No. 21-1496

In the
Supreme Court of the United States

TWITTER, INC.,
Petitioner,
v.
MEHIER TAAMNEH, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS FACEBOOK, INC. AND GOOGLE LLC SUPPORTING PETITIONER

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QUESTIONS PRESENTED

Under §2333 of the Anti-Terrorism Act, as amended by the Justice Against Sponsors of Terrorism Act, U.S. nationals injured by "an act of international terrorism" that is "committed, planned, or authorized by" a designated foreign terrorist organization may sue any person who "aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism," and recover treble damages. 18 U.S.C. §2333(a), (d)(2).

The questions presented are:

1. Whether a defendant that provides generic, widely available services to all its numerous users and "regularly" works to detect and prevent terrorists from using those services "knowingly" provided substantial assistance under §2333 merely because it allegedly could have taken more "meaningful" or "aggressive" action to prevent such use.

2. Whether a defendant whose generic, widely available services were not used in connection with the specific "act of international terrorism" that injured the plaintiff may be liable for aiding and abetting under §2333.

PARTIES TO THE PROCEEDING

Petitioner Twitter, Inc. was a defendant in the district court and an appellee before the court of appeals.

Respondents Facebook, Inc. (now known as Meta Platforms, Inc.) and Google LLC also were defendants in the district court and appellees before the court of appeals.

Respondents Mehier Taamneh, Lawrence Taamneh, Sara Taamneh, and Dimana Taamneh were plaintiffs in the district court and appellants before the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Meta Platforms, Inc. is a publicly traded corporation; it has no parent corporation and no publicly traded corporation owns 10% or more of its stock.

Google LLC is a subsidiary of XXVI Holdings, Inc., which is a subsidiary of Alphabet, Inc. Alphabet, Inc. is a publicly traded company and no publicly traded corporation owns 10% or more of its stock.

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INTRODUCTION

The Anti-Terrorism Act (ATA) authorizes a United States national who is injured by an "act of international terrorism" to recover treble damages from the perpetrator(s) of the act. 18 U.S.C. §2333(a). In 2016, Congress expanded the ATA to allow victims to recover from "any person who aids and abets" or "conspires with the person who committed such an act of international terrorism." *Id.* §2333(d)(2). Cognizant of the harsh penalties and stigma associated with being deemed an aider and abettor of terrorism, Congress carefully cabined aiding-and-abetting liability to those who "knowingly provid[e] substantial assistance" to the specific "act of international terrorism" that injured the plaintiff. *Id.* While Congress had previously enacted a criminal law that gives the government discretion to prosecute providing material support to a terrorist organization, when it came to the ATA and its private treble-damages regime, Congress adopted a different approach, requiring more than simply supporting a terrorist organization. Instead, Congress made clear in its enacted findings that it was embracing a common-law standard that imposes liability only on those who knowingly provide substantial assistance to a specific wrongful act. Retaining that high bar was critical because the same amendments not only authorized treble damages for private plaintiffs but took the exceptional step of abrogating the immunity of foreign sovereigns from ATA claims arising out of certain attacks, including the new aiding-and-abetting claims.

This case arises out of an ATA lawsuit against Facebook, YouTube, and Twitter brought by family members of a victim of the 2017 Reina nightclub shooting in Istanbul, Turkey. The plaintiffs do not (and cannot plausibly) claim that any of the defendants knowingly aided that horrific act of terrorism. Nor do plaintiffs claim that the perpetrators used any of the defendants' online services to aid in the commission of the attack, much less did so with any defendant's knowledge. In fact, plaintiffs do not allege that the perpetrators of the attack ever used any of the defendants' services at all. Plaintiffs instead sued the companies on the theory that they "aided and abetted" the Reina attack by failing to adequately enforce their policies prohibiting terrorism-related content when it came to removing content that was generally helpful to ISIS. As the district court correctly recognized, those allegations are nowhere near sufficient to sustain a claim that any defendant "knowingly provid[ed] substantial assistance" to the Reina attack.

The Ninth Circuit nevertheless revived plaintiffs' aiding-and-abetting claim—but did so only by embracing a reading of the statute that defies text, context, common-law principles, and common sense. Rather than require plaintiffs to plead (and ultimately prove) that defendants aided and abetted the "act of international terrorism" from which their "injury aris[es]," 18 U.S.C. §2333(d)(2)—*i.e.*, the Reina attack—the court found it sufficient that plaintiffs alleged that the companies assisted ISIS generally by failing to do more to keep ISIS supporters from exploiting the companies' services. And rather than require plaintiffs to plead (and ultimately prove) that

defendants "knowingly provid[ed] substantial assistance" to the Reina attack, the Ninth Circuit found it sufficient that plaintiffs alleged that the companies were generally aware that terrorists were exploiting their services—in contravention of their terms of use and despite extensive efforts to prevent that activity—and did not undertake even more aggressive prevention efforts.

The combined effect of the Ninth Circuit's errors creates a statute of impossible breadth. Any provider of widely available services that can be exploited by terrorists risks treble damages for unrelated terrorist attacks if a jury later determines that it should have done more to root out such exploitation. A bank that learns that its policies prohibiting terrorists from exploiting its services have not proven foolproof could be held liable for unwittingly providing services to an ISIS member. A rental-car company could be held liable for renting cars to ISIS adherents, an online marketplace could be liable for selling them ordinary goods, and so on. Efforts to screen out suspicious customers would be treated as awareness of the problem and, under the Ninth Circuit's logic, treble-damages liability would extend to anyone ever injured in a terrorist attack conducted by ISIS. Making matters worse, foreign sovereigns could be haled into U.S. courts on equally extravagant theories of liability. None of that is remotely consistent with Congress's expressly stated intent to provide a damages remedy consistent with well-established and suitably restrained principles of aiding-and-abetting liability. This Court should restore ATA liability to the limits imposed by the statutory text and traditional principles of secondary liability.

OPINIONS BELOW

The opinion of the court of appeals (Pet.App.1a-150a[1]) is reported at 2 F.4th 871. The opinion of the district court (Pet.App.151a-180a) is reported at 343 F.Supp.3d 904.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 2021. A petition for rehearing was denied on December 27, 2021 (Pet.App.181a). On March 14, 2022, Justice Kagan extended the time within which to file a petition for a writ of certiorari to May 26, 2022, and the petition was filed on that date. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the appendix to this brief. Stat.App.1a-3a.

STATEMENT OF THE CASE

A. Statutory Background

1. The ATA creates a civil cause of action for victims of international terrorist acts to obtain redress from perpetrators. The Act permits a United States national "injured … by reason of an act of international terrorism" to sue in our courts and seek treble damages. 18 U.S.C. §2333(a). The statute defines "international terrorism" as certain "violent acts or acts dangerous to human life" that would be criminal if committed domestically, but that either occur primarily abroad or transcend national boundaries, and appear to be "intended" to

[1] In this brief, "Pet.App." refers to the appendix to the conditional petition for a writ of certiorari in No. 21-1496.

"intimidate" civilian populations or to "influence" or "affect" government action through fear or acts of violence. 18 U.S.C. §2331(a)(1). Separately from the civil remedies provided in the ATA, in 1996, Congress enacted a criminal prohibition on providing "material support or resources to a foreign terrorist organization." Pub. L. No. 104-132, §303(a), 110 Stat. 1214, 1250 (1996) (codified at 18 U.S.C. §2339B).

As originally enacted, the ATA did not expressly address secondary liability against those who aid and abet acts of international terrorism. *See* Pub. L. No. 101-519, §132(a), 104 Stat. 2240, 2250-51 (1990) (codified at 18 U.S.C. §2333 (1990)); Pub. L. No. 102-572, §1003, 106 Stat. 4506, 4521-24 (1992) (reenacting §2333 with minor modifications). Accordingly, most appellate courts to confront the issue held that §2333 as originally enacted did not authorize aiding-and-abetting liability. *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 278 (D.C. Cir. 2018); *Rothstein v. UBS AG*, 708 F.3d 82, 97-98 (2d Cir. 2013). In contrast, the Seventh Circuit, extrapolating from the separate criminal prohibition on providing material support, 18 U.S.C. §2339B, held that a form of "secondary liability" was available under §2333. *See Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 691-92 (7th Cir. 2008) (en banc).

2. In 2016, Congress amended the ATA to authorize certain forms of secondary liability. Justice Against Sponsors of Terrorism Act ("JASTA"), Pub. L. No. 114-222, §4, 130 Stat. 852, 852 (2016). Rather than follow the lead of the Seventh Circuit in *Boim*, however, and build on the material-support approach taken in §2339B, Congress added a new provision to

§2333 incorporating only aiding-and-abetting and conspiracy liability. In particular, subsection (d) now provides that, "[i]n an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by" a designated terrorist organization, "liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism." *Id.* §4, 130 Stat. at 854 (codified at 18 U.S.C. §2333(d)(2)).

