No. 23-9

IN THE
Supreme Court of the United States

ASTRAZENECA UK LIMITED, ET AL.,
Petitioners,

v.

JOSHUA ATCHLEY, ET AL.,
Respondents.

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

BRIEF FOR RESPONDENTS IN OPPOSITION

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August 23, 2023

QUESTIONS PRESENTED

Petitioners paid millions of dollars in cash and in-kind bribes to the terrorist group Jaysh al-Mahdi. That group had taken control of Iraq's Ministry of Health, and petitioners secured lucrative medical-supply contracts from the Ministry by paying off the terrorists in charge. Those bribes directly financed Jaysh al-Mahdi's attacks on Americans in Iraq. Respondents were among the victims.

The D.C. Circuit held that respondents adequately alleged aiding-abetting claims and proximate cause under the Antiterrorism Act. *See* 18 U.S.C. § 2333(a), (d)(2). Respondents alleged "in unusual detail," App.15a, how petitioners knew they were funding terrorism, "foreseeably including the attacks against [respondents]," App.39a-40a. Respondents also alleged how the terrorist organization Hezbollah, which co-founded Jaysh al-Mahdi, "committed, planned, or authorized" each attack. 18 U.S.C. § 2333(d)(2).

After the D.C. Circuit's decision, this Court held in *Twitter, Inc. v. Taamneh* that aiding-abetting liability under the ATA tracks the common law and requires "conscious, voluntary, and culpable participation in another's wrongdoing." 143 S. Ct. 1206, 1223 (2023).

The questions presented are:

1. Whether this Court needs to grant, vacate, and remand in light of *Twitter* for the D.C. Circuit to reconsider whether petitioners' years of bribing terrorists was "conscious, voluntary, and culpable" conduct.

2. Whether respondents plausibly alleged that petitioners' corrupt payments to the Jaysh al-Mahdi operatives at the Ministry foreseeably led to Jaysh al-Mahdi's terrorist attacks on respondents.

3. Whether respondents plausibly alleged that Hezbollah "committed, planned, or authorized" Jaysh al-Mahdi's terrorist attacks on respondents.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND RULES

LEGISLATIVE MATERIALS

OTHER MATERIALS

INTRODUCTION

Respondents' complaint alleges "in unusual detail," App.15a, how petitioners gave "millions of dollars of cash and cash-equivalents" to an Iraqi terrorist group called Jaysh al-Mahdi, App.7a. The reason for petitioners' bribes was simple: Jaysh al-Mahdi had "completely overrun" Iraq's Ministry of Health, and petitioners secured lucrative contracts from that Ministry by "giving corrupt payments" to the terrorists who ran it. App.5a, 7a. Petitioners knew their bribes supplied Jaysh al-Mahdi with vital funding for attacking Americans throughout Iraq. App.6a. Respondents—American service members and civilians who served in Iraq, and their families—were among the victims.

The D.C. Circuit properly held those allegations sufficient to plead aiding-abetting claims and proximate cause under the Antiterrorism Act. Petitioners now seek this Court's review by rewriting both the opinion below and the complaint it assessed, recasting themselves as innocent parties that merely "answered th[e] call" to help rebuild Iraq. Pet.6. Such factual assertions do not merit certiorari.

Petitioners first seek a grant-vacate-remand order in light of *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023), but that decision is consistent with the one below. *Twitter* confirmed that centuries-old common-law principles govern aiding-abetting claims under the ATA. Common-law courts look for culpable conduct before finding aiding and abetting; here, the D.C. Circuit concluded petitioners' knowing bribes to terrorists were culpable enough. There is no need to remand just for the D.C. Circuit to reaffirm that obvious result. Indeed, *Twitter* came out the other way because its facts were different. The plaintiffs sought to hold Twitter liable for mere *inaction*—failing to

exclude ISIS from its generally available social-media platform—and this Court refused to extend liability to such "passive actors." *Id.* at 1222. Petitioners' knowing bribes to terrorists were far more culpable.

Petitioners' arguments for plenary review are no more compelling. The D.C. Circuit rejected petitioners' efforts to reinvent the Ministry as a "legitimate" entity that precludes liability. Pet.18. As the complaint sets out in exhaustive detail, "Jaysh al-Mahdi controlled the Ministry and used it as a terrorist headquarters." App.7a. The Jaysh al-Mahdi–controlled Ministry "was therefore not an independent intermediary" that breaks the causal link to Jaysh al-Mahdi's attacks. *Id.* Respondents' detailed allegations likewise show that Hezbollah "committed, planned, or authorized" each attack at issue. 18 U.S.C. § 2333(d)(2). Petitioners say that Hezbollah offered Jaysh al-Mahdi only "general support," Pet.4, but the D.C. Circuit properly rejected that contention, App.25a-26a. Applying the ATA to these incriminating facts creates no circuit split and risks none of the humanitarian calamities petitioners and their amici imagine.

If the decision below truly posed a legal question warranting review, petitioners would not need to rewrite the complaint as they do. Their continued distortion of the allegations—pretending (at 2, 23) that this case is just about "sales of life-saving medicine" or "rebuild[ing] troubled countries"—confirms that certiorari is unwarranted. The allegations as pleaded are far more incriminating. Respondents have been waiting nearly six years for their claims to advance past the pleading stage, and the Court should not extend their wait just to reconsider petitioners' unfounded factual disputes. The petition should be denied.

STATEMENT

A. Statutory Background

The Antiterrorism Act authorizes American victims of "an act of international terrorism" to bring a civil action in federal court. 18 U.S.C. § 2333(a). It is "part of a comprehensive statutory and regulatory regime that prohibits terrorism and terrorism financing." *Jesner v. Arab Bank PLC*, 138 S. Ct. 1386, 1405 (2018) (plurality). Congress intended the ATA's private right of action not only to "provid[e] victims of terrorism with a remedy" but also to stop "the flow of money" to terrorists. S. Rep. No. 102-342, at 22 (1992). Congress thus designed the statute's civil remedy to impose "liability at any point along the causal chain of terrorism." *Id.* By authorizing litigation to "cut[] terrorists' financial lifelines," Congress bolstered "longstanding efforts to reduce global terrorism and thus protect Americans here and abroad." H.R. Rep. No. 115-858, at 3-4 (2018).

