No. 19-

In the Supreme Court of the United States

MARK SOKOLOW, ET AL., PETITIONERS,

v.

PALESTINE LIBERATION ORGANIZATION
AND PALESTINIAN AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

At issue in this case is the continued viability of Congress's effort to combat international terrorism through the Anti-Terrorism Act of 1992 (ATA). Petitioners, victims of terrorism and their families, won a jury verdict after a seven-week trial against the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) under the ATA, which provides a private right of action for "[a]ny national of the United States injured * * * by reason of an act of international terrorism." 18 U.S.C. § 2333(a). But the Second Circuit vacated the judgment, holding that the Fifth Amendment bars the exercise of personal jurisdiction over the PLO and PA for committing terror attacks harming U.S. citizens "outside the territorial jurisdiction of the United States." Pet. App. 41a.

In response, Congress passed the Anti-Terrorism Clarification Act of 2018 (ATCA), which provides that defendants "benefiting from a waiver or suspension" of a 1987 statute restricting the activities of the PLO and its affiliates are deemed to consent to personal jurisdiction in ATA actions if they "continue[] to maintain" an office or other facility "within the jurisdiction of the United States." 18 U.S.C. § 2334(e). The same Second Circuit panel held that the new law, enacted for the specific purpose of superseding the panel's initial decision, did not provide jurisdiction over these entities.

The questions presented are:

1. Whether the PLO and PA consented to personal jurisdiction when they chose to maintain facilities within the United States after the date specified in the ATCA.

2. Whether the Fifth Amendment's Due Process Clause bars federal courts from exercising jurisdiction authorized by Congress over a defendant whose criminal conduct harms a U.S. citizen outside of the United States.

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, Revital Bauer, Yehonathon Bauer, Binyamin Bauer, Daniel Bauer, Yehuda 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, individually and as personal representative of the Estate of Janis Ruth Coulter, Robert L Coulter, Jr., individually and as personal representative of the Estate of Janis Ruth Coulter, Ann Marie K. Coulter, as personal representative of the estate of 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 plaintiff Yaakov Moshe Goldberg, Shoshana Malka Goldberg, Tzvi Yehoshua 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 Organiza-

tion and Palestinian Authority (aka Palestinian Interim Self-Government Authority and or Palestinian Council and or Palestinian National Authority).

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OPINIONS BELOW

The court of appeals' opinions (Pet. App. 1a-56a) are reported at 925 F.3d 570 and 835 F.3d 317. The court of appeals' order denying rehearing (Pet. App. 112a-113a) is unreported. The judgment (*id.* at 57a-64a) and relevant opinion of the district court (*id.* at 92a-111a) are unreported, but are available at 2015 WL 10852003 and 2011 WL 1345086, respectively.

JURISDICTION

The court of appeals entered its order denying Petitioners' motion to recall the mandate on June 3, 2019, and denied a timely petition for rehearing and rehearing en banc on July 23, 2019. Pet. App. 93a-94a. Justice Ginsburg extended the time for filing a petition for a writ of certiorari until December 20, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the Appendix. Pet. App. 114a-117a.

STATEMENT

This case concerns Congress's repeated efforts to deter and punish international terrorism by empowering U.S. citizens injured by overseas terror attacks to hold perpetrators accountable in U.S. courts. More than 100 million U.S. citizens live or travel abroad every year, and hundreds have died in terror attacks abroad since 1995.[1]

[1] See National Consortium for the Study of Terrorism and Responses to Terrorism, *American Deaths in Terrorist Attacks, 1995-*

Following a seven-week trial, a jury found respondents, the Palestine Liberation Organization (PLO) and Palestinian Authority (PA), liable under the Anti-Terrorism Act of 1992 (18 U.S.C. § 2333(a), (d)) for six terror attacks in which petitioners or their family members were maimed or murdered. But the Second Circuit held that statute unconstitutional as applied on the theory that the due-process standard is "the same under both the Fifth and Fourteenth Amendments," Pet. App. 30a, and, under the Fourteenth Amendment cases, the "citizenship of the plaintiffs is an insufficient basis for specific jurisdiction over the defendants," *id.* at 43a, even where Congress deems such citizenship a sufficient jurisdictional contact.

This holding disregarded this Court's teachings that 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), while, by contrast, the *federal* government has a "responsibility" to protect "the just rights of [the federal government's] own nationals when those nationals are in another country," *Hines* v. *Davidowitz*, 312 U.S. 52, 64 (1941).

In an attempt to remedy the harm to petitioners and other U.S. terror victims caused by the Second Circuit's decision, Congress passed the Anti-Terrorism Clarification Act of 2018, Pub. L. No. 115-253, 132 Stat. 3183-3185. But the same Second Circuit panel thwarted Congress's remedial effort, holding that the new law—enacted for the specific purpose of superseding the panel's initial decision and similar cases—failed to give federal courts the authority to exercise personal jurisdiction over the PLO and

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2016 Trends in Global Terrorism (Nov. 2017), https:/www.start.umd.edu/pubs/START_AmericanTerrorismDeaths_FactSheet_Nov2017.pdf.

PA. Indeed, the panel held that the law was inoperative upon enactment, and remained so, contrary to the rule that "Congress presumably does not enact useless laws." *United States* v. *Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring).

The Second Circuit's decisions profoundly misapprehend the constitutional powers of Congress and the deference owed to Congress in matters of foreign affairs and the protection of national security. As the full House of Representatives said earlier in this case, the Second Circuit's decision "not only vitiates the ATA and frustrates Congress's intended exercise of legislative power to combat terrorism," but also "improperly cabins the broad constitutional authority of Congress to legislate extraterritorially for the protection of U.S. interests in the areas of foreign affairs and national security." Br. of House of Representatives at 1-2, *Sokolow* v. *Palestine Liberation Org.*, No. 16-1071 (Apr. 6, 2017).

This Court's review is warranted.

1. In 1992, Congress passed the Anti-Terrorism Act (ATA), Pub. L. 102-572, tit. X, § 1003, 106 Stat. 4521-4524 (codified as amended at 18 U.S.C. § 2331 *et seq.*), which provides an expressly extraterritorial private right of action for "[a]ny national of the United States injured * * * by reason of an act of international terrorism." 18 U.S.C. §§ 2331(1), 2333(a).

Acting in response to the PLO's attempt to avoid jurisdiction in a suit by the family of American citizen Leon Klinghoffer, who was murdered by the PLO aboard the Achille Lauro cruise ship, H.R. Rep. No. 102-1040, at 5 (1992), Congress intended the ATA to "ope[n] 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. 102-342, at 45 (1992).

President Bush signed the ATA 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).

By imposing liability for intentional misconduct, the ATA deters entities like the PLO and PA from engaging in or supporting terrorism. As the United States said in a statement of interest filed in the district court below, the ATA "reflects our nation's compelling interest in combatting and deterring terrorism at every level," and "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.Ct. Doc. 953-1, at 2 (Aug. 10, 2015).

For nearly 25 years, the courts exercised jurisdiction over the PLO and the PA in civil ATA cases, principally on the basis of their maintenance of a systematic and continuous presence in the United States. See Pet. App. 101a-102a n.10 (collecting cases).

2. This case arises out of terror attacks in Israel between 2001 and 2004 in which five American citizens were murdered and dozens more maimed and injured. Mark Sokolow and his family were on vacation in Jerusalem, buying a pair of shoes for their 12-year-old daughter when a PA intelligence agent detonated a 22-pound bomb in her backpack, killing two and injuring the Sokolows and more than 100 others. Alan Bauer and his seven-year-old son were walking down a crowded street when a suicide bomber directed by a PA security officer blew himself up, sending shrapnel into the father's arm and the boy's brain. A PA police officer recruited and directed by a cell of PA security and police officers detonated himself on a local bus, killing Scott Goldberg on his way to work. Goldberg left a widow and seven children. Four plaintiffs were killed by a massive bomb detonated in a university

cafeteria at lunchtime. Their parents learned about the attack at home in the United States—some by recognizing the bodies or personal effects of their children on the television news.