In §2(a)(5) of JASTA, Congress stated that the D.C. Circuit's opinion in *Halberstam v. Welch*, 705 F.2d 472 (1983), "provides the proper legal framework" for aiding-and-abetting liability under the ATA. 130 Stat. at 852 (codified at 18 U.S.C. §2333 note). That opinion, authored by Judge Wald and joined by Judge Bork and then-Judge Scalia, included a section entitled "Legal Framework," *see* 705 F.2d at 476-78, that canvassed the case law and distilled civil aiding-abetting liability to "the following elements":

> (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation.

Id. at 477. The *Halberstam* opinion then articulated six factors designed to determine whether the third prong of that test is satisfied: (1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) the defendant's presence or absence at

the time of the tort, (4) the defendant's relation to the principal, (5) the defendant's state of mind, and (6) the period of defendant's assistance. *See id.* at 483-84.

In addition to creating aiding-and-abetting and conspiracy liability, JASTA carved out an exception to foreign sovereign immunity for suits caused by "an act of international terrorism in the United States" and "a tortious act or acts of the foreign state" or of its "official[s], employee[s], or agent[s]. §3(a), 130 Stat. at 853 (codified at 28 U.S.C. §1605B). Where those conditions are satisfied, United States nationals may bring ATA claims against foreign sovereigns, including under an aiding-and-abetting or conspiracy theory. 28 U.S.C. §1605B(c).

Concerned that JASTA's abrogation of sovereign immunity could undermine international comity, impair the ability of the United States to respond effectively to state sponsors of terror, damage relationships with close partners, and possibly lead to reciprocal actions by foreign nations against the United States, President Obama vetoed JASTA. The White House, Veto Message from the President—S.2040 (Sept. 23, 2016), https://bit.ly/3Nwy3x3. Congress overrode the veto and passed JASTA into law. 130 Stat. at 855-56.

B. Proceedings Below

This case arises from a heinous terrorist attack committed at the Reina nightclub in Istanbul, Turkey, by Abdulkadir Masharipov. On January 1, 2017, Masharipov murdered 39 people at the club. Nawras Alassaf, a relative of plaintiffs, was among the victims. JA54. Plaintiffs allege that Masharipov committed the attack at the direction of ISIS and under the

guidance of Abu Shuhada, the head of ISIS operations in Turkey. JA118.

Although plaintiffs vaguely allege that Masharipov was "radicalized by ISIS's use of social media," JA157, they do not allege that any of the defendants had any connection whatsoever to Masharipov, Shuhada, or this specific terrorist attack—or even that the terrorists involved in the Reina attack ever used these services, let alone used them in conjunction with the attack. And plaintiffs do not dispute that each defendant prohibits use of its services by terrorists or terrorist organizations or to further terrorist attacks or activities.

1. Plaintiffs sued Facebook and Google (which owns YouTube), along with Twitter, in the Northern District of California, asserting claims under the ATA and state tort law. JA158-67. The operative complaint alleges that the Reina attack was the result of a year-long effort by ISIS to plan a major terrorist attack in Turkey. JA118. As part of that plan, Masharipov was directed to establish himself, along with his wife and family, in Turkey and await further orders, and then was provided with detailed instructions from Shuhada and ISIS on how to execute the attack. JA119.

The complaint does not allege that Facebook or YouTube helped to commit the Reina attack, that their services were used in any way in furtherance of the attack, or that they had any connection to Masharipov or Shuhada. Indeed, plaintiffs do not even allege that Masharipov or Shuhada ever had an account on Facebook or YouTube, viewed or posted any content through these services, or used those services at all.

Pet.App.168a. Instead, plaintiffs allege that *other* ISIS members and sympathizers posted content on Facebook and YouTube services—not in connection with the Reina attack, but for the general purposes of spreading propaganda, soliciting funding, and recruiting followers. JA117-18. According to plaintiffs, that content helped ISIS grow. JA49.

Plaintiffs further allege, albeit generically and with few specifics, that defendants "recommend[] ISIS" material through algorithms that "match content, videos, and accounts with similarities." JA143, 147. According to plaintiffs, users who viewed particular Facebook accounts or YouTube videos were shown similar accounts and videos. JA147. But plaintiffs do not allege that defendants knew of any specific ISIS content that any of their algorithms ever displayed, let alone that their algorithms were designed or implemented for that purpose. And in any event, plaintiffs do not claim that Masharipov, Shuhada, or any ISIS adherent saw any ISIS accounts or videos based on these features, let alone any content related to the Reina attack.

As the Ninth Circuit noted, plaintiffs acknowledge that defendants maintain "policies [that] prohibit posting content that promotes terrorist activity or other forms of violence." Pet.App.64a-65a. Facebook, for example, has long prohibited "threats of harm to public and personal safety"; any organization involved in terrorist activity; and any content that "expresses support for" those groups, their "leaders," or "celebrate[s]" their violence. *See Facebook Community*

Standards (Apr. 23, 2015), https://bit.ly/3Urkh1f.[2] YouTube likewise has long "strictly prohibit[ed]" "content intended to recruit for terrorist organizations, incite violence, celebrate terrorist attacks or otherwise promote acts of terrorism," as well as "violent or gory content" that is "primarily intended to be shocking, sensational or disrespectful." *YouTube Help* (Apr. 30, 2016), http://bit.ly/3UuS5Ld.

Plaintiffs further concede that the companies enforced those policies by "regularly remov[ing] ISIS content and ISIS-affiliated accounts." Pet.App.64a. For example, the complaint alleges that: Facebook "continuously" removed pages created by one unnamed "ISIS supporter[]," JA93; YouTube "removed" ISIS recruitment videos from its site and hired "Arabic speakers to serve as 'moderators' to review videos posted to YouTube," JA78, 135-36; and all defendants "suspended or blocked selected ISIS-related accounts … prior to the Istanbul attack," JA135, and invested in "tools" to "identify, flag, review, and remove ISIS accounts." JA148; *see also, e.g.*, JA149-50, 155. Nevertheless, plaintiffs maintain that defendants "knowingly and recklessly" allowed ISIS to engage in "illegal activity" because they did not take sufficiently "meaningful action to stop" users

[2] The effort to police their websites and enforce their user agreements is hardly static. Although this case involves the specific allegations and time period set forth in the operative complaint, the companies' efforts are constantly evolving and improving. Both Facebook and YouTube regularly remove content that violates their terrorism policies. *See Facebook Transparency Center* (last visited Nov. 27, 2022), https://bit.ly/3Ve7kbH; *Google Transparency Report* (last visited Nov. 27, 2022), https://bit.ly/2IguufL.

from posting ISIS-related content in violation of defendants' policies. JA135.

In particular, plaintiffs maintain that the companies did not adequately "monitor content"; "actively guard against terrorists' use of" the platforms; prevent "ISIS-linked account[s]" that they "shut down … from springing right back up"; or develop "algorithm[s]" to block "newly created account[s] similarly named to one previously taken down" that "sen[d] out large numbers of requests in a very short period of time." JA136, 148-49, 154-56. And the complaint alleges that, despite media and government organizations calling attention to ISIS's general use of their platforms, defendants removed only ISIS content that violated their policies. JA93, 95, 134, 136-38. According to plaintiffs, these alleged failures to take sufficiently "aggressive" measures to prevent the posting of terrorist content in violation of their explicit and regularly enforced anti-terrorism policies renders defendants liable for aiding and abetting the Reina terrorist attack. JA90-91.

2. Defendants moved to dismiss, arguing that the complaint fails to state a claim under the ATA and that plaintiffs' claims are also barred by §230 of the Communications Decency Act, 47 U.S.C. §230. The district court granted the motion on the first ground without reaching defendants' §230 arguments. Pet.App.151a-180a.

The district court held (as relevant here) that plaintiffs had not stated a claim for aiding-and-abetting liability. As the court explained, under §2333 "the injury at issue must have arisen from '*an act* of international terrorism,'" so to be liable for aiding and

abetting, the defendant must have "assisted the principal tortfeasor in committing '*such an act of* international terrorism.'" Pet.App.174a. The court contrasted §2333 with the material-support statute, which makes it unlawful to knowingly provide "material support or resources to a foreign terrorist organization" that has been designated as such, regardless whether the support or resources are used in connection with any particular terrorist act, 18 U.S.C. §2339B(a)(1). The court observed that, unlike the material-support statute, §2333 "does not refer to assisting a foreign terrorist organization generally or such an organization's general course of conduct." Pet.App.174a. Yet the complaint here tied its "aiding/abetting … claim[] to ISIS" generally, "not Mr. Masharipov" or the Reina attack. Pet.App.172a.

The district court further held that, even if §2333 authorized aiding-and-abetting liability based on general "assistance of a foreign terrorist organization," the complaint still would "fail to establish liability." Pet.App.175a. As the court explained, the complaint contains "no allegation, for example, that Defendants knew that ISIS members had previously used Defendants' platforms to communicate specific plans to carry out terrorist attacks," and it contains "insufficient allegations that Defendants played a role in any particular terrorist activities." Pet.App.177a. The complaint alleged "a market relationship at best" between ISIS supporters and the companies, with "Defendants provid[ing] routine services generally available to members of the public." Pet.App.178a. And there is "no allegation that Defendants ha[d] any intent to further ISIS's terrorism." Pet.App.179a.

