support for future attacks.

The decision below, however, held that this paradigmatic Anti-Terrorism Act suit cannot proceed in U.S. court at all—due to facts likely to exist in most suits under the Act against foreign supporters of terrorism. The court concluded that, because the bombings and shootings that killed U.S. nationals occurred outside the United States, federal courts could not exercise personal jurisdiction over the defendants without a showing that the defendants or their agents "specifically targeted United States citizens" or had the "specific aim" of targeting the United States, a limitation nowhere to be found in the Act. Pet. App. 42a, 45a. The court deemed insufficient even petitioners' showing that the Palestinian Authority and PLO "knowingly aimed their conduct at U.S. interests" not only by murdering U.S. citizens, but also by materi-

ally supporting U.S.-designated terrorist organizations and acting for the purpose of influencing U.S. policy. *Id.* at 42a, 45a-49a.

That novel rule creates from whole cloth an all-but-insurmountable burden for victims of terrorism abroad and leaves the Act a practical nullity. In *most* cases of terrorism abroad, there is no way for American victims to prove that their attackers "specifically targeted" U.S. citizens or had the "specific aim" of targeting the United States. Terrorists are seldom available for discovery at any stage of litigation, let alone at the case's commencement when personal jurisdiction generally must be litigated, *cf.* Fed. R. Civ. P. 12(h)(1). Such attacks do not often "specifically target" victims by nationality. Mass bombings and shootings are ordinarily indiscriminate by nature. Indeed, as the court of appeals chillingly recounted, the Palestinian Authority and PLO targeted "Christians and Jews, Israelis, Americans, people from all over the world," in an attempt to "kill as many people as possible." Pet. App. 38a (internal quotation marks omitted).

The impracticability of proving the constitutionally unnecessary factual predicate the Second Circuit created—merely to establish personal jurisdiction to litigate the case—thus would bar most suits under the Act based on overseas attacks. Instead of enabling "*any* U.S. national injured … by an act of international terrorism to bring a civil action in a U.S. District Court," H.R. Rep. No. 102-1040, at 5 (emphasis added), the Act would enable few if any American victims to sue. Combined with the already-serious "practical and legal difficulties" of enforcing judgments against terrorists, *Bank Markazi* v. *Peterson*, 136 S.

Ct. 1310, 1317-18 (2016), the court's rule would diminish or eliminate incentives for terrorism victims to sue in the first place—defeating Congress's policy of deterring and disrupting terrorism through private suits.

The need for this Court's intervention is magnified because the barriers the court of appeals erected are beyond the political branches' power to remove. Because the Second Circuit's holding rests on its interpretation of the Fifth Amendment, Congress cannot return to the drawing board and draft a different statute. Its ruling means that Congress simply lacks the power to provide for private suits, except in the improbable cases where terrorism victims can prove the additional factual predicates the court below articulated. The court of appeals' decision should not be permitted to nullify a federal statute and hamstring the political branches' ability to combat international terrorism going forward without further, definitive review by this Court.

B. The Second Circuit's Decision Imperils Congress's Authority To Provide For Enforcement Of Other Federal Laws.

The urgency of the question presented is compounded by the serious consequences of the Second Circuit's decision for numerous other areas of federal law. The court's conclusion that the Fifth Amendment bars personal jurisdiction over terrorism suits, if allowed to stand, will cripple Congress's ability to create remedies to enforce statutes that validly regulate conduct abroad.

1. It is well-settled that "Congress has the authority to enforce its laws beyond the territorial boundaries of the United States." *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). To be sure,

courts assume that Congress has not exercised that power unless it has spoken clearly. *See Morrison* v. *Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010). But that is only a "presumption about a statute's meaning, rather than a limit upon Congress's power to legislate." *Ibid.*

Congress has exercised this power to apply federal laws to a range of foreign conduct. And to make those laws effective, it has often coupled substantive provisions with enforcement tools including both public and private civil actions.

The federal government, for example, can pursue civil actions in federal court against foreign violators of the federal securities laws based on "conduct occurring outside the United States that has a foreseeable substantial effect within the United States." 15 U.S.C. § 78aa(b)(2); *see also* 7 U.S.C. § 2(i); 15 U.S.C. §§ 78dd-1, 78u(d)(3). The Attorney General or private plaintiffs may bring civil suits under the antitrust laws against persons who engage in anticompetitive conduct abroad, so long as the conduct "involv[es] … import commerce" or has a "direct, substantial, and reasonably foreseeable effect" on American commerce. 15 U.S.C. § 6a; *see also id.* §§ 4, 15. And the Attorney General has broad civil-forfeiture powers to aid in enforcement of the federal criminal laws, including criminal prohibitions of international terrorism. 18 U.S.C. § 981(a)(1)(G).

The decision below, however, sharply curbs Congress's power to adopt such enforcement tools, and limits Congress's flexibility in tailoring remedial measures. As the court of appeals acknowledged, its holding regarding constitutional limits on federal-court personal jurisdiction creates a mismatch be-

tween Congress's authority to apply U.S. law to conduct abroad and Congress's power to create remedies that federal courts can adjudicate and enforce. Pet. App. 43a-44a. In many areas of exclusive federal power, although federal law continues to reach a broad range of foreign conduct, the Second Circuit's rule would constrict federal-court jurisdiction *only* to the narrow subset of extraterritorial cases in which the government or private plaintiffs can show that the defendant "specifically targeted" U.S. citizens or had the "specific aim" of targeting the United States. *Id.* at 42a, 45a. The collateral consequences of the court of appeals' holding for Congress's authority in these and many other areas reinforce the need for this Court's intervention.

2. The Second Circuit's ruling applying its due-process test to respondents here exacerbates the intrusion on the political branches' authority. The Palestinian Authority and PLO are not private persons or entities, but admittedly function as a foreign government. Their relationship to the United States government (including its courts) implicates Congress's and the President's power over "foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper." *Bank Markazi*, 136 S. Ct. at 1328. By curbing a federal statute's effective reach on personal-jurisdiction grounds, the decision below unduly restricts those branches' power in areas constitutionally committed to their sound and exclusive discretion.

The Second Circuit's only justification for deeming the Palestinian Authority and PLO "persons" under the Due Process Clause raises the stakes still further. The court of appeals deemed these foreign govern-

ments "persons" solely because the Executive has *declined* to recognize them diplomatically. Pet. App. 20a. That ruling, if upheld, ironically may interfere with the Executive's foreign-affairs prerogatives. If the susceptibility of a foreign government to civil suit in U.S. courts turns on the President's decisions whether and when to recognize the government, the Executive's diplomatic decisionmaking may well be skewed.

*****

The constitutional question the Second Circuit decided—and its consequences for the Anti-Terrorism Act and for Congress's authority more broadly—amply warrants review. This case provides the perfect vehicle. The issue was thoroughly pressed and passed upon below. And it is outcome-determinative: Petitioners' suit has proceeded to trial and a jury verdict in their favor; the court of appeals set that verdict aside solely for lack of personal jurisdiction. Pet. App. 6a-7a. Indeed, aside from a makeweight challenge to the district court's evidentiary and trial-management rulings regarding the presentation of particular expert testimony, personal jurisdiction is the only issue respondents presented on appeal. *See* Resp. C.A. Br. 28-66. This is thus a rare instance in which a crucial question of personal jurisdiction comes to the Court after the merits have been fully litigated, and the factual record is already thoroughly developed through discovery and trial. The Court should seize this opportunity to address this important and case-dispositive constitutional question.

II. THE DECISION BELOW CONTRAVENES THE CONSTITUTION AND THIS COURT'S CASE LAW.

Review is independently warranted because the decision below conflicts with the Fifth Amendment's Due Process Clause and this Court's precedents. The court of appeals should never have addressed what due-process restrictions apply to civil suits based on acts of terrorism abroad that killed and injured Americans, because the Palestinian Authority and PLO—which undisputedly comprise a foreign *government*—are not "persons" entitled to due process. The Second Circuit, moreover, incorrectly imported Fourteenth Amendment due-process principles—developed to impose limits on *state* power—into this *federal*-court suit raising *federal* causes of action for which Congress provided *nationwide* service of process. And the result it reached is untenable under any plausible test: No principle of fairness excuses foreign governments that knowingly commit or sponsor violent terrorist attacks that kill and injure Americans from being called to account in American courts.

A. Foreign Governments Are Not "Persons" Entitled To Due Process.

The Second Circuit's holding that due-process principles bar personal jurisdiction in this case starts from the flawed premise that the defendants here—the Palestinian Authority and PLO—have *any* due-process rights at all. Those governmental entities are not "persons," which is all the Fifth Amendment's Due Process Clause protects. The court of appeals' contrary conclusion cannot be squared with the Constitution's text or this Court's precedents.

1. The only constitutional limitation on federal courts' authority to assert personal jurisdiction over litigants is set by the Fifth Amendment's Due Process

Clause. *See Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102-03 & n.5 (1987). That Clause, by its plain text, protects *only* "persons." U.S. Const. amend. V ("nor shall any person … be deprived of life, liberty, or property, without due process of law"). Entities that are *not* "persons" cannot object on due-process grounds to being called into court to defend against a claim.

Governments, both foreign and domestic, are not "persons" within the meaning of the Fifth Amendment's provision—which was adopted to shield persons *from* government authority. The ordinary meaning of "person" has never encompassed governments. *See*, *e.g.*, 2 Samuel Johnson, *A Dictionary of the English Language*, s.v. "person" (6th ed. 1785) ("Individual or particular man or woman," "Man or woman considered as opposed to things," etc.). Although the law treats private corporate entities as artificial persons, "person" has long been understood by this Court and others as excluding the government. *See United States* v. *Fox*, 94 U.S. 315, 321 (1876) ("The term 'person' … cannot be so extended as to include within its meaning the Federal government."); *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989) ("in common usage, the term 'person' does not include the sovereign"); *In re Fox's Will*, 52 N.Y. 530, 535 (1873) ("The word person does not, in its ordinary or legal signification, embrace a State or government….").

In line with this common usage, this Court and the federal courts of appeals have consistently held that governments are not "persons" within the meaning of the Due Process Clause and thus cannot assert due-process rights. This Court, for instance, unequivocally held that "the word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot,

by any reasonable mode of interpretation, be expanded to encompass the States of the Union." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 323-24 (1966), *abrogated on other grounds by Shelby Cty., Ala.* v. *Holder*, 133 S. Ct. 2612 (2013). Applying the same principle, the courts of appeals have concluded that both municipalities and foreign nations lack due-process rights. *See City of E. St. Louis* v. *Circuit Ct. for 20th Judicial Circuit*, 986 F.2d 1142, 1144 (7th Cir. 1993) (municipalities); *Frontera Res. Azerbaijan Corp.* v. *State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 399 (2d Cir. 2009) (foreign nations); *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 95-100 (D.C. Cir. 2002) (foreign nations).

This consensus that governments lack due-process rights dovetails with the Due Process Clause's purpose. The "touchstone of due process is protection of the *individual* against arbitrary action of government." *Cty. of Sacramento* v. *Lewis*, 523 U.S. 833, 845 (1998) (emphasis added). The core value protected by the Due Process Clause—individual liberty *from* government action—is hardly implicated by a U.S. court's assertion of jurisdiction over the government of a foreign territory. *See Price*, 294 F.3d at 98. Such "disputes between the United States and foreign governments are not mediated through the Constitution," but rather through international law. *Ibid.* "The foreign State," in other words, "lies outside the structure of the Union" altogether. *Principality of Monaco* v. *State of Miss.*, 292 U.S. 313, 330 (1934). Its relation to the United States and its courts is not a matter of liberty, but of international relations.

This commonsense understanding of the Due Process Clause's scope should resolve this case. The Palestinian Authority and PLO undisputedly constitute

a foreign government. As they conceded below, they "function as Palestine's government," full stop. Resp. C.A. Br. 7 (capitalization omitted). Indeed, they collectively regulate all aspects of domestic life in their territory and interact with the United States as a foreign government. *See id.* at 7-13. They are not "persons," and cannot invoke due-process principles to avoid litigating in federal court.

2. The Second Circuit nevertheless held that the Palestinian Authority and PLO are "persons." Pet. App. 20a. The court never grappled with the Due Process Clause's text or purpose. And it acknowledged that foreign *sovereigns* are *not* "persons." *Ibid.* The court asserted, however, that the Palestinian Authority and PLO—unlike other foreign governments—*are* persons, solely because neither "is recognized by the United States as a sovereign state, and the executive's determination of such a matter is conclusive." *Ibid.* The court of appeals' premise that "the power to recognize foreign states and governments and their territorial bounds is exclusive to the Presidency," is of course correct. *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2094 (2015). But its conclusion—that any foreign government not recognized by the Executive is a person—does not remotely follow.

The court of appeals did not and could not cite any decision of this Court holding that Executive Branch recognition is even relevant to, let alone conclusive regarding, a foreign government's Fifth Amendment status. That is unsurprising: Whether the Executive has extended diplomatic recognition to a foreign government that exercises control over foreign territory has no bearing on whether the government is a "person" under the Fifth Amendment. Recognition represents the Executive's determination of "the legitimacy

of other states and governments, including their territorial bounds." *Zivotofsky*, 135 S. Ct. at 2087. It is a diplomatic determination—an assessment of whether the United States will treat with a particular foreign government and accord it certain benefits, not whether that entity is a government at all.

Indeed, the Second Circuit's theory that non-recognized foreign governments enjoy greater constitutional protections has things exactly backwards. Recognition confers on a foreign sovereign certain *additional* benefits that non-recognized governments do not enjoy, such as the right to "sue in United States courts," to assert sovereign immunity when sued, and "deference in domestic courts under the act of state doctrine." *Zivotofsky*, 135 S. Ct. at 2084. Foreign governments that the Executive declines to recognize do *not* enjoy such rights; they enjoy fewer safeguards than recognized states, not more. Thus, despite the well-settled principle that "the Due Process Clause" confers on "persons" a "right of access to the courts," *Wolff* v. *McConnell*, 418 U.S. 539, 579 (1974), this Court has long acknowledged that a foreign government may "*not* maintain a suit in our courts *before* its recognition by the political department of the [g]overnment," *Guar. Trust Co. of N.Y.* v. *United States*, 304 U.S. 126, 137 (1938) (emphases added).

It would be "highly incongruous to afford greater Fifth Amendment rights" to *any* foreign governments, "who are entirely alien to our constitutional system, than are afforded to the states, who help make up the very fabric of that system." *Price*, 294 F.3d at 96. And it is more illogical still to afford *greater* rights to governments the Executive has *declined* to recognize than those it has chosen to accord the benefits of

recognition. It would be perverse, for example, to allow the government of the Islamic State of Iraq and the Levant (ISIL or ISIS) to invoke fundamental due-process safeguards in U.S. courts that Norway and the State of New York may not.

Extending due-process protections to foreign governments prior to the point of Executive recognition also would embroil federal courts in disputes over sensitive foreign-policy matters that for recognized states would never be justiciable. Indeed, the court of appeals' logic might permit not-yet-recognized states to assert due-process challenges relating to the recognition decision *itself*. These incongruous consequences of the Second Circuit's theory, interfere with, rather than respect, the Executive's diplomatic determinations.

Nothing in constitutional law or logic supports linking a foreign government's entitlement *vel non* to assert due-process rights to diplomatic recognition. The Second Circuit's ruling, which rests squarely on its contrary understanding, should be reversed on that basis alone.

B. Asserting Personal Jurisdiction Over Foreign Governments That Carry Out Terrorist Attacks That Kill Americans Comports With The Fifth Amendment.

The Second Circuit compounded its error by applying an incorrect due-process standard. The court explicitly and unjustifiably imported restrictive personal-jurisdiction standards from Fourteenth Amendment case law. And it reached a result that is untenable under any plausible reading even of this Court's Fourteenth Amendment precedents.

1. The Second Circuit purported to draw its demanding test for personal jurisdiction—requiring a showing that the terrorists "specifically targeted" U.S. citizens or had the "specific aim" of targeting the United States—from case law addressing the Fourteenth Amendment's Due Process Clause. Pet. App. 37a-39a (relying on *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014) and circuit precedent). If the Palestinian Authority and PLO are entitled to any due-process protections at all, however, those protections must flow in this case from the Fifth Amendment's Due Process Clause, not from the Fourteenth Amendment. *See Omni Capital*, 484 U.S. at 102-03 n.5. The decision below, in fact, did not dispute that the Fifth Amendment must be the source of any personal-jurisdiction constraint here. Pet. App. 21a-24a. But it paid that principle only lip service, holding (based on circuit precedent) that the due-process inquiry "is the *same* under the Fifth Amendment and the Fourteenth Amendment in civil cases." *Id.* at 23a (emphasis added). That conflation of the limits on *federal* and *state* power lacks support.

This Court has never held that Fourteenth Amendment personal-jurisdiction standards apply in cases governed by the Fifth Amendment. *Cf. Omni Capital*, 484 U.S. at 102-03 n.5 (expressly reserving judgment on the issue). And for good reason: The contours of Fourteenth Amendment personal-jurisdiction principles are delimited by federalism concerns that are wholly absent in Fifth Amendment cases. Fourteenth Amendment personal-jurisdiction limitations are in part "a consequence of territorial limitations on the power of the respective States." *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958). Those limitations "ensure that the States through their courts, do not reach out beyond the limits imposed on them by their

status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980). Such interstate intrusions "would upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States." *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion).

Those federalism concerns, however, do not exist where, as here, a federal court exercises federal judicial power over a defendant in a case asserting federal-law claims. *See*, *e.g.*, *Max Daetwyler Corp.* v. *R. Meyer*, 762 F.2d 290, 294 (3d Cir. 1985); 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1068.1 (3d ed. 2002). Unlike the States, Congress possesses broad power to legislate beyond its geographic territory. There is consequently no basis to impose the Fourteenth Amendment's rigid, federalism-focused, requirements. *Cf. United States* v. *Bennett*, 232 U.S. 299 (1914) (federalism-based limits on state taxing authority inapplicable to federal taxing authority). A more flexible due-process inquiry is necessary—one that accommodates the full breadth of Congress's authority to legislate extraterritorially. *See Nicastro*, 564 U.S. at 884 (plurality opinion) ("whether a judicial judgment is lawful depends on whether the sovereign has authority to render it").

The Second Circuit's approach fails to account for this critical distinction. While the court acknowledged that the "minimum contacts" analysis in this case considers the defendant's connection with the Nation rather than a State, Pet. App. 22a, it disregarded the fundamental difference between the vast extraterritorial scope of Congress's legislative power and States' much more limited authority. The court's

equation of Fifth and Fourteenth Amendment personal-jurisdiction standards thus elides the "sovereign-by-sovereign … analysis" that due process demands. 564 U.S. at 884 (plurality opinion).

2. Even if the Second Circuit's importation of Fourteenth Amendment principles were defensible, its application of them to preclude personal jurisdiction here still is not. The ultimate question in determining whether specific personal jurisdiction is proper is whether "the defendant engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just, or reasonable." *Rush* v. *Savchuk*, 444 U.S. 320, 329 (1980) (emphasis omitted); *see also World-Wide Volkswagen*, 444 U.S. at 292. Courts ask whether a defendant has "certain minimum contacts … *such that* the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co.* v. *State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (emphasis added). Personal jurisdiction does not offend those tenets when a defendant's conduct was "expressly aimed" at the United States. *See Calder* v. *Jones*, 465 U.S. 783, 789 (1984). In this case there can be no question that respondents' purposeful activity was aimed at the United States in such a way that calling it to account in U.S. courts is fair and just.

As the jury found, the Palestinian Authority and PLO perpetrated bombings and shootings of high-tourist areas in Israel that repeatedly killed Americans over a two-year period. Pet. App. 88a-100a. The jury further found that respondents did so for several of the attacks by materially supporting terrorist organizations that had already been publicly designated by the United States as "threat[s] [to] the security of

United States nationals or the national security of the United States," 8 U.S.C. § 1189(a)(1)(C). Pet. App. 94a-95a, 97a-98a, 100a; *see also* Exec. Order No. 12947, 60 Fed. Reg. 5079 (Jan. 23, 1995) (designating Hamas "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."). Those now-adjudicated facts alone establish more than a sufficient connection between respondents' relevant conduct and the "society or economy existing within the jurisdiction of" the United States. *Nicastro*, 564 U.S. at 884 (plurality opinion). Congress agrees. As it found in the Justice Against Sponsors of Terrorism Act:

> Persons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States ….

Pub. L. No. 114-222, § 2(a)(6), 130 Stat. 852 (2016) (reprinted in 18 U.S.C. § 2333 note).

Respondents, moreover, aimed to influence U.S. foreign policy. A necessary element of petitioners' claims is that the Palestinian Authority and PLO were attempting to influence a government or scare its population. The Anti-Terrorism Act permits relief *only* for violent acts that "appear intended" either "to influence the policy of a government by intimidation or coercion," "to affect the conduct of a government by mass destruction, assassination, or kidnapping," or "to intimidate or coerce a civilian population." 18 U.S.C. § 2331(1)(A)-(C).

The jury's verdict establishes that respondents intended to do just that. Pet. App. 88a-100a. And the United States government and its people were undoubtedly among those whom respondents aimed to "influence." The evidence showed unequivocally that respondents conducted the terror campaign in part to harm U.S. "strategic interests in the region." *E.g.*, Trial Ex. 175 (Dkt. No. 907-3). All the while, respondents were also engaged in a sophisticated public-relations and lobbying campaign inside the United States, seeking to leverage their terror campaign into increased U.S. pressure on Israel to accede to respondents' territorial demands. The resulting harm to U.S. citizens and interests was by no means the type of "random" and "fortuitous" harm that was insufficient to establish jurisdiction in *Walden* v. *Fiore*, 134 S. Ct. at 1123, as the Second Circuit concluded. Pet. App. 38a. Rather, respondents' terror attacks were "expressly aimed" at causing harm to U.S. citizens and U.S. interests—such harm was an admitted and critical step in respondents' strategy. *E.g.*, Trial Ex. 175 (Dkt. No. 907-3).

The Second Circuit erred as a matter of law in discounting these contacts. It also went astray in considering these contacts in isolation. In assessing whether the link between the defendant and the forum establishes a fair or reasonable basis for jurisdiction, a "court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." *Asahi Metal Indus. Co.* v. *Super. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 113 (1987); *see also Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 775-76 (1984). Consideration of those contextual factors is critical, as they can "serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise

be required." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 477 (1985). These additional factors, which the Second Circuit failed to examine, amply suffice to "make the exercise of jurisdiction fair, just, or reasonable." *Rush*, 444 U.S. at 329.