As originally enacted, "the ATA did not explicitly impose liability on anyone who only helped the terrorists carry out the attack or conspired with them." *Twitter*, 143 S. Ct. at 1217. So in 2016, Congress enacted the Justice Against Sponsors of Terrorism Act "to provide for a form of secondary civil liability." *Id.* U.S. terror victims now can sue those secondarily liable for terrorist acts "committed, planned, or authorized by" a designated terrorist organization. 18 U.S.C. § 2333(d)(2). Secondary liability extends to anyone "who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism" under § 2333(d)(2).

The statute's text explains why Congress found it "necessary to recognize the substantive causes of

action for aiding and abetting and conspiracy liability under [the ATA]." JASTA § 2(a)(4), 130 Stat. 852 (*reprinted in* 18 U.S.C. § 2333 note). Secondary liability was needed, Congress found, because companies that "contribute material support or resources . . . to persons or organizations that pose a significant risk of committing acts of terrorism" should "reasonably anticipate being brought to court in the United States." *Id.* § 2(a)(6). Congress's "purpose" in recognizing aiding-abetting liability was thus "to provide civil litigants with the broadest possible basis . . . to seek relief against" entities that send resources "directly or indirectly" to terrorists. *Id.* § 2(b), 130 Stat. 853.

Congress further identified the standards courts should use when considering ATA secondary-liability claims. JASTA states that the D.C. Circuit's decision in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), "which has been widely recognized as the leading case regarding Federal civil aiding and abetting and conspiracy liability, . . . provides the proper legal framework for how such liability should function in the context of [the ATA]." JASTA § 2(a)(5), 130 Stat. 852.

B. Factual Background

1. Jaysh al-Mahdi used Iraq's Ministry of Health as a vehicle for terrorism

a. Iraq's Ministry of Health has a decades-long history of corruption. C.A.App.111-13, 135-38, 150-51 (¶¶ 48-51, 105-111, 137-138); App.8a-9a. Under Saddam Hussein, the Ministry devised schemes to extract kickbacks from medical-goods suppliers—including petitioners—to funnel more than $1.5 billion to Saddam's regime. C.A.App.110-12, 114 (¶¶ 46, 49, 53). Those kickbacks aided the regime in funding

terrorism. *Id.* One petitioner, Johnson & Johnson, later paid a large criminal fine for having admittedly used the Ministry to bribe Saddam's regime. C.A.App.212 (¶ 273).

In late 2004, about 18 months after the United States invaded Iraq and removed Saddam from power, the Shi'ite terrorist group Jaysh al-Mahdi seized control of the Ministry and its lucrative contracting apparatus. C.A.App.98, 114-15, 118-23 (¶¶ 3 n.1, 54, 63-76). Jaysh al-Mahdi was founded and led by anti-American cleric Muqtada al-Sadr, with guidance and direction from Hezbollah, the Lebanese terrorist group. C.A.App.115-16 (¶¶ 56-59). From its Ministry perch, Jaysh al-Mahdi rapidly became Iraq's deadliest terrorist group, responsible for more American casualties than even al-Qaeda. C.A.App.116-18 (¶¶ 58-62).

The Ministry was key to Jaysh al-Mahdi's terrorist enterprise. C.A.App.118-35 (¶¶ 63-104). It transformed the Ministry's headquarters into a terrorist base. C.A.App.127 (¶¶ 89-90). It converted Ministry hospitals into command-and-control centers. C.A.App.125-26 (¶¶ 86-87). It placed thousands of terrorist fighters on the Ministry's payroll. C.A.App.125 (¶ 85). And it used Ministry ambulances to transport death squads around Baghdad. C.A.App.125-26 (¶ 86). One senior Iraqi politician thus observed that a more apt name for the Ministry of Health was the "Ministry of Weapons Transportation." *Id.*

b. Jaysh al-Mahdi used the Ministry to raise funds for terrorism. C.A.App.135-38 (¶¶ 105-112). Petitioners knowingly supplied those funds by making "corrupt payments in both cash and goods to Jaysh al-Mahdi." App.12a; C.A.App.168-69 (¶ 176).

First, petitioners used local agents to deliver "cash kickbacks to the terrorists who gave them business."

App.5a-6a; C.A.App.153-63 (¶¶ 142-164). Petitioners paid these bribes, called "commissions," through several mechanisms. C.A.App.160 (¶ 158). For example, petitioners included commercially unreasonable "service clauses" in their contracts. C.A.App.99-100 (¶ 6). Under those clauses, petitioners funded illusory services meant only to provide cover for passing on the set-aside money as "commissions" to the terrorists who ran the Ministry. *Id.*

Second, petitioners "delivered extra, off-the-books batches of valuable medical goods that Jaysh al-Mahdi monetized on the black market." App.6a; C.A.App.139-53 (¶¶ 114-141). Petitioners included those "free goods" in the same shipments as the "purchased goods" and packaged them for easy street resale. C.A.App.99, 112-13, 140-42 (¶¶ 5, 50-51, 119-120). Because Ministry officials did not have to account for the extra goods, they were simple to appropriate for terrorist aims. C.A.App.140-42, 147 (¶¶ 117-120, 132).

The "free goods" supplied Jaysh al-Mahdi with an especially potent source of terrorist funding. Jaysh al-Mahdi "finance[d] operations from diverted medicines." C.A.App.166 (¶ 169). And it often used the free goods "as cash equivalents to pay terrorist fighters." App.6a; C.A.App.168-69 (¶ 176). Jaysh al-Mahdi was so dependent on the Ministry's resources that it was known in Iraq as "The Pill Army." C.A.App.101, 168-69 (¶¶ 9, 176).