Petitioners invoked the ATA in the United States District Court for the Southern District of New York. Discovery revealed extensive evidence that respondents were liable for these attacks, which they orchestrated as part of a bloody string of suicide terror attacks in furtherance of respondents' political goals. Full-time PA "security" officers planned or participated in each of the attacks, see C.A. App. 9436, and the PLO and PA continue to reward the surviving officers with generous salaries and promotions—even as they sit in jail for their crimes—and provide "martyr" payments to the families of the suicide terrorists in honor of their attacks, see *id.* at 4375, 4385, 5230-5231; accord Taylor Force Act, Pub. L. No. 115-141, § 1002, 132 Stat. 1143 (22 U.S.C. § 2378c-1 note) ("The Palestinian Authority's practice of paying salaries to terrorists serving in Israeli prisons, as well as to the families of deceased terrorists, is an incentive to commit acts of terror."). Official PA "political guidance" urged "open, bloody and fierce" action by PA security forces "letting the United States of America know" that violence will "threaten U.S. interests." C.A. App. 4491. On official PA television, leaders implored viewers to "kill those Jews and those Americans who are like them." *Id.* at 1715.

Within the United States, the PLO and PA used their terror campaign like a protection racket—meeting with U.S. policymakers, C.A. App. 7411, and engaging in a massive public relations campaign in which their message was "we're not going to talk about any kind of ceasefire until the Israelis pull out of the occupied territories," *id.* at 713-776, 3080-3082. The PLO's Marwan Barghouti published an op-ed piece in the *Washington Post* promising

to "resist" and "fight" until "full withdrawal from Palestinian territories occupied in 1967." D.Ct. Doc. 547-359, at 2 (June 25, 2014). Barghouti was later convicted of murder for orchestrating terror attacks on civilians occurring in the days and weeks after he published his *Washington Post* op-ed. D.Ct. Doc. 547-320 to 547-326 (June 25, 2014).

After a seven-week trial, the jury found that officers of the PA acting within the scope of their employment planned and perpetrated the terror attacks. Pet. App. 43a. The jury further found that, in several of the attacks, the PLO and PA knowingly provided material support and resources to Hamas and the Al-Aqsa Martyrs Brigades—two organizations that the United States government had 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); Pet. App. 43a, 72a, 74a, 77a. The District Court entered a judgment in favor of 40 of the petitioners totaling $655.5 million. *Id.* at 57a-64a.

3. The court of appeals vacated the judgment for lack of personal jurisdiction. Deciding a question this Court has left open, the circuit held that the due-process standard is "the same under both the Fifth and Fourteenth Amendments," Pet. App. 30a. Applying Fourteenth Amendment standards, it held that the PLO and PA could not be held accountable in a U.S. court for killing U.S. citizens in terror attacks that "occurred *entirely* outside the territorial jurisdiction of the United States." *Id.* at 41a (emphasis in original). The panel recognized that applying this standard "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," but considered itself bound by prior decisions in the Second Circuit. *Id.* at 30a.

Deeming itself constrained by this Court's Fourteenth Amendment decision in *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014), the court of appeals held that the "citizenship of the plaintiffs is an insufficient basis for specific jurisdiction over the defendants." Pet. App. 43a. Because the ATA provides a private right of action for "*[a]ny* national of the United States" harmed by "an act of international terrorism," 18 U.S.C. § 2333(a) (emphasis added), the court held the ATA unconstitutional as applied—indeed, as applied to the very fact pattern (a PLO murder of an American overseas) that inspired the statute. As a group of former federal officials (including Attorneys General Thornburg and Ashcroft) said, the decision "effectively nullif[ied] Congress's express intent for the ATA to address a 'gap in [Congress's] efforts to develop a comprehensive legal response to international terrorism' by providing a United States forum for families seeking redress for harm to United States nationals from international terrorism." Br. of Former Federal Officials at 4, *Sokolow* v. *Palestine Liberation Org.*, No. 16-1071 (Apr. 6, 2017) (quoting H.R. Rep. No. 102-1040, at 5 (1992)).

The decision drew scholarly criticism because "the court chose to rely solely on earlier perfunctory circuit precedent instead of addressing the plaintiffs' underlying claims," thereby "breezing over" arguments "based in recognized case law," "grounded in historical and legal differences between [the Fifth and Fourteenth] amendments," and supported by "prominent legal authorities"—thereby defeating "the congressionally articulated policy of providing jurisdiction over foreign terrorists." *Recent Case*, 130 Harv. L. Rev. 1488, 1491, 1495 (2017); see John Tyler Knoblett, *Mind the Gap: Ensuring That Quasi-State Actors are Held Liable for Human Rights Abuses*, 87 Geo. Wash. L. Rev. 740, 743 (2019) (criticizing the lower courts for "allow[ing] human rights abusers to avoid

accountability"); Aaron D. Simowitz, *Legislating Transnational Jurisdiction*, 57 Va. J. Int'l L. 325, 369 (2018) ("This is manifestly not what Congress envisioned.").

4. Petitioners sought review in this Court. Congress supported the request. In addition to the full House of Representatives (quoted *supra* p. 3), a broadly bipartisan group of 23 Senators decried the Second Circuit's failure to "give effect to the factual and policy determinations of a co-ordinate branch of government." Br. of Charles E. Grassley, *et al.*, at 3, *Sokolow* v. *Palestine Liberation Org.*, No. 16-1071 (Apr. 6, 2017).

This Court called for the views of the Solicitor General, who (in a break with general practice) did not say whether the Second Circuit "correctly" or "incorrectly" decided the case. The Solicitor General recommended against review on the ground that "further development in the lower courts is likely to be useful." U.S. Br. at 17, *Sokolow* v. *Palestine Liberation Org.*, No. 16-1071 (Feb. 2018). This Court denied review. 138 S. Ct. 1438 (2018).

5. In response, Congress enacted the Anti-Terrorism Clarification Act of 2018 (ATCA), Pub. L. No. 115-253, 132 Stat. 3183-3185. The ATCA provides that defendants in ATA civil actions "shall be deemed to have consented to personal jurisdiction" if they accept U.S. financial assistance or, in the case of specified defendants, maintain facilities in the U.S. after January 31, 2019, "regardless of the date of the occurrence of the act of international terrorism." 18 U.S.C. § 2334(e)(1).

The ATCA's lead sponsors, Senate Judiciary Committee Chairman Grassley, House Judiciary Committee Chairman Goodlatte and House Judiciary Committee Ranking Member Nadler, explained that the ATCA was specifically intended to overturn "recent Federal court decisions" "that severely undermined the ability of American victims to bring terrorists to justice." 164 Cong. Rec.

S5103 (daily ed. July 19, 2018); 164 Cong. Rec. H6617-6618 (daily ed. July 23, 2018). The House Judiciary Committee Report explained that the bill's "purpose" was "to better ensure that victims of international terrorism can obtain justice in United States courts," and that it "addresses lower court decisions that have allowed entities that sponsor terrorist activity against U.S. nationals overseas to avoid the jurisdiction of U.S. courts" in civil ATA cases. H.R. Rep. No. 115-858, at 2-3, 6 (2018).

As relevant here, the ATCA provides that a defendant "benefiting from a waiver or suspension" of § 1003 of the Anti-Terrorism Act of 1987, Pub. L. No. 100-204, tit. X, is deemed to consent to personal jurisdiction if it "continues to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States." 18 U.S.C. § 2334(e)(1)(B)(i). Section 1003—incorporated by reference into the ATCA—forbids the PLO and its successors and agents to "expend funds" or to "establish or maintain * * * facilities or establishments within the jurisdiction of the United States." 22 U.S.C. § 5202. The House Judiciary Committee Report explained that the ATCA therefore "applies to the Palestinian Liberation Organization" and its affiliates if any of them "continues to maintain any office * * * or other facilities within the U.S." H.R. Rep. No. 115-858, at 7 & n.23 (2018); accord 164 Cong. Rec. H6617-6618 (daily ed. July 23, 2018) (statement of Rep. Nadler).

6. Petitioners promptly moved to recall the Second Circuit's mandate in light of the new statute. The Second Circuit denied the motion in a published decision. Pet. App. 1a-10a. The panel recognized "the passage of a new law"—such as the ATCA—"might warrant recalling a mandate in some circumstances," *id.* at 6a, but concluded that the ATCA failed to restore jurisdiction.