If the Palestinian Authority and PLO have liberty interests under the Due Process Clause at all, the cognizable burden on them (if any) of litigating in the United States is *de minimis*. Due process primarily seeks to ensure that defendants "have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign." *Burger King*, 471 U.S. at 472 (internal quotation marks and alterations omitted). Complaints about fair warning ring hollow in this context: The Palestinian Authority and PLO are not being haled into federal court as a result of their commercial activities, *e.g.*, *Asahi*, 480 U.S. 102, or even as common tortfeasors, *e.g.*, *Walden*, 134 S. Ct. 1115. They were called to answer for what a jury has found was active, years-long support of violent terrorist acts—conduct that has long been universally condemned and proscribed. *See* Restatement (Fourth) of Foreign Relations Law § 217 (Am. Law Inst. Tentative Draft No. 2, 2016) ("certain acts of terrorism" are subject to *universal* jurisdiction).

In contrast, the United States and Anti-Terrorism Act plaintiffs like petitioners have a powerful interest in adjudicating these cases in U.S. courts. "[T]he Government's interest in combatting terrorism," this Court has recognized, is "an urgent objective of the highest order." *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 28 (2010). Unlike the tortious conduct at issue in *Walden* v. *Fiore*, 134 S. Ct. 1115, acts of "[i]nternational terrorism … threaten[] the vital interests of the United States," Pub. L. No. 114-222,

§ 2(a)(1), 130 Stat. 852 (2016). The Anti-Terrorism Act advances the government's weighty interest in combatting terrorism by deterring international terrorism and providing relief to American victims of international terrorism. *See* S. Rep. No. 102-572, at 22. A U.S. forum is essential for the Act to fulfill those functions and to provide terrorism victims "convenient and effective relief." *Burger King*, 471 U.S. at 477.

The Second Circuit failed to confront these key factors, which unmistakably compel permitting personal jurisdiction. Its misguided analysis cripples a federal statute meant to provide real relief to terrorism victims and a deterrent to future attacks.

CONCLUSION

The Second Circuit's erroneous decision guts the Anti-Terrorism Act and imperils Congress's ability to protect Americans from international terrorism and other unlawful acts abroad. This Court should grant review to restore the Anti-Terrorism Act to the vital role for which it was designed and vindicate the full scope of Congress's legislative power. The petition for a writ of certiorari should be granted.

Respectfully submitted.

KENT A. YALOWITZ
BARUCH WEISS
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
(212) 836-8000
Kent.Yalowitz@apks.com

THEODORE B. OLSON
Counsel of Record
MATTHEW D. MCGILL
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500
TOlson@gibsondunn.com

Counsel for Petitioners

March 3, 2017

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

(Argued: April 12, 2016 Decided: August 31, 2016)

Docket Nos. 15-3135-cv (L); 15-3151-cv (XAP)

EVA WALDMAN, REVITAL BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER AND YEHUDA BAUER, SHAUL MANDELKORN, NURIT MANDELKORN, OZ JOSEPH GUETTA, MINOR, BY HIS NEXT FRIEND AND GUARDIAN VARDA GUETTA, VARDA GUETTA, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFF OZ JOSEPH GUETTA, NORMAN GRITZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID GRITZ, MARK I. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAMIE A. SOKOLOW, RENA M. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAIME A. SOKOLOW, JAMIE A. SOKOLOW, MINOR, BY HER NEXT FRIENDS AND GUARDIAN MARK I. SOKOLOW AND RENA M. SOKOLOW, LAUREN M. SOKOLOW, ELANA R. SOKOLOW, SHAYNA EILEEN GOULD, RONALD ALLAN GOULD, ELISE JANET GOULD, JESSICA RINE, SHMUEL WALDMAN, HENNA NOVACK WALDMAN, MORRIS WALDMAN, ALAN J. BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL

BAUER AND YEHUDA BAUER, YEHONATHON BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, BINYAMIN BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, DANIEL BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, YEHUDA BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, RABBI LEONARD MANDELKORN, KATHERINE BAKER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, REBEKAH BLUTSTEIN, RICHARD BLUTSTEIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, LARRY CARTER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DIANE ("DINA") CARTER, SHAUN COFFEL, DIANNE COULTER MILLER, ROBERT L COULTER, JR., ROBERT L. COULTER, SR., INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JANIS RUTH COULTER, CHANA BRACHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, ELIEZER SIMCHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, ESTHER ZAHAVA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, KAREN GOLDBERG, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STUART SCOTT GOLDBERG/NATURAL GUARDIAN OF PLAINTIFFS CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG, TZVI YEHOSHUA GOLDBERG, SHOSHANA MALKA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, TZVI YEHOSHUA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, YAAKOV MOSHE GOLDBERG, MINOR, BY HER NEXT FRIEND AND

GUARDIAN KAREN GOLDBERG, YITZHAK SHALOM GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, NEVENKA GRITZ, SOLE HEIR OF NORMAN GRITZ, DECEASED,

Plaintiffs – Appellees – Cross–Appellants,

– v. –

PALESTINE LIBERATION ORGANIZATION, PALESTINIAN AUTHORITY, AKA PALESTINIAN INTERIM SELF-GOVERNMENT AUTHORITY AND OR PALESTINIAN COUNCIL AND OR PALESTINIAN NATIONAL AUTHORITY,

Defendants – Appellants – Cross–Appellees,

YASSER ARAFAT, MARWIN BIN KHATIB BARGHOUTI, AHMED TALEB MUSTAPHA BARGHOUTI, AKA AL-FARANSI, NASSER MAHMOUD AHMED AWEIS, MAJID AL-MASRI, AKA ABU MOJAHED, MAHMOUD AL-TITI, MOHAMMED ABDEL RAHMAN SALAM MASALAH, AKA ABU SATKHAH, FARAS SADAK MOHAMMED GHANEM, AKA HITAWI, MOHAMMED SAMI IBRAHIM ABDULLAH, ESTATE OF SAID RAMADAN, DECEASED, ABDEL KARIM RATAB YUNIS AWEIS, NASSER JAMAL MOUSA SHAWISH, TOUFIK TIRAWI, HUSSEIN AL-SHAYKH, SANA'A MUHAMMED SHEHADEH, KAIRA SAID ALI SADI, ESTATE OF MOHAMMED HASHAIKA, DECEASED, MUNZAR MAHMOUD KHALIL NOOR, ESTATE OF WAFA IDRIS, DECEASED, ESTATE OF MAZAN FARITACH, DECEASED, ESTATE OF MUHANAD ABU HALAWA, DECEASED, JOHN DOES, 1-99, HASSAN ABDEL RAHMAN,

Defendants.

Before: LEVAL AND DRONEY, Circuit Judges, and KOELTL, District Judge.*

The defendants-appellants-cross-appellees ("defendants") appeal from a judgment of the United States District Court for the Southern District of New York (Daniels, *J.*) in favor of the plaintiffs-appellees-cross-appellants ("plaintiffs"). A jury found the defendants—the Palestine Liberation Organization and the Palestinian Authority—liable under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in Israel that killed or wounded United States citizens. The jury awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million. The defendants appeal, arguing that the district court lacked general and specific personal jurisdiction over the defendants, and, in the alternative, seek a new trial because the district court abused its discretion by allowing certain testimony by two expert witnesses. The plaintiffs cross-appeal, asking this Court to reinstate claims the district court dismissed.

We vacate the judgment of the district court and remand the case with instructions to dismiss the action because the federal courts lack personal jurisdiction over the defendants with respect to the claims in this action. We do not reach the remaining issues.

KENT A. YALOWITZ, Arnold & Porter, LLP, for Plaintiffs-Appellees-Cross-Appellants.

GASSAN A. BALOUL (Mitchell R. Berger, Pierre H. Bergeron, John A. Burlingame, Alexandra E.

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* The Honorable John G. Koeltl, of the United States District Court for the Southern District of New York, sitting by designation.

Chopin, on the brief), Squire Patton Boggs (US), LLP, for Defendants-Appellants-Cross-Appellees.

David A. Reiser, Zuckerman Spaeder, LLP, and Peter Raven-Hansen, George Washington University Law School, on the brief for Amici Curiae Former Federal Officials in Support of Plaintiffs-Appellees-Cross-Appellants.

James P. Bonner, Stone, Bonner & Rocco, LLP, and Steven R. Perles, Perles Law Firm, on the brief for Amici Curiae Arthur Barry Sotloff, Shirley Goldie Pulwer, Lauren Sotloff, and the Estate of Steven Joel Sotloff in Support of Plaintiffs-Appellees-Cross-Appellants.

John G. Koeltl, District Judge:

In this case, eleven American families sued the Palestine Liberation Organization ("PLO") and the Palestinian Authority ("PA") (collectively, "defendants")[1] under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in Israel that killed or wounded the plaintiffs-appellees-cross-appellants ("plaintiffs") or their family members.[2]

The defendants repeatedly argued before the District Court for the Southern District of New York that the court lacked personal jurisdiction over them in light of their minimal presence in, and the lack of any nexus between the facts underlying the plaintiffs'

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[1] While other defendants, such as Yasser Arafat, were named as defendants in the case, they did not appear, and the Judgment was entered only against the PLO and the PA.

[2] The plaintiffs are United States citizens, and the guardians, family members, and personal representatives of the estates of United States citizens, who were killed or injured in the terrorist attacks.

claims and the United States. The district court (Daniels, *J.*) concluded that it had general personal jurisdiction over the defendants, even after the Supreme Court narrowed the test for general jurisdiction in Daimler AG v. Bauman, 134 S. Ct. 746 (2014). See Sokolow v. Palestine Liberation Org., No. 04-cv-397 (GBD), 2014 WL 6811395, at *2 (S.D.N.Y. Dec. 1, 2014); see also Sokolow v. Palestine Liberation Org., No. 04-cv-397 (GBD), 2011 WL 1345086, at *7 (S.D.N.Y. Mar. 30, 2011).

After a seven-week trial, a jury found that the defendants, acting through their employees, perpetrated the attacks and that the defendants knowingly provided material support to organizations designated by the United States State Department as foreign terrorist organizations. The jury awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million.

On appeal, the defendants seek to overturn the jury's verdict by arguing that the United States Constitution precludes the exercise of personal jurisdiction over them. In the alternative, the defendants seek a new trial, arguing that the district court abused its discretion by allowing certain testimony by two expert witnesses. The plaintiffs cross-appeal, asking this Court to reinstate non-federal claims that the district court dismissed, and reinstate the claims of two plaintiffs for which the district court found insufficient evidence to submit to the jury.

We conclude that the district court erred when it concluded it had personal jurisdiction over the defendants with respect to the claims at issue in this action. Therefore, we VACATE the judgment of the district court and REMAND the case to the district court with

instructions to DISMISS the case for want of personal jurisdiction. Accordingly, we do not consider the defendants' other arguments on appeal or the plaintiffs' cross-appeal, all of which are now moot.

I.

A.

The PA was established by the 1993 Oslo Accords as the interim and non-sovereign government of parts of the West Bank and the Gaza Strip (collectively referred to here as "Palestine"). The PA is headquartered in the city of Ramallah in the West Bank, where the Palestinian President and the PA's ministers reside.

The PLO was founded in 1964. At all relevant times, the PLO was headquartered in Ramallah, the Gaza Strip, and Amman, Jordan. Because the Oslo Accords limit the PA's authority to Palestine, the PLO conducts Palestine's foreign affairs.

During the relevant time period for this action, the PLO maintained over 75 embassies, missions, and delegations around the world. The PLO is registered with the United States Government as a foreign agent. The PLO has two diplomatic offices in the United States: a mission to the United States in Washington, D.C. and a mission to the United Nations in New York City. The Washington, D.C. mission had fourteen employees between 2002 and 2004, including two employees of the PA, although not all at the same time.[3] The Washington, D.C. and New York missions engaged in diplomatic activities during the relevant

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[3] The district court concluded that "the weight of the evidence indicates that the D.C. office simultaneously served as an office for the PLO and the PA." Sokolow, 2011 WL 1345086, at *3.

period. The Washington, D.C. mission "had a substantial commercial presence in the United States." Sokolow, 2011 WL 1345086, at *4. It used dozens of telephone numbers, purchased office supplies, paid for certain living expenses for Hassan Abdel Rahman, the chief PLO and PA representative in the United States, and engaged in other transactions. Id. The PLO also retained a consulting and lobbying firm through a multi-year, multi-million-dollar contract for services from about 1999 to 2004. Id. The Washington, D.C. mission also promoted the Palestinian cause in speeches and media appearances. Id.

Courts have repeatedly held that neither the PA nor the PLO is a "state" under United States or international law. See Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47-48 (2d Cir. 1991) (holding the PLO, which had no defined territory or permanent population and did not have capacity to enter into genuine formal relations with other nations, was not a "state" for purposes of the Foreign Sovereign Immunities Act); Estates of Ungar v. Palestinian Auth., 315 F. Supp. 2d 164, 178-86 (D.R.I. 2004) (holding that neither the PA nor the PLO is a state entitled to sovereign immunity under the Foreign Sovereign Immunities Act because neither entity has a defined territory with a permanent population controlled by a government that has the capacity to enter into foreign relations); see also Knox v. Palestine Liberation Org., 306 F. Supp. 2d 424, 431 (S.D.N.Y. 2004) (holding that neither the PLO nor the PA was a "state" for purposes of the Foreign Sovereign Immunities Act).

While the United States does not recognize Palestine or the PA as a sovereign government, see Sokolow v. Palestine Liberation Org., 583 F. Supp. 2d 451, 457-58 (S.D.N.Y. 2008) ("Palestine, whose statehood is not

recognized by the United States, does not meet the definition of a 'state,' under United States and international law . . . .") (collecting cases), the PA is the governing authority in Palestine and employs tens of thousands of security personnel in Palestine. According to the PA's Minister of Finance, the "PA funds conventional government services, including developing infrastructure; public safety and the judicial system; health care; public schools and education; foreign affairs; economic development initiatives in agriculture, energy, public works, and public housing; the payment of more than 155,000 government employee salaries and related pension funds; transportation; and, communications and information technology services."

B.

The plaintiffs sued the defendants in 2004, alleging violations of the ATA for seven terror attacks committed during a wave of violence known as "the al Aqsa Intifada," by nonparties who the plaintiffs alleged were affiliated with the defendants. The jury found the plaintiffs liable for six of the attacks.[4] At trial, the plaintiffs presented evidence of the following attacks.

i. January 22, 2002: Jaffa Road Shooting

On January 22, 2002, a PA police officer opened fire on a pedestrian mall in Jerusalem. He shot "indiscriminately at the people who were on Jaffa

[4] The district court found claims relating to an attack on January 8, 2001 that wounded Oz Guetta speculative and did not allow those claims to proceed to the jury. The plaintiffs argue that this Court should reinstate the Guetta claims. Because we conclude that there is no personal jurisdiction over the defendants for the ATA claims, it is unnecessary to reach this issue.

Street," at a nearby bus stop and aboard a bus that was at the stop, and at people in the stores nearby "with the aim of causing the death of as many people as possible." The shooter killed two individuals and wounded forty-five others before he was killed by police. The attack was carried out, according to trial evidence, by six members of the PA police force who planned the shooting. Two of the plaintiffs were injured.

ii. January 27, 2002: Jaffa Road Bombing

On January 27, 2002, a PA intelligence informant named Wafa Idris detonated a suicide bomb on Jaffa Road in Jerusalem, killing herself and an Israeli man and seriously wounding four of the plaintiffs, including two children. Evidence presented at trial showed that the bombing was planned by a PA intelligence officer who encouraged the assailant to conduct the suicide bombing, even after the assailant had doubts about doing so.

iii. March 21, 2002: King George Street Bombing

On March 21, 2002, Mohammed Hashaika, a former PA police officer, detonated a suicide bomb on King George Street in Jerusalem. Hashaika's co-conspirators chose the location because it was "full of people during the afternoon." Hashaika set-off the explosion while in a crowd "with the aim of causing the deaths of as many civilians as possible." Two plaintiffs were grievously wounded, including a seven-year-old American boy. Evidence presented at trial showed that a PA intelligence officer named Abdel Karim Aweis orchestrated the attack.

iv. June 19, 2002: French Hill Bombing

On June 19, 2002, a seventeen-year-old Palestinian man named Sa'id Awada detonated a suicide bomb at a bus stop in the French Hill neighborhood of Jerusalem. Awada was a member of a militant faction of the PLO's Fatah party called the Al Aqsa Martyr Brigades ("AAMB"), which the United States Department of State had designated as a "foreign terrorist organization" ("FTO"). The bombing killed several people and wounded dozens, including an eighteen-year-old plaintiff who was stepping off a bus when the bomb exploded.

v. July 31, 2002: Hebrew University Bombing

On July 31, 2002, military operatives of Hamas—a United States-designated FTO—detonated a bomb hidden in a black cloth bag that was packed with hardware nuts in a café at Hebrew University in Jerusalem. The explosion killed nine, including four United States citizens, whose estates bring suit here.

vi. January 29, 2004: Bus No. 19 Bombing

On January 29, 2004, in an AAMB attack, a PA police officer named Ali Al-Ja'ara detonated a suicide vest on a crowded bus, Bus No. 19 traveling from Malha Mall toward Paris Square in central Jerusalem. The suicide bombing killed eleven people, including one of the plaintiffs. The bomber's aim, according to evidence submitted at trial, was to "caus[e] the deaths of a large number of individuals."

C.

In 2004, the plaintiffs filed suit in the Southern District of New York. The defendants first moved to dismiss the claims for lack of personal jurisdiction in

July 2007. The district court denied the motion, subject to renewal after jurisdictional discovery. After the close of jurisdictional discovery, the district court denied the defendants' renewed motion, holding that the court had general personal jurisdiction over the defendants. See Sokolow, 2011 WL 1345086, at *7.

The district court concluded, as an initial matter, that the service of process was properly effected by serving the Chief Representative of the PLO and the PA, Hassan Abdel Rahman, at his home in Virginia, pursuant to Federal Rule of Civil Procedure 4(h)(1)(B) (providing that a foreign association "must be served[ ] . . . in a judicial district of the United States . . . by delivering a copy of the summons and of the complaint to an officer, a managing or general agent . . . ."); see also 18 U.S.C. § 2334(a) (providing for nationwide service of process and venue under the ATA); Sokolow, 2011 WL 1345086, at *2.

The district court then engaged in a two-part analysis to determine whether the exercise of personal jurisdiction comported with the due process protections of the United States Constitution. First, it determined whether the defendants had sufficient minimum contacts with the forum such that the maintenance of the action did not offend traditional notions of fair play and substantial justice. Sokolow, 2011 WL 1345086, at *2 (citing Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 396 (2d Cir. 2009)).

The district court distinguished between specific and general personal jurisdiction—specific jurisdiction applies where the defendants' contacts are related to the litigation and general jurisdiction applies where the defendants' contacts are so substantial that the defendants could be sued on all claims, even those

unrelated to contacts with the forum—and found that the district court had general jurisdiction over the defendants. Id. at *3. The court considered what it deemed the defendants' "substantial commercial presence in the United States," in particular "a fully and continuously functional office in Washington, D.C.," bank accounts and commercial contracts, and "a substantial promotional presence in the United States, with the D.C. office having been permanently dedicated to promoting the interests of the PLO and the PA." Id. at *4.

The district court concluded that activities involving the defendants' New York office were exempt from jurisdictional analysis under an exception for United Nations' related activity articulated in Klinghoffer, 937 F.2d at 51-52 (UN participation not properly considered basis for jurisdiction); see Sokolow, 2011 WL 1345086, at *5. The district court held that the activities involving the Washington, D.C. mission were not exempt from analysis and provided "a sufficient basis to exercise general jurisdiction over the Defendants." Id. at *6 ("The PLO and the PA were continuously and systematically present in the United States by virtue of their extensive public relations activities.").

Next, the district court considered "'whether the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice"—that is, whether it is reasonable under the circumstances of the particular case.'" Id. (quoting Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 568 (2d Cir. 1996)). The court found that the exercise of jurisdiction did not offend "traditional notions of fair play and substantial justice," pursuant to the standard articulated by International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), and its progeny. See

Sokolow, 2011 WL 1345086, at *6-7. The district court concluded that "[t]here is a strong inherent interest of the United States and Plaintiffs in litigating ATA claims in the United States," and that the defendants "failed to identify an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy." Id. at *7.

In January 2014, after the Supreme Court had significantly narrowed the general personal jurisdiction test in Daimler, 134 S. Ct. 746, the defendants moved for reconsideration of the denial of their motion to dismiss.

On April 11, 2014, the district court denied the defendants' motions for reconsideration, ruling that Daimler did not compel dismissal. The district court also denied the defendants' motions to certify the jurisdictional issue for an interlocutory appeal. See Sokolow, 2014 WL 6811395, at *1. The defendants renewed their jurisdictional argument in their motions for summary judgment, arguing that this Court's decision in Gucci America, Inc. v. Weixing Li, 768 F.3d 122 (2d Cir. 2014), altered the controlling precedent in this Circuit, requiring dismissal of the case. See Sokolow, 2014 WL 6811395, at *1. The district court concluded that it still had general personal jurisdiction over the defendants, describing the action as presenting "'an exceptional case,'" id. at *2, of the kind discussed in Daimler, 134 S. Ct. at 761 n.19, and Gucci, 768 F.3d at 135.

The district court held that "[u]nder both Daimler and Gucci, the PA and PLO's continuous and systematic business and commercial contacts within the United States are sufficient to support the exercise of general jurisdiction," and that the record before the

court was "insufficient to conclude that either defendant is 'at home' in a particular jurisdiction other than the United States." Sokolow, 2014 WL 6811395, at *2.

Following the summary judgment ruling, the defendants sought *mandamus* on the personal jurisdiction issue. This Court denied the defendants' petition. See In re Palestine Liberation Org., Palestinian Authority, No. 14-4449 (2d Cir. Jan. 6, 2015) (summary order).

The case proceeded to trial in January 2015. During the trial, the defendants introduced evidence about the PA's and PLO's home in Palestine. The trial evidence showed that the terrorist attacks occurred in the vicinity of Jerusalem. The plaintiffs did not allege or submit evidence that the plaintiffs were targeted in any of the six attacks at issue because of their United States citizenship or that the defendants engaged in conduct in the United States related to the attacks.

At the conclusion of plaintiffs' case in chief, the defendants moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a), arguing, among other grounds, that the district court lacked personal jurisdiction over the defendants. The Court denied the motion. The defendants renewed that motion at the close of all the evidence and again asserted that the court lacked personal jurisdiction.

During and immediately after trial, the District Court for the District of Columbia issued three separate decisions dismissing similar suits for lack of personal jurisdiction by similar plaintiffs in cases against the PA and the PLO. See Estate of Klieman v. Palestinian Auth., 82 F. Supp. 3d 237, 245-46 (D.D.C. 2015), *appeal docketed*, No. 15-7034 (D.C. Cir. Apr. 8, 2015); Livnat v. Palestinian Auth., 82 F. Supp. 3d 19, 30 (D.D.C. 2015), *appeal docketed*, No. 15-7024 (D.C.

Cir. Mar. 18, 2015); Safra v. Palestinian Auth., 82 F. Supp. 3d 37, 47-48 (D.D.C. 2015), *appeal docketed*, No. 15-7025 (D.C. Cir. Mar. 18, 2015).