2. Petitioners knew their bribes to Jaysh al-Mahdi funded terrorist attacks

Jaysh al-Mahdi's control of the Ministry was no secret. By late 2004, Jaysh al-Mahdi propaganda festooned Ministry facilities throughout Iraq. C.A.App.121-22 (¶ 73). Pictures of Muqtada al-Sadr

decorated the walls alongside terrorist slogans such as "Death to America." *Id.* Jaysh al-Mahdi's all-black flag adorned entrances to Ministry buildings, and Jaysh al-Mahdi fighters patrolled the halls. *Id.* (¶¶ 73-75). As the U.S. Embassy concluded in a 2006 report, the Ministry and its infrastructure were "openly under the control" of Jaysh al-Mahdi. C.A.App.123 (¶ 79).

Petitioners understood that their corrupt payments to Jaysh al-Mahdi financed terrorist attacks. Petitioners "finalized their contracts at the Ministry headquarters surrounded by terrorist propaganda and other indicia of Jaysh al-Mahdi's control." App.13a; C.A.App.142, 170-71 (¶¶ 121, 180-181). Petitioners retained local agents who knew that Jaysh al-Mahdi raised funds through the Ministry. C.A.App.171-72 (¶ 182). And each petitioner had a "corporate security" and compliance operation that exposed it to extensive public and nonpublic reporting connecting the Ministry to Jaysh al-Mahdi terrorism. C.A.App.172-76 (¶¶ 183-186). One such article from 2007 reported that "[s]upplies and medicine . . . ha[d] been siphoned off and sold elsewhere for profit because of corruption in the Iraqi Ministry of Health," which was "in the 'grip' of the Mahdi Army, the anti-American militia run by the Shiite cleric Muqtada al-Sadr." C.A.App.174 (¶ 183) (emphases omitted).

Petitioners are 21 defendants from 5 corporate families: AstraZeneca, C.A.App.105 (¶¶ 17-18); GE Healthcare, *id.* (¶¶ 19-21); Johnson & Johnson, C.A.App.106 (¶¶ 22-29); Pfizer, C.A.App.107 (¶¶ 30-34); and Roche, C.A.App.107-08 (¶¶ 35-37). For each petitioner, respondents specify multiple cash bribes it paid; describe the corrupt local agents it used to pay the bribes; and identify its contract numbers and "free

goods" percentages. C.A.App.177-87 (¶¶ 188-209) (AstraZeneca); C.A.App.187-200 (¶¶ 210-244) (GE Healthcare); C.A.App.200-14 (¶¶ 245-280) (Johnson & Johnson); C.A.App.214-27 (¶¶ 281-309) (Pfizer); C.A.App.227-36 (¶¶ 310-332) (Roche).

3. Jaysh al-Mahdi's Hezbollah-sponsored attacks killed or maimed respondents

Petitioners' payments financed Jaysh al-Mahdi's terrorist attacks against respondents in Iraq. The U.S. military viewed Jaysh al-Mahdi as a "terrorist organization" more lethal than al-Qaeda in Iraq, the terrorist group that became ISIS. C.A.App.242-43 (¶¶ 347-348). Jaysh al-Mahdi's threat reflected its mastery of sophisticated, Hezbollah-taught terrorist tactics. C.A.App.238-41 (¶¶ 338-346). Most lethal were explosively formed penetrators, which were devices designed to penetrate American tank armor. C.A.App.239-40 (¶¶ 341-342). Jaysh al-Mahdi used penetrators and other weaponry to kill and injure respondents. C.A.App.103, 239-41 (¶¶ 14, 339-346).

The U.S. government did not designate Jaysh al-Mahdi as a Foreign Terrorist Organization. C.A.App.246-47 (¶¶ 355-356). But Hezbollah, designated since 1997, was key to Jaysh al-Mahdi's terrorist attacks. C.A.App.247-50 (¶¶ 357-363). Jaysh al-Mahdi publicly declared that association, chanting "We are Hezbollah" at rallies and marching under Hezbollah's flag. C.A.App.104 (¶ 15). Indeed, Hezbollah co-founded Jaysh al-Mahdi as its Iraqi proxy; recruited Iraqis to join its ranks; designed Jaysh al-Mahdi's terrorist tactics; instructed Jaysh al-Mahdi fighters how to deploy them; and planned and authorized the attacks that followed. C.A.App.250-74 (¶¶ 364-407). Hezbollah also provided penetrators—weapons "exclusively associated with" Hezbollah,

C.A.App.266 (¶ 395)—to Jaysh al-Mahdi and taught the group's fighters how to use them. App.25a-26a; C.A.App.265-66 (¶¶ 395-396). And joint Hezbollah–Jaysh al-Mahdi cells committed at least 22 of the attacks at issue, injuring 35 respondents. App.20a-21a. All told, Hezbollah "provided vital and concrete support without which the attacks that injured [respondents] could not have occurred." Commanders C.A. Br. 10, 2021 WL 1599301.

C. Procedural History

1. Respondents are U.S. citizens, and their families, whom Jaysh al-Mahdi killed or injured between 2005 and 2011. C.A.App.274-631 (¶¶ 409-3180). Every respondent brings two direct-liability claims, C.A.App.638-41 (¶¶ 3208-3221), and two aiding-abetting claims, C.A.App.632-38 (¶¶ 3181-3207), under the ATA. They also assert state-law claims for the same misconduct. C.A.App.641-46 (¶¶ 3222-3254).