The court of appeals held the ATCA's provision that a specified defendant that "continues to maintain" a U.S. facility is deemed to consent to jurisdiction inapplicable on the theory that respondents are not "benefiting from a waiver or suspension of § 1003" and are therefore not within the ATCA's reach. *Id.* at 7a-8a. The court did not dispute that § 1003 implements Congress's determination that "the PLO and its affiliates * * * should not benefit from operating in the United States" by forbidding them to "expend funds" or to "establish or maintain * * * facilities within the jurisdiction of the United States." 22 U.S.C. §§ 5201-5202. Nor was there any dispute that the PLO and PA do, in fact, continue to expend funds and maintain facilities in the United States, with full knowledge of the Executive Branch.

But the court of appeals held that the knowing and tacit permission of the Executive Branch is insufficient, and that the PLO and PA are not "benefiting from a waiver or suspension of § 1003" within the meaning of the ATCA unless the President has signed a written certification under a *third* statute—one not mentioned in the ATCA or its legislative history. Pet. App. 7a-8a (following *Estate of Klieman* v. *Palestinian Authority*, 923 F.3d 1115 (D.C. Cir. 2019), *petition for cert. filed*, No. 19-741); see Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 7041(k)(2)(B)(i), 133 Stat. 341. The court held that this statutory authorization was the *only* available means for the President to waive or suspend § 1003 under the ATCA, Pet. App. 8a, notwithstanding the absence of such a requirement in the ATCA's text. The court did not acknowledge the President's independent *constitutional* authority to waive or suspend § 1003—authority that President Reagan specifically reserved when signing § 1003. See *Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989*, 2 Pub.

Papers 1541, 1542 (Dec. 22, 1987) (reserving power based on the "express grant of authority in Article II, Section 3, to receive ambassadors"). And the court disregarded the undisputed fact that the Executive had invoked that independent constitutional authority to permit respondents to continue to benefit from operating in the United States at the time Congress enacted the ATCA. *See infra* pp. 16 & nn.3, 4.

The court also held that a facility maintained by respondents in New York City—a building on East 65th Street—"is not considered to be within the jurisdiction of the United States" because it is used in part by the Palestinian UN observer. Pet. App. 8a. For this surprising conclusion, the court cited its earlier decision in *Klinghoffer* v. *S.N.C. Achille Lauro*, which created a judge-made exception to New York's general-jurisdiction statute for official UN activities, based on "policy considerations" to support the "smooth functioning" of the United Nations in light of a treaty known as the UN Headquarters Agreement. 937 F.2d 44, 51-52 (2d Cir. 1991) (discussing Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, 61 Stat. 3416, T.I.A.S. 1676, 554 U.N.T.S. 308 (1947)). The court did not mention that the *Klinghoffer* decision had *permitted* the exercise of jurisdiction over the PLO based on non-UN activities in that same East 65th Street facility, *id.* at 52, nor that the district court in that case *exercised* such jurisdiction on remand, see *Klinghoffer* v. *S.N.C. Achille Lauro*, 795 F. Supp. 112, 114-115 (S.D.N.Y. 1992).

Having determined as a matter of law that the ATCA does not do what its text appears to do—and what its sponsors said at the time it was enacted to do—the court of appeals added that the "interest in finality also weighs against recalling the mandate." Pet. App. 9a. The panel

then suggested that a future "do over" might be needed, noting that petitioners had filed a protective complaint against respondents in the district court in case the court of appeals did not restore the judgment, and stated that future "developments in the activities of the PA or the PLO that may subject them to personal jurisdiction under the ATCA" can be raised in that case. *Id.* at 9a-10a n.2. The panel thus disregarded the precept of salvaging jurisdiction where possible because "requiring dismissal after years of litigation would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 836 (1989). The court said nothing about the harms that litigating a new case through trial would inflict on the terror-victim petitioners (one of whom has died since the first trial).

7. Congress again has taken steps to remedy the decisions of the lower court. In July 2019, the House passed H.R. 1837. Section 303 of that bill would replace the "benefiting from a waiver or suspension of § 1003" language ruled ineffective by the panel with a simple definition that specifies the PLO and PA as "defendant[s]" who will be deemed to consent to jurisdiction if they continue to maintain a U.S. facility, and it would overturn the Second Circuit's surprising award of extraterritorial status to 115 East 65th Street in Manhattan, by applying the ATCA to any facility "within the territory of the United States" "[n]otwithstanding any other law (including any treaty)." See 165 Cong. Rec. H7192-7193 (daily ed. July 23, 2019). In October 2019, the Senate Judiciary Committee reported out a companion bill with language identical to those provisions in the House Bill. See S. 2132, 116th Cong. (2019).

REASONS FOR GRANTING THE PETITION

This Court's review is warranted because the Second Circuit has nullified an important federal anti-terrorism statute. That statute was enacted because the same panel of that court previously held the Anti-Terrorism Act of 1992 unconstitutional as applied based on its resolution of a question that has divided the circuits and that this Court has left open. This Court's review is urgently warranted to prevent the lower court from frustrating Congress's plain (and repeatedly expressed) intent to provide a right of action for U.S. victims of overseas terrorism, and to restore Congress's full measure of constitutional authority to protect American citizens abroad.

The need for review is enhanced by the Second Circuit's departure from fundamental constitutional principles, its misapprehension of the respective roles of the coordinate branches of our government on matters of national security and foreign policy, and its nullification of a statute enacted to protect national security.

Finally, the decisions below are dangerous. Entities adjudicated to be responsible for murdering and maiming American citizens in terror attacks continue to evade accountability for their conduct. And the power of Congress to provide for extraterritorial jurisdiction "for the protection of U.S. interests in the areas of foreign affairs and national security" remains "improperly cabin[ed]." Br. of House of Representatives at 1-2, *Sokolow*, *supra* (No. 16-1071).

I. The Decision Below Nullified A Statute Enacted To Promote Important National Security Interests

A. The Second Circuit Rendered The ATCA A Dead Letter

Congress enacted the ATCA for the specific purpose of restoring jurisdiction in civil ATA cases against the

PLO and the PA, as is obvious from the ATCA's text and legislative history.

1. The ATCA provides that a defendant "benefiting from a waiver or suspension of § 1003 of the Anti-Terrorism Act of 1987" is deemed to consent to personal jurisdiction in civil ATA cases if it (i) "continues to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States," or (ii) "establishes" such a facility. 18 U.S.C. § 2334(e)(1)(B). Section 1003, in turn, makes it unlawful to "expend funds" or "establish or maintain * * * facilities or establishments within the jurisdiction of the United States," "if the purpose be to further the interests of the Palestine Liberation Organization." 22 U.S.C. § 5202.

By expressly incorporating § 1003, the ATCA reaches the PLO and PA, because—

- they are the very entities covered by § 1003 ("the Palestine Liberation Organization," "any successor" or "any agents");
- they are engaged in the very conduct forbidden by § 1003 ("expend[ing] funds" and "maintain[ing] an office * * * or other facilities within the jurisdiction of the United States"); and
- the Executive knows of this conduct and permits it notwithstanding the prohibitions in § 1003.[2]

The plain meaning of "waiver or suspension" covers such a case without the "written certification" requirement inserted into the statute by the court below. A "waiver" may be "express *or* implied." Waiver, *Black's Law Dictionary* (11th ed. 2019) (emphasis added); see

[2] This activity is reflected in Foreign Agent Registration Act statements filed with the Justice Department and documented on respondents' websites and postings on U.S.-based social media platforms. C.A. Docs. 305-3, at A28-144; 305-4, at A146-208.

Waive, *Oxford English Dictionary Online* ("[t]o relinquish [a] * * * contention[] *either* by express declaration *or by doing some intentional act*") (emphasis added). The government can "constructive[ly] waive" statutory requirements. See, *e.g.*, *Morris Commc'ns, Inc.* v. *FCC*, 566 F.3d 184, 189 (D.C. Cir. 2009). And Congress's further inclusion of the word "suspension" in the ATCA broadens the statute's coverage, because the government effects a "suspension" by mere forbearance. See *Salazar* v. *King*, 822 F.3d 61, 78-79 (2d Cir. 2016); *Arpaio* v. *Obama*, 797 F.3d 11, 30 (D.C. Cir. 2015) (Brown, J., concurring).