In light of these cases, on May 1, 2015, the defendants renewed their motion to dismiss for lack of both general and specific personal jurisdiction. The defendants also moved, in the alternative, for judgment as a matter of law or for a new trial pursuant to Federal Rules of Civil Procedure 50(b) and 59. The district court reviewed the decisions by the District Court for the District of Columbia, but, for the reasons articulated in its 2014 decision and at oral argument, concluded that the district court had general personal jurisdiction over the defendants. The district court did not rule explicitly on whether it had specific personal jurisdiction over the defendants.

The jury found the defendants liable for all six attacks and awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million.

The parties engaged in post-trial motion practice not relevant here, the defendants timely appealed, and the plaintiffs cross-appealed.

II.

A.

"We review a district court's assertion of personal jurisdiction *de novo*." Dynegy Midstream Servs. v. Trammochem, 451 F.3d 89, 94 (2d Cir. 2006).[5]

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[5] The standard of review in this case is complicated because the issue of personal jurisdiction was raised initially on a motion to dismiss, both before and after discovery, and as a basis for

To exercise personal jurisdiction lawfully, three requirements must be met. "First, the plaintiff's service of process upon the defendant must have been procedurally proper. Second, there must be a statutory basis for personal jurisdiction that renders such service of process effective. . . . Third, the exercise of personal jurisdiction must comport with constitutional due process principles." Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 59-60 (2d Cir. 2012) (footnotes and internal citations omitted), *certified question accepted sub nom.* Licci v. Lebanese Canadian Bank, 967 N.E.2d 697 (N.Y. 2012), *and certified question answered sub nom.* Licci v. Lebanese Canadian Bank, 984 N.E.2d 893 (N.Y. 2012).

Constitutional due process assures that an individual will only be subjected to the jurisdiction of a court where the maintenance of a lawsuit does not offend "traditional notions of fair play and substantial justice." Int'l Shoe, 326 U.S. at 316 (internal quotation marks omitted). Personal jurisdiction is "a matter of individual liberty" because due process protects the individual's right to be subject only to lawful power. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011) (plurality opinion) (quoting Ins. Corp.

Rule 50 motions at the conclusion of the plaintiffs' case and after all the evidence was presented. This Court typically reviews factual findings in a district court's decision on personal jurisdiction for clear error and its legal conclusions *de novo*. See Frontera Res., 582 F.3d at 395. In this case, the parties agree that this Court should review *de novo* whether the district court's exercise of personal jurisdiction was constitutional. See Pls.' Br. at 27; Defs.' Br. at 23. In any event, the issues relating to general jurisdiction are essentially legal questions that should be reviewed *de novo*. Assuming without deciding the question, we review the district court's assertion of personal jurisdiction *de novo*.

of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982)).

The ATA provides that process "may be served in any district where the defendant resides, is found, or has an agent . . . ." 18 U.S.C § 2334(a). The district court found that the plaintiffs properly served the defendants because they served the complaint, pursuant to Federal Rule of Civil Procedure 4(h)(1)(B) (providing that service on an unincorporated association is proper if the complaint is served on a "general agent" of the entity), on Hassan Abdel Rahman, who "based upon the overwhelming competent evidence produced by Plaintiffs, was the Chief Representative of the PLO and the PA in the United States at the time of service." Sokolow, 2011 WL 1345086, at *2.[6]

The defendants have not disputed that service was proper and that there was a statutory basis pursuant to the ATA for that service of process. Therefore, the only question before the Court is whether the third jurisdictional requirement is met—whether jurisdiction over the defendants may be exercised consistent with the Constitution.

B.

Before we reach the analysis of constitutional due process, the plaintiffs raise three threshold issues: First, whether the defendants waived their objections to personal jurisdiction; second, whether the defendants have due process rights at all; and third, whether the due process clause of the Fifth Amendment to the

[6] The district court found that the defendants are "unincorporated associations." See Sokolow v. Palestine Liberation Org., 60 F. Supp. 3d 509, 523-24 (S.D.N.Y. 2014).

Constitution and not the Fourteenth Amendment controls the personal jurisdiction analysis in this case.

First, the plaintiffs argue that the defendants waived their argument that the district court lacked personal jurisdiction over them. The plaintiffs contend that the defendants could have argued that they were not subject to general jurisdiction under the "at home" test before Daimler was decided because the "at home" general jurisdiction test existed after Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915 (2011). This argument is unavailing because this Court in Gucci looked to the test in Daimler as the appropriate test for general jurisdiction over a corporate entity. See Gucci, 768 F.3d at 135-36. The defendants did not waive or forfeit their objection to personal jurisdiction because they repeatedly and consistently objected to personal jurisdiction and invoked Daimler after this Court's decision in Gucci. Furthermore, the district court explicitly noted that the "Defendants' motions asserting lack of personal jurisdiction are *not* denied based on a theory of waiver." Sokolow, 2014 WL 6811395, at *2 n.2 (emphasis added).

Second, the plaintiffs argue that the defendants have no due process rights because the defendants are foreign governments and share many of the attributes typically associated with a sovereign government. Foreign sovereign states do not have due process rights but receive the protection of the Foreign Sovereign Immunities Act. See Frontera Res., 582 F.3d at 396-400. The plaintiffs argue that entities, like the defendants, lack due process rights, because they do not view themselves as part of a sovereign and are treated as a foreign government in other contexts. The plaintiffs do not cite any cases indicating that a non-sovereign entity with governmental attributes

lacks due process rights. All the cases cited by the plaintiffs stand for the proposition that *sovereign* governments lack due process rights, and these cases have not been extended beyond the scope of entities that are separate sovereigns, recognized by the United States government as sovereigns, and therefore enjoy foreign sovereign immunity.

While sovereign states are not entitled to due process protection, see id. at 399, neither the PLO nor the PA is recognized by the United States as a sovereign state, and the executive's determination of such a matter is conclusive. See Zivotofsky v. Kerry, 135 S. Ct. 2076, 2088 (2015); see also Ungar, 315 F. Supp. 2d at 177 ("The PA and PLO's argument must fail because Palestine does not satisfy the four criteria for statehood and is not a State under prevailing international legal standards."); Knox, 306 F. Supp. 2d at 431 ("[T]here does not exist a state of Palestine which meets the legal criteria for statehood. . . ."); accord Klinghoffer, 937 F.2d at 47 ("It is quite clear that the PLO meets none of those requirements [for a state]."). Because neither defendant is a state, the defendants have due process rights. See O'Neill v. Asat Trust Reg. (In re Terrorist Attacks on Sept. 11, 2001), 714 F.3d 659, 681-82 (2d Cir. 2013) ("O'Neill") (dismissing for lack of personal jurisdiction claims against charities, financial institutions, and other individuals who are alleged to have provided support to Osama Bin Laden and al Qaeda); Livnat, 82 F. Supp. 3d at 26 (due process clause applies to the PA (collecting cases)).

Third, the plaintiffs and *amici curiae* Former Federal Officials argue that the restrictive Fourteenth Amendment due process standards cannot be imported into the Fifth Amendment and that the due

process clause of the Fifth Amendment to the Constitution,[7] and not the Fourteenth Amendment,[8] applies to the ATA and controls the analysis in this case. The argument is particularly important in this case because the defendants rely on the standard for personal jurisdiction set out in Daimler and the Daimler Court explained that it was interpreting the due process clause of the Fourteenth Amendment. Daimler, 134 S. Ct. at 751.

The plaintiffs and amici argue that the Fourteenth Amendment due process clause restricts state power but the Fifth Amendment should be applied to the exercise of federal power. Their argument is that the Fourteenth Amendment imposes stricter limits on the personal jurisdiction that courts can exercise because that Amendment, grounded in concepts of federalism, was intended to referee jurisdictional conflicts among the sovereign States. The Fifth Amendment, by contrast, imposes more lenient restrictions because it contemplates disputes with foreign nations, which, unlike States, do not follow reciprocal rules and are not subject to our constitutional system. See, e.g., J. McIntyre Mach., 564 U.S. at 884 (plurality opinion) ("Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State. This is consistent with the premises and unique genius of our Constitution."). To

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[7] The Fifth Amendment states in relevant part: ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. V.

[8] The Fourteenth Amendment states in relevant part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV., § 1.

conflate the due process requirements of the Fourteenth and Fifth Amendments, the plaintiffs and *amici* argue, would impose a unilateral constraint on United States courts, even when the political branches conclude that personal jurisdiction over a defendant for extraterritorial conduct is in the national interest.[9]

This Court's precedents clearly establish the congruence of due process analysis under both the Fourteenth and Fifth Amendments. This Court has explained: "[T]he due process analysis [for purposes of the court's *in personam* jurisdiction] is basically the same under both the Fifth and Fourteenth Amendments. The principal difference is that under the Fifth Amendment the court can consider the defendant's contacts throughout the United States, while under the Fourteenth Amendment only the contacts with the forum state may be considered." Chew v. Dietrich, 143 F.3d 24, 28 n.4 (2d Cir. 1998).

Indeed, this Court has already applied Fourteenth Amendment principles to Fifth Amendment civil terrorism cases. For example, in O'Neill, 714 F.3d at 673-74, this Court applied Fourteenth Amendment

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[9] The plaintiffs also point to the brief filed by the United States Solicitor General in Daimler to support their argument that the due process standards for the Fifth and Fourteenth Amendments vary. However, the United States never advocated that the Fourteenth Amendment standard would be inapplicable to Fifth Amendment cases and, instead, urged the Court not to reach the issue. See Brief for the United States as Amicus Curaie Supporting Petitioner, DaimlerChrysler AG v. Bauman, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3377321, at *3 n.1 ("This Court has consistently reserved the question whether its Fourteenth Amendment personal jurisdiction precedents would apply in a case governed by the Fifth Amendment, and it should do so here.").

due process cases to terrorism claims brought pursuant to the ATA in federal court. See In re Terrorist Attacks on Sept. 11, 2001, 538 F.3d 71, 93 (2d Cir. 2008), *abrogated on other grounds by* Samantar v. Yousuf, 560 U.S. 305 (2010); see also Tex. Trading & Milling Corp. v. Fed. Republic of Nigeria, 647 F.2d 300, 315 n.37 (2d Cir. 1981) (declining to apply different due-process standards in a case governed by the Fifth Amendment compared to one governed by the Fourteenth Amendment), *overruled on other grounds by* Frontera Res., 582 F.3d at 400; GSS Grp. Ltd v. Nat'l Port Auth., 680 F.3d 805, 816-17 (D.C. Cir. 2012) (applying Fourteenth Amendment case law when considering minimum contacts under the Fifth Amendment).

Amici Federal Officials concede that our precedents settle the issue, but they argue those cases were wrongly decided and urge us not to follow them. We decline the invitation to upend settled law.[10]

Accordingly, we conclude that the minimum contacts and fairness analysis is the same under the Fifth Amendment and the Fourteenth Amendment in civil cases and proceed to analyze the jurisdictional question.

III.

Pursuant to the due process clauses of the Fifth and Fourteenth Amendments, there are two parts to

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[10] *Amici* argue for "universal"—or limitless—personal jurisdiction in terrorism cases. This Court has already rejected that suggestion. See United States v. Yousef, 327 F.3d 56, 107-08 (2d Cir. 2003) (per curiam) ("[T]errorism—unlike piracy, war crimes, and crimes against humanity—does not provide a basis for universal jurisdiction.").

the due process test for personal jurisdiction as established by International Shoe, 326 U.S. 310, and its progeny: the "minimum contacts" inquiry and the "reasonableness" inquiry. See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 127 (2d Cir. 2002) (Sotomayor, J.). The minimum contacts inquiry requires that the court determine whether a defendant has sufficient minimum contacts with the forum to justify the court's exercise of personal jurisdiction over the defendant. See Daimler, 134 S. Ct. at 754; Calder v. Jones, 465 U.S. 783, 788 (1984); Int'l Shoe, 326 U.S. at 316; Metro. Life Ins., 84 F.3d at 567-68. The reasonableness inquiry requires the court to determine whether the assertion of personal jurisdiction over the defendant comports with "'traditional notions of fair play and substantial justice'" under the circumstances of the particular case. Daimler, 134 S. Ct. at 754 (quoting Goodyear, 564 U.S. at 923); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78 (1985).

International Shoe distinguished between two exercises of personal jurisdiction: general jurisdiction and specific jurisdiction. The district court in this case ruled only on the issue of general jurisdiction. We conclude that general jurisdiction is absent; the question remains whether the court may nonetheless assert its jurisdiction under the doctrine of specific jurisdiction.

A court may assert general personal jurisdiction over a foreign defendant to hear any and all claims against that defendant only when the defendant's affiliations with the State in which suit is brought "are so constant and pervasive 'as to render [it] essentially at home in the forum State.'" Daimler, 134 S. Ct. at 751 (quoting Goodyear, 564 U.S. at 919); see also

Goodyear, 564 U.S. at 924. "Since International Shoe, 'specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced rule.'" Daimler, 134 S. Ct. at 755 (quoting Goodyear, 564 U.S. at 925). Accordingly, there are "few" Supreme Court opinions over the past half-century that deal with general jurisdiction. Id.

"Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Goodyear, 564 U.S. at 919 (alterations, internal quotation marks, and citation omitted). The exercise of specific jurisdiction depends on in-state activity that *"gave rise to the episode-in-suit*." Id. at 923 (quoting Int'l Shoe, 326 U.S. at 317) (emphasis in original). In certain circumstances, the "commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections." Id. (quoting Int'l Shoe, 326 U.S. at 318).

A.

The district court concluded that it had general jurisdiction over the defendants; however, that conclusion relies on a misreading of the Supreme Court's decision in Daimler.

In Daimler, the plaintiffs asserted claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991, see 28 U.S.C. §§ 1350 & note, as well as other claims, arising from alleged torture that was committed in Argentina by the Argentinian government with the collaboration of an Argentina-based

subsidiary of the German corporate defendant. See Daimler, 134 S. Ct. at 750-52. The Supreme Court rejected the argument that the California federal court could exercise general personal jurisdiction over the German corporation based on the continuous activities in California of the German corporation's indirect United States subsidiary. See id. at 751. Daimler concluded that the German corporate parent, which was not incorporated in California and did not have its principal place of business in California, could not be considered to be "at home in California" and subject to general jurisdiction there. Id. at 762.

Daimler analogized its "at-home test" to that of an individual's domicile. "[F]or a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home. With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction." Id. at 760 (alterations, internal quotation marks, and citations omitted).

As an initial matter, while Daimler involved corporations, and neither the PA nor the PLO is a corporation—the PA is a non-sovereign government and the PLO is a foreign agent, and both are unincorporated associations, see Part I.A—Daimler's reasoning was based on an analogy to general jurisdiction over individuals, and there is no reason to invent a different test for general personal jurisdiction depending on whether the defendant is an individual, a corporation, or another entity. Indeed, in Gucci this Court relied on Daimler when it found there was no general personal jurisdiction over the Bank of China, a non-party bank that was incorporated and headquartered in China and owned by the Chinese government. The

Court described the Daimler test as applicable to "entities." "General, all-purpose jurisdiction permits a court to hear 'any and all claims' against an *entity*." Gucci, 768 F.3d at 134 (emphasis added); see id. at 134 n.13 ("The essence of general personal jurisdiction is the ability to entertain 'any and all claims' against an entity based solely on the entity's activities in the forum, rather than on the particulars of the case before the court."). Consequently, we consider the PLO and the PA entities subject to the Daimler test for general jurisdiction. See Klieman, 82 F. Supp. 3d at 245-46; Livnat, 82 F. Supp. 3d at 28; Safra, 82 F. Supp. 3d at 46.

Pursuant to Daimler, the question becomes, where are the PA and PLO "'fairly regarded as at home'"? 134 S. Ct. at 761 (quoting Goodyear, 564 U.S. at 924). The overwhelming evidence shows that the defendants are "at home" in Palestine, where they govern. Palestine is the central seat of government for the PA and PLO. The PA's authority is limited to the West Bank and Gaza, and it has no independently operated offices anywhere else. All PA governmental ministries, the Palestinian president, the Parliament, and the Palestinian security services reside in Palestine.

As the District Court for the District of Columbia observed, "[i]t is common sense that the single ascertainable place where a government such a[s] the Palestinian Authority should be amenable to suit for all purposes is the place where it governs. Here, that place is the West Bank, not the United States." Livnat, 82 F. Supp. 3d at 30; see also Safra, 82 F. Supp. 3d at 48. The same analysis applies equally to the PLO, which during the relevant period maintained its headquarters in Palestine and Amman, Jordan. See

Klieman, 82 F. Supp. 3d at 245 ("Defendants' alleged contacts . . . do not suffice to render the PA and the PLO 'essentially at home' in the United States.")

The activities of the defendants' mission in Washington, D.C.—which the district court concluded simultaneously served as an office for the PLO and the PA, see Sokolow, 2011 WL 1345086, at *3—were limited to maintaining an office in Washington, promoting the Palestinian cause in speeches and media appearances, and retaining a lobbying firm. See id. at *4.

These contacts with the United States do not render the PA and the PLO "essentially at home" in the United States. See Daimler, 134 S. Ct. at 754. The commercial contacts that the district court found supported general jurisdiction are like those rejected as insufficient by the Supreme Court in Daimler. In Daimler, the Supreme Court held as "unacceptably grasping" a formulation that allowed for "the exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" 134 S. Ct. at 761. The Supreme Court found that a court in California could not exercise general personal jurisdiction over the German parent company even though that company's indirect subsidiary was the largest supplier of luxury vehicles to the California market. Id. at 752. The Supreme Court deemed Daimler's contacts with California "slim" and concluded that they would "hardly render it at home" in California. Id. at 760.

Daimler's contacts with California were substantially greater than the defendants' contacts with the United States in this case. But still the Supreme Court rejected the proposition that Daimler should be

subjected to general personal jurisdiction in California for events that occurred anywhere in the world. Such a regime would allow entities to be sued in many jurisdictions, not just the jurisdictions where the entities were centered, for worldwide events unrelated to the jurisdiction where suit was brought. The Supreme Court found such a conception of general personal jurisdiction to be incompatible with due process. The Supreme Court explained:

> General jurisdiction . . . calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States. Nothing in International Shoe and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity.

Id. at 762 n.20 (internal citations omitted). Regardless of the commercial contacts occasioned by the defendants' Washington, D.C. mission, there is no doubt that the "far larger quantum" of the defendants' activities took place in Palestine.

The district court held that the record before it was "insufficient to conclude that either defendant is 'at home' in a particular jurisdiction other than the United States." Sokolow, 2014 WL 6811395, at *2. That conclusion is not supported by the record. The evidence demonstrates that the defendants are "at

home" in *Palestine*, where these entities are headquartered and from where they are directed. See Daimler, 134 S. Ct. at 762 n.20.[11]

The district court also erred in placing the burden on the defendants to prove that there exists "an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy." Sokolow, 2011 WL 1345086, at *7. Daimler imposes no such burden. In fact, it is the plaintiff's burden to establish that the court has personal jurisdiction over the defendants. See Koehler v. Bank of Bermuda Ltd., 101 F.3d 863, 865 (2d Cir. 1996) ("[T]he plaintiff bears the ultimate burden of establishing jurisdiction over the defendant by a preponderance of evidence . . . ."); Metro. Life Ins., 84 F.3d at 566-67; see also Klieman, 82 F. Supp. 3d at 243; Livnat, 82 F. Supp. 3d at 30; Safra, 82 F. Supp. 3d at 49.[12]

Finally, the district court did not dispute the defendants' ties to Palestine but concluded that the

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[11] It appears that the district court, when considering where the defendants were "at home," limited its inquiry to areas that are within a sovereign nation. We see no basis in precedent for this limitation.

[12] The district court's focus on the importance of identifying an alternative forum may have been borrowed inappositely from *forum non conveniens* jurisprudence, pursuant to which a court considers (1) the degree of deference to be afforded to the plaintiff's choice of forum; (2) whether there is an adequate alternative forum for adjudicating the dispute; and (3) whether the balance of private and public interests tips in favor of adjudication in one forum or the other. See Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005). However, that is not the test for general jurisdiction under Daimler, 134 S. Ct. at 762 n.20.

court had general jurisdiction pursuant to an "exception" that the Supreme Court alluded to in a footnote in Daimler. In Daimler, the Supreme Court did not "foreclose the possibility that in an exceptional case, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." 134 S. Ct. at 761 n.19 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447-48 (1952)).

Daimler analyzed the 1952 Perkins case, "'the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.'" Id. at 755-56 (quoting Goodyear, 564 U.S. at 928). The defendant in Perkins was a company, Benguet Consolidated Mining Company ("Benguet"), which was incorporated under the laws of the Philippines, where it operated gold and silver mines. During World War II, the Japanese occupied the Philippines, and Benguet's president relocated to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. Perkins, 342 U.S. at 447-48. The plaintiff, a nonresident of Ohio, sued Benguet in a state court in Ohio on a claim that neither arose in Ohio nor related to the corporation's activities in Ohio, but the Supreme Court nevertheless held that the Ohio courts could constitutionally exercise general personal jurisdiction over the defendant. Id. at 438, 440. As the Supreme Court later observed: "'Ohio was the corporation's principal, if temporary, place of business.'" Daimler, 134 S. Ct. at 756 (quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780 n.11 (1984)).

Such exceptional circumstances did not exist in Daimler, id. at 761 n.19, or in Gucci. In Gucci, this

Court held that, while a nonparty bank had branch offices in the forum, it was not an "exceptional case" in which to exercise general personal jurisdiction where the bank was incorporated and headquartered elsewhere, and its contacts were not "'so continuous and systematic as to render [it] essentially at home in the forum.'" 768 F.3d at 135 (quoting Daimler, 134 S. Ct. at 761 n.19).

The defendants' activities in this case, as with those of the defendants in Daimler and Gucci, "plainly do not approach" the required level of contact to qualify as "exceptional." Daimler, 134 S. Ct. at 761 & n.19. The PLO and PA have not transported their principle "home" to the United States, even temporarily, as the defendant had in Perkins. See Brown v. Lockheed Martin Corp., 814 F.3d 619, 628-30 (2d Cir. 2016).

Accordingly, pursuant to the Supreme Court's recent decision in Daimler, the district court could not properly exercise general personal jurisdiction over the defendants.

B.

The district court did not rule explicitly on whether it had specific personal jurisdiction over the defendants, but the question was sufficiently briefed and argued to allow us to reach that issue.

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." Walden v. Fiore, 134 S. Ct. 1115, 1121 (2014) (internal quotation marks and

citations omitted). The relationship between the defendant and the forum "must arise out of contacts that the 'defendant *himself*' creates with the forum." Id. at 1122 (citing Burger King, 471 U.S. at 475) (emphasis in original). The "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Id. And the "same principles apply when intentional torts are involved." Id. at 1123.