The district court dismissed respondents' claims. The court recognized that petitioners "knowingly provided medical goods to the Ministry for economic gain and were aware those goods would be used by [Jaysh al-Mahdi] to support terrorist attacks." App.95a. And it accepted that Jaysh al-Mahdi "'captured' the Ministry" and that petitioners "engaged in corrupt transactions with that compromised entity." App.83a. But it held that the Jaysh al-Mahdi–controlled Ministry's role in the transactions broke "the causal chain" to Jaysh al-Mahdi, precluding proximate cause and aiding-abetting liability. App.86a-87a. It also held that no designated organization committed, authorized, or planned most of the relevant attacks. App.90a-92a.

2. A unanimous panel of the D.C. Circuit reversed in full. It credited the allegations that "[petitioners], aware of Jaysh al-Mahdi's command of the Ministry, secured lucrative medical-supply contracts with the Ministry by giving corrupt payments and valuable gifts to Jaysh al-Mahdi." App.5a. Based on the "unusual[ly] detail[ed]" complaint, App.15a, the court concluded petitioners were "[a]ware of Jaysh al-Mahdi's ongoing terrorist operations" yet still gave "the organization millions of dollars of cash and cash-equivalents over a period of many years," App.7a. Those allegations, the court held, sufficed "at the motion-to-dismiss stage" to plead aiding-abetting claims and proximate causation. App.6a.

As relevant here, the D.C. Circuit reversed on three issues. *First*, it held that respondents "plausibly allege that Hezbollah both planned and authorized the attacks against them." App.23a. Not only had Hezbollah itself "allegedly committed twenty-two of the attacks at issue here," App.20a-21a, but its "alleged involvement in planning the [other] attacks that injured and killed [respondents] was deep and far reaching," App.25a, and its "religious, personal, and operational authority over Jaysh al-Mahdi show[s] that it 'authorized' the attacks as well," App.26a.

Second, the court held that respondents plausibly alleged that petitioners "aided and abetted acts of international terrorism." App.7a. "[O]n balance," petitioners' "alleged awareness that, by bribing the Ministry, they were funding" Jaysh al-Mahdi's "attacks on Americans" stated a valid claim. App.35a-36a.

Third, the court reversed on causation because "[i]t was reasonably foreseeable that financially fortifying Jaysh al-Mahdi would lead to the attacks that [respon-

dents] suffered." App.43a. The court distinguished the Ministry from "independent intermediar[ies]" that defeated causation in other cases. App.44a. Petitioners' efforts to reframe the Ministry as an intermediary, the court noted, "rest[ed] on an untenably skeptical reading of the complaint." App.45a.

The D.C. Circuit "remand[ed] the balance of the issues" to the district court. App.6a. On direct liability, the court of appeals reached only causation and told the district court "to consider in the first instance" petitioners' other arguments. App.40a. More broadly, it recognized that "[petitioners] plan to dispute many of the facts alleged." App.8a. It invited petitioners to support their factual narrative—about, for example, the "nature and context of any U.S. [government] dealings with the Ministry"—through further "evidentiary development" on remand. App.48a.

3. Petitioners sought rehearing en banc. The D.C. Circuit denied rehearing without dissent. App.1a.

REASONS FOR DENYING THE PETITION

I. THE COURT SHOULD NOT GRANT, VACATE, AND REMAND

This Court's power to issue a grant-vacate-remand order "should be exercised sparingly." *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 173 (1996) (per curiam). The petition meets none of the traditional requirements for a GVR. *First*, there is no "reasonable probability" that *Twitter* would lead the D.C. Circuit to reach a different result on remand. *Id.* at 167. *Twitter* affirmed that the ATA, like the common law, requires culpable conduct for aiding-abetting liability. That narrow holding casts no doubt on the result below—bribing terrorists is, of course, culpable. *Second*, petitioners cannot show that "redetermination may determine the ultimate outcome of the litigation."

Id. No matter the result on respondents' ATA aiding-abetting claims, their direct-liability and state-law claims will move forward. *Third*, "the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration." *Id.* at 168. This case has languished at the motion-to-dismiss stage for almost six years. Nineteen respondents have died waiting for discovery to start. The Court should not compound that delay with a needless remand.

A. There Is No Reasonable Probability The D.C. Circuit Would Reach A Different Result In Light Of *Twitter*

1. After *Twitter*, as before, bribing terrorists creates aiding-abetting liability

Twitter does not warrant vacatur because it changed none of the secondary-liability "premise[s]" grounding the decision below. *Lawrence*, 516 U.S. at 167. A GVR is thus not even "potentially appropriate" here. *Id.*

a. In the D.C. Circuit, aiding-abetting liability is the same after *Twitter* as it was before. *Twitter* reaffirmed the "deep-rooted common-law basis" for aiding-abetting liability. 143 S. Ct. at 1223. It instructed courts considering ATA aiding-abetting claims to look for the same conduct "that has animated aiding-and-abetting liability for centuries": "conscious, voluntary, and culpable participation in another's wrongdoing." *Id.* As Justice Jackson noted, the Court's unanimous decision was "narrow in important respects." *Id.* at 1231 (Jackson, J., concurring).

The allegations in *Twitter* fell far short of the mark. The social-media companies there passively "failed to stop ISIS" from misusing their "generally available virtual platforms." *Id.* at 1230 (majority). They committed no "affirmative misconduct" at all—they

just inadequately policed their platforms—and the allegations of "mere passive nonfeasance" did not state a claim. *Id.* at 1227. As the Court noted, "both tort and criminal law have long been leery of imposing aiding-and-abetting liability for mere passive nonfeasance." *Id.* Aiding and abetting requires more, "lest mostly passive actors like banks become liable for all of their customers' crimes by virtue of carrying out routine transactions." *Id.* at 1222.

The D.C. Circuit applied *Twitter*'s common-law rule to starkly different allegations. As the court explained, petitioners engaged in the "corrupt provision of free goods and cash bribes to do business with a Ministry completely overrun by Jaysh al-Mahdi." App.6a-7a. Those transactions—knowingly providing terrorists with "cash kickbacks" and "off-the-books batches of valuable medical goods"—showed the requisite culpability. App.5a-6a. Such active malfeasance is nothing like the "passive nonfeasance" *Twitter* held inadequate.