Because the district court concluded that plaintiffs failed to state a viable ATA claim, it did not reach or address whether §230 would independently bar their claims.

3. In a consolidated opinion, the Ninth Circuit reversed the dismissal in *Taamneh*, but affirmed the dismissal of materially identical claims in *Gonzalez v. Google LLC*, which is before this Court in No. 21-1333. Pet.App.71a.

a. The *Taamneh* plaintiffs pursued a single theory of aiding-and-abetting liability on appeal: that defendants aided and abetted the Reina attack by failing to take sufficiently meaningful steps to prevent ISIS members or supporters from exploiting their services to aid ISIS's general aims. *Taamneh* CA.Br. at 5, 18-20. The Ninth Circuit did not consider whether §230 would bar those allegations, despite siding with Google on the §230 issue on functionally identical facts in *Gonzalez*. Pet.App.60a. Instead, the Ninth Circuit held that the *Taamneh* plaintiffs stated a claim for aiding-and-abetting liability under §2333. Pet.App.60a-66a.

The Ninth Circuit identified "the Reina Attack" as the "act of international terrorism" on which plaintiffs' aiding-and-abetting claims are predicated. Pet.App.61a. The "Taamneh Plaintiffs," it noted, "unambiguously conceded [that] the act of international terrorism they allege is the Reina Attack." Pet.App.64a. Nevertheless, the court did not ask whether the complaint sufficiently alleged that defendants knowingly provided substantial assistance to the Reina attack itself.

Instead, the Ninth Circuit sustained plaintiffs' aiding-and-abetting claim based on allegations that defendants "were generally aware they were playing an important role in ISIS's terrorism enterprise by providing access to their platforms and not taking aggressive measures to restrict ISIS-affiliated content." Pet.App.62a. In other words, according to the Ninth Circuit, it is enough that the companies allegedly "knowingly assisted ISIS" itself. Pet.App.62a. And in the Ninth Circuit's view, the companies allegedly acted with the requisite knowledge simply because they allegedly were "aware of ISIS's use of their respective social media platforms for many years" yet "refused to take meaningful steps to prevent that use." Pet.App.62a.

Turning to whether the alleged assistance to ISIS was "substantial," the Ninth Circuit considered six factors that the D.C. Circuit identified in *Halberstam*. *See* Pet.App.52a, 63a-66a. The court acknowledged that several of those factors cut against classifying the alleged assistance as substantial. Defendants undisputedly "were not present during the Reina Attack." Pet.App.64a. They "had, at most, an arms-length transactional relationship with ISIS," which "may be even further attenuated" than their relationships with "other users because" they "regularly removed ISIS content and ISIS-affiliated accounts." Pet.App.64a. And the complaint did not "allege that defendants had any intent to further or aid ISIS's terrorist activities, or that defendants shared any of ISIS's objectives." Pet.App.65a. To the contrary, it acknowledged that the companies "took steps to remove ISIS-affiliated" users and content. Pet.App.64a-65a.

Nonetheless, the court concluded that the complaint "adequately allege[d] that defendants' assistance to ISIS was substantial" solely because of its alleged importance to ISIS's growth and its duration. Pet.App.63a-65a. Thus, in the court's view, the complaint adequately alleged that defendants "knowingly provided substantial assistance" simply because it "allege[d] that defendants provided services that were central to ISIS's growth and expansion, and that this assistance was provided over many years." Pet.App.65a.

b. In the companion *Gonzalez* case, the Ninth Circuit held that §230 barred all of the plaintiffs' materially similar ATA allegations.[3] The *Gonzalez* plaintiffs alleged that Google, by operating YouTube, committed or aided and abetted a separate ISIS terrorist attack. Pet.App.5a-6a. Like the *Taamneh* plaintiffs, the *Gonzalez* plaintiffs highlighted YouTube's allegedly imperfect removal of ISIS content. *Gonzalez* CA.Br. at 8-11. The *Gonzalez* plaintiffs also alleged (in three conclusory paragraphs) that YouTube helped popularize ISIS by purportedly recommending additional ISIS content to users already interested in ISIS. *Gonzalez* Second Am. Compl. ¶¶14, 60, 62. The Ninth Circuit concluded that §230 barred both theories. Pet.App.26a-42a. The court also held that the remaining allegation—that Google shared advertising revenue with ISIS from ads purportedly placed in ISIS videos—fell outside §230

[3] The parties in *Taamneh* have stipulated that the Ninth Circuit's holding in *Gonzalez*, if affirmed, would foreclose Plaintiffs' claims in *Taamneh*. *See* D.Ct.Dkt.88 at 3.

but was insufficient to plead direct or secondary liability under the ATA. Pet.App.42a-60a.

At this point, the *Gonzalez* plaintiffs do not contest that §230 would immunize defendants from claims based on "knowingly permit[ing] ISIS to post on" their platforms and/or failing to remove such content. *Gonzalez* Pet.10-12 & n.2. That case now focuses exclusively on allegations that defendants "recommend[ed]" ISIS content, *Gonzalez* Pet. i. But neither complaint alleges that defendants made such recommendations deliberately (or even knowingly) or that any content was recommended to any participant in either the Paris attack at issue in *Gonzalez* or the Istanbul attack at issue in *Taamneh*.

4. The Ninth Circuit denied rehearing en banc. Pet.App.181a.

SUMMARY OF ARGUMENT

Under §2333(d)(2) of the ATA, a defendant can be held liable for aiding and abetting "an act of international terrorism," and face treble damages for injuries arising out of it, only if the defendant "knowingly provid[ed] substantial assistance" to the commission of that act of terrorism. The statute's focus is not on assisting terrorism in general, or terrorist organizations generally (as with the criminal prohibition on material support), but on knowingly providing substantial assistance to a specific act of international terrorism. The text, context, common-law principles of aiding-and-abetting liability expressly embraced in JASTA, and common sense all support that focus.

That straightforward rule dooms plaintiffs' ATA claims. Everyone agrees that the specific act of terrorism for which plaintiffs seek treble damages is the Reina attack in Istanbul. And plaintiffs' complaint contains no allegations that Facebook, YouTube, or any of the services they provide played any role at all in the Reina attack. The complaint never suggests that Facebook or YouTube had any connection to the perpetrators of the Reina attack, who were not even Facebook or YouTube users and appear to have used different services to communicate. At best, the complaint alleges only that other ISIS members and supporters exploited Facebook and YouTube services to further ISIS's general cause, in contravention of the companies' express and enforced policies. But even those allegations of generic assistance fail to supply the requisite connection to the specific act of terrorism from which plaintiffs' injuries arise, let alone to demonstrate that either company *knowingly* provided *substantial* assistance to any terrorist activity. As the district court correctly recognized, plaintiffs fail to state any viable ATA claim.

The Ninth Circuit reached a contrary conclusion by making two critical mistakes that have the combined effect of stretching §2333(d)(2) far beyond anything Congress could sensibly have intended to accomplish. First, the Ninth Circuit improperly shifted its focus from whether defendants aided and abetted *the Reina attack* to whether they aided ISIS *in general*. Congress knows how to draft a statute that imposes liability for assisting *a terrorist organization*; that is what the material-support statute does, and it entrusts its enforcement to federal prosecutors. *See* 18 U.S.C. §2339B. Congress took a decidedly different

approach when it authorized a civil treble damages remedy for secondary liability. By its terms, §2333(d) extends liability only to those who aid and abet the commission *a particular act of terrorism*. That conclusion is reinforced by the *Halberstam* principles that Congress explicitly identified as supplying the "proper legal framework" for analyzing aiding-and-abetting claims. Those principles make no sense when applied to the general activities of terrorist organizations rather than to a specific act of terrorism like the Reina attack.

Making matters worse, the Ninth Circuit embraced an atextual and boundless conception of "knowingly providing substantial assistance." The Ninth Circuit conflated mere awareness that some terrorists exploit Facebook and YouTube, despite policies prohibiting such use, with the statute's actual requirement of knowingly providing substantial assistance to the commission of specific acts of international terrorism. In the process, the Ninth Circuit diluted the demanding knowledge requirement to something akin to recklessness (or less). Once again, that approach cannot be squared with the statutory text or the legal framework of *Halberstam*.