But the court below accepted a non-textual argument. It held that another statute—one not mentioned in the ATCA's text—is exclusive and controlling. That other statute authorizes the President to issue a written certification expressly waiving § 1003. See Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 7041(k)(2)(B)(i), 133 Stat. 341. The President has not issued the written certification meeting the terms of that other statute. Therefore, the Second Circuit concluded, the President has not waived or suspended § 1003. Pet. App. 7a-8a.

This argument suffers from a basic logical flaw called the fallacy of the inverse. ("If P, then Q" does not mean "if not P, then not Q.") The President not only has *statutory* authority to waive § 1003 with an express, written certification; he also has independent *constitutional* authority to waive or suspend § 1003, as President Reagan's 1987 signing statement concerning § 1003 explained: "the right to decide the kind of foreign relations, if any, the United States will maintain is encompassed by the President's authority under the Constitution, including the express grant of authority in Article II, Section 3, to receive ambassadors." *Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989*, 2 Pub. Papers 1541, 1542 (Dec. 22, 1987); see *Dames & Moore* v.

Regan, 453 U.S. 654, 675-688 (1981) (recognizing Executive foreign-affairs powers in absence of express congressional authorization); see generally *Bill to Relocate United States Embassy from Tel Aviv to Jerusalem*, 19 Op. O.L.C. 123, 125-126 (1995) (collecting authorities for the proposition that "Congress cannot trammel the President's constitutional authority to conduct the Nation's foreign affairs").

In fact, the State Department announced that it was exercising independent constitutional authority to suspend § 1003 with respect to the PLO and PA—"consistent with the president's authorities to conduct the foreign relations of the United States,"[3] precisely because "the factual record * * * did not permit the Secretary to make a factual certification that was required by statute."[4]

Congress knows how to specify written or express waivers when it wishes. *E.g.*, 10 U.S.C. § 2193b(c)(3)(B); 15 U.S.C. § 1845(e)(2)(B); 22 U.S.C. § 4310; 28 U.S.C. § 2254(b)(3); 50 U.S.C. § 3343(c)(1). But it used no such language in the ATCA. Instead, Congress phrased the ATCA broadly, to accomplish the purpose of restoring jurisdiction in civil ATA cases against the PLO and PA. See, *e.g.*, H.R. Rep. No. 115-858, at 7 & n.23; 164 Cong. Rec. H6617-6618 (daily ed. July 23, 2018) (statement of Rep. Nadler).

At the time Congress enacted the ATCA, the PLO and PA were maintaining facilities and expending funds in the United States with the Executive's knowledge and permission, notwithstanding § 1003. *That* was the only

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[3] See Jim Zanotti, Congressional Research Services, *The Palestinians: Background and U.S. Relations* 4 nn.14-15 (Nov. 21, 2018), https://fas.org/sgp/crs/mideast/RL34074.pdf.

[4] Department of State, Press Briefing (Nov. 21, 2017), https://www.state.gov/briefings/department-press-briefing-november-21-2017/.

waiver or suspension Congress had before it when it passed the ATCA. To conclude, as the lower court did, that Congress had in mind some other, non-existent "waiver or suspension," and that the "continues to maintain" clause was therefore a complete nullity, strains credulity. See *United States* v. *Hayes*, 555 U.S. 415, 427 (2009) (rejecting construction that would render a statute "'a dead letter' in some two-thirds of the States from the very moment of its enactment").

2. The Second Circuit made doubly sure to nullify the ATCA by going on to hold that respondents' facility on East 65th Street in New York City is not a "within the jurisdiction of the United States." Pet. App. 8a (quoting 18 U.S.C. § 2334(e)(1)(B)).

That conclusion is obviously inconsistent with the ATCA's text, which on its face reaches "*any* office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States." 18 U.S.C. § 2334(e)(1)(B) (emphasis added). "[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997)). East 65th Street in New York City is ordinarily thought to be within the jurisdiction of the United States.

In announcing that holding, the Second Circuit did not grapple with or even mention the ATCA's expansive text. Instead, it cited a comment in its earlier decision in *Klinghoffer* that the UN Headquarters Agreement (61 Stat. 3416, T.I.A.S. 1676, 554 U.N.T.S. 308 (1947)) created "a legal fiction," which renders the UN Headquarters on First Avenue in New York City "not really United States territory at all, but is rather neutral ground over which the United States has ceded control." Pet. App. 8a (quoting *Klinghoffer*, 937 F.2d at 51). This was contrary to the

text of the treaty, which expressly provides that "the federal, state and local courts of the United States *shall have jurisdiction* over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws." UN Headquarters Agreement § 7(c) (emphasis added). *A fortiori* that applies to UN Missions *outside* the headquarters district, such as respondents' observer mission on East 65th Street. The treaty also provides that "the United States retains full control and authority over * * * the conditions under which persons may remain and reside" in the United States. § 13(d).

The Foreign Mission Act of 1982, Pub. L. No. 97-241, tit. II, § 202(b), 96 Stat. 283-290, confirms that the treaty does not remove UN missions from the jurisdiction of the United States. It provides specifically that UN missions remain "subject to reasonable regulation," 22 U.S.C. § 4309a(a)(1)(B), and requires all foreign missions to "comply with such terms and conditions as the Secretary [of State] may determine as a condition to the * * * acquisition, retention, or use of any real property," § 4304(b).

Even on its own terms, the court of appeals' reliance on *Klinghoffer* was nonsensical. The *Klinghoffer* decision *permitted* the exercise of jurisdiction over the PLO based on activities in its East 65th Street facility, see 937 F.2d at 52, and the district court in that case *exercised* such jurisdiction on remand, see 795 F. Supp. at 114-115.

B. Review Is Warranted As A Matter Of Respect For Coordinate Branches

By rendering the ATCA a dead letter upon enactment, the court below frustrated the considered judgment of the political branches in areas—national security and foreign relations—where those judgments are paramount. A court of appeals should not be permitted to nullify a federal statute without further, definitive review by

this Court. Indeed, this Court has not hesitated to grant certiorari to define the respective roles of the three branches of government in cases implicating separation-of-powers and foreign-policy concerns without awaiting a circuit split. *E.g.*, *Patchak* v. *Zinke*, 138 S. Ct. 897 (2018); *Ziglar* v. *Abbasi*, 137 S. Ct. 1843 (2017); *Bank Markazi* v. *Peterson*, 136 S. Ct. 1310 (2016); *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076 (2015); *Bond* v. *United States*, 134 S. Ct. 2077 (2014).

This Court's intervention is also necessary to vindicate Congress's authority to protect Americans from terrorism abroad. Congress enacted the ATCA specifically to "address[] lower court decisions that have allowed entities that sponsor terrorist activity against U.S. nationals overseas to avoid the jurisdiction of U.S. courts" in civil ATA cases, and to "halt, deter, and disrupt international terrorism." H.R. Rep. No. 115-858, at 3, 6, 7 (2018). Congress enacted the original ATA 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 (1992) (emphasis added). In 1987, Congress found specifically that "the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad," and therefore determined that "the PLO and its affiliates * * * should not benefit from operating in the United States." Anti-Terrorism Act of 1987, Pub. L. No. 100-204, tit. X, § 1002, 101 Stat. 1406. In 2004, Congress mandated the creation of an Office of Justice for Victims of Overseas Terrorism to implement proposed legislation finding that more than 100 American citizens have been murdered or maimed in Palestinian terrorist attacks. Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 126, 118 Stat. 2872; see HR. Rep. No. 108-792, at 780; S. 684, 108th Cong.; H.R. 401, 108th Cong. And in

2016, Congress passed legislation finding that international terrorism "threatens the vital interests of the United States," and that persons who knowingly contribute material support or resources to designated terror groups "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." Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, § 2(a)(1), (6), 130 Stat. 852.

These legislative findings merit great deference. In "considering both the procedural and substantive standards used to * * * prevent acts of terrorism, proper deference must be accorded to the political branches." *Boumediene* v. *Bush,* 553 U.S. 723, 796 (2008). Anti-terrorism legislation 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. "[I]n no other area has the Court accorded Congress greater deference." *Rostker* v. *Goldberg*, 453 U.S. 57, 64-65 (1981); see *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013) (cautioning against "unwarranted judicial interference in the conduct of foreign policy")

Last term, in *Jesner* v. *Arab Bank PLC*, the Court again confirmed that courts owe "special respect" to those "delicate judgments, involving a balance that it is the prerogative of the political branches to make, especially in the field of foreign affairs" because of "important separation-of-powers concerns." 138 S. Ct. 1386, 1408 (2018) (plurality opinion); see *id.* at 1412 (Gorsuch, J., concurring) ("[T]he job of creating new causes of action and navigating foreign policy disputes belongs to the political branches.").