Twitter's disparate treatment of the "allegations specific to Google" illustrates the point. 143 S. Ct. at 1230. Unlike Twitter, Google allegedly "shared advertising revenue with ISIS." *Id.* In assessing those funding allegations, the Court invoked none of the common-law principles that had proved fatal to the earlier passive-inaction theory. Rather, the Court affirmed dismissal of the advertising-revenue allegations for a different reason: the plaintiffs "allege[d] nothing about the amount of money that Google supposedly shared" or "the number of accounts" involved. *Id.* Faced with a bare-bones complaint in which the amount of money paid could have been "only $50," the Court held that, "[w]ithout more," the plaintiffs had "not plausibly alleged" that the funding was

substantial assistance. *Id.* Respondents' claims suffer from no such flaw. App.33a (assistance was "at least several million dollars per year").

b. *Twitter* all-but-expressly endorsed liability on the facts here. The Court confirmed that aiding-abetting liability remains available in cases involving "affirmative misconduct." 143 S. Ct. at 1227. And the Court explained that "some set of allegations involving aid to a known terrorist group would justify holding a secondary defendant liable for all of the group's actions or perhaps some definable subset of terrorist acts." *Id.* at 1228. A prime example, the Court said, would be "where [a] provider of routine services does so in an unusual way or provides such dangerous wares that selling those goods to a terrorist group could constitute aiding and abetting." *Id.* And one way a medical "distributor" could act culpably, the Court observed, would be to deliver medicines "far in excess of normal amounts." *Id.* (citing case involving "morphine distributor['s]" secondary liability).

Petitioners did just what the Court's example contemplated. Indeed, the United States highlighted that very point in its amicus brief in *Twitter*, opposing liability for Twitter but explicitly supporting respondents' claims here because petitioners "engaged in transactions outside the regular course of business" through "'the corrupt provision of free goods and cash bribes.'" Brief for the United States as Amicus Curiae at 22, *Twitter, Inc. v. Taamneh*, No. 21-1496 (U.S. Dec. 6, 2022) ("U.S. *Twitter* Amicus Br.") (quoting App.31a).

c. None of this is novel. The common law long has held defendants liable as aiders and abettors for far less culpable conduct than bribing terrorists.

First, common-law courts often find aiding-abetting liability when the defendant aids the primary actor under "unusual circumstances." *Halberstam*, 705 F.2d at 487.[1] In *Halberstam*, for example, Linda Hamilton's back-office work supported her liability for murder because she had reason to suspect her partner was committing nighttime property crimes, and her performance of services "in an unusual way under unusual circumstances" suggested she knew what she was doing was illegal. *Id.* Similarly, in *Woods v. Barnett Bank of Fort Lauderdale*, the court inferred a bank's "knowing assistance" to a fraud "from atypical business actions," including writing a reference letter for an underwriter "without even minimal investigation." 765 F.2d 1004, 1012 (11th Cir. 1985); *see Twitter*, 143 S. Ct. at 1222 (citing *Woods*).

The allegations of knowing illegal conduct are at least as strong here. Petitioners engaged in "atypical business transactions," *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991), structuring their bribes to provide Jaysh al-Mahdi with extra batches of in-kind drugs and medical devices—for free—on top of the paid-for drugs, C.A.App.139-53 (¶¶ 116-141). They included those free goods in the same shipments as the purchased goods, packaging them for easy resale on the black market. C.A.App.99, 112-13, 140-42 (¶¶ 5, 50-51, 119-120). And petitioners' agents negotiated the bribes at meetings inside the Ministry's headquarters, surrounded by posters paying homage to known terrorist Muqtada al-Sadr; Jaysh al-Mahdi's

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[1] *See also*, *e.g.*, *Howard v. SEC*, 376 F.3d 1136, 1149 (D.C. Cir. 2004) (collecting cases involving brokers aiding and abetting securities violations by completing transactions despite "red flags"); *Fund of Funds, Ltd. v. Arthur Andersen & Co.*, 545 F. Supp. 1314, 1356 (S.D.N.Y. 1982) (similar).

unmistakable flag; terrorist fighters and weapons; and "Death to America" slogans. Giving aid under such unusual circumstances would support aiding-abetting liability even "with a minimal showing of knowledge." *Camp*, 948 F.2d at 459; *see* App.30a. But here, the allegations of knowledge are substantial: even the district court acknowledged that petitioners "were aware" that the goods they gave Jaysh al-Mahdi "would be used . . . to support terrorist attacks." App.95a; *see* App.35a.

Second, common-law courts often find aiding-abetting liability when the defendant actively aided especially blameworthy conduct. *Halberstam* suggested a "proportionality test" under which "a defendant's responsibility for the same amount of assistance increases with the blameworthiness of the tortious act." 705 F.2d at 484 n.13. For example, *Keel v. Hainline* involved students throwing erasers at one another in a classroom. 331 P.2d 397, 399 (Okla. 1958). This "creation of a free-for-all" was blameworthy enough for the court to find "even a minimally-involved participant liable." *Halberstam*, 705 F.2d at 484.

Jaysh al-Mahdi's terrorist attacks are far more blameworthy. Any aid to conduct so heinous—even "relatively trivial" aid—is culpable. *Id.* at 484 n.13; *see* Restatement (Third) of Torts: Liability for Economic Harm § 28 cmt. d (2020) ("the enormity of a wrong . . . may appropriately cause such lesser acts to be considered aiding and abetting"). Petitioners' multi-million-dollar aid to Jaysh al-Mahdi easily clears that low bar.