The combined implications of those mistakes are breathtaking. By the Ninth Circuit's telling, Facebook and YouTube could be held liable under the ATA for virtually any terrorist attack ISIS ever commits, at any time and anywhere in the world, simply because their efforts to prevent ISIS members or supporters from exploiting their services were not, in a jury's estimation, sufficiently "aggressive." And it would not

stop with social-media or online-video services. Any provider of widely available goods or services—be it financial services providers, oil companies, pharmaceutical companies, commercial airline companies, and more—that is aware that terrorists can exploit its goods or services to their own unlawful ends is at risk under the Ninth Circuit's approach. Nothing in the statutory text or JASTA's enumerated findings provides any indication that Congress intended to impose such far-reaching secondary liability. In fact, such expansive liability would have raised even more serious foreign policy concerns than those that produced a presidential veto. JASTA not only expanded secondary liability under the ATA but abrogated foreign sovereign immunity for claims arising out of some attacks. If the scope of secondary liability is truly as broad as the Ninth Circuit believes, the potential for friction with friendly nations and reciprocal abrogation of our own sovereign immunity in foreign courts is nearly limitless.

This Court should reject the Ninth Circuit's novel and boundless conception of aiding-and-abetting liability. If it does so, then the *Gonzalez* plaintiffs' claims necessarily fail too, and there would be no reason for this Court to reach the question whether §230 of the Communications Decency Act would eliminate ATA liability that does not, in fact, exist.

ARGUMENT

I. Plaintiffs Failed To Allege That Facebook Or YouTube Aided And Abetted The Act Of International Terrorism That Caused Their Injuries.

Plaintiffs' aiding-and-abetting claim fails at the threshold because their complaint does not allege that defendants knowingly and substantially assisted the commission of the Reina attack. Under both the plain text of the ATA and the common-law principles on which it draws, a defendant cannot be liable for aiding and abetting unless it "knowingly provid[ed] substantial assistance" to the principal in connection with the underlying wrong—namely, the specific "act of international terrorism" from which the plaintiff's "injury aris[es]." 18 U.S.C. §2333(d)(2). Plaintiffs "unambiguously conceded [that] the act of international terrorism they allege is the Reina Attack." Pet.App.64a. Yet their complaint nowhere alleges that Facebook or YouTube had any direct connection with the perpetrators or assisted in the Reina attack in any way—let alone that either company did so knowingly or substantially. Thus, under a straightforward reading of the statute, plaintiffs failed to state a viable claim for aiding and abetting an international act of terrorism.

A. Section 2333(d)(2) Imposes Aiding-and-Abetting Liability Only If a Defendant Knowingly and Substantially Assisted the Act of International Terrorism That Injured the Plaintiff.

Section 2333 provides that, in "an action under subsection (a) for an injury arising from an act of

international terrorism committed, planned, or authorized by [a designated foreign terrorist] organization … liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism." 18 U.S.C. §2333(d)(2). Under a straightforward reading of that statutory text, a defendant must knowingly and substantially assist the commission of the specific act of terrorism that injured the plaintiff to be liable as an aider and abettor; merely alleging that defendants provided generic assistance to the terrorist organization that claims responsibility does not suffice. Both the contrasting approach of the material-support provision, which does target aid to the organization in general, as well as other textual features of the ATA confirm that conclusion, as do longstanding common-law principles of aiding-and-abetting liability.

1. The ATA's text makes clear that the focal point here must be aiding and abetting the Reina attack, not aiding a terrorist organization in the abstract. Subsection (a) provides a cause of action for Americans injured "by reason of an act of international terrorism." 18 U.S.C. §2333(a). Section 2333(d)(2), added by JASTA, expands the universe of persons who may be held liable for "an action under subsection (a) for an injury arising from an act of international terrorism" to include "any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism." *Id.* §2333(d)(2). The statute thus permits aiding-and-abetting liability only when the defendant aids and abets the specific "act of

international terrorism" that injured the plaintiff. Indeed, that is the only sensible way to read the statute since the whole point of subsection (d)(2) is to delineate who may held liable for "an action under subsection (a)," which provides a remedy for U.S. persons injured "by reason of an act of international terrorism." *Id.* §2333(a).

The statute's use of the word "such" and its repeated use of the singular "an act" confirms that it is focused on a single, discrete act. *Cf. Niz-Chavez v. Garland*, 141 S.Ct. 1474, 1481-82 (2021). So does the fact that the foreign terrorist organization responsible for the attack must be formally designated as such "as of the *date* on which such act of international terrorism was committed, planned, or authorized." 18 U.S.C. §2333(d)(2) (emphasis added). Similarly, the limited abrogation of foreign sovereign immunity introduced by JASTA focuses on not just the timing of the specific act vis-a-vis the responsible organization's designation, but its location, as it abrogates immunity only for, *inter alia*, "act[s] of international terrorism in the United States." That waiver of sovereign immunity extends to the newly created actions for aiding and abetting and conspiracy. A statute whose application turns on the timing and location of specific attacks does not impose secondary liability for generically helping a terrorist organization. Rather, all these textual features focusing on a specific act of international terrorism compel the conclusion that one "aids and abets" "an act of international terrorism" only "by knowingly providing substantial assistance" to the commission of that specific act.

Plain meaning reinforces that understanding. The ordinary meaning of "abet" is to help bring about a particular act. *The American Heritage Dictionary of the English Language* 3 (5th ed. 2018) ("To approve, encourage, and support (an action or plan of action)"); *Webster's New International Dictionary of the English Language* 4 (2d ed. 1949) (*Webster's Second*) ("To incite, encourage, instigate, or countenance;—now used chiefly in a bad or a disparaging sense; as, to *abet* the commission of a crime"); *Webster's Third New International Dictionary of the English Language* 3 (2002) (*Webster's Third*) (same). And "aid" is similarly defined as a verb meaning "to provide with what is useful or necessary in achieving an end." *Merriam-Webster's Collegiate Dictionary* 26 (11th ed. 2014); *see also Webster's Third* 44 (defining "aid" as "to give help or support to" as in "he [aid]ed the cause"). Legal usage is the same: The black-letter definition of the familiar doublet "aid and abet" is "[t]o assist or facilitate the commission of a crime, or to promote its accomplishment," *Black's Law Dictionary* 84 (10th ed. 2014) (*Black's*), or, in the civil context, to "assis[t] in or facilitat[e] the commission of an act that results in harm or loss," or "otherwise promote[] the act's accomplishment," *id.* at 1054. In both ordinary and legal usage, then, one can aid and abet someone only in committing some particular wrong. *See, e.g.*, *Webster's Third* 3 ("assist or support *in the achievement of* a purpose" (emphasis added)); *American Heritage Dictionary* 3 ("abetted the thief in robbing the bank"); 1 *Oxford English Dictionary* 21 (2d ed. 1989) ("incite … a person … *in* a crime or offence").

Other textual clues lead to the same conclusion. Section 2333(d)(2) clearly ties the phrase "aids and

abets" to "knowingly providing *substantial* assistance," which calls for assessing the alleged assistance in relation to a specific act, outcome, or objective. It is difficult to assess whether the degree of assistance is substantial unless it is judged in reference to a specific act—a $5 gift substantially assists the purchase of a hamburger but not a house. And the text makes clear that the specific act that must be substantially assisted is "such act of international terrorism."

Basic rules of grammar underscore that straightforward reading. The words "aids" and "abets" are both transitive verbs that require a direct object. The most natural direct object of "aids and abets" is "such an act of international terrorism." The only other noun that could serve as the direct object ("person") is part of a separate prepositional phrase ("the person who committed such an act of international terrorism") that qualifies "conspires with." If Congress wanted "person" to be the direct object of *both* "aids and abets" and "conspires with," one would have expected it to include a comma after the phrase "conspires with" to make that clear (*i.e.*, "liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with, the person who committed such an act of international terrorism").[4] But in all events, whether the direct object of "aids and abets" is the "person" or the "act," the result is the

[4] General principles of conspiracy law require an agreement between two or more persons, underscoring that one conspires with a person, but aids and abets an act. *See, e.g.*, *Halberstam*, 705 F.2d at 477.

same: The defendant must have aided and abetted "the person who committed [the] act of international terrorism" *in the commission* of that act.

That natural reading of the text of §2333 is strongly supported by the contrasting approach in §2339B, the criminal prohibition on providing material support to terrorist organizations. Section 2339B, which was enacted a full decade before JASTA, makes it a crime to "knowingly provid[e] material support or resources to a foreign terrorist organization." 18 U.S.C. §2339B(a)(1). And as this Court has recognized—also long before JASTA was enacted—the plain language of that provision criminalizes the provision of material support *to a designated foreign-terrorist organization*, regardless of whether that support is connected to any particular act of terrorism, as long as the defendant knows that the recipient "is a designated terrorist organization" or "has engaged or engages in terrorist activity." *Id.*; *see Holder v. Humanitarian Law Project*, 561 U.S. 1, 8 (2010). The defendant need not know that the material support she furnishes will itself substantially assist any particular terrorist act. *Holder*, 561 U.S. at 16-17.