* * * * *

Congress passed the ATCA to promote the United States' national security and the foreign policy interests by superseding the lower court's initial decision in this case, which rendered the ATA a dead letter in its intended heartland applications. Now, the Second Circuit has nullified the ATCA as well. This Court should grant review without awaiting a conflict as a matter of comity and respect for the judgment of a coordinate branch in a matter of national security and foreign affairs.

II. The Court Should Also Grant Review To Resolve A Deepening Circuit Split Left Open In Earlier Cases

A. The Circuits Remain Divided On Whether A Victim's Status As A U.S. Citizen Provides Sufficient Nexus To Satisfy Fifth Amendment Due Process

The circuits are divided on whether Congress can, consistent with the Fifth Amendment's Due Process Clause, authorize U.S. courts to exercise personal jurisdiction over a defendant who injures U.S. citizens or U.S. interests abroad, in violation of federal law. The issue has been fully joined and is ripe for this Court's review.

The Third, Sixth, Tenth, and Eleventh Circuits have held that "a Fifth Amendment analysis of due process is different from one undertaken under the Fourteenth Amendment," *Handley* v. *Ind. & Mich. Elec. Co.*, 732 F.2d 1265, 1271 (6th Cir. 1984), because "the fact that the United States is the sovereign asserting its power undoubtedly must affect the way the constitutional balance is struck," *Republic of Panama* v. *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 945 (11th Cir. 1997); accord *Peay* v. *BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1213 (10th Cir. 2000) (following *Republic of Panama*); *Pinker* v. *Roche Holdings, Ltd.*, 292 F.3d 361, 370-371 (3d Cir. 2002) ("In the federal court context, the inquiry will be slightly different, taking less account of federalism

concerns, and focusing more on the national interest in furthering the policies of the law(s) under which the plaintiff is suing." (citation omitted)). These circuits evaluate "the federal policies advanced by the statute," and where "Congress has provided for nationwide service of process * * * presume that nationwide personal jurisdiction is necessary to further congressional objectives." *Peay*, 205 F.3d at 1213 (quoting *Republic of Panama*, 119 F.3d at 948); *Pinker*, 292 F.3d at 370-371 (taking into consideration "the national interest in furthering the policies of the law(s) under which the plaintiff is suing"). In criminal cases, the Second, Fourth, Fifth, and Eleventh Circuits hold that "a sufficient nexus between the defendant and the United States" may be found under statutes criminalizing conduct occurring outside the United States "when the aim of that activity is to cause harm inside the United States or to U.S. citizens or interests." *E.g.*, *United States* v. *Rojas*, 812 F.3d 382, 393 (5th Cir. 2016); *United States* v. *Brehm*, 691 F.3d 547, 552 (4th Cir. 2012).

In contrast, the Second, Seventh, and D.C. Circuits hold that the standard for assessing personal jurisdiction in civil actions is "the same" under the Fifth Amendment and the Fourteenth Amendment: those Circuits refuse to consider extraterritorial federal interests—such as national security—limiting their analysis to defendants' contacts with the "territorial jurisdiction of the United States." Pet. App. 41a; *Livnat* v. *Palestinian Authority*, 851 F.3d 45, 54 (D.C. Cir. 2017); *Abelesz* v. *OTP Bank*, 692 F.3d 638, 660 (7th Cir. 2012).[5] This Court has "le[ft] open

[5] Although the Second Circuit does not consider federal interests in applying the Fifth Amendment's Due Process Clause in civil cases, it does consider such interests in applying the same clause in criminal cases. *E.g.*, *United States* v. *Epskamp*, 832 F.3d 154, 168 (2d Cir. 2016).

the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court" as the Fourteenth Amendment. *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1773, 1784 (2017).[6]

The split is sharply presented and outcome-dispositive here. Considering itself bound by this Court's decision in *Walden* v. *Fiore* (applying the Fourteenth Amendment), the Second Circuit held that the "citizenship of the plaintiffs is an insufficient basis for specific jurisdiction over the defendants." Pet. App. 43a. The Second Circuit also found that injury to U.S. interests does not suffice: the jury found that respondents had provided material support to designated Foreign Terrorist Organizations (FTOs) (so designated precisely because the FTOs threaten U.S. interests, see Exec. Order 12,947, 60 Fed. Reg. 5079 (Jan. 23, 1995)), see Pet. App. 72a, 74a, 77a, but the circuit held that finding irrelevant because there was no evidence that the FTOs directed their conduct at U.S. territory. *Id.* at 47a-48a & n.13. The Second Circuit acknowledged that its holding on this "important" question "impose[d] 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." *Id.* at 30a.

In contrast, the Fourth Circuit has rejected a due process challenge in a criminal prosecution of extraterritorial conduct that rested "solely on the premise that [defendant's] prosecution in this country was fundamentally unfair, because he did not know that [his victim] was an American." *United States* v. *Murillo*, 826 F.3d 152, 157

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[6] See also *Asahi Metal Indus. Co.* v. *Superior Court of Cal.*, 480 U.S. 102, 113 n.* (1987); *Omni Capital Int'l* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987).

(4th Cir. 2016). Similarly, the Eleventh Circuit held recently that the victim's status as a United States citizen satisfies the nexus requirement of the Fifth Amendment Due Process Clause. *United States* v. *Noel*, 893 F.3d 1294, 1305 (11th Cir. 2018).

To be sure, the Fourth and Eleventh Circuit's decisions in these cases came in *criminal* cases, but the Due Process Clause does not textually distinguish between civil and criminal cases. And as courts have observed, it requires, in criminal cases, a "nexus between the prohibited activity and the United States," which "serves the same purpose as the 'minimum contacts' test in personal jurisdiction." *United States* v. *Perlaza*, 439 F.3d 1149, 1168 (9th Cir. 2006); see *United States* v. *Angulo-Hernandez*, 576 F.3d 59, 62 (1st Cir. 2009) (Torruella, J., dissenting from denial of en banc review) (explaining that "principles of due process" developed in civil cases "should be applied when our government attempts to exercise criminal jurisdiction over foreign nationals").

"[T]he realities of today's global economy" mean that organizations with no physical presence in the United States are commonly charged with federal crimes. See Advisory Committee Note to Fed. R. Crim. P. 4 (2016 Amendment). This Court has never suggested that there could be a *stricter* due process standard in civil cases against such defendants than in criminal cases, and such a distinction would make no sense. Civil enforcement authority extends to almost every federal criminal regime. See 18 U.S.C. § 981. Many expressly extraterritorial statutes impose *both* civil *and* criminal penalties and authorize civil enforcement by private citizens as well as the Attorney General. *E.g.*, 18 U.S.C. §§ 1963, 1964 (RICO); 18 U.S.C. §§ 2334, 2339B, 2339C (terrorism); 7 U.S.C. §§ 13, 25 (commodities price manipulation); 15 U.S.C. §§ 2, 15, 15a (antitrust). If the constitution tolerates a defendant's

loss of liberty or even life where the conduct at issue occurred abroad, then it cannot possibly be the case that depriving a defendant of property for the same conduct would cross the constitutional line.

Since this Court declined review in April 2018 of the court of appeals' initial decision, the split has deepened. The Eleventh Circuit has followed the Fourth Circuit in holding that a victim's U.S. citizenship is sufficient to warrant jurisdiction in U.S. courts, *Noel*, 893 F.3d at 1305, while the D.C. Circuit has reaffirmed its position rejecting jurisdiction in a case now pending before this Court. *Estate of Klieman*, 923 F.3d at 1126, *petition for cert. filed*, No. 19-741. In the Second and D.C. Circuits, cases are now routinely dismissed on the theory that the Fifth Amendment restricts Congress' power to hale into court persons who injure U.S. citizens and U.S. interests outside of U.S. territory. *E.g.*, *Ofisi* v. *Al Shamal Islamic Bank*, No. CV 15-2010 (JDB), 2019 WL 1255096, at *6 (D.D.C. Mar. 19, 2019); *Dennis* v. *JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 207 (S.D.N.Y. 2018). And the D.C. Circuit recently confounded the split by suggesting that "intentional targeting" of an American citizen *might* meet the constitutional standard. *Estate of Klieman*, 923 F.3d at 1126, *petition for cert. filed*, No. 19-741.