The question in this case is whether the defendants' suit-related conduct—their role in the six terror attacks at issue—creates a substantial connection with the forum State pursuant to the ATA. The relevant "suit-related conduct" by the defendants was the conduct that could have subjected them to liability under the ATA. On its face, the conduct in this case did not involve the defendants' conduct in the United States in violation of the ATA. While the plaintiff-victims were United States citizens, the terrorist attacks occurred in and around Jerusalem, and the defendants' activities in violation of the ATA occurred outside the United States.

The ATA provides:

> Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

18 U.S.C. § 2333(a)

To prevail under the ATA, a plaintiff must prove "three formal elements: unlawful *action*, the requisite *mental state*, and *causation*." Sokolow, 60 F. Supp. 3d at 514 (quoting Gill v. Arab Bank, PLC, 893 F. Supp. 2d 542, 553 (E.D.N.Y. 2012)) (emphasis in original).

To establish an "unlawful action," the plaintiffs must show that their injuries resulted from an act of "international terrorism." The ATA defines "international terrorism" as activities that, among other things, "involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State." 18 U.S.C. § 2331(1)(A). The acts must also appear to be intended "(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping." 18 U.S.C. § 2331(1)(B)(i)-(iii).

The plaintiffs asserted that the defendants were responsible on a *respondeat superior* theory for a variety of predicate acts, including murder and attempted murder, 18 U.S.C. §§ 1111, 2332, use of a destructive device on a mass transportation vehicle, 18 U.S.C. § 1992, detonating an explosive device on a public transportation system, 18 U.S.C. § 2332f, and conspiracy to commit those acts, 18 U.S.C. § 371. See Sokolow, 60 F. Supp. 3d at 515. They also asserted that the defendants directly violated federal and state antiterrorism laws, including 18 U.S.C. § 2339B, by providing material support to FTO-designated groups (the AAMB and Hamas) and by harboring persons whom the defendants knew or had reasonable grounds to believe committed or were about to commit

an offense relating to terrorism, see 18 U.S.C. § 2339 *et seq.*; see also Sokolow, 60 F. Supp. 3d at 520-21, 523.

The ATA further limits international terrorism to activities that "occur *primarily outside* the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum." 18 U.S.C. § 2331(1)(C) (emphasis added).

The bombings and shootings here occurred *entirely* outside the territorial jurisdiction of the United States. Thus, the question becomes: What other constitutionally sufficient connection did the commission of *these* torts by *these* defendants have to *this* jurisdiction?

The jury found in a special verdict that the PA and the PLO were liable for the attacks under several theories. In all of the attacks, the jury found that the PA and the PLO were liable for providing material support or resources that were used in preparation for, or in carrying out, each attack.

In addition, the jury found that in five of the attacks—the January 22, 2002 Jaffa Road Shooting, the January 27, 2002 Jaffa Road Bombing, the March 21, 2002 King George Street Bombing, the July 31, 2002 Hebrew University Bombing, and the January 29, 2004 Bus No. 19 Bombing—the PA was liable because an employee of the PA, acting within the scope of the employee's employment and in furtherance of the activities of the PA, either carried out, or knowingly provided material support or resources that were used in preparation for, or in carrying out, the attack.

The jury also found that in one of the attacks—the July 31, 2002 Hebrew University Bombing—the PLO and the PA harbored or concealed a person who the organizations knew, or had reasonable grounds to believe, committed or was about to commit the attack.

Finally, the jury found that in three attacks—the June 19, 2002 French Hill Bombing, the July 31, 2002 Hebrew University Bombing, and the January 29, 2004 Bus No. 19 Bombing—the PA and PLO knowingly provided material support to an FTO-designated group (the AAMB or Hamas).

But these actions, as heinous as they were, were not sufficiently connected to the United States to provide specific personal jurisdiction in the United States. There is no basis to conclude that the defendants participated in these acts in the United States or that their liability for these acts resulted from their actions that did occur in the United States.

In short, the defendants were liable for tortious activities that occurred outside the United States and affected United States citizens only because they were victims of indiscriminate violence that occurred abroad. The residence or citizenship of the plaintiffs is an insufficient basis for specific jurisdiction over the defendants. A focus on the relationship of the defendants, the forum, and the defendants' suit-related conduct points to the conclusion that there is no specific personal jurisdiction over the defendants for the torts in this case. See Walden, 134 S. Ct. at 1121; see also Goodyear, 564 U.S. at 923.

In the absence of such a relationship, the plaintiffs argue on appeal that the Court has specific jurisdiction for three reasons. First, the plaintiffs argue that, under the "effects test," a defendant acting entirely outside the United States is subject to jurisdiction "if

the defendant expressly aimed its conduct" at the United States. Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 173 (2d Cir. 2013). The plaintiffs point to the jury verdict that found that the defendants provided material support to designated FTOs—the AAMB and Hamas—and that the defendants' employees, acting within the scope of their employment, killed and injured United States citizens. They also argue that the defendants' terror attacks were intended to influence United States policy to favor the defendants' political goals. Second, the plaintiffs argue that the defendants purposefully availed themselves of the forum by establishing a continuous presence in the United States and pressuring United States government policy by conducting terror attacks in Israel and threatening further terrorism unless Israel withdrew from Gaza and the West Bank. See Banks Brussels Lambert, 305 F.3d at 128. Third, the plaintiffs argue that the defendants consented to personal jurisdiction under the ATA by appointing an agent to accept process.

Walden forecloses the plaintiffs' arguments. First, with regard to the effects test, the defendant must "expressly aim[]" his conduct at the United States. See Licci, 732 F.3d at 173. Pursuant to Walden, it is "insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff" with the forum to establish specific jurisdiction. Walden, 134 S. Ct. at 1123 (quoting Burger King, 471 U.S. at 475). While the killings and related acts of terrorism are the kind of activities that the ATA proscribes, those acts were unconnected to the forum and were not expressly aimed at the United States. And "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that

creates the necessary contacts with the forum." Id. That is not the case here.

The plaintiffs argue that United States citizens were targets of these attacks, but their own evidence establishes the random and fortuitous nature of the terror attacks. For example, at trial, the plaintiffs emphasized how the "killing was indeed random" and targeted "Christians and Jews, Israelis, Americans, people from all over the world." J.A. 3836. Evidence at trial showed that the shooters fired "indiscriminately," J.A. 3944, and chose sites for their suicide bomb attacks that were "full of people," J.A. 4030-31, because they sought to kill "as many people as possible," J.A. 3944; see also J.A. 4031.

The plaintiffs argue that "[i]t is a fair inference that Defendants *intended to* hit American citizens by continuing a terror campaign that continuously hit Americans . . . ." Pls.' Br. at 37 (emphasis in original). But the Constitution requires much more purposefully directed contact with the forum. For example, the Supreme Court has "upheld the assertion of jurisdiction over defendants who have purposefully 'reach[ed] out beyond' their State and into another by, for example, entering a contractual relationship that 'envisioned continuing and wide-reaching contacts' in the forum State," Walden, 134 S. Ct. at 1122 (alteration in original) (quoting Burger King, 472 U.S. at 479-80), or "by circulating magazines to 'deliberately exploi[t]' a market in the forum State." Id. (alteration in original) (quoting Keeton, 465 U.S. at 781). But there was no such purposeful connection to the forum in this case, and it would be impermissible to speculate based on scant evidence what the terrorists intended to do.

Furthermore, the facts of Walden also suggest that a defendant's mere knowledge that a plaintiff resides in a specific jurisdiction would be insufficient to subject a defendant to specific jurisdiction in that jurisdiction if the defendant does nothing in connection with the tort in that jurisdiction. In Walden, the petitioner was a police officer in Georgia who was working as a deputized Drug Enforcement Administration ("DEA") agent at the Atlanta airport. He was informed that the respondents, Gina Fiore and Keith Gipson, were flying from San Juan, Puerto Rico through Atlanta en route to their final destination in Las Vegas, Nevada. See Joint Appendix, Walden v. Fiore, 2013 WL 2390248, *41-42 (U.S.) (Decl. of Anthony Walden). Walden and his DEA team stopped the respondents and searched their bags in Atlanta and examined their California drivers' licenses. Id.; Walden, 134 S. Ct. at 1119. Walden found almost $100,000 in cash in the respondents' carry-on bag and seized it, giving rise to a claim for an unconstitutional search under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). See Walden, 134 S. Ct. at 1119-20. The Supreme Court found that the petitioner's contacts with Nevada were insufficient to establish personal jurisdiction over the petitioner in a Nevada federal court, even though Walden knew that the respondents were destined for Nevada. See id. at 1119.

In this case, the plaintiffs point us to no evidence that these indiscriminate terrorist attacks were specifically targeted against United States citizens, and the mere knowledge that United States citizens might be wronged in a foreign country goes beyond the jurisdictional limit set forth in Walden.

The plaintiffs cite to several cases to support their argument that specific jurisdiction is warranted under an "effects test." Those cases are easily distinguishable from this case. Indeed, they point to the kinds of circumstances that would give rise to specific jurisdiction under the ATA, which are not present here.

For example, in Mwani v. Bin Laden, 417 F.3d 1 (D.C. Cir. 2005), the Court of Appeals for the District of Columbia Circuit found that specific personal jurisdiction over Osama Bin Laden and al Qaeda was supported by allegations that they "orchestrated the bombing of the *American* embassy in Nairobi, not only to kill both American and Kenyan employees inside the building, but to cause pain and sow terror in the embassy's home country, *the United States*," as well as allegations of "an ongoing conspiracy to attack the United States, with overt acts occurring *within* this country's borders." Id. at 13 (emphasis added). The plaintiffs pointed to the 1993 World Trade Center bombing, as well as the plot to bomb the United Nations, Federal Plaza, and the Lincoln and Holland Tunnels in New York. Id. Furthermore, the Court of Appeals found that bin Laden and al Qaeda "'purposefully directed' [their] activities at residents" of the United States, and that the case "result[ed] from injuries to the plaintiffs 'that arise out of or relate to those activities,'" id. (quoting Burger King, 471 U.S. at 472).

"[E]xercising specific jurisdiction because the victim of a foreign attack happened to be an American would run afoul of the Supreme Court's holding that '[d]ue process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with

other persons affiliated with the State.'" Klieman, 82 F. Supp. 3d at 248 (quoting Walden, 134 S. Ct. at 1123); see Safra, 82 F. Supp. 3d at 52 (distinguishing Mwani); see also In re Terrorist Attacks on Sept. 11, 2001, 538 F.3d at 95-96 (holding that even if Saudi princes could and did foresee that Muslim charities would use their donations to finance the September 11 attacks, providing indirect funding to an organization that was openly hostile to the United States did not constitute the type of intentional conduct necessary to constitute purposeful direction of activities at the forum); Livnat, 82 F. Supp. 3d at 33.

The plaintiffs also rely on O'Neill, 714 F.3d at 659, which related to the September 11 attacks. In that case, this Court first clarified that "specific personal jurisdiction properly exists where the defendant took 'intentional, and allegedly tortious, actions . . . expressly aimed' at the forum." Id. at 674 (quoting Calder, 465 U.S. at 789). This Court also noted that, "the fact that harm in the forum is foreseeable . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant." Id. This Court then held that the plaintiffs' allegations were insufficient to establish personal jurisdiction over about two dozen defendants, but that jurisdictional discovery was warranted for twelve other defendants whose "alleged support of al Qaeda [was] more direct." Id. at 678; see also id. at 656-66. Those defendants "allegedly controlled and managed some of [the front] 'charitable organizations' and, through their positions of control, they allegedly sent financial and other material support *directly* to al Qaeda when al Qaeda allegedly was known to be *targeting the United States*." Id. (second emphasis added).

The plaintiffs argue that this Court should likewise find jurisdiction because the defendants' "direct, knowing provision of material support to designated FTOs [in this case, Hamas and the AAMB] is enough—standing alone—to sustain specific jurisdiction because they knowingly aimed their conduct at U.S. interests." Pls.' Br. at 36. But that argument misreads O'Neill. In O'Neill, this Court emphasized that the mere "fact that harm in the forum is foreseeable" was "insufficient for the purpose of establishing specific personal jurisdiction over a defendant," 714 F.3d at 674, and the Court did not end its inquiry when it concluded that the defendants may have provided support to terror organizations. Indeed, the Court held that "factual issues persist with respect to whether this support was 'expressly aimed' at the United States," warranting jurisdictional discovery. Id. at 678-79. The Court looked at the specific aim of the group receiving support—particularly that al Qaeda was "known to be targeting the United States"—and not simply that it and other defendants were "terrorist organizations." Id. at 678.[13]

The plaintiffs also cite Calder v. Jones, 465 U.S. at 783. In that case, a California actress brought a libel suit in California state court against a reporter and an editor, both of whom worked for a tabloid at

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[13] Furthermore, the mere designation of a group as an FTO does not reflect that the organization has aimed its conduct at the United States. The Secretary of State may "designate an organization as a foreign terrorist organization" if the Secretary finds "the organization is a foreign organization," "the organization engages in terrorist activity," "or retains the capability and intent to engage in terrorist activity or terrorism," and "the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1)(A)-(C).

the tabloid's Florida headquarters. Id. at 784. The plaintiff's claims were based on an article written and edited by the defendants in Florida for the tabloid, which had a California circulation of about 600,000. Id. at 784-86. The Supreme Court held that California's assertion of personal jurisdiction over the defendants for a libel action was proper based on the effects of the defendants' conduct in California. Id. at 788. "The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California," the Supreme Court held. Id. at 788-89. "In sum, California is the *focal point* both of the story and of the harm suffered." Id. at 789 (emphasis added); see also Walden, 134 S. Ct. at 1123 (describing the contacts identified in Calder as "ample" to support specific jurisdiction). As the Supreme Court explained in Walden, the jurisdictional inquiry in Calder focused on the relationship among the defendant, the forum, and the litigation. Walden, 134 S. Ct. at 1123.

Unlike in Calder, it cannot be said that the United States is the focal point of the torts alleged in this litigation. In this case, the United States is not the nucleus of the harm—Israel is. See Safra, 82 F. Supp. 3d at 51.

Finally, the plaintiffs rely on two criminal cases, United States v. Yousef, 327 F.3d 56 (2d Cir. 2003) (per curiam), and United States v. Al Kassar, 660 F.3d 108 (2d Cir. 2011), for their argument that the "effects test" supports jurisdiction. In both cases, this Court applied the due process test for asserting jurisdiction over extraterritorial criminal conduct, which differs from the test applicable in this civil case, see Al Kassar, 660 F.3d at 118; Yousef, 327 F.3d at 111-12, and

does not require a nexus between the specific criminal conduct and harm within the United States. See also United States v. Murillo, No. 15-4235, 2016 WL 3257016, at *3 (4th Cir. June 14, 2016) ("[I]t is not arbitrary to prosecute a defendant in the United States if his actions affected significant American interests—even if the defendant did not mean to affect those interests." (internal citation and quotation marks omitted)). In order to apply a federal criminal statute to a defendant extraterritorially consistent with due process, "'there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair.' For non-citizens acting entirely abroad, a jurisdictional nexus exists when the aim of that activity is to cause harm inside the United States *or* to U.S. citizens *or* interests." Al Kassar, 660 F.3d 108, 118 (emphasis added) (quoting Yousef, 327 F.3d at 111).

In a civil action, as Walden makes clear, "the defendant's suit-related conduct must create a substantial connection with the forum State." 134 S. Ct. at 1121.

Even setting aside the fact that both Yousef and Al Kassar applied the more expansive due process test in criminal cases, the defendants in both cases had more substantial connections with the United States than the defendants have in the current litigation. Yousef involved a criminal prosecution for the bombing of an airplane traveling from the Philippines to Japan. See 327 F.3d at 79. The Yousef defendants "conspired to attack a dozen United States-flag aircraft in an effort to inflict injury on this country and its people and influence American foreign policy, and their attack on the Philippine Airlines flight was a 'test-run' in furtherance of this conspiracy." Id. at 112.

In Al Kassar, several defendants were convicted of conspiring to kill United States officers, to acquire and export anti-aircraft missiles, and knowingly to provide material support to a terrorist organization; two were also convicted of conspiring to kill United States citizens and of money laundering. 660 F.3d at 115. On appeal, the defendants challenged their convictions on a number of grounds, including that the defendants' Fifth Amendment due process rights were violated by prosecuting them for activities that occurred abroad. Id. at 117-18. This Court rejected that argument because the defendants conspired to sell arms to a group "with the understanding that they would be used to kill Americans and destroy U.S. property; the aim therefore was to harm U.S. citizens and interests and to threaten the security of the United States." Id. at 118.

In this case, the defendants undertook terror attacks within Israel, and there is no evidence the attacks specifically targeted United States citizens. See Safra, 82 F. Supp. 3d at 53-54; see also Livnat, 82 F. Supp. 3d at 34.

Accordingly, in the present case, specific jurisdiction is not appropriate under the "effects test."

Second, Walden undermines the plaintiffs' arguments that the defendants met the "purposeful availment" test by establishing a continuous presence in the United States and pressuring United States government policy. The emphasis on the defendants' Washington, D.C. mission confuses the issue: Walden requires that the "suit-related conduct"—here, the terror attacks in Israel—have a "substantial connection with the forum." 134 S. Ct. at 1121. The defendants' Washington mission and its associated lobbying efforts do not support specific personal jurisdiction on

the ATA claims. The defendants cannot be made to answer in this forum "with respect to matters unrelated to the forum connections." Goodyear, 564 U.S. at 923; see also Klieman, 82 F. Supp. 3d at 247 ("Courts typically require that the plaintiff show some sort of causal relationship between a defendant's U.S. contacts and the episode in suit.").

The plaintiffs argue on appeal that the defendants intended their terror campaign to influence not just Israel, but also the United States. They point to trial evidence—specifically pamphlets published by the PA—that, the plaintiffs argue, shows that the defendants were attempting to influence United States policy toward the Israel-Palestinian conflict. The exhibits themselves speak in broad terms of how United States interests in the region are in danger and how the United States and Europe should exert pressure on Israel to change its practices toward the Palestinians. It is insufficient for purposes of due process to rely on evidence that a political organization sought to influence United States policy, without some other connection among the activities underlying the litigation, the defendants, and the forum. Such attenuated activity is insufficient under Walden.

The plaintiffs cite Licci, 732 F.3d 161, to support their argument that the defendants meet the purposeful availment test. But the circumstances of that case are distinguishable and illustrate why the defendants here do not meet that test. In Licci, American, Canadian, and Israeli citizens who were injured or whose family members were killed in a series of terrorist rocket attacks by Hizbollah in Israel brought an action under the ATA and other laws against the Lebanese Canadian Bank, SAL ("LCB"), which allegedly facilitated Hizbollah's acts by using correspondent

banking accounts at a defendant New York bank (American Express Bank Ltd.) to effectuate wire transfers totaling several million dollars on Hizbollah's behalf. Id. at 164-66. This Court concluded that the exercise of personal jurisdiction over the defendants was constitutional because of the defendants' "repeated use of New York's banking system, as an instrument for accomplishing the alleged wrongs for which the plaintiffs seek redress." Id. at 171. These contacts constituted "'purposeful[] avail[ment] . . . of the privilege of doing business in [New York],' so as to permit the subjecting of LCB to specific jurisdiction within the Southern District of New York . . . ." Id. (quoting Bank Brussels Lambert, 305 F.3d at 127).

"It should hardly be unforeseeable to a bank that selects and makes use of a particular forum's banking system that it might be subject to the burden of a lawsuit in that forum for wrongs *related to*, and *arising from*, *that use*." Id. at 171-72 (emphasis added) (footnote omitted).

In Licci, this Court also distinguished the "effects test" theory of personal jurisdiction which is "typically invoked where (*unlike here*) the conduct that forms the basis for the controversy occurs entirely out-of-forum, and the only relevant jurisdictional contacts with the forum are therefore in-forum effects harmful to the plaintiff." Id. at 173 (emphasis added) (footnote omitted). The Court held that the effects test was inappropriate because "the constitutional exercise of personal jurisdiction over a foreign defendant" turned on conduct that "occur[ed] *within* the forum," id. (emphasis in original), namely the repeated use of bank accounts in New York to support the alleged wrongs for which the plaintiffs sued.

In this case, there is no such connection between the conduct on which the alleged personal jurisdiction is based and the forum. And the connections the defendants do have with the United States—the Washington, D.C. and New York missions—revolve around lobbying activities that are not proscribed by the ATA and are not connected to the wrongs for which the plaintiffs here seek redress.

At a hearing before the district court, the plaintiffs also cited Bank Brussels Lambert, 305 F.3d 120, as their "best case" for their purposeful availment argument. See J.A. 1128. But that case, too, is distinguishable. There, a client bank sued its lawyers for legal malpractice that occurred in Puerto Rico. Bank Brussels Lambert, 305 F.3d at 123. This Court held that the Puerto Rican law firm defendant had sufficient minimum contacts with the New York forum and purposely availed itself of the privilege of doing business in New York, because, although the law firm did not solicit the bank as a client in New York, the firm maintained an apartment in New York partially for the purpose of better servicing its New York clients, the firm faxed newsletters regarding Puerto Rican legal developments to persons in New York, the firm had numerous New York clients, and its marketing materials touted the firm's close relationship with the Federal Reserve Bank of New York. Id. at 127-29. "The engagement which gave rise to the dispute here is not simply one of a string of fortunate coincidences for the firm. Rather, the picture which emerges from the above facts is that of a law firm which seeks to be known in the New York legal market, makes efforts to promote and maintain a client base there, and profits substantially therefrom." Id. at 128. This Court held that there was "nothing fundamentally unfair about requiring the firm to defend itself in the New York

courts when a dispute arises from its representation of a New York client—a representation which developed in a market it had deliberately cultivated and which, after all, the firm voluntarily undertook." Id. at 129. In short, the defendants' contacts with the forum were sufficiently related to the malpractice claims that were at issue in the suit.

That is not the case here. The plaintiffs' claims did not arise from the defendants' purposeful contacts with the forum. And where the defendant in Bank Brussels Lambert purposefully and repeatedly reached into New York to obtain New York clients—and as a result of those activities, it obtained a representation for which it was sued—in this case, the plaintiffs' claims did not arise from any activity by the defendants in this forum.

Thus, in this case, unlike in Licci and Bank Brussels Lambert, the defendants are not subject to specific personal jurisdiction based on a "purposeful availment" theory because the plaintiffs' claims do not arise from the defendants' activity in the forum.

Third, the plaintiffs' argue that the defendants consented to personal jurisdiction under the ATA by appointing an agent to accept process. It is clear that the ATA permitted service of process on the representative of the PLO and PA in Washington. See 18 U.S.C. § 2334(a). However, the statute does not answer the constitutional question of whether due process is satisfied.

