

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-1496

TWITTER, INC., PETITIONER

v.

MEHIER TAAMNEH, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,
ENLARGEMENT OF ARGUMENT, AND DIVIDED ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case and that the time for oral argument be enlarged to allow the United States 15 minutes of argument time as amicus curiae supporting reversal. Petitioner (Twitter), respondents supporting petitioner (Facebook and Google), and respondents all consent to this motion. The United States understands that respondents supporting petitioner will separately move to enlarge the time for argument and for divided argument.

If the Court grants both that motion and this one, the time would be allotted as follows: 15 minutes for petitioner, 10 minutes for respondents supporting petitioner, 15 minutes for the United States, and 40 minutes for respondents. If the Court grants this motion but not the motion of respondents supporting petitioner, the time for argument would be allotted as follows: 20 minutes for petitioner, 15 minutes for the United States, and 35 minutes for respondents.

The Antiterrorism Act of 1990 (ATA), 18 U.S.C. 2331 et seq., authorizes United States nationals "injured * * * by reason of an act of international terrorism" to recover treble damages for their injuries, 8 U.S.C. 2333(a). The Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 852 (JASTA), amended the ATA to provide that in an action under the ATA for "injury arising from an act of international terrorism committed, planned, or authorized by" an organization designated by the Secretary of State as a foreign terrorist organization under 8 U.S.C. 1189, "liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspired with the person who committed such an act of international terrorism." 18 U.S.C. 2333(d)(2).

This case raises two questions concerning the scope of aiding-and-abetting liability under the ATA. First, this case raises the question whether plaintiffs, whose family member was killed in an act of international terrorism committed by a foreign terrorist

organization, plausibly allege that defendants -- several social media companies -- aided and abetted the act of international terrorism through the knowing provision of substantial assistance, in violation of 18 U.S.C. 2333(d)(2), based on defendants' provision of widely available social media services and their failure to actively screen for use of those services by terrorist organizations and individuals affiliated with them. Second, this case raises the question whether plaintiffs plausibly allege aiding-and-abetting liability in the absence of allegations that defendants' widely available social media services were used in connection with the act of international terrorism that caused plaintiffs' injuries. The United States has filed a brief as amicus curiae supporting reversal, arguing that plaintiffs do not plausibly allege the knowledge and substantial assistance required for aiding-and-abetting liability under the statute and the common-law framework it adopts, and that the ATA's aiding-and-abetting liability standard focuses on the act that injured the plaintiff, but does not necessarily require that the defendant knew about or specifically aided that act.

The United States has a substantial interest in this case. As noted above, a necessary prerequisite to the availability of aiding-and-abetting liability under JASTA is that the organization was designated by the Secretary of State as a foreign terrorist organization. The United States has an interest in recognizing appropriate invocations of the ATA's aiding-and-abetting cause of

action, which can afford a measure of justice to victims and their families and encourage private actors to be diligent in guarding against actions that support acts of terrorism by designated organizations. At the same time, the United States has an interest in ensuring that the scope of ATA liability is consistent with Congress's incorporation of common-law tort principles that limit secondary liability to culpable actors.

The United States has previously presented oral argument in cases involving terrorism-related statutes. E.g., Opati v. Republic of Sudan, 140 S. Ct. 1601 (2020) (No. 17-1268); Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018) (No. 16-534); Bank Markazi v. Peterson, 578 U.S. 212 (2016); Holder v. Humanitarian Law Project, 561 U.S. 1 (2010). The United States' participation in oral argument in this case accordingly will be of material assistance to the Court.

Respectfully submitted.

BRIAN H. FLETCHER*
Acting Solicitor General
Counsel of Record

JANUARY 2023

* The Solicitor General is recused in this case.