As §2339B confirms, Congress knew how to create liability for assisting a terrorist *organization*, yet it chose not to take that approach in JASTA. Instead, rather than borrow language from a relatively novel statute that focuses on support for organizations, Congress used language borrowed from traditional principles of *aiding-and-abetting* liability that focuses on knowingly providing substantial support for specific acts of terrorism. JASTA asks not whether the

defendant has provided material support for the designated foreign terrorist organization responsible for the attack, but whether the defendant aided and abetted the commission of *a particular wrongful act*. That choice is particularly striking because the first half of §2333(d)(2) references designated foreign terrorist organizations. Thus, if aiding the responsible organization in general, rather than the particular wrongful act, were enough, Congress could have easily said so. The conclusion that §2333(d)(2) imposes liability only on those who knowingly provided substantial assistance to the commission of the specific act of international terrorism that injured the plaintiff is thus reinforced by "the usual rule that when the legislature uses certain language in one part of the statute and different language in another," courts should "assum[e]" that "different meanings were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004).

That reading of the ATA is also consistent with Congress's approach to aiding-and-abetting liability in other contexts. For instance, the federal criminal aiding-and-abetting statute makes "punishable as a principal" whoever "aids, abets, counsels, commands, induces or procures [the] commission" of "an offense against the United States." 18 U.S.C. §2. To be liable under that provision, the defendant must at a minimum have known that he was assisting whatever crime was committed or attempted. *See, e.g.*, U.S. Dep't of Justice, *Criminal Resource Manual* §2475

(1998).[5] Given the "rough similarity" between criminal and civil aiding and abetting, *see Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994), it would be odd to divorce the reach of §2333(d) from traditional concepts of aiding and abetting liability in the criminal-law context. And the notion that YouTube or Facebook could be criminally prosecuted for aiding and abetting the Reina attack when they had no direct interactions with the perpetrators and policies to prevent terrorists from exploiting their services is completely untenable. Thus, both statutory text and broader context confirm that aiding-and-abetting liability attaches only to those who knowingly provide substantial assistance to the commission of the specific act of terrorism that caused the plaintiff's injuries.

2. The same conclusion follows from the common-law principles that Congress expressly incorporated to govern §2333(d)(2) claims. In its explicit findings in JASTA's enacted text, Congress stated that the "decision of the [D.C. Circuit] in Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983)"—"the leading case regarding Federal civil aiding and abetting and conspiracy liability"—"provides the proper legal framework for how such liability should function" in §2333(d)(2). JASTA §2(a)(5), 130 Stat. at 852. And

[5] Congress has tied aiding and abetting liability to specific acts of misconduct in other civil contexts as well. *See, e.g.*, 7 U.S.C. §25(a)(1) ("willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter"); 8 U.S.C. §1182(a)(6)(E)(i) ("knowingly … assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law").

the *Halberstam* opinion could not have been clearer: To be liable as an aider-and-abettor, "the defendant must knowingly and substantially assist *the principal violation*." 705 F.2d at 477 (emphasis added). The aiding-and-abetting rubric that Congress explicitly incorporated thus unmistakably requires the plaintiff to plead and prove that the defendant knowingly provided substantial assistance to the specific underlying wrong.

The *Halberstam* court hardly broke new ground in recognizing that principle. To the contrary, it reflects the prevailing understanding of aiding and abetting liability at common law. *See id.* at 477-78, 481-86. Civil aiding-and-abetting liability descends from the "joint tort," which at common law required at a minimum a "tacit understanding" among the defendants to commit an unlawful act. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* §46, at 322-23 (5th ed. 1984). Accordingly, long before *Halberstam*, many courts had recognized that an "aider-abettor [must] knowingly and substantially assis[t] the violation" committed by the principal. *SEC v. Coffey*, 493 F.2d 1304, 1316 & n.30 (6th Cir. 1974) (collecting cases); *see also*, *e.g.*, *Monsen v. Consol. Dressed Beef Co.*, 579 F.2d 793, 799 (3d Cir. 1978) ("aider-abettor [must] knowingly and substantially participat[e] in the wrongdoing").

Both *Halberstam* and the cases from which it drew therefore reflect the "centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission." *Rosemond v. United States*, 572 U.S. 65, 70 (2014); *Cent. Bank of Denver*, 511 U.S.

at 181 (principal violator is one who aids or abets the commission of the offense or tort); Dan B. Dobbs et al., *The Law of Torts* §435 (2d ed. 2022) (one must "knowingly provid[e] substantial aid or encouragement to another's commission of a tort"). Nothing in the text of §2333(d)(2) gives any indication that Congress intended to radically depart from those traditional principles in the ATA, and Congress's express incorporation of the settled framework articulated in *Halberstam* positively refutes such a counterintuitive claim. If anything, Congress's intent to provide a civil remedy to victims of specific terrorist attacks makes a focus on the defendant's culpability vis-à-vis that specific attack particularly appropriate.

B. The Complaint Fails to Allege That Facebook or YouTube Knowingly and Substantially Assisted the Reina Attack.

Section 2333(d)(2)'s requirement that a defendant "knowingly provid[e] substantial assistance" to the particular "act of international terrorism" that injured the plaintiff makes this a straightforward case. Plaintiffs seek to hold Facebook and YouTube liable on an abetting-and-abetting theory. And there is no dispute that the "act of international terrorism" that the companies are alleged to have aided and abetted is the Reina attack. Yet the complaint contains no allegation—none—that Facebook or YouTube assisted the commission of that specific attack in any way, let alone that they knowingly provided its perpetrators with substantial assistance. Plaintiffs thus failed to plead a viable aiding-and-abetting claim.

1. As the Ninth Circuit explained, the "Taamneh Plaintiffs unambiguously conceded the act of

international terrorism they allege is the Reina Attack." Pet.App.64a. That concession was correct and unavoidable. Section 2333(d)(2) authorizes secondary liability in "an action under subsection (a) for an injury arising from an act of international terrorism." 18 U.S.C. §2333(d)(2). Section 2333(a), in turn, provides a cause of action for United States nationals injured "by reason of an act of international terrorism." *Id.* §2333(a). Plaintiffs can pursue a statutory cause of action only because their relative was injured in the Reina attack.

To recover from defendants for the injuries suffered in the Reina attack, plaintiffs must allege that defendants knowingly provided substantial assistance for that specific attack, not for ISIS in the abstract. Plaintiffs thus must adequately plead (and ultimately prove) that defendants aided and abetted the Reina attack.

2. That necessary concession suffices to end this case, for the complaint contains no allegations that either Facebook or YouTube was used to provide assistance to Masharipov, Shuhada, or anyone else directly involved with the Reina attack—let alone that any such assistance was substantial or provided knowingly. In contrast to the considerable detail in the complaint describing who committed that attack and how, the complaint nowhere suggests that Facebook or YouTube supplied any assistance at all, at any time, to either the terrorist who carried out the attack (Masharipov) or the "ISIS emir" who allegedly orchestrated it (Shuhada). JA119. The complaint does not allege, for example that Masharipov or Shuhada used Facebook or YouTube to communicate

with each other or other ISIS-affiliated individuals in the lead-up to the Reina attack, or even that either decided to affiliate with ISIS because of something he saw on Facebook or YouTube. In fact, while it obviously would not suffice, the complaint does not even allege that Masharipov or Shuhada had an account on Facebook or YouTube or ever used these services at all (which, of course, in and of itself would hardly qualify as substantial assistance).

Nor does the complaint allege that anyone else involved in the Reina attack used any Facebook or YouTube service to facilitate its commission. To the contrary, the complaint's detailed allegations about the events leading up to the attack make crystal clear that Facebook and YouTube had nothing to do with it. The complaint alleges that the attack was the product of a year of planning by ISIS and specific directions conveyed by Shuhada to Masharipov over the course of that year. JA118-19, 128. To the extent any technology was involved to communicate, the sources cited in the complaint indicate that Masharipov used the secure messaging app Telegram to coordinate the details of the shooting and communicate with his ISIS commander. *See* Ahmet S. Yayla, The Reina Nightclub Attack and the Islamic State Threat to Turkey, CTCSentinel (Mar. 2017), https://bit.ly/3fzWRYy (cited at JA118, 120). By plaintiffs' own telling, then, neither Facebook's nor YouTube's services played a role in the Reina attack.

Instead, plaintiffs allege that ISIS members or supporters used Facebook's and YouTube's services to spread propaganda, raise funds, and attract new recruits. But plaintiffs make no effort to link any of

that to the Reina attack, let alone to explain how it rose to the level of knowingly providing substantial assistance to the commission of that attack. At most, the complaint just generically alleges that the Reina attack "involved the use" (by unidentified people) "of Defendants' platforms, before and after the attack, to intensify the fear and intimidation that ISIS intended to inflict." JA117. That does not come close to clearing the high bar of "knowingly providing substantial assistance." *See infra* Part II. But in all events, the complaint does not cite a single Facebook post or YouTube video involving the Reina attack to substantiate even that legally irrelevant claim. Because the complaint does not "allege any clear or direct linkage between Defendants' platforms and the Reina attack," Pet.App.168a, it does not plead facts that, if proven, could satisfy the ATA's demanding standard for holding someone liable for aiding and abetting an international act of terrorism.