The plaintiffs contend that under United States v. Scophony Corp. of America, 333 U.S. 795 (1948), meeting the statutory requirement for service of process suffices to establish personal jurisdiction. But Scophony does not stand for that proposition. The defendant in Scophony "was 'transacting business' of a

substantial character in the New York district at the times of service, so as to establish venue there," and so that "such a ruling presents no conceivable element of offense to 'traditional notions of fair play and substantial justice.'" Id. at 818 (quoting Int'l Shoe, 326 U.S. at 316). Thus, Scophony affirms the understanding, echoed by this Court in Licci, 673 F.3d at 60, and O'Neill, 714 F.3d at 673-74, that due process analysis—considerations of minimum contacts and reasonableness—applies even when federal service-of-process statutes are satisfied. Simply put, "the exercise of personal jurisdiction must comport with constitutional due process principles." Licci, 673 F.3d at 60; see also Brown, 814 F.3d at 641. As explained above, due process is not satisfied in this case, and the courts have neither general nor specific personal jurisdiction over the defendants, regardless of the service-of-process statute.

In sum, because the terror attacks in Israel at issue here were not expressly aimed at the United States and because the deaths and injuries suffered by the American plaintiffs in these attacks were "random [and] fortuitous" and because lobbying activities regarding American policy toward Israel are insufficiently "suit-related conduct" to support specific jurisdiction, the Court lacks specific jurisdiction over these defendants. Walden, 134 S. Ct. at 1121, 1123.

* * *

The terror machine gun attacks and suicide bombings that triggered this suit and victimized these plaintiffs were unquestionably horrific. But the federal courts cannot exercise jurisdiction in a civil case beyond the limits prescribed by the due process clause

of the Constitution, no matter how horrendous the underlying attacks or morally compelling the plaintiffs' claims.

The district court could not constitutionally exercise either general or specific personal jurisdiction over the defendants in this case. Accordingly, this case must be dismissed.

CONCLUSION

We have considered all of the arguments of the parties. To the extent not specifically addressed above, they are either moot or without merit. For the reasons explained above, we **VACATE** the judgment of the district court and **REMAND** the case to the district court with instructions to **DISMISS** the case for want of jurisdiction.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, individually and as a natural guardian of plaintiff Jamie A. Sokolow; RENA M. SOKOLOW, individually and as a natural guardian of plaintiff Jamie A. Sokolow; JAMIE A. SOKOLOW, minor, by her next friends and guardian Mark I. Sokolow and Rena M. Sokolow; LAUREN M. SOKOLOW; ELANA R. SOKOLOW; SHAYNA EILEEN GOULD; ELISE JANET GOULD; JESSICA RINE; SHMUEL WALDMAN; HENNA NOVACK WALDMAN; MORRIS WALDMAN; EVA WALDMAN; DR. ALAN J. BAUER, individually and as a natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel Bauer, and Yehuda Bauer; REVITAL BAUER, individually and as a natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel Bauer, and Yehuda Bauer; YEHONATHON

DATE FILED:
30 MAR 2011

MEMORANDUM DECISION AND OPINION

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(GBD)

BAUER, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer; BINYAMIN BAUER, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer; DANIEL BAUER, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer; YEHUDA BAUER, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer; RABBI LEONARD MANDELKORN; SHAUL MANDELKORN; NURIT MANDELKORN; OZ JOSEPH GUETTA, minor, by his next friend and guardian Varda Guetta; VARDA GUETTA, individually and as natural guardian of plaintiff Oz Joseph Guetta; DR. KATHERINE BAKER, individually and as personal representative of the Estate of Benjamin Blutstein; REBEKAH BLUSTEIN, DR. RICHARD BLUSTEIN, individually and as personal representative of the Estate of Benjamin Blutstein; DR. LARRY CARTER, individually and as personal representative of the Estate of Diane ("Dina") Carter; SHAUN COFFEL; DIANNE COULTER

MILLER; ROBERT L. COULTER, JR.; ROBERT L. COULTER, SR., individually and as personal representative of the Estate of Janis Ruth Coulter; CHANA BRACHA GOLDBERG, minor, by her next friend and guardian Karen Goldberg; ELIZER SIMCHA GOLDBERG, minor, by her next friend and guardian Karen Goldberg; ESTHER ZAHAVA GOLDBERG, minor, by her next friend and guardian Karen Goldberg; KAREN GOLDBERG, individually, as pers. rep. of the Est. of Stuart Scott Goldberg/ nat. guard. of pltffs Chana Bracha Goldberg, Esther Zahava Goldberg, Yitzhak Shalom Goldberg, Shoshana Malka Goldberg, Eliezer Simcha Goldberg, Yaakov Moshe Goldberg, Tzvi Yehoshua Goldberg; SHOSHANA MALKA GOLDBERG, minor, by her next friend and guardian Karen Goldberg; TZVI YEHOSHUA GOLDBERG, minor, by her next friend and guardian Karen Goldberg; YAAKOV MOSHE GOLDBERG, minor, by her next friend and guardian Karen Goldberg, YITZHAK SHALOM GOLDBERG, minor,

by her next friend and guardian Karen Goldberg; NEVENKA GRITZ, individually and as personal representative of the Estate of David Gritz; NORMAN GRITZ, individually and as personal representative of the Estate of David Gritz,

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION; and PALESTINE AUTHORITY, also known as Palestine Interim Self-Government Authority and/or Palestine Council and/or Palestinian National Authority

Defendants.

GEORGE B. DANIELS, District Judge:

In the above-captioned action brought under the Antiterrorism Act of 1991, 18 U.S.C. § 2331 et. seq. ("ATA"), United States citizens and guardians, family members, and personal representatives of the estates of United States citizens, are suing the Palestine Lib-

eration Organization ("PLO") and the Palestinian Authority[1] ("PA") for injuries and death allegedly suffered as a result of a series of seven terrorist attacks occurring over a three year period in or near Jerusalem from January 8, 2001, to January 29, 2004. See Complaint ¶¶ 54-125. Plaintiffs assert causes of action for international terrorism, pursuant to 18 U.S.C. § 2333,[2] and various state law claims including wrongful death, pain and suffering, battery, assault, loss of consortium, negligence, and infliction of emotional distress. Defendants move to dismiss the Amended Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2). Defendants' motion is DENIED.

PROCEDURAL HISTORY

In response to Plaintiff's motion for a default judgment pursuant to Fed. R. Civ. P. 56, Defendants moved to dismiss the Amended Complaint for lack of subject matter and personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1) and (2), and to dismiss the pendant state law causes of action for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). See Docket ## 22, 45. Plaintiffs opposed Defendants' prior motion to dismiss for lack of personal jurisdiction, and, in the alternative, sought jurisdictional discovery. See Docket # 50. This Court denied Defendants' motion to dismiss for lack of subject matter jurisdiction with

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[1] The Palestinian Authority is also known as "The Palestinian Interim Self-Government Authority," "The Palestinian Council" and "The Palestinian National Authority."

[2] Section 2333 is the civil provision of the ATA, which provides that "[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors or heirs may sue therefore . . ." 18 U.S.C.§ 2333(a).

prejudice, and denied their motion to dismiss for lack of personal jurisdiction and failure to state a claim without prejudice to renew after limited jurisdictional discovery. See Sololow v. Palestine Liberation Org., 583 F. Supp. 2d 451 (S.D.N.Y. 2008), available at Docket # 58.

The parties engaged in jurisdictional discovery under the supervision of Magistrate Judge Ronald L. Ellis. See Docket # 61. Defendants prematurely renewed their motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) during jurisdictional discovery, and this Court denied the motion without prejudice to renew after the completion of jurisdictional discovery. See Docket ## 66, 79. After the Magistrate Judge declared discovery complete, Defendants properly filed the instant motion to dismiss. See Docket ## 80, 67.

STANDARD OF REVIEW

To withstand a 12(b)(2) motion to dismiss, the plaintiff "bears the burden of showing [by a preponderance of the evidence] that the court has jurisdiction over the defendant." In re Magnetic Audiotape Antitrust Lithog., 334 F.3d 204, 206 (2d Cir. 2003); Landoil Resources Corp. v. Alexander & Alexander Servs., Inc., 918 F.2d 1039, 1043 (2d Cir. 1990). The showing necessary to satisfy this burden is more demanding when, as is the case here, the parties have completed jurisdictional discovery.[3] Whereas legally sufficient allegations are alone sufficient to make a prima facie

[3] It is appropriate to apply the higher burden in the present case regardless of how dissatisfied Plaintiffs may be with Defendants' productions. The appropriate time to seek relief for such grievances has expired now that jurisdictional discovery is complete.

showing where no evidentiary hearing has been held, or when the parties have not engaged in jurisdictional discovery, "[a]fter discovery, the plaintiff's prima facie showing . . . must include an averment of facts that, if credited by the trier, would suffice to establish jurisdiction over the defendant."[4] Ball v. Metallurgic Hoboken — Overpelt S.A., 902 F.2d 194, 197 (2d Cir. 1990); see also Chloe v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163 (2d Cir. 2010). The Court is to accept all averments of jurisdictional facts as true, and construe the pleadings, affidavits, and any doubts in plaintiff's favor. See In re Magnetic Audiotape, 334 F.3d at 206; PDK Labs. Inc. v. Friedlander, 103 F.3d 1105, 1108 (2d Cir. 1997); see also Whitaker v. American Telecasting Inc., 261 F.3d 196, 208 (2d Cir. 2001) (quoting A.I. Trade Fin., Inc. v. Petra Bank, 989 F.2d 76, 79-80 (2d Cir. 1993)).

GENERAL JURISDICTION

In the context of ATA litigation, a plaintiff makes a prima facie showing of personal jurisdiction if: (1) service of process was properly effected as to the defendant, see Fed. R. Civ. P. 4(k)(1)(C) ("Serving a summons . . . establishes personal jurisdiction over a defendant . . . when authorized by a federal statute"); 18 U.S.C. § 2334(a) (providing for nationwide service of process and venue); and (2) the defendant has sufficient minimum contacts with the United States as a whole to satisfy a traditional due process analysis. See Estates of Ungar v. Palestinian Auth., 153 F.

[4] Plaintiffs have not provided an exhaustive list of the facts that they believe confer jurisdiction over the Defendants. However, Plaintiffs have provided all of the materials submitted in Estates of Ungar v. Palestinian Auth., 325 F. Supp. 2d 15 (D.R.I. 2004), as well as additional materials relevant to post-2002 activities.

Supp. 2d 76, 87, 95 (D.R.I. 2001); see also In re Terrorist Attacks on September 11, 2001, 392 F. Supp. 2d 539, 556-58 (S.D.N.Y. 2005); Burnett v. Al Baraka Inv. & Dev. Corp., 349 F. Supp. 2d 765, 806-07 (S.D.N.Y. 2005); Biton v. Palestinian Interim Self-Gov't Auth., 310 F. Supp. 2d 172, 179 (D.D.C. 2004).

Here, Defendants do not assert that service was defective. Defendants do not even dispute that, during the relevant time period, they maintained sufficient contacts with the United States to satisfy the traditional due process analysis for general jurisdiction. Rather, Defendants contend that their contacts with the United States qualify as jurisdictional exceptions and may not be relied upon to support the exercise of general jurisdiction over them. They contend that any remaining contacts are insubstantial.

A. SERVICE

Plaintiffs' properly served the PLO and the PLA. Fed. R. Civ. P. 4(h)(1)(B) provides that a foreign association "must be served[] . . . in a judicial district of the United States . . . by delivering a copy of the summons and of the complaint to an officer, a managing or general agent." Here, Plaintiffs personally served Hassan Abdel Rahman at his home in Virginia. See Pls.' Opposition Memo, Ex. B ("Affidavit of Service"). Rahman, based upon the overwhelming competent evidence produced by Plaintiffs,[5] was the Chief Representative of the PLO and the PA in the United States

[5] See Pls.' Opp. Mem., Exs. C (business card identifying him as "Chief Representative" to the "Palestine Liberation Organization" and the "Palestine National Authority"), D (letter written by him to Congressman Abercrombie in which he identifies himself as "Chief Representative of the PLO and PNA"), E (letter

at the time of service. Rahman was thus a valid agent for service of process on the PLO and the PA.[6]

B. DUE PROCESS

To determine whether the exercise of jurisdiction comports with due process, the Court must engage in a two part analysis: "the 'minimum contacts' inquiry and the 'reasonableness' inquiry." Chloe v. Queen Bee of Beverly Hills. LLC, 616 F.3d 158, 171 (2d Cir. 2010). The court must first determine whether a defendant has minimum contacts with the forum such that maintenance of the action does not offend traditional notions of fair play and substantial justice. See State Oil Co. of Azerbaijan Republic v. Frontera, 582 F.3d 393, 396 (2d Cir. 2009) (citation omitted). The court must then determine whether it would be reasonable, under the circumstances of the particular case, to exercise jurisdiction over the defendant. See Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 568 (2d Cir. 1996).

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sent to him by Richard C. Massey of the United States Department of State identifying him as "Chief Representative PLO & PNA), M (10/30/2003 Senate Hearing Transcript identifying Rahman as "chief representative of the PLO and the PA in the United States" at 13 and speaking on behalf of "[w]e, the Palestinian Authority" at 28); see also Declaration of David J. Strachman, Ex. 1 (reproducing evidence of Rahman's dual agency from Unger, 325 F.Supp.2d at 55-59).

[6] This finding is consistent with other federal courts. See, e.g., Kliman v. Palestine Authority, 547 F.Supp.2d 8, 13-14 (D.D.C. 2008) (considering Haman's successor); Ungar, 325 F. Supp. 2d at 55-59 (considering Haman); Biton, 310 F. Supp. 2d at 179-190 (same).

1. Minimum Contacts[7]

The minimal contacts inquiry necessitates "a distinction . . . between 'specific' jurisdiction and 'general' jurisdiction." Chloe, 616 F.3d at 165. Whereas specific jurisdiction applies where a defendant's contacts are related to the litigation, general jurisdiction applies where they are unrelated, and involves a more stringent minimal contacts test. See Helicopteros Nacionales de Columbia., S.A. v. Hall, 466 U.S. 408, 414, 415 n.9; see also Metro Life, 84 F.3d at 568. General jurisdiction requires that each[8] defendant's contacts with the forum are continuous and systematic. Id. In determining the strength of those contacts, the court is to examine the totality of the defendant's con-

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[7] This Court conducts a *de novo* review of the minimal contacts of the PLO and the PA. Upon first considering the issue of personal jurisdiction in the above-captioned action, this Court recognized that "[a] number of federal courts [had already] concluded that both the PA and PLO have sufficient minimum contacts with the United States to justify the exercise of personal jurisdiction under the Due Process Clause." Sololow, 583 F. Supp. 2d at 460 (citations omitted). This Court, nevertheless, held that "[p]ersonal jurisdiction must be determined on a case-by-case basis because it is dependent upon the defendants' contacts with the [United States] at the time the lawsuit was commenced." Id. at 460. This Court thus declined to entertain Plaintiffs' arguments that the principles of collateral estoppel and/or the presumption of continuity preclude or otherwise limit Defendants' litigation of the personal jurisdiction issue.

[8] "Each defendant's contacts with the [United States] must be assessed individually," and "jurisdiction cannot be implied or imputed from one defendant to another." Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 781 n.13 (1984); Langenberg v. Sofair, 2006 U.S. Dist. LEXIS 65276, at *21 (S.D.N.Y. Sept. 11, 2006); see also Rush v. Savchuk, 444 U.S. 320, 331-32 (1980).

tacts with the forum over a period of time that is reasonable under the circumstances, up to and including the date the suit was filed.[9] See Chloe, 616 F.3d at 164; Porina v. Marward Shipping Co., 521 F.3d 122, 128 (2d Cir. 2008) (citation omitted). Additionally, the defendant must be found to have purposely availed himself of the privilege of conducting activities in the forum. See Hanson v. Denckla, 357 U.S. 235, 253 (1958).

a. Traditional Jurisdictional Analysis

After carefully reviewing the competent evidence produced, this Court finds that Plaintiffs have gone beyond the allegations in the Amended Complaint to demonstrate by a preponderance of the evidence that the PLO and the PA purposely engaged in numerous activities that resulted in both entities having a continuous and systematic presence within the United States. Therefore, this Court agrees with every federal court to have considered the issue that the totality of activities in the United States by the PLO and the PA justifies the exercise of general personal jurisdiction.[10]

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[9] For the purpose of discovery, the parties agreed that the relevant time period was the six-year period preceding the filing of the complaint, i.e. January 16, 1998, to January 16, 2004. See Pls. Opp. Mem., at 5; Defs. Opening Mem., at 7-8. Such periods have been found to be reasonable by the Second Circuit. See Metro Life, 84 F.3d at 569-70 (collecting cases).

[10] See, e.g., Knox v. PLO, 248 F.R.D. 420, 427 (S.D.N.Y. 2008); Estate of Klieman v. Palestinian Auth., 467 F. Supp. 2d 107, 113 (D.D.C. 2006); Ungar, 325 F. Supp. 2d at 59; Biton v. Palestinian Authority, 310 F. Supp. 2d at 179; Estates of Ungar v. Palestinian Auth., 153 F. Supp. 2d 76, 88 (D.R.I. 2001); Klinghoffer v.

It is undisputed that the PLO maintained an office in Washington, D.C., during the relevant period. See Defs.' Opening Mem., at 8-9; Pls.' Opp. Mem., at 10; see also Strachman Declaration, Ex. 1 Part 5 ("Revised Notice"), Ex. KK (3/10/1998 Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended ("FARA"), by "PLO Washington Office"); id., Exs. 2-12 (FARA Supplemental Statements filed by the PLO from September 1998 to September 2003). It is also undisputed that most of the individuals who worked in the D.C. office were PLO employees. See Defs.' Opening Mem., Ex. 3 (Interrogatories) (listing twelve employees during the relevant period), at 5-6.[11] The evidence suggests that the majority of the twelve employees were present for the entirety of the relevant period. See id., Ex. 3, at 9.

S.N.C. Achille Lauro, 795 F. Supp. 112, 114 (S.D.N.Y. 1992); United States v. Palestine Liberation Organization, 695 F. Supp. 1456, 1471 (S.D.N.Y. 1988); cf. Knox, 229 F.R.D. at 67-70; Mohamad v. Rajoub, 2008 U.S. Dist. LEXIS 117400 (S.D.N.Y. Sept. 29, 2008) (finding jurisdictional discovery against the PA and PLO in Washington, D.C. would be unnecessary and cause undue delay and expense as previous courts in Washington, D.C. have reviewed at length the PA and PLO's Washington, D.C. contacts); Estate of Esther Klieman v. Palestinian Auth., 547 F. Supp. 2d 8, 15 (D.D.C. 2008) (Defendants moved to dismiss for lack of personal jurisdiction due to insufficient service of process); Gilmore v. Palestinian Interim Self-Government Auth., 422 F. Supp. 2d 96, 102 n.4 (D.D.C. 2006) ("Defendants did not move to dismiss the PLO and the PA from this action for lack of personal jurisdiction.").

[11] Defendants did not provide precise dates of employment. Construing all facts in a light favorable to Plaintiffs, the lack of duplication amongst the titles and job descriptions of the PLO employees suggests that the majority of the twelve employees

The parties disagree over whether the PA maintained an office in Washington, D.C.; however the weight of the evidence indicates that the D.C. office simultaneously served as an office for the PLO and the PA.[12] The initial registration statement states that "[t]he PLO offices in Washington, D.C. shall represent the PLO and the Palestinian Authority in the United States" and that "[t]he PLO and the Palestinian Authority will pay for the expenses of the office and salaries of its employees." Strachman Declaration, Ex. 1 Part 5, Ex. KK. Rahman, the Chief Representative of the PLO and the PA, used and was contacted at a single address – that of the D.C. office. See Pls.' Opp. Mem., Exs. C-E. The PA entered into a substantial commercial contract that repeatedly described the D.C. office as an office of the PA. See id., F (retainer agreement for 1999-2002). Finally, the PA's Ministry of Finance – rather than the PLO Headquarters in Gaza – provided the vast majority of the D.C. office's

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were present for the entirety of the relevant period. See Defs.' Opening Mem., Ex. 3, at 9.

[12] Defendants' argument that only the PLO had the authority to conduct foreign affairs is unpersuasive. The fact that the PA should not have been operating an office in the United States does not mean that it did not or could not have done so. Moreover, even if Defendants' are right, "there is nothing in the Oslo Accords . . . prohibit[ing] the PA from conducting other non-diplomatic activities (such as commercial, public relations, lobbying, or educational activities) through its representatives, officers and agents abroad." Unger, 325 F.Supp.2d at 54. Also the fact that only 2 of the 14 employees at the D.C. office were employed by the PA does not demonstrate that D.C. office was not working on behalf of the PA. See Defs.' Opening Mem., Ex. 3 (Interrogatories), at 6, 10-11.

income. See Strachman Declaration, Exs. 2-12. Accordingly, the activities of the D.C. office are attributable to both the PLO and the PA.[13]

The Defendants, through the D.C. office, had a substantial commercial presence in the United States. The Defendants operated a fully and continuously functional office in Washington, D.C., during the relevant period. Defendants had thirty-five land line telephone and cell phone numbers and two bank accounts from 2002-2004.[14] See Defs.' Opening Mem., Ex. 3, at 20-22. The Defendants had a CD account as late as January 2003. Id., Ex. 3, at 20. Defendants also had ongoing commercial contracts and transactions with numerous U.S.-based businesses, including for office supplies and equipment, postage/shipping, new services/subscriptions, telecommunications/internet, IT support, accountant and legal services, and credit cards. See id., Ex. 4 ("Document Requests"), at 9-10. Defendants even paid for certain living expenses of Rahman. See id., Ex. 4, at 10.

Furthermore, the PA retained a consulting and lobbying firm through a multi-year, multimillion dollar contract. See Pls.' Opp. Mem., Ex. F. That contract resulted in the performance of services from November 1999 to at least April 2004. See id., Ex G. (11/29/1999 FARA Registration Statement filed by Firm for services to the PA); id., Ex. H-L (FARA Supplemental Statements filed by Firm from April 2000

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[13] Defendants have not offered any evidence or other basis to attribute particular D.C. office activities to a single entity.

[14] The D.C. office does not have telephone or bank records for 1998-2001.

to April 2004) (indicating that services were continuous and continued after 2002). In particular, these American agents engaged in numerous political activities on behalf of the PA such as office and lunch meetings with various U.S. government officials and departments.[15] Id., Exs. H-L (listing each of the activities during every six month period). These agents also promoted the PA's interests through television and radio appearances on occasion,[16] and pursuant to the Retainer Agreement, provided the PA with consulting and public relations services that would not have been disclosed in the required public filings as such. Id., Ex. F. This included the preparation of "weekly memoranda on developments in Washington which are relevant to the Palestinian Authority" and "[r]egular contacts . . . between personnel of the Firm and the Washington Office of the Palestinian Authority." Id., Ex. F, ¶¶ 3-4.