2. Petitioners fail to manufacture conflict between *Twitter* and the decision below

Petitioners purport to identify mismatches between *Twitter* and the decision below. None exists.

a. ***Nexus.*** Secondary liability turns on whether the defendant aided and abetted an act of international terrorism. *See* 18 U.S.C. § 2333(d)(2). Petitioners argue that the D.C. Circuit erred by focusing on aid to Jaysh al-Mahdi, not "the specific attacks that injured respondents." Pet.14. But the court *did* focus on "Jaysh al-Mahdi's terrorist acts against [respondents]," concluding that petitioners "aided and abetted *those attacks*." App.39a (emphasis added). Petitioners quote (at 14) part of this sentence but omit the language inconvenient to their position.

In any event, petitioners, like Twitter, "overstate the nexus that § 2333(d)(2) requires between the alleged assistance and the wrongful act." *Twitter*, 143 S. Ct. at 1224. In fact, the statute "does not always demand a strict nexus between the alleged assistance and the terrorist act." *Id.* at 1225; *see* App.39a ("Substantial assistance to the ultimate deed . . . is enough."). A defendant "can be held liable for other torts that were 'a foreseeable risk' of the intended tort." *Twitter*, 143 S. Ct. at 1225 (quoting *Halberstam*, 705 F.2d at 488); *see id.* at 1228 (describing "aiding and abetting a foreseeable terror attack"). And a defendant may be liable for "every single" attack by a terrorist group if the defendant "affirmatively gave aid that would assist each of [those] terrorist acts." *Id.*

The common law outlines which risks are foreseeable. For example, *Halberstam* held that "violence and killing is a foreseeable risk" of property crimes. 705 F.2d at 488. And *American Family Mutual Insurance Co. v. Grim* held that a fire from lit torches was a foreseeable risk of a nighttime break-in. 440 P.2d 621, 626 (Kan. 1968); *see Twitter*, 143 S. Ct. at 1224-25 (discussing *Grim*). By contrast, a terrorist attack on a nightclub was not a foreseeable risk of Twitter's

"arm's length, passive, and largely indifferent" relationship with ISIS. *Id.* at 1227.

Jaysh al-Mahdi's attacks on respondents were the foreseeable result of petitioners' funding. In general, bankrolling terrorists creates a foreseeable risk of terrorist attacks. *See*, *e.g.*, *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 690-91 (7th Cir. 2008) (en banc) (explaining importance of "financial angels" to terrorist operations); *Owens v. Republic of Sudan*, 864 F.3d 751, 783, 794 (D.C. Cir. 2017) ("actively promot[ing] al Qaeda's businesses" proximately caused al-Qaeda's attacks), *vacated and remanded on other grounds sub nom. Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020). And here specifically, petitioners' "affirmative[] . . . aid" to Jaysh al-Mahdi "assist[ed] each of [the group's] terrorist acts" against respondents. *Twitter*, 143 S. Ct. at 1228; *see* C.A.App.100-01, 163-76 (¶¶ 8-9, 165-186). The D.C. Circuit made this point twice. It reversed on aiding-abetting because petitioners' "substantial assistance to Jaysh al-Mahdi" aided the group's "terrorist attacks, foreseeably including the attacks against [respondents]." App.39a-40a. And it reversed on proximate cause because it was "reasonably foreseeable" that petitioners' aid "would lead to the attacks that [respondents] suffered." App.43a; *see also* U.S. *Twitter* Amicus Br. 34 (citing this holding and noting that "a secondary defendant's contributions may have a sufficient nexus to a terrorist act" if, as here, they involve "the direct channeling of substantial funds"). Such a factual nexus—tying petitioners' aid to Jaysh al-Mahdi to each individual attack—suffices under any plausible reading of *Twitter*.

Petitioners also did more than fund terrorists from afar. They bribed Jaysh al-Mahdi terrorists in the

same building from which those terrorists carried out attacks. As the D.C. Circuit recognized, Jaysh al-Mahdi used "its takeover of the Ministry" not only "to fund" its "terrorist acts," but also to "facilitate" them. App.31a. Jaysh al-Mahdi commanders often led attacks from the building's roof. C.A.App.127 (¶¶ 89-90). And the group used Ministry ambulances to ferry death squads and weapons around Baghdad. C.A.App.125-26 (¶ 86). In one attack, Jaysh al-Mahdi even rigged a Ministry ambulance with explosives and used it to attack respondents Staff Sergeant John Kirby, C.A.App.295-96 (¶¶ 559-563); Corporal Anthony Donald Pellecchia, C.A.App.303-04 (¶¶ 621-626); and Private First Class Andrew Fukuzawa, C.A.App.358-59 (¶¶ 1075-1077). The attenuated nexus the Court rejected in *Twitter* is not comparable.

b. *Knowledge and Substantiality.* The ATA requires defendants to have "knowingly provid[ed] substantial assistance" to terrorist acts. 18 U.S.C. § 2333(d)(2). Petitioners fault the D.C. Circuit for not considering these elements—knowledge and substantiality—"in tandem." Pet.15. But the court did just that. In the section of its opinion titled "***Knowing and Substantial Assistance***," App.31a-37a, the court held that, "on balance, [petitioners'] alleged state of mind supports substantial assistance," App.36a. In so holding, the court engaged in the very analysis petitioners demand, reasoning that petitioners' "awareness . . . they were funding an entity's terrorist attacks on Americans in Iraq drives home the substantial character of their aid." App.35a.

There is no daylight between *Twitter* and the decision below on § 2333(d)(2)'s knowledge and substantiality requirement. This requirement aims "to capture conscious and culpable conduct," *Twitter*, 143 S. Ct. at

1229, so it calls for courts to balance "the nature and amount of assistance" with "the defendant's scienter," *id.* at 1223. For example, "[a] party who engages in atypical business transactions . . . may be found liable as an aider and abettor with a minimal showing of knowledge." *Camp*, 948 F.2d at 459. On the other hand, "a party whose actions are routine and part of normal everyday business practices would need a higher degree of knowledge for liability as an aider and abettor to attach." *Id.* "[L]ess substantial assistance require[s] more scienter," and "vice versa." *Twitter*, 143 S. Ct. at 1222.