C. The Ninth Circuit Improperly Conflated the Act of International Terrorism and the Organization That Perpetrated It.

The Ninth Circuit reached a contrary conclusion because it lost sight of the relevant act that must be aided and abetted. The court acknowledged that the "act of international terrorism" that plaintiffs alleged caused their injuries was "the Reina Attack." Pet.App.61a, 64a. Yet it sustained plaintiffs' aiding-and-abetting claim without identifying any allegation in the complaint that any of the defendants' services were used to assist in the commission of that attack. Instead, the court found it sufficient that the complaint "adequately allege[d] that defendants

knowingly assisted *ISIS*," without regard to whether that purported assistance did anything to further the Reina attack in particular. Pet.App.62a (emphasis added); *see also, e.g.*, *id.* (highlighting allegations that defendants "were generally aware they were playing an important role in ISIS's terrorism enterprise"); *id.* at 64a (invoking allegations that defendants' services were "integral to ISIS's expansion, and to its success as a terrorist organization").

That reasoning reflects a basic category mistake, as it conflates aiding and abetting *a specific act of terrorism* with generally assisting the terrorist organization that committed it—a mistake that is particularly clear given the stark contrast between §2333(d)(2) and the material-support statute, 18 U.S.C. §2339B. Unlike the material-support statute, §2333(d)(2) does not impose liability for assisting *a terrorist organization*. It imposes liability for aiding and abetting "an act of international terrorism," specifically, the "act of international terrorism" from which the plaintiff's "injury aris[es]." 18 U.S.C. §2333(d)(2). Needless to say, ISIS is not an "act of international terrorism." *Id.* By the complaint's own description, it is an organization (or conglomeration of several). JA48. Neither the text of §2333(d)(2) nor the settled aiding-and-abetting principles it incorporates permits the imposition of liability for aiding a terrorist organization in the abstract. Indeed, §2333(d)(2) expressly references designated "foreign terrorist organization[s]" in describing the universe of terrorist attacks covered by the statute. If Congress intended to capture anyone who aided and abetted "such terrorist organizations," it would have said so. Instead, it imposed liability for aiding and abetting

"an act of international terrorism." 18 U.S.C. §2333(d)(2).

The Ninth Circuit's own analysis illustrates the intractable problems with allowing support for an organization to substitute for aiding and abetting a specific "act of international terrorism." Under the framework articulated by the D.C. Circuit in *Halberstam*, the aiding-and-abetting analysis focuses on factors designed to assess whether assistance is "substantial" in relation to the "principal violation," examining things like "the nature of the act encouraged," the defendant's "presence or absence at the time of the tort," and the defendant's "state of mind" when it was committed. 705 F.2d at 478; *see id.* at 483-84. Those factors are useful aids in ascertaining whether the connection between the alleged assistance and the underlying wrong is marginal or substantial. But they are incoherent if the task is to measure whether a defendant's assistance to a terrorist organization is substantial. It is meaningless to ask, for example, whether Facebook or YouTube was "absen[t] or presen[t] at the time of" ISIS. *Id.* at 484.

Implicitly recognizing as much, the Ninth Circuit bounced back and forth between treating ISIS and the Reina attack as the relevant unit of analysis. Pet.App.63a-65a. It began by assessing the amount of assistance allegedly provided by defendants to "ISIS's terrorism campaign" writ large and its role in "ISIS's growth and expansion" as an entity. Pet.App.63a. But it then flipped to find that the "defendants were not present during the Reina Attack." Pet.App.64a. And it flopped again to find that defendants had no "intent

to further or aid ISIS's terrorist activities." Pet.App.65a. The Ninth Circuit's inability to articulate a consistent understanding of what it is that defendants allegedly aided and abetted is a sure sign that it veered far off the beaten aiding-and-abetting track.

To the extent the Ninth Circuit tried to fix that problem by deeming the "act of terrorism" the general ISIS "terrorism enterprise," *see, e.g.*, Pet.App.62a, that just walks back into the same problem. After all, §2333(d) applies *only* when "an injury aris[es] from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization," 18 U.S.C. §2333(d)(2)—in other words, only when the attack is the product of an organization engaged in the general enterprise of terrorism, *see* 8 U.S.C. §1189(a)(1)(B). Thus, whatever role the "enterprise" construct may have to play in a common-law case like *Halberstam*, it cannot be used to override the plain text of §2333(d)(2), which does not impose liability for assisting the responsible "organization" or enterprise, but focuses on aiding and abetting a specific act of international terrorism. Congress specified in §2333(d)(2) that only an act of international terrorism can qualify as the "principal violation," *Halberstam*, 705 F.2d at 477, that a defendant aided and abetted. Moreover, *Halberstam* itself recognized the important distinction between aiding the perpetrator of a wrong generally versus aiding the commission of the wrong. *See, e.g.*, *id.* at 488 (cautioning against factoring into the aiding-and-abetting analysis things like "normal spousal support activities" and "performing household chores"). That distinction applies with even greater

force here given all the ways in which §2333(d) is focused like a laser beam on the "act of international terrorism" from which the plaintiff's injury arose.

Had the Ninth Circuit properly focused on the act of international terrorism, rather than the terrorist organization that committed it, it would (or at least should) have recognized that plaintiffs' complaint fails for the simple reason that it does not allege any meaningful connection between Facebook or YouTube and Masharipov and Shuhada and the Reina attack.

II. The Ninth Circuit's Lax Conception Of "Knowingly Providing Substantial Assistance" Cannot Be Reconciled With The Statutory Text Or The Common-Law Principles It Incorporates.

In addition to focusing on the wrong unit of analysis, the Ninth Circuit's decision suffers from an independent and critical flaw: It embraces a conception of "knowingly providing substantial assistance" that cannot be reconciled with the statutory text or any recognizable form of aiding-and-abetting liability.

1. Section 2333(d)(2) requires a plaintiff to plead and prove that the defendant "knowingly provid[ed] substantial assistance" to the commission of an "act of international terrorism." 18 U.S.C. §2333(d)(2). The defendant thus not only must have provided substantial assistance, but must have known that the aid it was providing was substantial in relation to the principal violation. Merely providing some aid to the person who committed that act is not enough. Neither is the mere negligent provision of aid, or the failure to do more to prevent inadvertent assistance.

Indeed, even reckless actions—*i.e.*, things done despite an "unjustifiably high risk of harm that is either known or so obvious that it should be known," *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 68 (2007)—do not suffice for aiding-and-abetting liability. "Knowingly" and "recklessly" are unquestionably different forms of mens rea, *see, e.g.*, *Borden v. United States*, 141 S.Ct. 1817, 1823-24 (2021), and Congress knows how to extend liability to those who substantially assist wrongful conduct recklessly rather than knowingly. *See, e.g.*, 15 U.S.C. §78t(e) (permitting Securities and Exchange Commission to bring civil action against "any person that knowingly *or recklessly* provides substantial assistance" to a primary violator of the securities laws (emphasis added)). Congress chose not to do so in §2333(d)(2).

The Ninth Circuit did not and could not conclude that plaintiffs alleged that Facebook or YouTube "knowingly" assisted—let alone knowingly provided "substantial" assistance to—the commission of the Reina attack. As explained, the complaint does not allege that either company had any knowledge of the attack, of any ISIS leader or member's plans to perpetrate it, of any of the individuals who planned it or carried it out, or of any alleged (but as-yet-unidentified) content having anything to do with it. Instead, the Ninth Circuit improperly focused on aid to ISIS's "terrorism campaign" generally, finding it sufficient that defendants allegedly were "aware of ISIS's use of their respective social media platforms for many years," notwithstanding their express and enforced policies prohibiting the use of their services to facilitate terrorism, and that this unauthorized use allegedly played "an important role in ISIS's terrorism

enterprise" generally. Pet.App.62a-63a. But even setting aside the court's conflation of the act of international terrorism and the terrorist organization that perpetrated it, that conception of "knowingly providing substantial assistance" is deeply flawed.

Section 2333(d)(2) does not ask whether a defendant was "aware" that it was taking some action or supplying some widely available service that it knew that a terrorist organization could exploit to its advantage. Nor does it ask whether the provider of such services could have taken more aggressive action to prevent their misuse. It asks whether the defendant "aid[ed] and abet[ted]" the commission of "an act of international terrorism" by "knowingly providing substantial assistance." 18 U.S.C. §2333(d)(2). That language contemplates knowing in the sense of complicity in the outcome, not mere awareness that one might unintentionally be aiding a terrorist organization by not doing even more to prevent terrorists from exploiting widely available services. That is clear from the fact that the phrase "by knowingly providing substantial assistance" defines the preceding phrase "aiding and abetting." That doublet has a well-established meaning that requires more than the mere provision of aid; it requires the defendant to have abetted—*i.e.*, to have "approve[d]," "encourage[d]," and/or "support[ed]," *The American Heritage Dictionary*, *supra*, at 3—the primary wrong. Mere awareness that terrorists seek to exploit one's generic services and that one's efforts to *prevent* such exploitation are not foolproof is not remotely the kind of "knowledge" that §2333(d)(2) requires. That is the stuff of negligence or strict liability (or at most recklessness), not the far more

demanding standard of knowingly aiding and abetting wrongdoing.