The Defendants also had a substantial promotional presence in the United States, with the D.C. office having been permanently dedicated to promoting

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[15] Approximate total are as follows: 36 activities in the six month period ending April 2000. See Pls.' Opp. Mem., Ex. H Part 1. 46 activities in the six month period ending October 2000. Id., Ex. H Part 2. 30 activities in the six month period ending April 2001. Id., Ex. I Part 1. 35 activities in the six month period ending October 2001. Id., Ex. I Part 2. 29 activities in the six month period ending April 2002. Id., Ex. J Part 1. 37 activities in the six month period ending October 2002. Id., Ex. J Part 2. 33 activities in the six month period ending April 2003. Id., Ex. K Part 1. 50 activities in the six month period ending October 2003. Id., Ex. K Part 2. 33 activities in the six month period ending April 2004. Id., Ex. L

[16] 17 activities in the six month period ending October 2000. See id., Ex. H Part 2.

the interests of the PLO and the PA. Based upon required disclosures to federal authorities, the D.C. office engaged in extensive public relations activities throughout the United States, ranging from interviews and speeches to attending and participating in various public events. See Stachman Declaration, Exs. 2-12. Defendants not only participated in a substantial number of events,[17] but also Defendants expended substantial amounts of money – often exceeding $200K every six months – on these activities. See id., Exs. 2-12; see also Unger, 325 F.Supp.2d at 4950 (summarizing the millions of dollars spend on media and public relations activities from 1999-2001). Rahman, the Chief Representative of the PLO and the PA in the United States, participated in at least 158 public interviews and media appearances between January 1998 and January 2004.[18] See Stachman Declaration ¶ 18 (listing events); id., Ex. 13 (providing transcripts). Most were broadcasted on major national news networks such as CNN, Fox News Channel, ABC, and MSNBC.

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[17] Approximate total are as follows: 14 events in the six month period ending September 1998. See Strachman Declaration, Ex. 2. 13 events in the six month period ending March 1999. Id., Ex. 3. 20 events in the six month period ending September 1999. Id., Ex. 4. 15 events in the six month period ending March 2000. Id., Ex. 5. 19 events in the six month period ending September 2000. Id., Ex. 6. 27 events in the six month period ending March 2001. Id., Ex. 7. 18 events in the six month period ending September 2001. Id., Ex. 8. 23 events in the six month period ending September 2002. Id., Ex. 10. 10 events in the six month period ending March 2003. Id., Ex. 11. 21 events in the six month period ending September 2003. Id., Ex. 12.

[18] Many of these events do not appear to have been disclosed in the required filings.

c. Jurisdictional Exceptions

Certain activities fall under jurisdictional exceptions and may not be properly considered as a basis of jurisdiction. See Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione, 937 F.2d 44, 51 n.7 (2d Cir. 1991) (noting examples). However, there is not a presumption that a jurisdictional exception applies where a dispute exists over excluding particular contacts. A plaintiff is not required to disprove the applicability of a jurisdictional exception simply because one is asserted by a defendant. A defendant bears the burden of demonstrating that it is entitled to the benefits of a jurisdictional exception, triggering a re-assessment of the sufficiency of a plaintiff's prima facie case. Unsupported allegations and assertions are simply insufficient after the parties have engaged in jurisdictional discovery.

With respect to foreign entities such as the PLO and the PA engaging in activities in the United States, two exceptions may be applicable. First, jurisdiction in the District of Columbia over a person or entity may not be grounded on the defendant's "contacts with a federal instrumentality," including where contacts only consist of "lobbying activity before federal agencies to secure their own proprietary interests." Bechtel & Cole v. Graceland Broadcasting, 1994 U.S. App. LEXIS 4468, at *3 (D.C. Cir. Mar. 9, 1994) (citing Environmental Research Intl, Inc. v. Lockwood Greene Engineers, Inc., 355 A.2d 808, 813 (D.C. 1976) (en banc)); id. (citing Naartex Consulting Corp. v. Watt, 232 U.S. App. D.C. 293, 722 F.2d 779, 787 (D.C. Cir. 1983) (citing Rose v. Silver, 394 A.2d 1368, 1373-

74 (D.C. 1978))).[19] The "government contacts" exception does not apply where the defendant is engaged in substantial activity beyond lobbying the federal government.

The Second Circuit has also held that participation in the United Nation's affairs by a "foreign organization" may not properly be considered as a basis of jurisdiction in New York. See Klinghoffer, 937 F.2d at 51-52. With respect to the PLO's New York office, the parties have produced little evidence, but no factual dispute appears to exist. The PLO operated and owned an office in New York City during the relevant period, in addition to the residence used by the Permanent Observer Mission of Palestine to the United Nations. See Dfs.' Opening Mem., Ex. 3, at 19-20. The PLO employed twenty employees at the New York office for all or a portion of the relevant period, and the PA employed one. Id., Ex. 3, at 6. The New York office had a checking account and at least two telephone lines. Id., Ex. 3, at 20, 22. Finally, Nasser Al-Kidwa, the ambassador during the relevant period, participated on behalf of the PLO in at least 73 media appearances and interviews between 2000 and 2003 on a mix of major national news networks and local stations. See Strachman Declaration ¶ 20 (listing events); id., Ex. 14 (transcripts).

Defendants assert that none of the contacts associated with the D.C. and New York offices can be con-

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[19] See also Klinghoffer, 937 F.2d at 51 (noting that the government contacts exception covers non-resident's "getting information from or giving information to the government, or getting the government's permission to do something.") (quoting Investment Co. Inst. v. United States, 550 F. Supp. 1213, 1216-17 (D.D.C 1982)).

sidered for purposes of establishing personal jurisdiction pursuant to the aforementioned exceptions. Defendants do not, however, provide any evidence demonstrating that either office exclusively and solely dealt with the federal government or the UN. Nor have Defendants made an effort to demonstrate that their activities in Washington, D.C., and New York were commensurate with their special diplomatic need for being present in those cities. See, e.g., Fandel v. Arabian American Oil Co., 345 F.2d 87, 89 (D.C. Cir. 1965). With respect to the activities involving the New York office, Defendants are entitled to the Klinghoffer jurisdictional exception. Plaintiffs have failed to identify any contacts that raise a dispute over the exclusivity of the activities conducted from the New York office, and, in any event, the evidence indicates that the activities were primarily related to the PLO's UN affairs.

With respect to the activities involving the D.C. office, Defendants have failed to demonstrate by a preponderance of the evidence that any of the contacts should be excluded by either jurisdictional exception. The Klinghoffer jurisdictional exception is inapplicable because there is no evidence that the D.C.-based activities involved UN affairs,[20] and because the exception does not provide for a blanket immunization

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[20] Defendants never assert that they were conducting UN affairs from the D.C. office. In fact, the evidence – namely, the deposition testimony of Said M. Hamad, Deputy Chief in the D.C. office – indicates that they had no involvement with UN activities.

Q: And the office in New York, are you involved with that office at all? Do you communicate with them?

A No.;

of all contacts in the United States. Defendants have failed to demonstrate by a preponderance of the evidence that their activities from the Washington, D.C. office exclusively involved contacting some branch of the federal government. Outside of New York, Defendants are no different than any other political organization based in Washington, D.C.,[21] and yet the record contains overwhelming evidence that Defendants were primarily in Washington, D.C. pursuing their political interest, but were not solely conducting diplomatic activities with our government.

Nevertheless, even after excluding activities conducted in furtherance of the PLO's observer status and contacts with the federal government, the remaining contacts would still provide a sufficient basis to exercise general jurisdiction over the Defendants. See, e.g., Unger, 325 F. Supp. 2d at 53; see also Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione etc., 795 F. Supp. 112, 114 (S.D.N.Y. 1992). The PLO and the PA were continuously and systematically present

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Q Why is that?

A Because they have their own business at U.N.

Q And you don't coordinate any activities?

A Well, there's no activities to coordinate. They have their own business. Their mission is the United States. We have nothing to do with them, they have nothing to do with us, except hello and all.

See Strachman Declaration, Ex. N, at 31.

[21] Palestine, as discussed in this Court's 9/30/2008 Memorandum Decision and Order, is not recognized, under United States law, as a 'foreign state.'" Sokolow, 583 F. Supp. 2d at 458. "[D]efendants cannot derivatively secure sovereign immunity as agencies and/or instrumentalities of Palestine," and "the PA is [not] . . . entitled to immunity as a political subdivision of Israel." Id.

in the United States by virtue of their extensive public relations activities. Whether characterized as diplomatic public-speaking or proselytizing, the forums and audiences clearly indicate that the vast majority of these appearances were not directly communicating to or sponsored by the federal government or the United Nations General Assembly. These appearances were separate from Defendants' diplomatic foreign affairs functions in the United States, such as the PLO's right to speak at the United Nations General Assembly meetings, or the PLO or the PA's efforts to petition the United States government. This alone is a sufficient basis to decline to ignore the entire physical presence, commercial transactions, and other activities of the D.C. office. Thus, as found in Unger, "even if the court excludes from its consideration contacts by the Washington Office of the PLO with the federal government [or by the New York office with the UN], the other activities of that office are sufficient to allow this court to find minimum contacts." 325 F. Supp. 2d at 53; see also Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione, 795 F. Supp. 112, 114 (S.D.N.Y. 1992).

3. Reasonableness

The second part of the jurisdictional analysis asks "whether the assertion of personal jurisdiction comports with 'traditional notions of fair play and substantial justice' – that is, whether it is reasonable under the circumstances of the particular case." Metro. Life, 84 F.3d at 568 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945)). Where a plaintiff makes the threshold showing of the minimum contacts required to meet the first test, a defendant must present "a compelling case that

the presence of some other considerations would render jurisdiction unreasonable." Id. (quoting Burger King, 471 U.S. at 477). Courts are to consider five factors in evaluating reasonableness: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies." Id. at 568 (citing Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113-14 (1987); Burger King, 471 U.S. at 476-47)).

Here, neither the PLO nor the PA has presented a compelling case that exercising jurisdiction over them in the present action will offend the Constitution or federal law. The reality is that ATA litigation often involves foreign individuals and entities, and thereby, a statutory cause of action for international terrorism exists. There is a strong inherent interest of the United States and Plaintiffs in litigating ATA claims in the United States. The Defendants have not demonstrated that this case would impose a more significant burden than can typically be expected, particularly in light of the fact that they have vigorously engaged in such litigation several times before. The Defendants have also failed to identify an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy.

CONCLUSION

Defendants' motion to dismiss for lack of personal jurisdiction is DENIED.

Dated: New York, New York
March 30, 2011

SO ORDERED:

s/
GEORGE B. DANIELS
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK I. SOKOLOW, et al.,

Plaintiffs,

v. 04 CV 00397 (GBD)

PALESTINIAN LIBERATION ORGANIZATION, et al.,

Defendants.

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New York, N.Y.
April 11, 2014
2:00 p.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

ARNOLD & PORTER, LLP
Attorneys for Plaintiffs
KENT YALOWITZ
KEN HASHIMOTO

PHILIP HORTON
TAL MACHNES

MILLER & CHEVALIER CHARTERED
Attorneys for Defendants
LAURA FERGUSON
BRIAN HILL
MARK ROCHON

* * *

[Page 67]

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THE COURT: At this point, I'm going to deny the **[Page 68]** motion to reconsider.

At this point I don't think there has been such a significant change in the law that now makes this case not an appropriate case for litigation here on this record.

I think the activities are continuous and systematic. I think that the arguments with regard to jurisdiction, the defendants want to argue that the law has significantly changed, but a motion based on jurisdiction was an argument to be made much earlier in this case and that argument was not made with regard to the lack of due process, even though there was case law from which one could have made such an argument.

I think at this point on the record that I have before me, whether or not I'm applying the proportionality test or a qualitative test, I don't see that I have a basis to conclude that somehow that the PLO's activity outside of the West Bank, and the nature of their activities here in the United States, would not qualify as a continuous and systematic activity and contact to make it at home in the United States.

Quite frankly, I don't have, on this record, any basis to believe that they're engaged in any significant activity of the kind that they're continuously and systematically involved in in the United States than any other country. I don't have such a record that wasn't the issue, but because that wasn't the issue, it's not a basis for a motion to reconsider. I don't have those

facts now. The motion to reconsider was made **[Page 69]** without those facts. So, I don't think that that is a basis.

I think there is no reason at this point, given the litigation that the PLO has continuously been involved in in the United States, they're involved without assertions of lack of jurisdiction and involved in even beyond any assertion of a lack of jurisdiction, that somehow I have a record before me to be the first Court to say that there's no basis to sue the PLO in the United States on the basis of their continuous and systematic contact that its at home in this jurisdiction.

If some factual analysis is done in a case or cases that have such a record to produce such a result, then I'm willing to consider that if that is compelling or binding case law, but I don't have such a record. Quite frankly, the activity that is at issue here seems to be significant, and significantly different, even than the activity in the West Bank.

Given its continuous and ongoing activity here and no indication that worldwide it has greater activity than its home base, someplace else other than the West Bank, I have no basis on this record to reconsider this and make a factual determination that the contacts are so not continuous and significant and systematic enough to make it at home in this this country to be expected to be sued based on its continuous and significant contact and activity in this country.

I don't think there's anything nor has it ever been **[Page 70]** demonstrated, and if it's to be argued someplace else and convincingly, then I'd like to see it, but I have no basis to conclude that a successful argument lies that it's somehow violative of their due process rights for them to be expected to be sued in the United

States based on what is, obviously, its greatest level of PR and political activity as the record is before me at this point in the United States other than anyplace else, so I'm going to deny the motion.

We're going to move forward. If the law significantly changes, then we will address that. But I don't think *Daimler* stands for the proposition that I should do anything other than make an independent factual evaluation of the significance of the contact in its continuous and systematic nature to make a determination of whether or not it makes the PLO at home in the United States.

To the extent that it can be sued in the United States rather than simply only be sued in the West Bank, where really the only argument that's being made is that it's an alternative forum that would have jurisdiction over the PLO or the Palestinian Authority, I think it raises other issues which I think are not ripe for determination now. It may not be ripe for determination during this litigation. It's a little awkward to argue that the only place that they can be sued is the place where they govern, even though they have what's expected to be ongoing, continuous, significant activity in the **[Page 71]** United States, that activity is insufficient contact to make them at home in any place other than the West Bank.

I'm not aware of any greater level of activity over a longer time period and the type of activity that's continuously engaged in in the United States, on this record or on any record. I'm not aware of any jurisdiction in which that level of activity is more continuous, more systematic, and is more significant on an ongoing basis than in the United States.

I think unless the test is that they can only be sued in their home base, and I won't even use the term

"their principal place of business" because I don't think that's an appropriate term to use – this is not the corporation doing business.

I don't think that the result of it, somehow that that's the only place, given what one of the defendant would characterize as an insignificant rather than a significant level of activity than the United States, insignificant to the extent that it does not make them at home in the United States, I don't think that argument compels saying they cannot be sued here, that they should not expect to be sued here, and that their activity is insufficient for them to be sued here.

I'm not particularly compelled by some of the plaintiffs' other arguments, but I think some of them might still apply, even if that were the case.

But at this point, given the limited evaluation that **[Page 72]** I'm supposed to give to a motion to reconsider, I don't believe that *Daimler* or *Goodyear* themselves make such a pronouncement that it compels a different decision based on a significant change in the law in order to make a different determination that somehow the contacts and activity of the PLO do not meet the test as it has been articulated.

I'm going to deny the motion, and we're going to move forward on the schedule that we have already agreed to.

Let me give the court reporter a break and then I want to address some basic issues. We're not going to address all of the issues that the parties have raised, but there are a couple of issues that should be addressed today so we can move forward efficiently in this case.

* * *

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW et al., Plaintiffs, -against- PALESTINE LIBERATION ORGANIZATION, et al., Defendants.	:	DATE FILED: JUN 16 2014 ORDER 04 Civ 397 (GBD)(RLE)

GEORGE B. DANIELS, United States District Judge:

For the reasons articulated at the April 11, 2014 oral argument, Defendants' motion for reconsideration of this Court's Opinion and Order of March 30, 2011 denying Defendants' motion to dismiss for lack of personal jurisdiction is DENIED.

The clerk of the court is directed to close the motion at ECF No. 421.

Dated: June 16, 2014
New York, New York

SO ORDERED:

s/
GEORGE B. DANIELS
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al., Plaintiffs, -against- THE PALESTINE LIBERATION ORGANIZATION, THE PALESTINIAN AUTHORITY, et al., Defendants.	:	DATE FILED: DEC 1 2014 MEMORANDUM DECISION AND ORDER 04 Civ. 397 (GBD)

GEORGE B. DANIELS, United States District Judge:

Defendants, the Palestine Liberation Organization ("PLO") and the Palestinian Authority ("PA"), each moved for summary judgment in part on the grounds that this Court lacks personal jurisdiction over them in light of the Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Defendants' motions for dismissal and summary judgment based on lack of personal jurisdiction are DENIED.

Prior to the *Daimler* decision, Defendants moved to dismiss arguing that this Court did not have jurisdiction over them on the basis that the PLO and PA had insufficient contacts with the United States. (*See* ECF Nos. 66 & 81.) This Court denied those motions

and "agree[d] with every federal court to have considered the issue that the totality of activities in the United States by the PLO and the PA justifie[d] the exercise of general personal jurisdiction." (*See* ECF No. 87 at 7 (March 30, 2011).)[1]

Following the Supreme Court's decision in *Daimler*, Defendants filed motions for reconsideration of this Court's March 30, 2011 denial of Defendants' motions to dismiss. (*See* ECF No. 421 (Jan. 31, 2014).) Defendants argued that *Daimler* served as "an intervening change in the controlling law," requiring a different conclusion because Defendants were not "at home" in the United States. (*Id.* at 1, 7.) On April 11, 2014, this Court denied Defendants' motions for reconsideration ruling that *Daimler* did not warrant dismissal of this case against either Defendant. (Oral

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[1] This Court's previous decision laid out Defendants' systematic and continuous contacts and activities with the United States and stated:

> The reality is that ATA litigation often involves foreign individuals and entities, and thereby, a statutory cause of action for international terrorism exists. There is a strong inherent interest of the United States and Plaintiffs in litigating ATA claims in the United States. The Defendants have not demonstrated that this case would impose a more significant burden than can typically be expected, particularly in light of the fact that they have vigorously engaged in such litigation several times before. The Defendants have also failed to identify an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy.
>
> (ECF No. 87 at 16.)

Argument (Apr. 11, 2014); *see also* ECF No. 537.) Defendants' motions to certify this issue for interlocutory appeal were similarly denied, and the case was scheduled for trial. (ECF No. 543.)

Defendants renewed their *Daimler* argument in their motions for summary judgment. (*See* ECF Nos. 496 & 497.) Defendants thereafter submitted to this Court the Second Circuit's decision in *Gucci America, Inc. v. Weixing Li*, 768 F.3d 122 (2d Cir. 2014), arguing that the *Gucci* Court's interpretation of *Daimler*, as changing the controlling precedent in this Circuit, requires dismissal of this case. In *Gucci*, the court reiterated the holding in *Daimler*:

> [A] corporation may . . . be subject to general jurisdiction in a state only where its contacts are so 'continuous and systematic,' judged against the corporation's national and global activities, that it is 'essentially at home' in that state. Aside from 'an exceptional case' . . . corporation is at home (and thus subject to general jurisdiction, consistent with due process) only in a state that is the company's formal place of incorporation or its principal place of business.

Id. at 135 (citing *Daimler*, 134 S. Ct. at 761-62 & n.19). The court in *Gucci* went on to explain that the Supreme Court in *Daimler* "expressly warned against the 'risks to international comity' of an overly expansive view of general jurisdiction inconsistent with 'the fair play and substantial justice' due process demands." 768 F.3d at 135 (citing 134 S. Ct. at 763 (citation and quotation omitted)).

Under a *post-Daimler* and *-Gucci* analysis, this Court has personal jurisdiction pursuant to the Anti-terrorism Act, 18 U.S.C. § 2331, *et. seq.*, over the PA

and PLO. Defendants' motions asserting lack of personal jurisdiction are denied because this action presents such "an exceptional case," as alluded to in *Daimler* and *Gucci*.[2]

Defendants by their own admission are not foreign corporations and therefore are not subject to the traditional analysis of determining a defendant's place of incorporation or principal place of business.[3] Under both *Daimler* and *Gucci*, the PA and PLO's continuous and systematic business and commercial contacts within the United States are sufficient to support the exercise of general jurisdiction. (*See* ECF No. 87 (analyzing Defendants' business and commercial contacts with the United States following extensive jurisdictional discovery).)

Each Defendant argues that its own individual contacts with the United States are minimal, especially when compared to their contacts elsewhere. The PLO contacts that Defendant PLO identifies outside of the United States-namely that "there were several embassies, missions and delegations maintained

---

[2] Defendants argue that they did not waive their personal jurisdiction objections because *Daimler* and *Gucci* changed the controlling precedent in this Circuit. However, Defendants' motions asserting lack of personal jurisdiction are not denied based on a theory of waiver.

[3] Defendants point out that they are not individuals, partnerships or corporations. (ECF No. 498, Ex. A., 1, 17-22.) In their memorandum in support of their motions for summary judgment, Defendants describe both the PA and PLO as "foreign organizational defendant[s]." (ECF No. 497 at 49.) In their memorandum in opposition to Plaintiffs' motion for summary judgment, Defendants are self-described as "(1) unincorporated; (2) foreign governmental organizations; of (3) an unrecognized foreign state." (ECF No. 523 at 6.)

by the PLO around the world that were larger than the PLO Delegation [in the United States]"—do not lead to the conclusion that the PLO is "at home" in any one of those countries, nor does the PLO make such a claim. (ECF No. 497 at 49.) Defendant PLO does not specify the nature or extent of its contacts or activities in other countries; it relies on the collective number of personnel in foreign embassies, missions and delegations around the world, but does not identify any one of those countries as a place where the PLO is "at home" based on greater business and commercial activities than are conducted in the United States.[4] Similarly, Defendant PA estimates that it had over 100,000 employees in 2002, but it does not identify which, if any, of those employees engaged in activities in any country outside of the "Palestinian Territories in the West Bank and Gaza Strip." (*See* ECF No. 498, Ex. A., ¶¶ 2, 40.) This record is therefore insufficient to conclude that either defendant is "at home" in a particular jurisdiction other than the United States.

Undertaking a comity analysis further supports asserting personal jurisdiction because doing so does not conflict with any foreign country's applicable law or sovereign interests, nor is it in contravention of the laws of any foreign country.[5]

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[4] The chief representative of the PLO to the United States asserts: "[T]he PLO employed at various times approximately 1,300 persons to work in its embassies, missions and delegations in countries or organizations outside the United States." (ECF No. 497, Ex. A-71, ¶ 18.)

[5] Defendants do not argue in their memorandum in support of their motions for summary judgment that this Court should engage in a comity analysis, nor do they cite foreign laws that conflict with the exercise of general jurisdiction pursuant to the ATA. (*See* ECF No. 497 at 49-50.)

