

No. 23-208

In the
Supreme Court of the United States

KEREN KAYEMETH LEISRAEL, ET AL.,

Petitioners,

v.

EDUCATION FOR A JUST PEACE IN THE MIDDLE EAST,

Respondent.

**On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit**

**PETITIONERS' REPLY TO RESPONDENT'S
BRIEF IN OPPOSITION**

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January 3, 2024

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**PETITIONERS' REPLY TO RESPONDENT'S
BRIEF IN OPPOSITION**

I.

THE ELEPHANT IN THE ROOM

Respondent's Brief in Opposition remarkably ignores the elephant in the room. Nowhere in its 23 pages is there any reference to the events that have transpired since October 7, 2023, or to the fact that Hamas – the alleged beneficiary of the contributions solicited by the respondent – has now become the world's most notorious terrorist.

The United States Government, acting through the Treasury Department's Office of Foreign Assets Control ("OFAC"), has imposed four rounds of sanctions on Hamas since Hamas' October 7 terrorist attack on Israel. See U.S. Department of the Treasury, "US and UK Target Additional Hamas Finance Officials and Representatives," December 13, 2023. See also U.S. Department of the Treasury, "United States and United Kingdom Take Coordinated Action Against Hamas Leaders and Financiers," November 14, 2023; U.S. Department of the Treasury, "Treasury Targets Additional Sources of Support and Financing to Hamas," October 27, 2023; "United States FinCEN Alert to Financial Institutions to Counter Financing to Hamas and Its Terrorist Activities," October 20, 2023; U.S. Department of the Treasury, "Following Terrorist Attack on Israel, Treasury Sanctions Hamas Operatives and Financial Facilitators," October 18, 2023.

Private lawsuits under federal antiterrorism law, like the action that is the subject of the present

Petition for Certiorari, supplement the government's enforcement of antiterrorism provisions provided by federal law. The respondent may not be individually designated by the Treasury Department, but the objectives of the antiterrorism provisions of federal law are realized if private lawsuits identify and deter transmission of material support for Hamas' activities, whether given directly or through charitable fronts that serve as "fiscal sponsors" of Hamas.

The federal government's enforcement of sanctions designed to prevent financing of Hamas terrorism is significantly strengthened if private plaintiffs can establish in their lawsuits that funds collected in the United States are funneled to Hamas and may be used for international terrorism such as Hamas commits in Israel. Hence the United States has an interest in ensuring that courts allow full discovery of the route used by solicitors of tax-deductible contributions that are plausibly alleged to reach Hamas.

Unlike the cases cited on page 15 of respondent's brief in opposition, this case does not concern isolated conduct by international banks or other private commercial entities that injures American citizens by supporting terrorism. The barbarism committed by Hamas' terrorist massacre on October 7 has made this case more than an instance of commercial activity that aids and abets international terrorism. The legal issues this case presents are now critical to American national security.

II.**FEDERAL TAX LAW ENABLES USCPR, AS A
“FISCAL SPONSOR,” TO CONCEAL HOW BNC
FUNNELS CONTRIBUTIONS TO HAMAS**

Pages 7-13 of the *amicus curiae* brief filed by the National Jewish Advocacy Center and four additional *amici* detail the federal tax law provisions that currently prevent petitioners from including in their Complaint detailed allegations that tax-deductible contributions reach Hamas through the nominal beneficiary of respondent’s solicitations. A Section 501(c)(3) charity like respondent may currently conceal from the public how the funds contributed to it are spent by becoming the “fiscal sponsor” of a beneficiary that is not itself required to disclose publicly the identities of the ultimate recipients of money solicited from the public. See Memorandum of Marc Greendorfer, President of Zachor Legal Institute, to H.R. Comm. on Ways and Means, “How Designated Foreign Terror Organizations Exploit Loopholes in Anti-Terror Financing Laws and Rules and Recommendations to Close the Loopholes,” November 6, 2023.

The receipt copied on page 8 of the *amicus*’ brief illustrates this essential point. Funds transmitted by USCPR to the Boycott National Committee (“BNC”) are treated for federal tax purposes as tax-deductible contributions to USCPR. BNC is not itself a 501(c)(3) entity with any federal reporting obligation. Federal tax law does not require BNC to disclose publicly how it spends the money it receives from USCPR. USCPR’s role in assisting international terrorism must be

disclosed to prevent BNC from effectively concealing its finances from public scrutiny. If USCPR may avoid routine discovery of records it maintains – as the decision below effectively permits it to do – plaintiffs injured by Hamas’ terrorism like the petitioners are unable to articulate and make the detailed allegations that funds solicited by the respondent were routed to Hamas.

Respondent’s Brief in Opposition declares (p. 4) that “there are *no facts* alleged that *any* money which USCPR transferred to the Boycott National Committee went directly or indirectly to any other entity, including Hamas” and (pp. 20-21) that “Petitioners’ Complaint does not factually allege that money raised by USCPR went to any group other than the Boycott National Committee” and that “Petitioners did not plead that the Boycott National Committee, the entity that USCPR transferred funds to, was the primary tortfeasor.” Allegations regarding the transmission of the contributed funds after they were sent to the Boycott National Committee (“BNC”) cannot be made by the petitioners because the BNC is permitted, under federal tax law, as the recipient of funds from a “fiscal sponsor,” to conceal how it spends its money.

This tactic for concealing funding funneled to Hamas for its international terrorism can only be countered by robust discovery. Injured American citizens must be empowered to discover, via routine federal-court procedures, how and to whom tax-deductible contributions are transmitted by “fiscal sponsors” who endorse the terrorist activities of Hamas.

III.

**THE UNITED STATES HAS AN INTEREST
BEYOND THAT OF THE PRIVATE LITIGANTS**

This case affects much more than the rights of the petitioners and the respondent. It implicates the important federal policy of denying any form of material support to Hamas, one of the world's leading terrorist organizations.

When “some governmental interest may be involved in the case, an interest that is not represented by the private litigants,” this Court has frequently invited the Solicitor General to file a brief expressing the views of the United States. Shapiro, Geller, Bishop, Hartnett, Himmelfarb, “Supreme Court Practice” 519 (10th ed. 2013). See also Thompson & Wachtell, “An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General,” 16 Geo. Mason L. Rev. 240, 270-302 (2009).

Amicus curiae assistance from the federal government is particularly essential in this case to advise the Court of the extent to which denial of discovery to private victims of international terrorism who initiate legal action under JASTA (18 U.S.C. § 2333(d)(2)) will cripple the national policy to prevent the funding of Hamas. Compare *Moody v. NetChoice, LLC*, No. 22-277, *cert granted*, September 29, 2023.

Petitioners' Complaint plausibly alleges that funds solicited by the respondent reached Hamas and financed the incendiary kites and balloons that

injured US citizens residing in Israel. The Complaint did not assert only “labels and conclusions,” and “naked assertions,” as was true of the complaints in *Ashcroft v. Iqbal*, 556 U.S. 667 (2009) and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Its very specific allegations, if true, suffice to support, by a preponderance of the evidence, the “reasonable inference that the defendant is liable for the misconduct alleged” and go well beyond “the mere possibility of misconduct.”

Hamas’ terrorist agenda materialized in the brutal massacre of October 7, 2023. It was preceded by the revival of the launch of incendiary kites and balloons – the terrorist tactic that prompted this lawsuit – and it was implemented by murderers arriving at the scene of the crime on paragliders. Hence the petitioners were entitled to proceed with routine discovery.

CONCLUSION

For the foregoing reasons the Solicitor General should be invited to file a brief in this case expressing the views of the United States.

Respectfully submitted,

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