To treat mere awareness that one's services are being used by a terrorist organization as sufficient to demonstrate that one was "knowingly" supporting acts of terrorism would collapse the settled distinction between "knowingly" and "recklessly" acting or failing to act, or even lesser standards of scienter. At bottom, the Ninth Circuit's reasoning reduces to the notion that plaintiffs stated a viable aiding-and-abetting claim by alleging that defendants could have acted more aggressively to root out terrorists and disregarded an "unjustifiably high risk of harm that [wa]s either known or so obvious that it should [have] be[en] known." *Safeco*, 551 U.S. at 68. That is at best recklessness, not knowledge. "JASTA requires more." *Cain v. Twitter Inc.*, 2018 WL 4657275, at *3 (N.D. Cal. Sept. 24, 2018) (rejecting allegations that Twitter "should have known ISIS was planning an attack" and "ignored the possible consequences of letting terrorists operate on its platform" as "in effect an allegation of recklessness").

2. That more is required is clear not only from the statute's text, but from the common-law principles on which it relies. The Ninth Circuit's approach cannot be reconciled with the *Halberstam* "legal framework" that Congress embraced in JASTA. JASTA §2(a)(5), 130 Stat. at 852 (18 U.S.C. §2333 note). First, allowing the "knowingly" analysis to focus on mere awareness that one's conduct might, even unintentionally, aid the principal wrong or wrongdoer, collapses the second and third elements of the *Halberstam* analysis. *Halberstam* treats whether the

defendant was "generally aware of his role as part of an overall illegal or tortious activity at the time he provide[d] the assistance" as an inquiry *separate* from whether the defendant "knowingly and substantially assist[ed] the principal violation." 705 F.2d at 477. As *Halberstam* makes clear, general awareness that one may be furthering an illegal act is necessary for aiding-and-abetting liability, but hardly sufficient. *Id.*

Second, the Ninth Circuit's diluted approach fails to meaningfully account for the fact that §2333(d)(2) does not just require the defendant to have provided assistance "knowingly." It requires the defendant to have "knowingly provid[ed] *substantial* assistance." 18 U.S.C. §2333(d) (emphasis added). The "knowingly" inquiry thus necessarily entails analysis of whether the defendant knew that what it was providing was "substantial assistance" to the principal violation. *Halberstam* distilled "five factors" from existing case law as relevant to that inquiry: "[1] the nature of the act encouraged; [2] the amount and kind of assistance given; [3] the defendant's absence or presence at the time of the tort; [4] his relationship to the tortious actor; and [5] the defendant's state of mind." 705 F.2d at 483-84 (alteration omitted). And it "rate[d] a sixth factor—[6] duration of the assistance provided—as important." *Id.* at 484 (emphasis omitted). Even accepting the Ninth Circuit's conflation of assistance to the terrorist organization and the specific terrorist attack at issue, those factors foreclose any finding that defendants knew they were providing substantial assistance.

Indeed, the Ninth Circuit itself acknowledged that three of those factors plainly weigh in defendants'

favor. *Halberstam*'s "third factor considers the defendant's presence or absence at the time of the tort," and here that factor unquestionably cuts against plaintiffs' claim. Pet.App.64a. Not only is there "no dispute that defendants were not present during the Reina attack," *id.*, but plaintiffs nowhere allege that either Facebook or YouTube was present at the scene of *any* of ISIS's terrorist acts, or even any of its more general terrorism-related activities.

Halberstam's fourth factor—"the defendant's relation to the principal actor," Pet.App.64a—also plainly goes defendants' way. As the Ninth Circuit recognized, plaintiffs alleged that the companies had "at most an arms-length transactional relationship with ISIS." Pet.App.64a; *see* JA91-92, 96-97. And even that is being generous. The complaint does not allege that any assistance "transcended" the typical relationship between an online service and those who use it. *Halberstam*, 705 F.2d at 488 (cautioning that courts should look for other indicia that the assistance "transcended" ordinary activities). To the contrary, the complaint alleges an unusually "attenuated" relationship between defendants and ISIS. Pet.App.64a. Plaintiffs do not dispute "that defendants' policies prohibit posting content that promotes terrorist activity or other forms of violence." Pet.App.64a-65a. And the complaint acknowledges that "defendants regularly removed ISIS-affiliated accounts and content." Pet.App.65a. Even accepting the allegation that those efforts at preventing terrorists from exploiting widely available services could have been more robust, that is hardly the kind of "relationship" that connotes knowingly providing substantial assistance. There is no suggestion that

Facebook or YouTube knowingly approved or allowed *any* specific ISIS account or content posted by such an account, much less knowingly transacted business with any ISIS agents or operatives.[6]

Halberstam's fifth factor—"the defendant's state of mind," Pet.App.65a—likewise weighs decisively against plaintiffs. As the Ninth Circuit acknowledged, plaintiffs "do not allege that the defendants had any intent to further or aid ISIS's terrorist activities, or that defendants shared any of ISIS's objectives." *Id.* (citation omitted). To the contrary, plaintiffs' own allegations show exactly the opposite. The complaint "alleged [that] the defendants regularly *removed* ISIS content and ISIS-affiliated accounts," which their content policies undisputedly prohibited. Pet.App.64a (emphasis added); *see* JA78, 93, 135, 149-50, 155. The complaint itself thus confirms that, far from being "one in spirit" with ISIS, *Halberstam*, 705 F.2d at 484, defendants actively *prohibited* the use of their services by ISIS and engaged in ongoing efforts to disrupt and thwart ISIS's efforts to exploit their services.

Taken together, these factors should have been dispositive. As lower courts have recognized, when a

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[6] Although the Ninth Circuit alluded to allegations that Google shared advertising revenue with ISIS, Pet.App.62a-63a; *see* JA139-40, it did not treat those allegations as sufficient to establish substantial assistance. And in the *Gonzalez* case that it addressed in the same opinion, the court specifically held that nearly identical allegations based on revenue sharing "failed to state a claim for aiding-and-abetting liability." Pet.App.58a. That conclusion is correct, and the same is true of the revenue-sharing allegations here. And in all events, the complaint does not allege that Google shared revenue with anyone whom it *knew* to be part of ISIS.

defendant was not present at the time of the tort, had at best only an arm's length relationship with the principal, and neither had a culpable state of mind nor encouraged the violation, it cannot be said to have knowingly provided substantial assistance. *See Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 225 (2d Cir. 2019) (no aiding-and-abetting liability where there was no encouragement, no presence, no relationship, and no culpable state of mind); *Copeland v. Twitter, Inc.*, 352 F.Supp.3d 965, 976 (N.D. Cal. 2018) (no aiding-and-abetting liability where plaintiff did not allege that Meta, Google, or Twitter "encouraged terrorist attacks, had advance knowledge of any attacks (much less that they were present), intended ISIS to carry out the attacks, or otherwise manifested a culpable state of mind").

Rather than focus on those critical factors, the Ninth Circuit deemed it sufficient that the complaint alleges that ISIS succeeded in exploiting defendants' services "for many years," and that ISIS "was heavily dependent on social media platforms to recruit members, to raise funds, and to disseminate propaganda." *See* Pet.App.63a-64a, 65a. That mode of reasoning replaces *Halberstam*'s effort to ensure some measure of genuine *culpability* with a simplistic, hindsight test focused on the importance *to the wrongdoer* of assistance that was not even voluntarily furnished. That approach cannot be squared with any sensible notion of aiding-and-abetting liability. If a terrorist arrived at the scene via taxi, as Masharipov in fact did, that service may have been indispensable, but it would not make the taxi company an aider and abettor. And the analysis would not change were the taxi service "on notice" that ISIS members have

sometimes succeeded in using its service. The whole point of focusing on things like the defendant's state of mind, relationship to the wrongdoer, and actual participation in the wrong is to keep the focus on things that help meaningfully assess whether *the defendant* understood that it was substantially assisting the commission of the principal wrong. Focusing myopically on how valuable the assistance was to the wrongdoer thus just conflates "knowingly" and lower standards of mens rea all over again.

The Ninth Circuit's lax approach to knowing and substantial assistance is especially misguided here, where there is no allegation that defendants' services were integral to carrying out *any* specific "act of international terrorism," in Istanbul or elsewhere. At most, plaintiffs alleged only that ISIS exploited the companies' services—in violation of their policies, and despite their efforts to remove the content—to recruit followers and solicit support that it then used to help carry out or direct attacks. Pet.App.62a-64a. A court's post hoc perception that a third party's actions—or, here, alleged *inaction* of purportedly failing to enforce anti-terrorism policies vigilantly enough—unintentionally helped contribute to a terrorist organization's growth is simply not the kind of close connection between the third party and the wrongdoer that settled aiding-and-abetting principles require.

III. The Ninth Circuit's Stark Departures From Traditional Aiding-And Abetting Principles Produce Untenable Consequences.