CONCLUSION

Defendants' motions for summary judgment on the ground that this Court does not have personal jurisdiction over the PA or PLO are DENIED.

Dated: December 1, 2014
New York, New York

SO ORDERED:

s/
GEORGE B. DANIELS
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELISE GOULD, RONALD GOULD, SHAYNA GOULD, JESSICA RINE, HENNA NOVACK WALDMAN, MORRIS WALDMAN, SHMUEL WALDMAN, Plaintiffs, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	FEB 25 2015 **Jury Verdict Form** 04 Civ. 00397 (GBD)

LIABILITY

I. JANUARY 22, 2002 - JAFFA ROAD SHOOTING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **January 22, 2002** attack because the **PLO** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__ YES _____ NO

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the

January 22, 2002 attack because the **PA** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 22, 2002** attack because an employee of the **PA**, acting within the scope of his employment and in furtherance of the activities of the **PA**, either carried out, or knowingly provided material support or resources that were used in preparation for or in carrying out, this attack?

__✓__YES _____ NO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELANA SOKOLOW, JAMIE SOKOLOW, LAUREN SOKOLOW, MARK SOKOLOW, RENA SOKOLOW,	:	
Plaintiffs,	:	**Jury Verdict Form**
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	04 Civ. 00397 (GBD)
Defendants.	:	

LIABILITY

II. JANUARY 27, 2002 - JAFFA ROAD BOMBING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **January 27, 2002** attack because the **PLO** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

   __✓__ YES **_____ NO**

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 27, 2002** attack because the **PA** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 27, 2002** attack because an employee of the **PA**, acting within the scope of his employment and in furtherance of the activities of the **PA**, either carried out, or knowingly provided material support or resources that were used in preparation for or in carrying out, this attack?

__✓__YES _____ NO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALAN BAUER, BINYAMIN BAUER, DANIEL BAUER, YEHONATHON BAUER, YEHUDA BAUER,	:	
Plaintiffs,	:	**Jury Verdict Form**
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	04 Civ. 00397 (GBD)
Defendants.	:	

LIABILITY

III. MARCH 21, 2002 - KING GEORGE STREET BOMBING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **March 21, 2002** attack because the **PLO** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__ YES **_____ NO**

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **March 21, 2002** attack because the **PA** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **March 21, 2002** attack because an employee of the **PA**, acting within the scope of his employment and in furtherance of the activities of the **PA**, either carried out, or knowingly provided material support or resources that were used in preparation for or in carrying out, this attack?

__✓__YES _____ NO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD MANDELKORN, Plaintiff, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

LIABILITY

IV. JUNE 19, 2002 - FRENCH HILL BOMBING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **June 19, 2002** attack because the **PLO** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

   __✓__ YES _____ NO

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **June 19, 2002** attack because the **PA** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

   __✓__ YES _____ NO

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **June 19, 2002** attack because the **PLO**

knowingly provided to the al-Aqsa Martyrs' Brigade, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

4. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **June 19, 2002** attack because the **PA** knowingly provided to the al-Aqsa Martyrs' Brigade, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHERINE BAKER, ESTATE OF BENJAMIN BLUTSTEIN, REBEKAH BLUTSTEIN, RICHARD BLUTSTEIN, ESTATE OF DIANE CARTER, LARRY CARTER, SHAUN CHOFFEL, ROBERT L. COULTER JR., DIANE COULTER MILLER, ROBERT L. COULTER SR., ESTATE OF JANIS RUTH COULTER, ESTATE OF DAVID GRITZ, NEVENKA GRITZ (on behalf of herself and as successor to NORMAN GRITZ), Plaintiffs, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

LIABILITY

V. July 31, 2002 - HEBREW UNIVERSITY BOMBING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **July 31, 2002** attack because the **PLO**

knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **July 31, 2002** attack because the **PA** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **July 31, 2002** attack because an employee of the **PA**, acting within the scope of his employment and in furtherance of the activities of the **PA**, either carried out, or knowingly provided material support or resources that were used in preparation for or in carrying out, this attack?

__✓__YES _____ NO

4. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **July 31, 2002** attack because the **PLO** knowingly provided to Hamas, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

5. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the

July 31, 2002 attack because the **PA** knowingly provided to Hamas, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__ **YES** _____ **NO**

6. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **July 31, 2002** attack because the **PLO** harbored or concealed a person who the **PLO** knew, or had reasonable grounds to believe, committed or was about to commit this attack?

__✓__ **YES** _____ **NO**

7. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **July 31, 2002** attack because the **PA** harbored or concealed a person who the **PA** knew, or had reasonable grounds to believe, committed or was about to commit this attack?

__✓__ **YES** _____ **NO**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHANA GOLDBERG, ELIEZER GOLDBERG, ESTHER GOLDBERG, KAREN GOLDBERG, SHOSHANA GOLDBERG, TZVI GOLDBERG, YAAKOV GOLDBERG, YITZHAK GOLDBERG, Plaintiffs, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

LIABILITY

VI. JANUARY 29, 2004 - BUS NO. 19 BOMBING

1. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **January 29, 2004** attack because the **PLO** knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__YES _____ NO

2. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 29, 2004** attack because the **PA**

knowingly provided material support or resources that were used in preparation for or in carrying out this attack?

__✓__ **YES** _____ **NO**

3. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 29, 2004** attack because an employee of the **PA**, acting within the scope of his employment and in furtherance of the activities of the **PA**, either carried out, or knowingly provided material support or resources that were used in preparation for or in carrying out, this attack?

__✓__ **YES** _____ **NO**

4. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PLO** is liable for the **January 29, 2004** attack because the **PLO** knowingly provided to the al-Aqsa Martyrs' Brigade, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__ **YES** _____ **NO**

5. Did Plaintiffs prove by a preponderance of the evidence that **Defendant PA** is liable for the **January 29, 2004** attack because the **PA** knowingly provided to the al-Aqsa Martyrs' Brigade, after its designation as a Foreign Terrorist Organization, material support or resources that were used in preparation for or in carrying out this attack?

__✓__ **YES** _____ **NO**

IF YOU ANSWERED "YES" IN RESPONSE TO AT LEAST ONE PREVIOUS QUESTION, PLEASE PROCEED TO ANSWER THE RELATED DAMAGES QUESTIONS BEGINNING ON PAGE 10. IF YOU ANSWERED "NO" IN RESPONSE TO EVERY PREVIOUS QUESTION, YOU SHOULD PROCEED NO FURTHER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELISE GOULD, RONALD GOULD, SHAYNA GOULD, JESSICA RINE, HENNA NOVAK WALDMAN, MORRIS WALDMAN, SHMUEL WALDMAN, Plaintiffs, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

DAMAGES

I. JANUARY 22, 2002 - JAFFA ROAD SHOOTING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Elise Gould's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$3,000,000.00

2. What amount of damages, if any, do you award as compensation for Plaintiff **Ronald Gould's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$3,000,000.00

3. What amount of damages, if any, do you award as compensation for Plaintiff **Shayna Gould's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$20,000,000.00

4. What amount of damages, if any, do you award as compensation for Plaintiff **Jessica Rine's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$3,000,000.00

5. What amount of damages, if any, do you award as compensation for Plaintiff **Henna Novack Waldman's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$2,500,000.00

6. What amount of damages, if any, do you award as compensation for Plaintiff **Morris Waldman's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$2,500,000.00

7. What amount of damages, if any, do you award as compensation for Plaintiff **Shmuel Waldman's** injuries that you determine were caused by the **January 22, 2002** terrorist attack?

$7,500,000.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELANA SOKOLOW, JAMIE SOKOLOW, LAUREN SOKOLOW, MARK SOKOLOW, RENA SOKOLOW,	:	
Plaintiffs,	:	**Jury Verdict Form**
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	04 Civ. 00397 (GBD)
Defendants.	:	

DAMAGES

II. JANUARY 27, 2002 - JAFFA ROAD BOMBING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Elana Sokolow's** injuries that you determine were caused by the **January 27, 2002** terrorist attack?

$2,500,000.00

2. What amount of damages, if any, do you award as compensation for Plaintiff **Jamie Sokolow's** injuries that you determine were caused by the **January 27, 2002** terrorist attack?

$6,500,000.00

3. What amount of damages, if any, do you award as compensation for Plaintiff **Lauren Sokolow's** injuries that you determine were caused by the **January 27, 2002** terrorist attack?

$5,000,000.00

4. What amount of damages, if any, do you award as compensation for Plaintiff **Mark Sokolow's** injuries that you determine were caused by the **January 27, 2002** terrorist attack?

$5,000,000.00

5. What amount of damages, if any, do you award as compensation for Plaintiff **Rena Sokolow's** injuries that you determine were caused by the **January 27, 2002** terrorist attack?

$7,500,000.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALAN BAUER, BINYAMIN BAUER, DANIEL BAUER, YEHONATHON BAUER, YEHUDA BAUER,	:	
Plaintiffs,	:	**Jury Verdict Form**
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	04 Civ. 00397 (GBD)
Defendants.	:	

DAMAGES

III. MARCH 21, 2002 - KING GEORGE STREET BOMBING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Alan Bauer's** injuries that you determine were caused by the **March 21, 2002** terrorist attack?

$7,000,000.00

2. What amount of damages, if any, do you award as compensation for Plaintiff **Binyamin Bauer's** injuries that you determine were caused by the **March 21, 2002** terrorist attack?

$1,000,000.00

3. What amount of damages, if any, do you award as compensation for Plaintiff **Daniel Bauer's** injuries that you determine were caused by the **March 21, 2002** terrorist attack?

$1,000,000.00

4. What amount of damages, if any, do you award as compensation for Plaintiff **Yehonathon Bauer's** injuries that you determine were caused by the **March 21, 2002** terrorist attack?

$25,000,000.00

5. What amount of damages, if any, do you award as compensation for Plaintiff **Yehuda Bauer's** injuries that you determine were caused by the **March 21, 2002** terrorist attack?

$1,000,000.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD MANDELKORN, Plaintiff, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

DAMAGES

IV. JUNE 19, 2002 - FRENCH HILL BOMBING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Leonard Mandelkorn's** injuries that you determine were caused by the **June 19, 2002** terrorist attack?

$10,000,000.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHERINE BAKER, ESTATE OF BENJAMIN BLUTSTEIN, REBEKAH BLUTSTEIN, RICHARD BLUTSTEIN, ESTATE OF DIANE CARTER, LARRY CARTER, SHAUN CHOFFEL, ROBERT L. COULTER JR., DIANE COULTER MILLER, ROBERT L. COULTER SR., ESTATE OF JANIS RUTH COULTER, ESTATE OF DAVID GRITZ, NEVENKA GRITZ (on behalf of herself and as successor to NORMAN GRITZ),	:	**Jury Verdict Form**
Plaintiffs,	:	04 Civ. 00397 (GBD)
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	
Defendants.	:	

DAMAGES

V. July 31, 2002 - HEBREW UNIVERSITY BOMBING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Katherine Baker's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$6,000,000.00

2. What amount of damages, if any, do you award as compensation for Plaintiff **Benjamin Blutstein's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$2,500,000.00

3. What amount of damages, if any, do you award as compensation for Plaintiff **Rebekah Blutstein's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$4,000,000.00

4. What amount of damages, if any, do you award as compensation for Plaintiff **Richard Blutstein's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$6,000,000.00

5. What amount of damages, if any, do you award as compensation for Plaintiff **Diane Carter's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$1,000,000.00

6. What amount of damages, if any, do you award as compensation for Plaintiff **Larry Carter's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$6,500,000.00

7. What amount of damages, if any, do you award as compensation for Plaintiff **Shaun Choffel's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$1,500,000.00

8. What amount of damages, if any, do you award as compensation for Plaintiff **Robert L. Coulter Jr.'s** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$3,000,000.00

9. What amount of damages, if any, do you award as compensation for Plaintiff **Diane Coulter Miller's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$3,000,000.00

10. What amount of damages, if any, do you award as compensation for Plaintiff **Robert L. Coulter Sr.'s** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$7,500,000.00

11. What amount of damages, if any, do you award as compensation for Plaintiff **Janis Ruth Coulter's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$2,500,000.00

12. What amount of damages, if any, do you award as compensation for Plaintiff **David Gritz's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$2,500,000.00

13. What amount of damages, if any, do you award as compensation for Plaintiff **Nevenka**

Gritz's injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$10,000,000.00

14. What amount of damages, if any, do you award to Plaintiff **Nevenka Gritz as successor to Norman Gritz** as compensation for Plaintiff **Norman Gritz's** injuries that you determine were caused by the **July 31, 2002** terrorist attack?

$2,500,000.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHANA GOLDBERG, ELIEZER GOLDBERG, ESTHER GOLDBERG, KAREN GOLDBERG, SHOSHANA GOLDBERG, TZVI GOLDBERG, YAAKOV GOLDBERG, YITZHAK GOLDBERG, Plaintiffs, v. THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA), Defendants.	:	**Jury Verdict Form** 04 Civ. 00397 (GBD)

DAMAGES

VI. JANUARY 29, 2004 - BUS NO. 19 BOMBING

1. What amount of damages, if any, do you award as compensation for Plaintiff **Chana Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$8,000,000.00

2. What amount of damages, if any, do you award as compensation for Plaintiff **Eliezer Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$4,000,000.00

3. What amount of damages, if any, do you award as compensation for Plaintiff **Esther Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$8,000,000.00

4. What amount of damages, if any, do you award as compensation for Plaintiff **Karen Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$13,000,000.00

5. What amount of damages, if any, do you award as compensation for Plaintiff **Shoshana Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$4,000,000.00

6. What amount of damages, if any, do you award as compensation for Plaintiff **Tzvi Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$2,000,000.00

7. What amount of damages, if any, do you award as compensation for Plaintiff **Yaakov Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$2,000,000.00

8. What amount of damages, if any, do you award as compensation for Plaintiff **Yitzhak Goldberg's** injuries that you determine were caused by the **January 29, 2004** terrorist attack?

$6,000,000.00

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK I. SOKOLOW, et al.,

Plaintiffs,

v.

04 CV 397 (GBD)

PALESTINE LIBERATION ORGANIZATION, et al.,

Defendants.

----------X

New York, N.Y.
July 28, 2015
11:19 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

ARNOLD & PORTER LLP
Attorneys for Plaintiffs
BY: KENT A. YALOWITZ
TAL MACHNES
CARMELA T. ROMEO

SQUIRE PATTON BOGGS
Attorneys for Defendants
BY: GASSAN A. BALOUL
MITCHELL R. BERGER
ALEXANDRA E. CHOPIN
JOHN A. BURLINGAME

* * *

[Page 89]

* * *

MR. YALOWITZ: Okay. That's all I have to say about that.

With regard to Daimler, I think the comments that you made were really spot-on and reflected – I have to say I thought reflected a judicial mind. You know, lawyers come in and they say well here's the test and here's how I apply it and here's the test. You sit in a different position on the bench and you think about well what does this mean for the real live **[Page 90]** people who are supposed to apply these rules and live with them. And I really liked it. I thought it was really spot-on. I think that it's routed in Daimler in this way which I'll explain.

In Daimler, Justice Ginsburg said we're – this decision that we're making that the stakes shouldn't be exercising general jurisdiction, she didn't say anything about the United States but about individual states, is routed in international comity because we've heard from our European nation counterparts, not judges but the European nations have complained that their corporations are being subject to general jurisdiction suit in judicial jurisdictions like Mississippi or California, whatever, where it's a problem for the European corporations and they said in Europe they don't have that rule. And that's the point of international comity. You're supposed to give as full effect as you can to the laws of a foreign sovereign. And in this exceptional case we're not dealing with a foreign sovereign. There is no foreign sovereign saying it's a problem for us if the PA or the PLO or an unregistered ship – I mean it's like that. It's a stateless entity.

And so it's not only your point, which I agree with, that you're looking for a place where they are at home and subject to suit. It's – you're looking for a place where they're at home subject to suit by another sovereign, and that's what's driving Daimler and that's what's driving Gucci. **[Page 91]** They said the same thing in Gucci. It's about international comity. It's really just another I agree and here's another thing. That's really all I need to say about that unless you have thoughts or questions or things you want to talk.

THE COURT: That's a point for me to consider. I think – I don't think I disagree with that. I think that the comity, and I think we discussed that and I've discussed that in one of the opinions on this issue, the comity issue – I think that was significant in Daimler. And Daimler is not just talking about – Daimler isn't just a due process argument on – to benefit the defendant. Daimler is also, and depending on which justice that you would discuss it with, more or less significant in a comity context in saying to other governments and so that they will say the same thing to us that, no, we have a greater interest in resolving these disputes. You do not. They're at home here. And to regulate how business is supposed to efficiently effectively operate, international comity has to say that the place where you're at home is the jurisdiction that should decide these issues. And I think that's recognized in Daimler. And maybe it's reading too much into Daimler but I think that that is what's recognized in Daimler.

And I think that partially what drives my analysis of: Okay, where is the competing jurisdiction? Who says that they have the interest to resolve this dispute and resolve it fairly **[Page 92]** for both sides? What

is driving the court to say that, look, where – the jurisdiction and the sovereignty that regulates by law the relationships of individuals and entities because that's – and has the strongest interest to do so, a at-home test finds that location. And it gives you an opportunity not to be dragged into a foreign jurisdiction under foreign laws but as importantly, if not more importantly, it gives that jurisdiction an opportunity to resolve these disputes in the context that it has an interest in regulating the relationships, particularly of corporations, but relationships vis-a-vis individuals and corporate entities and other noncorporate entities that have a like structure and conduct themselves in a like business manner.

That's primarily what Daimler is dealing with. It is not a real debate to try to figure out whether the PLO is an exceptional circumstance that falls within the definition of usual or exception. The standard case that Daimler is talking about, those cases are not PLO. They are corporate relationships that Daimler knows that there isn't – in most cases there's an easy, direct way to establish those relationships.

Corporations have two anchors. They have the principal place of business that we recognize and they have their place of incorporation that we recognize. And those are all standard tests that we standardly use. When we use **[Page 93]** something outside of that test and it is not – and Daimler implies that what we use is no longer the significance of – simply the significance of the contacts, then it seems to me that exceptional has many definitions, one of which – if I put exceptional on one side and the usual on the other side, I would have to put the PLO in the exceptional category than the usual category. Otherwise we wouldn't even be having this debate about territory,

jurisdiction, where – Oslo Accords, whether they're a recognized country or government, whether they really – do we really think that they can be sued if these plaintiffs wanted to sue them.

Is that what is intended by Daimler? Did Daimler really intend to say to these plaintiffs you want to sue the PLO, you go to the West Bank? That's a legitimate question. That's a legitimate question.

Do I know the answer to that question? I don't know. I didn't write Daimler. I wasn't in any debate on Daimler. I'm only trying to apply it in a way where the Second Circuit has yet to give any guidance on it and, quite frankly, I know that – I know where the other judges ended up. They believed that that is the right position and they may, in fact, have the right position. But I know in watching their analysis and what they were asking from the parties and how they were approaching it, this was not an easy question for them either. They have just as much or as little guidance to go on as I do.

[Page 94] So, as you say, most of our arguments are just based on our perspectives, our analysis of what the consequences are. And as I always say, there are no right answers here. There are only answers that work and ones that don't. I'm looking for the answer that works because there is no right answer. Nobody said this is the way you're supposed to do it clearly.

I am not convinced that the analysis by the court in the – the courts in D.C. provide a reasonable alternative for a plaintiff who finds themselves in a Daimler analysis to try to bring a claim. And I'm not sure that Daimler intended that effect. And if Daimler really did intend that effect, then I think the Second Circuit or the Supreme Court should say that. Because

it is not, from my perspective, it is clearly an exceptional circumstance and simply because it's an exceptional circumstance doesn't mean that the analysis still wouldn't, under the exceptional circumstances, fall within any defendant's favor, even analyzing it under the exceptional circumstances.

Obviously, arguments can be made that they are neither at home or – they're not at home in the United States. Those arguments can be made whether you analyze it under what one might think is a usual test or exceptional circumstance. But it does not appear to me that this is what the Supreme Court had in mind when it thought about how Daimler – what effect Daimler would have and how it would be applied. And I'm not **[Page 95]** sure this is what they meant.

So I think the record on that, I think the Second Circuit needs to address it. I think the D.C. Circuit needs to address it. Whether or not they end up at the same place or they end up at different places and the Supreme Court ends up having to address it specifically will be another issue. But I don't – I think the same facts and the same law exist before me and the D.C. judges. And I think we just come to a different point and a different conclusion. And I think that that issue – I'm not – I have no reason at this point to change my analysis simply because I'm disagreed with. I don't see that the judge's analysis in D.C. addressed or solved my concern. And my concerns are as I've articulated.

So it is likely – I think I'm just going to sit down and read through them one more time. But it's likely that I – my position – there is no real compelling reason and there's nothing in the D.C. cases that they have considered that I did not consider that would make me believe that it makes sense for me to reverse

and change course and change my analysis of how the situation should be applied in this very unusual set of circumstances.

* * *

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al., Plaintiffs, -against- PALESTINE LIBERATION ORGANIZATION and PALESTINIAN AUTHORITY, Defendants.	:	DATE FILED: AUG 24 2015 ORDER 04 Civ. 397 (GBD)

GEORGE B. DANIELS, United States District Judge:

Defendants renew their motion to dismiss for lack of personal jurisdiction, and, in the alternative, move for judgment as a matter of law or new trial under Federal Rules of Civil Procedure 50(b) and 59.

Personal Jurisdiction

This Court has considered several times the issue of personal jurisdiction over Defendants, and it has reviewed the cases cited by Defendants from the United States District Court for the District of Columbia.[1]

[1] *See Safra v. Palestinian Auth.*, No. CV 14-669 (CKK), 2015 WL 567340, at *1 (D.D.C. Feb. 11, 2015); *Livnat v. Palestinian Auth.*, No. CV 14-668 (CKK), 2015 WL 558710, at *1 (D.D.C. Feb.

This Court's position remains unchanged. For the reasons articulated in this Court's memorandum decision and order, dated December 1, 2014, and at the oral argument, dated July 28, 2015, Defendants' "renewed motion to dismiss" for lack of personal jurisdiction is denied. (*See* Memorandum Decision and Order, ECF No. 657.)

Sufficiency of the Evidence

Defendants also move for judgment as a matter of law under Rule 50(b), arguing that Plaintiffs failed to meet their burden at trial. A "district court can grant the motion only if after viewing the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in favor of the non-moving party, it finds that there is insufficient evidence to support the verdict." *Fabri v. United Tech. Int'l, Inc.*, 387 F.3d 109, 119 (2d Cir. 2004) (citation omitted). The jury in this case had "a legally sufficient evidentiary basis to find" Defendants liable for the six attacks at issue. *See* Fed. R. Civ. P. 50(a)(1).