B. The Decision Below Contravenes The Constitution And This Court's Cases

The lower court's holding that the Fifth Amendment does not permit Congress to protect U.S. citizens outside of the United States runs afoul of this Court's due process jurisprudence.

1. In assessing whether the link between the defendant and the forum establishes a fair or reasonable basis for jurisdiction, a "court must consider [a] the burden on the defendant, [b] the interests of the forum State, and [c]

the plaintiff's interest in obtaining relief." *Asahi.*, 480 U.S. at 113; see also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 775-776 (1984). This "reasonableness" is "assessed 'in the context of our federal system of government.'" *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286, 293 (1980) (quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 317 (1945)).

a. It has long been the view of the United States that the PLO and PA have no constitutional rights. See, *e.g.*, Constitutionality of Closing the Palestine Information Office, an Affiliate of the Palestine Liberation Organization, 11 Op. O.L.C. 104 (1987); U.S. Br. at 44, Palestine Info. Office v. Schultz, No. 87-5396 (D.C. Cir. Jan. 1988). But if they do have liberty interests under the Due Process Clause at all, the cognizable burden on them of litigating in the United States is *de minimis*.

The primary interest of defendants that due process seeks to protect is "fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign." *Burger King Corp.* v. *Rudzewicz,* 471 U.S. 462, 472 (1985) (internal quotation marks and alterations omitted). Complaints about fair warning ring hollow in this context: the PLO and PA are being haled into federal court to answer for what a jury has found was active, ongoing support of a bloody terror campaign—conduct that is universally condemned and proscribed, see *Restatement (Fourth) of Foreign Relations Law* § 413 (2018), and that the United States has denounced in no uncertain terms for decades, *e.g.*, Taylor Force Act, Pub. L. No. 115-141, tit. X, 132 Stat. 1143-1147 (2018); Palestinian Anti-Terrorism Act of 2006, Pub. L. No. 109-446, 120 Stat. 3318; Middle East Peace Commitments Act of 2002, Pub. L. No. 107-228, tit. VI, §§ 601-604, 116 Stat. 1394-1396; PLO Commitments Compliance Act of 1989, Pub. L. No. 101-246, § 804, 104 Stat. 78-79 (requiring a semi-annual

"statement of the position of the PLO on providing compensation to the American victims or the families of American victims of PLO terrorism"); *Letter of Transmittal, International Convention for the Suppression of Terrorist Bombings*, S. Treaty Doc. 106-6, at 1 (1999). Moreover, the PLO and PA have maintained an office in this country despite ample warning and multiple cases over many years holding that doing so subjected them to federal-court jurisdiction. Pet. App. 101a-102a n.10.

b. The interest of the United States in the adjudication of this suit in U.S. court, in contrast, is very powerful. "[T]he Government's interest in combating terrorism," this Court has recognized, "is an urgent objective of the highest order." *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 4 (2010). The ATA directly advances that interest, by deterring international terrorism and providing relief to American victims of international terrorism. See S. Rep. No. 102-342, at 22 (1992).

It is true that this Court held in *Walden* that under the Fourteenth Amendment the "plaintiff cannot be the only link between the defendant and the forum." 571 U.S. at 285. But there are obvious and important differences between the sovereign interests of the federal government and those of the State governments. "Although both Amendments require the same type of analysis * * * the two protections are not always coextensive. * * * [T]here may be overriding national interests which justify * * * federal legislation that would be unacceptable for an individual State." *Hampton* v. *Mow Sun Wong*, 426 U.S. 88, 100 (1976) (footnote omitted).

Fourteenth Amendment personal-jurisdiction limitations are in part "a consequence of territorial limitations on the power of the respective States." *Hanson*, 357 U.S. at 251; see *World-Wide Volkswagen*, 444 U.S. at 292 (1980). "The sovereignty of each State" to adjudicate

claims "implie[s] a limitation on the sovereignty of all its sister States." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (internal quotations omitted).

Those state-sovereignty limitations, however, are entirely absent where, as here, a federal court exercises federal judicial power over a federal-law claim created by Congress to further national security and foreign policy. The Constitution allocates power over national security and foreign policy exclusively to the federal government and denies those powers to the individual States. See *Arizona* v. *United States*, 567 U.S. 387, 394-395 (2012). "There is no more important responsibility of government than to protect the lives and safety of its citizens," H.R. Rep. No. 104-383, at 38 (1995), and that "responsibility" extends to the protection of "the just rights of [the federal government's] own nationals when those nationals are in another country," *Hines*, 312 U.S. at 64.

This Court has held that the territorial limitations of the Fourteenth Amendment afford "no ground for constructing an imaginary constitutional barrier around the exterior confines of the United States for the purposes of shutting th[e] government off from the exertion of powers which inherently belong to it by virtue of its sovereignty." *United States* v. *Bennett*, 232 U.S. 299, 306 (1914); accord *Burnet* v. *Brooks*, 288 U.S. 378, 403-405 (1933); *Cook* v. *Tait*, 265 U.S. 47, 55-56 (1924); see also 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1068.1 (3d ed. 2002). Consistent with these holdings, the Solicitor General has explained that "the United States' special competence in matters of * * * foreign affairs, in contrast to the limited and mutually exclusive sovereignty of the several States * * * would permit the exercise of federal judicial power in ways that have no analogue at the state level." U.S. Br. at 3, n.1, *DaimlerChrysler A.G.* v. *Bauman*, No. 11-965 (July 2013).

c. Finally, the interest of ATA plaintiffs like petitioners in obtaining convenient and effective relief strongly supports a U.S. forum, as Congress recognized by creating special *forum non conveniens* rules for the statute. 18 U.S.C. § 2334(d). If ATA plaintiffs' claims cannot be litigated in federal court, many will have no viable alternative and simply will not sue. It would be too expensive and disruptive to engage in years-long litigation in an unfamiliar foreign court system, thousands of miles away. Foreign nations, moreover, may be inhospitable to claims against their own nationals by American victims of terrorism. That is particularly true of claims like these against a foreign government *itself*. See Pierre N. Leval, *The Long Arm of International Law: Giving Victims of Human Rights Abuses Their Day in Court*, Foreign Aff., Mar.-Apr. 2013, at 18.

2. In criminal cases, the United States has embraced the due-process standard espoused by the majority of Circuits, permitting consideration of federal interests in asserting jurisdiction over conduct occurring abroad, because the Fifth Amendment's Due Process Clause is not offended where the aim of the defendant's conduct "was to cause harm to U.S. nationals and interests." U.S. Br. in Opp. at 7, *Al Kassar* v. *United States*, No. 11-784 (Apr. 2012); see U.S. Br. in Opp. at 13, *Murillo* v. *United States of America*, No. 16-5924 (Dec. 2016).

There can be no question that respondents' intentional—indeed criminal—conduct harmed U.S. interests and U.S. citizens. As the jury found, PA employees acting within the scope of their employment committed terror attacks that killed and injured American citizens. Pet. App. 66a, 68a, 70a, 72a, 74a, 77a. The jury further found that respondents did so for several of the attacks by materially supporting foreign terrorist organizations that had been 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); see Exec. Order 12,947, 60 Fed. Reg. 5079 (Jan. 23, 1995); Pet. App. 72a, 75a, 77a.

* * * * *

This case presents an excellent vehicle for deciding recurring questions of substantial interest to national security and foreign affairs. Petitioners prevailed on the merits of their ATA claims after a seven-week trial, and respondents' only other challenge on appeal was a makeweight attack on the trial court's decision to allow two expert witnesses to answer certain questions on cross-examination and redirect—an issue the court of appeals did not reach in light of its ruling on personal jurisdiction.