The D.C. Circuit properly balanced those considerations. As the court explained in detail, petitioners' assistance to Jaysh al-Mahdi was both knowing and substantial. Petitioners "gave significant funding to Jaysh al-Mahdi." App.37a. They knew their bribes "supported the terrorist acts of a notoriously violent terrorist organization that had overrun the Ministry of Health." App.34a. And those terrorist acts "foreseeably includ[ed] the attacks against [respondents]." App.39a-40a. Given those findings, petitioners are incorrect to suggest that the D.C. Circuit "asked only whether [they] allegedly acted 'with a general awareness' of supporting 'terrorist acts.'" Pet.15-16 (quoting App.34a). The court's conclusions about petitioners' knowing conduct were far stronger.

c. *Intent.* Petitioners next fault the D.C. Circuit for not giving greater weight to their purported lack of intent to support terrorism. Pet.16. But nothing in the common law or *Twitter* requires an aiding-abetting defendant to share the primary wrongdoer's specific intent.[2] Common-law cases illustrate that

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[2] *See, e.g.*, *Failla v. City of Passaic*, 146 F.3d 149, 157-58 (3d Cir. 1998) (rejecting shared-intent requirement); *Passaic Daily*

point. In *Keel*, the defendant had no "intent to injure" the plaintiff. 331 P.2d at 399. In *Halberstam*, Hamilton knew nothing about the murder, so she could not have specifically intended it. 705 F.2d at 488. And in *Grim*, as *Twitter* recounted, the defendant was "liable for aiding and abetting the burning of a building" even though he did not know that "the others lit torches to guide them through the dark and accidentally started a fire." 143 S. Ct. at 1224-25.

Under the common law, then, a defendant may be liable as an aider and abettor for substantially assisting the primary offense, no matter their subjective intent. That rule makes particular sense under the ATA because "[t]o require proof that [a defendant] *intended* that his contribution be used for terrorism" would functionally "eliminate . . . liability except in cases in which the [defendant] was foolish enough to admit his true intent." *Boim*, 549 F.3d at 698-99.

Twitter applied the same rule to different facts. Because the plaintiffs there alleged only that the defendants "fail[ed] to stop ISIS from using the[ir] platforms," 143 S. Ct. at 1227, the plaintiffs had to make stronger allegations of "scienter before [the] court could infer conscious and culpable assistance," *id.* at 1222. Twitter's "undisputed lack of intent to support ISIS" mattered only because the plaintiffs' nonfeasance theory was so dubious to begin with. *Id.* at 1229-30. Indeed, the Court did not even mention intent when addressing the funding allegations against Google. *Id.* at 1230; *see supra* pp. 13-14.

In any event, petitioners' knowing payments to Jaysh al-Mahdi support an inference of terrorist

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News v. Blair, 308 A.2d 649, 656-57 (N.J. 1973) (same); *Holmes v. Young*, 885 P.2d 305, 309 (Colo. App. 1994) ("wrongful intent is not necessary" for aiding-abetting liability).

intent. Common-law courts presume that "people usually intend the natural consequences of their actions." *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 487 (1997); *see United States v. Salamanca*, 990 F.2d 629, 636 n.2 (D.C. Cir. 1993). And here petitioners fostered "a set of enduring, carefully cultivated relationships consisting of scores of transactions over a period of years." App.37a. Whatever petitioners subjectively desired, the law presumes they intended the natural consequences of their years of terrorist payoffs. *See Boim*, 549 F.3d at 693-94. So no matter where the bar is for intent, respondents have cleared it.

d. Petitioners' last argument—that the D.C. Circuit hewed too tightly to *Halberstam*, Pet.14-15—is incorrect. *Twitter* explained that the factors from *Halberstam* should guide the analysis but "should 'not be accepted as immutable components.'" 143 S. Ct. at 1220 (quoting *Halberstam*, 705 F.2d at 489). The court below agreed: "[n]o [*Halberstam*] factor alone is dispositive, and the weight of each varies with the circumstances of the particular claim." App.31a. At any rate, the reason *Twitter* cautioned against a "rigid[] focus[] on" *Halberstam*'s facts and elements was so courts would not lose sight of "the essence of aiding and abetting": whether the defendants' "participation" was "significant and culpable enough to justify attributing the principal wrongdoing to" them. 143 S. Ct. at 1223, 1229. The D.C. Circuit aimed squarely at that key issue, concluding that petitioners' "knowing[]" and "substantial assistance" to Jaysh al-Mahdi "aided and abetted" the group's "terrorist acts against [respondents]." App.39a.

B. Remand Will Not Change The Outcome Of This Litigation

A GVR also is unwarranted because any alleged error in addressing aiding-abetting liability would not "determine the ultimate outcome of the litigation." *Lawrence*, 516 U.S. at 167. As petitioners acknowledge, *Twitter* "involved only an aiding-and-abetting claim." Pet.16. But here, respondents allege direct liability as well as state-law violations, including for intentional infliction of emotional distress, assault and battery, wrongful death, and survival. C.A.App.638-46 (¶¶ 3208-3254). Thus, "the decision below does *not* 'rest upon' the objectionable faulty premise, but is independently supported by other grounds." *Wellons v. Hall*, 558 U.S. 220, 227 (2010) (Scalia, J., dissenting, joined by Thomas, J.); *see also id.* at 228-29 (Alito, J., dissenting, joined by Roberts, C.J.) (Court should not GVR when judgment below "rests on two independent grounds"); *id.* at 224-25 (majority, per curiam) (agreeing).