Defendants argue that judgment as a matter of law is appropriate because the Antiterrorism Act, 18 U.S.C. §§ 2331, *et. seq*., does not allow for respondeat superior liability. This Court addressed this issue in connection with Defendants' motion for summary judgment and rejected Defendants' argument. Again, this Court's position remains unchanged. (*See* Order, ECF No. 646, at 9-11.)

Having reviewed the testimony and evidence admitted in support of Plaintiffs' claims that Defendants provided material support and resources to the terrorists and terror groups who committed the six attacks

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11, 2015); *Estate of Esther Klieman v. Palestinian Auth.*, No. 04-1175, 2015 U.S. Dist. LEXIS 25167, at *1 (D.D.C. Mar. 3, 2015).

at issue in this case, and that employees of the Palestinian Authority committed or supported five of those six attacks within the scope of their employment, this Court holds that the evidence is legally sufficient under Rule 50.

Evidentiary Rulings

Defendants also move for new, separate trials under Rule 59, arguing that there were substantial errors during trial that created unfair prejudice to Defendants. "[F]or a district court to order a new trial under Rule 59(a), it must conclude that the jury has reached a seriously erroneous result or the verdict is a miscarriage of justice, i.e., it must view the jury's verdict as against the weight of the evidence." *Manley v. AmBase Corp.*, 337 F.3d 237, 245 (2d Cir. 2003) (citations and internal punctuation omitted); *see also Ricciuti v. N.Y. City Transit Auth.*, 70 F. Supp. 2d 300, 305 (S.D.N.Y. 1999) (quoting *DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 133-34 (2d Cir.1998)) ("A court considering a Rule 59 motion for a new trial must bear in mind, however, that the court should only grant such a motion when the jury's verdict is egregious.").

First, Defendants argue that this Court allowed Plaintiffs to present improper expert testimony. The testimony of Plaintiffs' experts Israel Shrenzel and Alon Eviatar complied with both Federal Rule of Evidence 702 and the requirements under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Moreover, Defendants were given ample opportunity to cross examine both experts, and the jury charge included an expert witness instruction that stated in part:

> You may give the expert testimony whatever weight, if any, you find it deserves

> in light of all the evidence in this case. You should not, however, accept an expert's opinion testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

(Tr. 3881:7-13 (Feb. 20, 2015).)

Second, Defendants argue that this Court admitted evidence that was more prejudicial than probative under Federal Rule of Evidence 403, without allowing Defendants to admit evidence that provided context and lessened the prejudice. Nearly every piece of evidence was objected to in this trial. This Court considered Defendants' objections to almost every category of evidence and document and carefully engaged in the Rule 403 analysis. The documents that Defendants deem unduly prejudicial—namely, "circulars, television clips, photographs, and 'police magazines'"—were determined by this Court to be both relevant and more probative than prejudicial. (*See* Defendants' Memorandum, ECF No. 896, at 19.) Defendants argue further that this Court "compounded this error" by limiting Defendants' ability to highlight "the political and social context" at the time. (*See id.* at 21.) While Defendants concede that this Court "did not preclude all testimony on these subjects," it argues more evidence of "the Palestinian perspective on the Israeli occupation" was proper "to understand the PA's actions." (*See id.* at 22.) As this Court stated multiple times during the course of this trial, this case was not about the "Israeli-Palestinian conflict." Thus, evidence of the nature that Defendants describe was improper and it was accordingly excluded.

Separate Trials

Third, Defendants argue that the six attacks should have been tried separately. The jury charge included a specific instruction that the six attacks should be treated separately. In addition, the verdict form was organized in such a way that it was clear that liability as to each defendant should be assessed on an attack-by-attack basis. This Court considered carefully the issue of prejudice when it first denied Defendants' motion for separate trials. The jury rendered a separate, specific verdict as to each plaintiff regarding each terrorist attack. (*See* Tr. 3925:12-3937:22 (Feb. 23, 2015).) There was no "spillover prejudice" to Defendants as a result of trying the six attacks in one trial.

Jury Instructions

Fourth, Defendants argue that the jury instruction on agency was inaccurate and that the jury instructions were unable to cure improper statements of the law by Plaintiffs' counsel. "A jury instruction is erroneous if it misleads the jury as to the correct legal standard or does not adequately inform the jury of the law." *Anderson v. Branen*, 17 F.3d 552, 556 (2d Cir. 1994) (citations omitted). Defendants must show that "they were prejudiced by the error." (*Id.*) Defendants' arguments in this regard were previously raised during conferences at which the parties addressed the proposed jury instructions with the Court. This Court considered Defendants' arguments regarding the proper agency instruction, and, after considering proposals from both sides, included the final language. (*See* Tr. 3859:6-3867:2 (Feb. 20, 2015) (discussion regarding agency instruction); *see id.* 3897:12-3899:17 (final agency instruction).) To the extent Defendants argue that Plaintiffs' counsel misstated the law in

closing, this Court instructed the jury as follows: "You must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow." (*Id.* 3871:19-3872:2.)

Finally, Defendants argue that Plaintiffs should not have been able to present to the jury proposed damages awards. In ruling that Plaintiffs could suggest specific dollar amounts for non-economic damages, this Court carefully considered the Second Circuit's decision in *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 912 (2d Cir. 1997), which leaves this determination "to the discretion of the trial judge." *Id.* Moreover, this Court required that Plaintiffs share with Defendants the figures they would suggest to the jury before doing so. Ultimately, the jury provided an award in an amount less than that proposed by Plaintiffs' counsel in his closing statement. This Court instructed the jury regarding the amounts suggested by Plaintiffs' counsel as follows:

> During his closing remarks, counsel for Plaintiffs suggested a specific dollar amount to be awarded to Plaintiffs. An attorney is permitted to make suggestions as to the amount that should be awarded, but those suggestions are argument only and not evidence and should not be considered by you as evidence of Plaintiffs' damages. The determination of damages is solely for you, the jury, to decide.

(Tr. 3904:10-16 (Feb. 20, 2015).) The final award is not excessive, nor is it against the weight of the evidence. *See Lore v. City of Syracuse*, 670 F.3d 127, 176-77 (2d Cir. 2012) ("It is well established that the trial

judge enjoys discretion to grant a new trial if the verdict appears to the judge to be against the weight of the evidence, and that this discretion includes overturning verdicts for excessiveness and ordering a new trial without qualification.") (citation, internal quotation marks, and alterations omitted).

This Court has considered all of the arguments raised by Defendants in support of their Rule 50 and Rule 59 motions, as well as their renewed motion to dismiss for lack of personal jurisdiction. Defendants' motions are denied. Judgment in this case shall be entered in Plaintiffs' favor against Defendants.

The Clerk of the Court is instructed to close the motion at ECF No. 895.

Dated: August 24, 2015
New York, New York

SO ORDERED:

s/
GEORGE B. DANIELS
United States District Judge

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al., Plaintiffs, -against- THE PALESTINE LIBERATION ORGANIZATION and THE PALESTINIAN AUTHORITY, Defendants.	:	DATE FILED: OCT 01 2015 04 **CIVIL** 00397 (GBD) **JUDGMENT**

A Jury Trial before the Honorable George B. Daniels, United States District Judge, began on January 14, 2015, and at the conclusion of the trial, on February 23, 2015, the jury rendered a verdict in favor of each Plaintiff and against both Defendants the Palestine Liberation Organization and the Palestinian Authority resulting in the following judgment:

I. JANUARY 22, 2002 - JAFFA ROAD SHOOTING:

1. A jury verdict in favor of Plaintiff Elise Gould in the amount of $3,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$9 million**;

2. A jury verdict in favor of Plaintiff Ronald Gould in the amount of $3,000,000.00, which

is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$9 million**;

3. A jury verdict in favor of Plaintiff Shayna Gould in the amount of $20,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$60 million**;

4. A jury verdict in favor of Plaintiff Jessica Rine in the amount of $3,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$9 million**;

5. A jury verdict in favor of Plaintiff Henna Novack Waldman in the amount of $2,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

6. A jury verdict in favor of Plaintiff Morris Waldman in the amount of $2,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

7. A jury verdict in favor of Plaintiff Shmuel Waldman in the amount of $7,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$22.5 million**;

II. JANUARY 27, 2002 - JAFFA ROAD BOMBING:

1. A jury verdict in favor of Plaintiff Elana Sokolow in the amount of $2,500,000.00, which is trebled automatically pursuant to the

Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

2. A jury verdict in favor of Plaintiff Jamie Sokolow in the amount of $6,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$19.5 million**;

3. A jury verdict in favor of Plaintiff Lauren Sokolow in the amount of $5,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$15 million**;

4. A jury verdict in favor of Plaintiff Mark Sokolow in the amount of $5,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$15 million**;

5. A jury verdict in favor of Plaintiff Rena Sokolow in the amount of $7,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$22.5 million**;

III. MARCH 21, 2002 - KING GEORGE STREET BOMBING:

1. A jury verdict in favor of Plaintiff Alan Bauer in the amount of $7,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$21 million**;

2. A jury verdict in favor of Plaintiff Binyamin Bauer in the amount of $1,000,000.00, which

is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$3 million**;

3. A jury verdict in favor of Plaintiff Daniel Baur in the amount of $1,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$3 million**;

4. A jury verdict in favor of Plaintiff Yehonathon Bauer in the amount of $25,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$75 million**;

5. A jury verdict in favor of Plaintiff Yehuda Bauer in the amount of $1,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$3 million**;

IV. JUNE 19, 2002 - FRENCH HILL BOMBING:

1. A jury verdict in favor of Plaintiff Leonard Mandelkorn in the amount of $10,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$30 million**;

V. July 31, 2002 - HEBREW UNIVERSITY BOMBING:

1. A jury verdict in favor of Plaintiff Katherine Baker in the amount of $6,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$18 million**;

2. A jury verdict in favor of Plaintiff Benjamin Blutstein in the amount of $2,500,000.00,

which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

3. A jury verdict in favor of Plaintiff Rebekah Blutstein in the amount of $4,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$12 million**;

4. A jury verdict in favor of Plaintiff Richard Blutstein in the amount of $6,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$18 million**;

5. A jury verdict in favor of Plaintiff Diane Carter in the amount of $1,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$3 million**;

6. A jury verdict in favor of Plaintiff Larry Carter in the amount of $6,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$19.5 million**;

7. A jury verdict in favor of Plaintiff Shaun Choffel in the amount of $1,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$4.5 million**;

8. A jury verdict in favor of Plaintiff Robert L. Coulter Jr. in the amount of $3,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$9 million**;

9. A jury verdict in favor of Plaintiff Diane Coulter Miller in the amount of $3,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$9 million**;

10. A jury verdict in favor of Plaintiff Robert L. Coulter Sr. in the amount of $7,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$22.5 million**;

11. A jury verdict in favor of Plaintiff Janis Ruth Coulter in the amount of $2,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

12. A jury verdict in favor of Plaintiff David Gritz in the amount of $2,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

13. A jury verdict in favor of Plaintiff Nevenka Gritz in the amount of $10,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$30 million**;

14. A jury verdict in favor of Plaintiff Nevenka Gritz, as successor to Norman Gritz, in the amount of $2,500,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$7.5 million**;

VI. JANUARY 29, 2004 - BUS NO. 19 BOMBING:

1. A jury verdict in favor of Plaintiff Chana Goldberg in the amount of $8,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$24 million**;

2. A jury verdict in favor of Plaintiff Eliezer Goldberg in the amount of $4,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$12 million**;

3. A jury verdict in favor of Plaintiff Esther Goldberg in the amount of $8,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$24 million**;

4. A jury verdict in favor of Plaintiff Karen Goldberg in the amount of $13,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$39 million**;

5. A jury verdict in favor of Plaintiff Shoshana Goldberg in the amount of $4,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$12 million**;

6. A jury verdict in favor of Plaintiff Tzvi Goldberg in the amount of $2,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$6 million**;

7. A jury verdict in favor of Plaintiff Yaakov Goldberg in the amount of $2,000,000.00,

which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$6 million**;

8. A jury verdict in favor of Plaintiff Yitzhak Goldberg in the amount of $6,000,000.00, which is trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$18 million**.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That Plaintiffs have a judgment as against Defendants the Palestine Liberation Organization and the Palestinian Authority jointly and severally in the amounts specified above for a total jury verdict of $218.5 million, trebled automatically pursuant to the Antiterrorism Act, 18 U.S.C. § 2333(a), for a total award of **$655.5 million**.

DATED: New York, New York
October 1, 2015

So Ordered:

s/ *George B. Daniels*
U.S.D.J.

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of October, two thousand sixteen.

ORDER

Docket Nos. 15-3135 (L) 15-3151(XAP)

Eva Waldman, Revital Bauer, individually and as natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel Bauer and Yehuda Bauer, Shaul Mandelkorn, Nurit Mandelkorn, Oz Joseph Guetta, minor, by his next friend and guardian Varda Guetta, Varda Guetta, individually and as natural guardian of plaintiff Oz Joseph Guetta, Norman Gritz, individually and as personal representative of the Estate of David Gritz, Mark I. Sokolow, individually and as a natural guardian of Plaintiff Jamie A. Sokolow, Rena M. Sokolow, individually and as a natural guardian of plaintiff Jaime A. Sokolow, Jamie A. Sokolow, minor, by her next friends and guardian Mark I. Sokolow and Rena M. Sokolow, Lauren M. Sokolow, Elana R. Sokolow, Shayna Eileen Gould, Ronald Allan Gould, Elise Janet Gould, Jessica Rine, Shmuel Waldman, Henna Novack Waldman, Morris Waldman, Alan J. Bauer, individually and as natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel

Bauer and Yehuda Bauer, Yehonathon Bauer, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer, Binyamin Bauer, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer, Daniel Bauer, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer, Yehuda Bauer, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer, Rabbi Leonard Mandelkorn, Katherine Baker, individually and as personal representative of the Estate of Benjamin Blutstein, Rebekah Blutstein, Richard Blutstein, individually and as personal representative of the Estate of Benjamin Blutstein, Larry Carter, individually and as personal representative of the Estate of Diane ("Dina") Carter, Shaun Coffel, Dianne Coulter Miller, Robert L Coulter, Jr., Robert L. Coulter, Sr., individually and as personal representative of the Estate of Janis Ruth Coulter, Chana Bracha Goldberg, minor, by her next friend and guardian Karen Goldberg, Eliezer Simcha Goldberg, minor, by her next friend and guardian Karen Goldberg, Esther Zahava Goldberg, minor, by her next friend and guardian Karen Goldberg, Karen Goldberg, individually, as personal representative of the Estate of Stuart Scott Goldberg/natural guardian of plaintiffs Chana Bracha Goldberg, Esther Zahava Goldberg, Yitzhak Shalom Goldberg, Shoshana Malka Goldberg, Eliezer Simcha Goldberg, Yaakov Moshe Goldberg, Tzvi Yehoshua Goldberg, Shoshana Malka Goldberg, minor, by her next friend and guardian Karen Goldberg, Tzvi Yehoshua Goldberg, minor, by her next friend and guardian Karen Goldberg, Yaakov Moshe Goldberg, minor, by her next friend and guardian Karen Goldberg, Yitzhak Shalom Goldberg, minor, by her next friend and guardian Karen Goldberg, Nevenka Gritz, sole heir of Norman Gritz, deceased,

Plaintiffs - Appellees - Cross - Appellants,

v.

Palestine Liberation Organization, Palestinian Authority, AKA Palestinian Interim Self-Government Authority and or Palestinian Council and or Palestinian National Authority,

Defendants - Appellants - Cross - Appellees,

Yasser Arafat, Marwin Bin Khatib Barghouti, Ahmed Taleb Mustapha Barghouti, AKA Al-Faransi, Nasser Mahmoud Ahmed Aweis, Majid Al-Masri, AKA Abu Mojahed, Mahmoud Al-Titi, Mohammed Abdel Rahman Salam Masalah, AKA Abu Satkhah, Faras Sadak Mohammed Ghanem, AKA Hitawi, Mohammed Sami Ibrahim Abdullah, Esatate of Said Ramadan, deceased, Abdel Karim Ratab Yunis Aweis, Nasser Jamal Mousa Shawish, Toufik Tirawi, Hussein Al-Shaykh, Sana'a Muhammed Shehadeh, Kaira Said Ali Sadi, Estate of Mohammed Hashaika, deceased, Munzar Mahmoud Khalil Noor, Estate of Wafa Idris, deceased, Estate of Mazan Faritach, deceased, Estate of Muhanad Abu Halawa, deceased, John Does, 1-99, Hassan Abdel Rahman,

Defendants.

Appellees-Cross-Appellants filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX K

U.S. Constitution, amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, § 2(a), 130 Stat. 852 (2016)

(a) FINDINGS.—Congress finds the following:

(1) International terrorism is a serious and deadly problem that threatens the vital interests of the United States.

(2) International terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States.

(3) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States.

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(6) Persons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities.

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8 U.S.C. § 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism)[1]; and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

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[1] So in original. The closing parenthesis probably should follow "section 1182(a)(3)(B) of this title".

15 U.S.C. § 6a. Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

15 U.S.C. § 78aa. Jurisdiction of offenses and suits

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the

rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

(b) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this chapter involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation,

even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

18 U.S.C. § 2331. Definitions

As used in this chapter—

(1) the term "international terrorism" means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

(2) the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property;

(4) the term "act of war" means any act occurring in the course of—

(A) declared war;

(B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin; and

(5) the term "domestic terrorism" means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

18 U.S.C. § 2332a. Use of weapons of mass destruction

(a) OFFENSE AGAINST A NATIONAL OF THE UNITED STATES OR WITHIN THE UNITED STATES.—A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction—

(1) against a national of the United States while such national is outside of the United States;

(2) against any person or property within the United States, and

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;

(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States; or

(4) against any property within the United States that is owned, leased, or used by a foreign government,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

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18 U.S.C. § 2332d. Financial transactions

(a) OFFENSE.—Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405)[2] as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

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18 U.S.C. § 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

(a) OFFENSES.—

(1) IN GENERAL.—Whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility—

(A) with the intent to cause death or serious bodily injury, or

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[2] See References in Text note below.

(B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss,

shall be punished as prescribed in subsection (c).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

(1) the offense takes place in the United States and—

(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

(C) at the time the offense is committed, it is committed—

(i) on board a vessel flying the flag of another state;

(ii) on board an aircraft which is registered under the laws of another state; or

(iii) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) a perpetrator is a national of another state or a stateless person; or

(F) a victim is a national of another state or a stateless person;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a victim is a national of the United States;

(C) a perpetrator is found in the United States;

(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

(G) the offense is committed on board an aircraft which is operated by the United States.

(c) PENALTIES.—Whoever violates this section shall be punished as provided under section 2332a(a) of this title.

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18 U.S.C. § 2332h. Radiological dispersal devices

(a) UNLAWFUL CONDUCT.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

(2) EXCEPTION.—This subsection does not apply with respect to—

(A) conduct by or under the authority of the United States or any department or agency thereof; or

(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

18 U.S.C. § 2332i. Acts of nuclear terrorism

(a) OFFENSES.—

(1) IN GENERAL.—Whoever knowingly and unlawfully—

(A) possesses radioactive material or makes or possesses a device—

(i) with the intent to cause death or serious bodily injury; or

(ii) with the intent to cause substantial damage to property or the environment; or

(B) uses in any way radioactive material or a device, or uses or damages or interferes with the operation of a nuclear facility in a manner that causes the release of or increases the risk of the release of radioactive material, or causes radioactive contamination or exposure to radiation—

(i) with the intent to cause death or serious bodily injury or with the knowledge that such act is likely to cause death or serious bodily injury;

(ii) with the intent to cause substantial damage to property or the environment or with the knowledge that such act is likely to cause substantial damage to property or the environment; or

(iii) with the intent to compel a person, an international organization or a country to do or refrain from doing an act,

shall be punished as prescribed in subsection (c).

(2) THREATS.—Whoever, under circumstances in which the threat may reasonably be believed, threatens to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c). Whoever

demands possession of or access to radioactive material, a device or a nuclear facility by threat or by use of force shall be punished as prescribed in subsection (c).

(3) ATTEMPTS AND CONSPIRACIES.—Whoever attempts to commit an offense under paragraph (1) or conspires to commit an offense under paragraph (1) or (2) shall be punished as prescribed in subsection (c).

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the prohibited conduct takes place in the United States or the special aircraft jurisdiction of the United States;

(2) the prohibited conduct takes place outside of the United States and—

(A) is committed by a national of the United States, a United States corporation or legal entity or a stateless person whose habitual residence is in the United States;

(B) is committed on board a vessel of the United States or a vessel subject to the jurisdiction of the United States (as defined in section 70502 of title 46) or on board an aircraft that is registered under United States law, at the time the offense is committed; or

(C) is committed in an attempt to compel the United States to do or abstain from doing any act, or constitutes a threat directed at the United States;

(3) the prohibited conduct takes place outside of the United States and a victim or an intended victim is

a national of the United States or a United States corporation or legal entity, or the offense is committed against any state or government facility of the United States; or

(4) a perpetrator of the prohibited conduct is found in the United States.

(c) PENALTIES.—Whoever violates this section shall be fined not more than $2,000,000 and shall be imprisoned for any term of years or for life.

(b) NONAPPLICABILITY.—This section does not apply to—

(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law; or

(2) activities undertaken by military forces of a state in the exercise of their official duties.

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18 U.S.C. § 2333. Civil remedies

(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 46314, 46502, 46505, or 46506 of title 49 shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

18 U.S.C. § 2334. Jurisdiction and venue

(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

(2) that foreign court is significantly more convenient and appropriate; and

(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

18 U.S.C. § 2338. Exclusive Federal jurisdiction

The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.

18 U.S.C. § 2339. Harboring or concealing terrorists

(a) OFFENSE.—Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), section 175 (relating to biological weapons), section 229 (relating to chemical weapons), section 831 (relating to nuclear materials), paragraph (2) or (3) of section 844(f) (relating to arson and bombing of government property risking or causing injury or death), section 1366(a) (relating to the destruction of an energy facility), section 2280 (relating to violence against maritime navigation), section 2332a (relating to weapons of mass destruction), or section 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relating to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both.

(b) A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

18 U.S.C. § 2339A. Providing material support to terrorists

(a) OFFENSE.—Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1091, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, 2340A, or 2442 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(b) OFFENSE.—As used in this section—

(1) the term "material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

(2) the term "training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

(3) the term "expert advice or assistance" means advice or assistance derived from scientific, technical or other specialized knowledge.

18 U.S.C. § 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) PROHIBITED ACTIVITIES.—

(1) UNLAWFUL CONDUCT.—Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(2) FINANCIAL INSTITUTIONS.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) CIVIL PENALTY.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) $50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) INJUNCTION.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) EXTRATERRITORIAL JURISDICTION.—

(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(B) an offender is a stateless person whose habitual residence is in the United States;

(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(D) the offense occurs in whole or in part within the United States;

(E) the offense occurs in or affects interstate or foreign commerce; or

(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(2) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

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