The Second Circuit's decision not to recall its mandate was an obvious abuse of discretion in two separate respects. *First*, a court necessarily abuses its discretion by basing the exercise of discretion on an erroneous view of the law. *Dart Cherokee Basin Operating Co.* v. *Owens*, 574 U.S. 81, 91, 95-96 (2014). The Court could construe the ATCA as Congress wrote it and remand for the exercise of discretion under the correct legal standard. *Ibid.*

Second, this Court could simply reverse, based on the lower court's failure to respect the "overwhelming" institutional considerations of finality that arise once a case has been tried to verdict in a federal court. See *Caterpillar Inc.* v. *Lewis*, 519 U.S. 61, 75 (1996); *Newman-Green, Inc.*, 490 U.S. at 836; *CGB Occupational Therapy, Inc.* v. *RHA Health Servs. Inc.*, 357 F.3d 375, 381 n.6 (3d Cir. 2004) ("[C]ourts should strive to cure jurisdictional defects, rather than dismiss for want of jurisdiction, in cases that have already proceeded to trial and judgment."). This Court has ample authority to reverse for such an abuse of discretion. *Calderon* v. *Thompson*, 523 U.S. 538, 560-566 (1998).

This case also presents an ideal vehicle to resolve the circuit-split over the manner in which the Fifth Amendment restricts congressional power to protect U.S. nationals and U.S. interests from misconduct occurring abroad, now that the split has deepened and the lower courts are routinely dismissing cases that satisfy Congress's jurisdictional determinations. This Court has the power to "consider all of the substantial federal questions determined in the earlier stages of the litigation." *Mercer* v. *Theriot*, 377 U.S. 152, 153 (1964).

There is no reason to delay review. The Second Circuit's nullification of the ATCA will bind pending and future lawsuits in the circuit. Thus, the Second Circuit was wrong to suggest that petitioners might fare better pursuing a complaint that petitioners filed while their motion to recall the mandate was pending. Pet. App. 9a-10a n.2. Petitioners filed the new case as a protective measure to ensure that their claims would not be time barred in the event that the Second Circuit denied the motion to recall the mandate *without* nullifying the new statute. But the Second Circuit has rendered the statute a dead letter, so that petitioners' protective complaint will likely fail absent a change in the law or in respondents' conduct. And even if respondents' conduct changes, or Congress amends 18 U.S.C. § 2334(e) yet again to correct the lower court's errors, the Second Circuit's decision would still needlessly force petitioners to endure another lengthy lawsuit and seven-week trial—and to again suffer the severe trauma of testifying about the murder of family members or the experience of a terror attack. Only this Court's review will prevent this irreparable harm to plaintiffs and the massive waste of judicial resources of an unnecessary retrial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 2019

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

Case Argued: April 12, 2016
Case Decided: August 31, 2016
Motion Filed: October 8, 2018
Motion Decided: June 3, 2019

Docket Nos. 15-3135-cv (Lead); 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.[*]

On October 8, 2018, shortly after Congress enacted the Anti-Terrorism Clarification Act ("ATCA"), the plaintiffs-appellees-cross-appellants ("plaintiffs") moved this Court to recall the mandate issued after this Court's

[*] Judge John G. Koeltl, of the United States District Court for the Southern District of New York, sitting by designation.

decision holding that the federal courts lacked personal jurisdiction over the Palestine Liberation Organization and the Palestinian Authority – the defendants-appellants-cross-appellees ("defendants") – with respect to the plaintiffs' claims. The plaintiffs contend that the newly enacted ATCA provides federal courts with jurisdiction over the defendants in this case and thus the mandate should be recalled. The extraordinary remedy of recalling a mandate is not warranted in this case, and the plaintiffs' motion is accordingly **DENIED**.

KENT A. YALOWITZ AND DAVID C. RUSSELL (Baruch Weiss, Dirk C. Phillips, John Robinson, Avishai D. Don, on the brief), Arnold & Porter Kaye Scholer LLP, for Plaintiffs-Appellees-Cross-Appellants.

GASSAN A. BALOUL (Mitchell R. Berger, Alexandra E. Chopin, Aaron W. Knights, on the brief), Squire Patton Boggs (US) LLP, for Defendants-Appellants-Cross-Appellees.

PER CURIAM:

In this case, eleven American families sued the defendants, the Palestine Liberation Organization ("PLO") and the Palestinian Authority ("PA"), under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in Israel that killed or wounded the plaintiffs or their family members. After a seven-week trial, the jury awarded the plaintiffs damages which, after trebling, amounted to $655.5 million. On appeal, this Court held that the federal courts lacked personal jurisdiction over the defendants with respect to the plaintiffs' claims. This Court vacated the judgment of the district court and remanded the case with instructions to dismiss the action. The mandate issued on November 28, 2016, and the Supreme Court denied the plaintiffs' petition for a writ of

certiorari on April 2, 2018. The plaintiffs have now moved to recall the mandate based on the recently enacted Anti-Terrorism Clarification Act ("ATCA").

The ATCA became law on October 3, 2018. Pub. L. No. 115-253, 132 Stat 3183 (2018). Section 4 of the ATCA, which added a subsection (e) to 18 U.S.C. § 2334, specifies activities by which certain parties shall be deemed to have consented to personal jurisdiction. The provision states that "regardless of the date of the occurrence of the act of international terrorism upon which [a] civil action [brought under 18 U.S.C. § 2333] was filed," a defendant shall be deemed to have consented to personal jurisdiction in such action if the defendant either (a) accepts any of three specified forms of assistance after the date that is 120 days after Section 4 of the ATCA was enacted or (b) is "benefiting from a waiver or suspension of section 1003 of the [ATA]" and, after the date that is 120 days after Section 4 of the ATCA was enacted, establishes or continues to maintain "any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States."[1] 18 U.S.C. § 2334(e)(1).

---

[1] Section 1003 of the ATA provides that:

> It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof . . .
>
> (1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;
>
> (2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or
>
> (3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

On October 8, 2018, the plaintiffs filed the present motion to recall the mandate issued in this case. They argue that Section 4 of the ATCA provides the federal courts with jurisdiction over the defendants with respect to the plaintiffs' claims. The defendants counter that the plaintiffs have failed to show circumstances that warrant the extraordinary remedy of recalling the mandate and that, in any event, Section 4 of the ATCA does not apply retroactively to closed cases.

I.

The federal courts of appeals "possess an inherent power to recall [a] mandate, subject to review for abuse of discretion." Taylor v. United States, 822 F.3d 84, 90 (2d Cir. 2016) (quotation marks omitted, alteration in original). Recalling a mandate is an extraordinary remedy to be used "sparing[ly]." Calderon v. Thompson, 523 U.S. 538, 550 (1998); Taylor, 822 F.3d at 90. Courts are reluctant to recall a mandate because of "the need to preserve finality in judicial proceedings." Sargent v. Columbia Forest Prod., Inc., 75 F.3d 86, 89 (2d Cir. 1996). Although the passage of a new law might warrant recalling a mandate in some circumstances, this is not such a case.

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22 U.S.C. § 5202. The President of the United States may waive this provision

> if the President determines and certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the appropriate congressional committees that the Palestinians have not, after the date of enactment of this Act [either (1) taken certain steps at the U.N. or (2) taken certain actions vis-à-vis the International Criminal Court].

Klieman v. Palestinian Auth., --- F.3d ----, 2019 WL 2093018, at *12 (D.C. Cir. May 14, 2019) (alteration and emphasis in Klieman) (quoting Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2780 (2015)).

II.

A.

The plaintiffs have not shown that either factual predicate of Section 4 of the ATCA has been satisfied. As to the first factual predicate, acceptance of a qualifying form of United States assistance, the plaintiffs state only that the defendants have accepted qualifying assistance in the past; they do not contend that the defendants currently do so. Meanwhile, in Klieman v. Palestinian Authority, which was decided on May 14, 2019, the Court of Appeals for the District of Columbia Circuit accepted the representation the Department of Justice made in an amicus curiae brief that neither the PLO nor the PA accept United States assistance. --- F.3d ----, 2019 WL 2093018, at *10 (D.C. Cir. May 14, 2019). The papers the plaintiffs filed in connection with this motion do not provide any reason to doubt the Department of Justice's representation or the Klieman court's adoption of that representation.

The plaintiffs also fail to show that, in accordance with Section 4's second factual predicate, the defendants benefit from a waiver or suspension of Section 1003 of the ATA and have established or continued to maintain an office or other facility "within the jurisdiction of the United States." Both conditions are necessary under Section 4's second factual predicate. Klieman, 2019 WL 2093018 at *10.