Taken together, the Ninth Circuit's mistakes produce a statute of breathtaking sweep that would impose liability in circumstances that Congress

cannot reasonably have intended. As Congress presumably recognized in hewing closely to traditional aiding-and-abetting principles, a regime focused on mere "awareness" that wrongdoers have sometimes succeeded in exploiting one's services would be particularly problematic in the sensitive context of secondary liability for acts of terrorism. After all, all manner of services that are generally available to the public, be it commercial air travel, taxis, grocery stores, financial services, or modes of mass or targeted communication, can be exploited by those bent on committing acts of terrorism. Unlike uniformed members of a declared enemy, terrorists blend into civilian society in ways that make denying them access to services particularly challenging. Worse still, converting everyday items and services into weapons of mass destruction is a classic terrorist modus operandi.

Congress thus understandably did not want to create a regime under which every travel, financial, communication, or other service that continues to operate notwithstanding "knowing" that its anti-terrorism measures are not foolproof could be held liable for treble damages and labeled with the stigma of being an aider and abettor of international terrorism. Yet by both shifting the focus away from specific acts of terrorism, and reducing "knowingly providing substantial assistance" to a mere awareness of imperfect safeguards test, the Ninth Circuit transforms the ATA into just such an unworkable scheme. Indeed, by the Ninth Circuit's telling, Facebook and YouTube may be held liable for treble damages to every individual ever injured in a terrorist attack conducted by ISIS, even though they

concededly had no intention of furthering ISIS's activities and affirmatively (if imperfectly) tried to prohibit ISIS from exploiting their services.

And it is not just the more obvious targets for terrorist exploitation that the Ninth Circuit's decision puts in the ATA's crosshairs. By eviscerating any meaningful limitation on aiding-and-abetting liability, it threatens a multitude of third parties with liability and public opprobrium for heinous acts of terrorism that they never knew about, much less supported, and in fact adamantly opposed. Consider, for instance, a grocery chain that learns that some of its shoppers are ISIS adherents. If the store nevertheless continues to sell groceries without scrutinizing every customer for ties to ISIS, while knowing that the food it supplies might be offered at meetings that ISIS uses to recruit followers who contribute resources that help the organization grow, the store would be liable for aiding and abetting every subsequent terrorist attack ISIS proceeds to undertake. Or imagine a store that sells walkie-talkies or other communication equipment known to be used by ISIS in its attacks. Under the Ninth Circuit's interpretation, the store owner may have knowingly provided substantial assistance for any and all acts of terrorism that ISIS later undertakes, and now owes treble damages to all of ISIS's victims, simply because it did not take more aggressive steps to screen its clientele for connections to ISIS.

Making matters worse, the Ninth Circuit's deviation from traditional aiding-and-abetting principles raises serious foreign policy concerns. JASTA not only established secondary liability for

aiding and abetting certain acts of international terrorism, but also abrogated foreign sovereign immunity for certain terrorist attacks, namely, "for physical injury to person or property or death occurring in the United States" if those injuries are caused by "(1) an act of international terrorism in the United States; and (2) a tortious act or acts of the foreign state" or its "official[s], employee[s], or agent[s]" acting within the scope of their office. 28 U.S.C. §1605B(b). Where those conditions are satisfied, JASTA abrogates foreign sovereign immunity by expressly permitting "a national of the United States" to "bring a claim against a foreign state in accordance with section 2333." *Id.* §1605B(c).

That abrogation applies to aiding-and-abetting claims under the ATA. Thus, in the Ninth Circuit's view, a foreign state could be haled into U.S. courts and saddled with treble damages if it takes insufficiently "meaningful" or "aggressive" steps to stamp out known terrorist activity within its borders, so long a designated terrorist organization that benefited from that policy later committed an act of international terrorism within the United States. Pet.App.62a. A foreign nation could face liability despite implementing "policies" against "terrorist activity or other forms of violence," and despite harboring no "intent to further or aid … terrorist activities." Pet.App.65a. Efforts to root out terrorism could signal awareness of a problem that is mistaken for knowing assistance. And foreign states could be held liable for aiding and abetting acts of terrorism any time a domestic court deems their affirmative "steps" to expel terrorists from their borders insufficient. *Cf. id.* (acknowledging that "defendants

took steps to remove ISIS-affiliated accounts and videos").

Such a regime would metastasize the "serious implications for [the] U.S. national interests" that led President Obama to veto JASTA. JASTA Veto Message, *supra*. Congress presumably overrode that veto because it expected its abrogation of foreign sovereign immunity to be limited to cases of true aiding and abetting. Expanding aiding-and-abetting liability beyond its traditional bounds thus not only expands Congress's abrogation in ways that it never intended, but flouts canons of construction that favor construing abrogations of sovereign immunity narrowly. *See Libr. of Cong. v. Shaw*, 478 U.S. 310, 318 (1986); *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1162 (D.C. Cir. 2002); *cf. F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004).

Those concerns apply with particular force when it comes to abrogations of foreign sovereign immunity. Unduly broad abrogations of the immunity historically enjoyed by foreign sovereigns in our courts risk reciprocal abrogations of our own sovereign immunity in foreign courts. As President Obama explained, "reciprocity plays a substantial role in foreign relations, and numerous other countries already have laws that allow for the adjustment of a foreign state's immunities based on the treatment their governments receive in the courts of the other state." JASTA Veto Message, *supra*; *see* Restatement (Second) of Foreign Relations Law §83, cmt. e (1965) (noting that "considerations of reciprocity … afford a practical basis for the immunity of a foreign state").

Such reciprocity concerns properly inform interpretation of federal statutes, like JASTA, that may affect foreign sovereign interests. *See, e.g.*, *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S.Ct. 2078, 2088 (2022).

Other canons in the foreign sovereign immunity context reinforce the importance of narrowly reading abrogations of sovereign immunity. For example, this Court ordinarily exercises great caution before construing federal statutes to invite U.S. judges to second-guess or interfere with foreign states' governance within their own borders. *See, e.g.*, *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 269 (2010) (rejecting extraterritorial application of Securities Exchange Act in part because of the "obvious" "probability of incompatibility with the applicable laws of other countries" regarding "exchanges and securities transactions occurring within their territorial jurisdiction" and the "interference with foreign securities regulation that application of §10(b) abroad would produce"); *F. Hoffmann-La Roche*, 542 U.S. at 164 ("[T]his Court ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations."). Before "sanction[ing] the exercise of local sovereignty … in this 'delicate field of international relations'" that would invite "international discord," the Court demands "'the affirmative intention of the Congress clearly expressed.'" *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21-22 (1963) (quoting *Benz v. Compania Naviera Hidalgo S.A.*, 353 U.S. 138, 147 (1957)). There is simply no indication in the statutory text or the accompanying enumerated

findings that Congress intended to subject foreign sovereigns to the novel form of aiding-and-abetting liability that the Ninth Circuit sanctioned.

IV. Faithful Interpretation And Application Of The ATA Suffices To Resolve Both This Case And *Google v. Gonzalez*.

In a single decision below, the Ninth Circuit resolved not just this case, but also the *Gonzalez* case, in which this Court has separately granted certiorari to consider whether similar ATA claims are barred by §230 of the CDA. Although the Ninth Circuit resolved both cases in a single opinion precisely because the underlying factual allegations are materially similar and the legal issues are essentially the same, it nonetheless managed to reach different results, allowing the claims in this case to proceed on the theory that plaintiffs stated viable ATA aiding-and-abetting claims, while holding the *Gonzalez* plaintiffs' largely similar ATA aiding-and-abetting claims barred by §230 of the CDA. In reality, however, both cases can be resolved on the same threshold ground: Neither complaint states a viable aiding-and-abetting claim under §2333(d)(2) in the first place. After all, as the district court correctly recognized, if there is no viable ATA cause of action, then there is no need to reach whether §230 nonetheless bars liability.

Rejecting the Ninth Circuit's lax conception of aiding-and-abetting liability under the ATA not only would obviate the need for any court to resolve the §230 issue in *this* case, but would obviate the need for this Court to resolve that issue in *Gonzalez*, as the aiding-and-abetting allegations in *Gonzalez* suffer

from the same basic legal defects as the aiding-and-abetting allegations here. Accordingly, if this Court agrees that the Ninth Circuit's view of aiding-and-abetting liability under the ATA is incorrect, then it can simply vacate the Ninth Circuit's decision in its entirety and remand for both cases to be dismissed for failure to state a claim.

CONCLUSION

The judgment of the court of appeals should be reversed.

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STATUTORY APPENDIX

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18 U.S.C. §2331(1)

§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;

* * *

18 U.S.C. §2333(a) & (d)

§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.

* * *

(d) Liability.—

(1) Definition.—In this subsection, the term "person" has the meaning given the term in section 1 of title 1.

(2) Liability.—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.

* * *

18 U.S.C. §2339B(a)(1)

§2339B. Providing material support or resources to designated foreign terrorist organizations

(a) Prohibited Activities.—

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

* * *