As to the first condition, the plaintiffs have not established that the defendants benefit from an express waiver or suspension under Section 1003 of the ATA. The plaintiffs contend that an express waiver is not required by Section 4 of the ATCA, and that the President impliedly suspended Section 1003 of the ATA with respect to the defendants by permitting the defendants to engage in conduct allowed only if Section 1003 were suspended. But the Klieman court persuasively rejected a similar argument, reasoning that allowing implied waivers to qualify

under Section 4 of the ATCA would "neglect the actual language of the legal authorization to issue waivers under [ATA] § 1003, . . . which creates legal consequences when the President 'certifies in writing' that a waiver is to be issued." 2019 WL 2093018 at *12. The plaintiffs in this case have not put forth anything that could qualify as, or substitute for, an express waiver or suspension under Section 1003 of the ATA.

Moreover, the plaintiffs in this case have not shown that the defendants have established or continued to maintain an office or other facility within the jurisdiction of the United States. Although the PLO maintains its United Nations Observer Mission in New York, the prohibitions of Section 1003 of the ATA do not apply to that office. Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro, 937 F.2d 44, 46 (2d Cir. 1991); see United States v. Palestine Liberation Org., 695 F. Supp. 1456, 1465 (S.D.N.Y. 1988) (finding the ATA inapplicable to the PLO Observer Mission). The Observer Mission is not considered to be within the jurisdiction of the United States. See Klinghoffer, 937 F.2d at 51 ("[T]he PLO's participation in the UN is dependent on the legal fiction that the UN Headquarters is not really United States territory at all, but is rather neutral ground over which the United States has ceded control.").

The plaintiffs point out that, according to Klinghoffer, "activities not conducted in furtherance of the PLO's observer status may properly be considered as a basis of jurisdiction." Id. at 51. But this statement was made in reference to determining whether such activities conferred personal jurisdiction over the PLO under § 301 of the New York Civil Practice Laws and Rules. Nothing in Klinghoffer suggests that the PLO's engaging in activities unrelated to its observer status transforms the PLO's Observer Mission into an office or other facility for the PLO "within the jurisdiction of the United States."

In sum, the plaintiffs have provided no basis to conclude that a factual predicate of Section 4 of the ATCA has been met in this case.

B.

This Court's interest in finality also weighs against recalling the mandate. When its factual predicates are met, Section 4 provides jurisdiction over a defendant "regardless of the date of the occurrence of the act of international terrorism upon which [the relevant] civil action was filed," 18 U.S.C. § 2334(e)(1), providing that the defendant subsequently commits certain acts. But irrespective of whether this language suggests that Section 4 applies retroactively to pending cases, such as the appeal in Klieman, it does not suggest that courts should reopen cases that are no longer pending. Legislation applies prospectively unless Congress explicitly provides for retroactive application. Vartelas v. Holder, 566 U.S. 257, 265–66 (2012); see Landgraf v. USI Film Prods., 511 U.S. 244, 272–73 (1994). And it is well-established that retroactive laws generally do not affect valid, final judgments. See Bank Markazi v. Peterson, 136 S. Ct. 1310, 1323 (2016) ("Congress . . . may not 'retroactively comman[d] the federal courts to reopen final judgments.'" (quoting Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 219 (1995) (alteration in original))). The mandate in this case was issued two and a half years ago, and the Supreme Court denied the plaintiffs' petition for a writ of certiorari more than six months before the plaintiffs filed their motion to recall the mandate. The ATCA does not provide explicitly or implicitly that closed cases can be reopened. Recalling the mandate now would offend "the need to preserve finality in judicial proceedings." Taylor, 822 F.3d at 90 (quotation marks omitted).[2]

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[2] The plaintiffs in this case have filed a new complaint in the Southern District of New York. Sokolow v. Palestine Liberation

CONCLUSION

This case does not warrant invoking the extraordinary remedy of recalling a mandate issued two and a half years ago. The Court has considered all the arguments of the parties. To the extent not specifically addressed, they are either moot or without merit. For the reasons explained above, the plaintiffs' motion to recall the mandate is **DENIED**.

Organization, No. 18cv12213 (S.D.N.Y.). To the extent that there are any developments in the activities of the PA or the PLO that may subject them to personal jurisdiction under the ATCA, they can be raised in that case.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

Case Argued: April 12, 2016
Case Decided: August 31, 2016

Docket Nos. 15-3135-cv (Lead); 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-

[*] Judge John G. Koeltl, of the United States District Court for the Southern District of New York, sitting by designation.

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. 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' 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

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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.

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 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

[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.

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 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

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[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.

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]

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

[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 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*.

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. 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]

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[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).

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 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

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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.

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 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 due process cases

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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.").

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 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

[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.").

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 court had general jurisdiction pursuant to an "exception" that the Supreme Court alluded to in a footnote in Daimler. In

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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.

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 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

[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).

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.

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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 C

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**

ORDER

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 Anti-terrorism 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 Anti-terrorism 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 Anti-terrorism 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 D

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

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

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

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 NOVACK WALDMAN, MORRIS WALDMAN, SHMUEL WALDMAN,	:	**Jury Verdict Form**
Plaintiffs,	:	
	:	04 Civ. 00397 (GBD)
v.	:	
THE PALESTINE LIBERATION ORGANIZATION (PLO) and THE PALESTINIAN AUTHORITY (PA),	:	
Defendants.	:	

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

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

LIABILITY

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 E

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 BAUER, minor, by his next friend and guardians Dr. Alan J. Bauer and Revital Bauer; BINYAMIN BAUER, minor, by his next friend and

DATE FILED:
30 MAR 2011

MEMORANDUM DECISION AND OPINION

04 CV 00397
(GBD)

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 Liberation 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

[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).

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 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 Sokolow 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 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

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[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.

[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.

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. 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 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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[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 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 contacts 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.

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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).

[9] For the purpose of discovery, the parties agreed that the relevant time period was the six-year period preceding the filing of the

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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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. 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

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.

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

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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 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.

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 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

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office was not working on behalf of the PA. See Defs.' Opening Mem., Ex. 3 (Interrogatories), at 6, 10-11.

[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.

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 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

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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.

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 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

[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.

(providing transcripts). Most were broadcasted on major national news networks such as CNN, Fox News Channel, ABC, and MSNBC.

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 considered 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

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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)).

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 of all contacts in the United States. Defendants have failed to demonstrate by a

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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.;
>
> 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.

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 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

[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.

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 fac-tors 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*
GEORGE B. DANIELS
United States District Judge

APPENDIX F

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 23rd day of July, two thousand nineteen.

Eva Waldman,

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, et al.,

Defendants.

ORDER

Docket Nos:
15-3135 (Lead)
15-3151

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 G

1. Article II, § 3 of the Constitution provides, in part, that the President "shall receive Ambassadors and other public Ministers."

2. Amendment V of the Constitution provides, in part, that no person shall "be deprived of life, liberty, or property, without due process of law."

3. The Anti-Terrorism Act of 1987, Public Law 100-204 (22 U.S.C. § 5202), provides, in part:

§ 1002. Findings; determinations

(a) Findings

The Congress finds that—

* * *

(2) the Palestine Liberation Organization (hereafter in this chapter referred to as the "PLO") was directly responsible for the murder of an American citizen on the Achille Lauro cruise liner in 1985, and a member of the PLO's Executive Committee is under indictment in the United States for the murder of that American citizen;

(3) the head of the PLO has been implicated in the murder of a United States Ambassador overseas;

(4) the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad; * * *

(b) Determinations

Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.

§ 1003. Prohibitions regarding PLO

It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any

of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this chapter—

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or

(3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

4. The Anti-Terrorism Act of 1992, Title X of Pub. L. 102-572, added the following provisions to Title 18 of the United States Code:

§ 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; * * *

§ 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. * * *

§ 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. * * *

5. The Anti-Terrorism Clarification Act of 2018, Pub. L. 115-253, added the following provision to Section 2334 of Title 18 of the United States Code:

(e) Consent of Certain Parties to Personal Jurisdiction.—

(1) In general.—Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed, the defendant— * * *

(B) in the case of a defendant benefiting from a waiver or suspension of section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5202) after the date that is 120 days after the date of enactment of this subsection—

(i) continues to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States; or

(ii) establishes or procures any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States. * * *