Petitioners argue that *Twitter* affects direct liability because elements of aiding-abetting liability and proximate causation "play similar roles" in "limiting liability." Pet.16. But the same is true of every element of every tort claim—all elements "limit" liability to only plaintiffs who can make the requisite showing. *Twitter* did not reference causation, nor did its discussion of common-law aiding-abetting principles purport to change the standard for evaluating proximate cause under the ATA. Petitioners' reference to the remand in *Gonzalez v. Google LLC*, 143 S. Ct. 1191 (2023) (per curiam), does not show otherwise. The direct-liability claims there failed due to a lack of any predicate act of material support for terrorism. *See id.* at 1192. The plaintiffs "did not seek review" of that holding;

instead, they said they would seek "leave to amend their complaint" on remand. *Id.* That statement is irrelevant to the viability of respondents' direct-liability (much less their state-law) claims here.

C. A Remand Would Create Needless Delay And Cost

The "equities of the case" also weigh against remand. *Lawrence*, 516 U.S. at 167-68. A GVR "is inappropriate" if "the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration." *Id.* at 168. Here, respondents' interests in moving forward dwarf the minimal-at-best benefits of having the D.C. Circuit reconsider its ruling.

Respondents filed this case nearly six years ago. During the half-decade spent litigating petitioners' serial motions to dismiss, no discovery has occurred. Nineteen respondents have died waiting for discovery to start. C.A.Doc. #1983137, at 3. Further "delaying" the case with a GVR "increase[s] the danger of prejudice resulting from the loss of evidence . . . or the possible death of a party." *Clinton v. Jones*, 520 U.S. 681, 707-08 (1997). The case should proceed before any more years pass or any more respondents die. *Cf. Dandridge v. Jefferson Par. Sch. Bd.*, 404 U.S. 1219, 1220 (Marshall, Circuit Justice 1971) (denying stay when parties "ha[d] been mired in litigation for seven years"); *Lawrence*, 516 U.S. at 168 (this Court's approach to GVR orders "is similar" to its "longstanding approach to applications for stays").

Remand also disserves the public interest. Congress found that it was in the "vital interest" of the United States for victims of terrorist attacks to have "full access to the court system" to pursue claims against entities that provide "resources, directly or indirectly,"

to terrorists. JASTA § 2(a)(7), 130 Stat. 852-53. Remand undermines that vital interest by further delaying respondents' ability to advance to discovery, trial, and recovery. *See Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945) (identifying "delayed justice" as a key reason to avoid interlocutory appeals).

II. THE COURT SHOULD NOT GRANT PLENARY REVIEW

Petitioners' arguments for plenary review are the same ones they made in their rehearing petitions in the D.C. Circuit. Those arguments garnered no votes below, and they fail here.

A. The D.C. Circuit's Proximate-Causation Holding Does Not Warrant Review

The D.C. Circuit properly held that respondents "adequately alleged proximate causation" and remanded on the other direct-liability arguments. App.40a. That holding implicates no circuit split. Petitioners' interlocutory, factbound disagreement (Pet.17-20) with the D.C. Circuit's holding does not merit review.

1. The D.C. Circuit's proximate-causation holding is correct. Petitioners "gave both cash and cash equivalents" to Jaysh al-Mahdi, "a known terrorist group." App.42a-43a. "Providing fungible resources to a terrorist organization allows it to grow, recruit and pay members, and obtain weapons." App.43a. The D.C. Circuit recognized the obvious when it held that it was "reasonably foreseeable that financially fortifying Jaysh al-Mahdi would lead to the attacks" at issue. *Id.* Respondents' "nonconclusory, detailed allegations" about petitioners' payments to Jaysh al-Mahdi thus supported causation. App.42a.

Reaching any other conclusion on causation would disserve the ATA's purposes. As this Court has held,

"[p]roximate-cause analysis is controlled by the nature of the statutory cause of action." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). With the ATA, Congress aimed to "interrupt, or at least imperil, the flow of money" "at any point along the causal chain of terrorism." S. Rep. No. 102-342, at 22. If the statute is to fulfill Congress's objective of "cut[ting] the terrorists' lifeline," the causation standard must encompass at least the "financiers" bankrolling terrorism. *Boim*, 549 F.3d at 691. That includes petitioners.

2. No circuit has rejected comparable causal allegations. Indeed, the D.C. Circuit considered the cases from which petitioners concoct their split and distinguished them at length. App.44a, 47a.

First, no conflict exists over whether there must be "'some direct relationship between the injuries suffered and the defendant's acts.'" Pet.18 (quoting *Fields v. Twitter, Inc.*, 881 F.3d 739, 744 (9th Cir. 2018)) (cleaned up). Petitioners' argument on this point misreads the D.C. Circuit's opinion. The court's lead holding was that petitioners "deal[t] with the terrorist organization directly." App.7a. Their direct dealing with Jaysh al-Mahdi proximately caused respondents' deaths and injuries.

Petitioners' cases are nothing like this one. In *Fields*, the plaintiff failed to "articulate any connection" between the generally available social-media platform and the terrorist attack, 881 F.3d at 750—the same flaw present in *Twitter*. In *Crosby v. Twitter, Inc.*, the lone-wolf "individual perpetrator" was not part of the terrorist group the defendant allegedly aided. 921 F.3d 617, 626-27 & n.6 (6th Cir. 2019). In *Rothstein v. UBS AG*, 708 F.3d 82 (2d Cir. 2013), the plaintiff "simply assumed that aid to . . . Iran was aid

to the terrorists [it] supported." App.47a. And in *Kemper v. Deutsche Bank AG*, there were no allegations "plausibly suggesting that it was foreseeable that [the defendant's] actions would fund terrorism." 911 F.3d 383, 394 (7th Cir. 2018); *see* App.44a (distinguishing *Kemper*).

The D.C. Circuit further distinguished *Rothstein* and *Kemper* because there the defendants' resources never even reached the relevant terrorist group. App.43a-44a; *see Kemper*, 911 F.3d at 394; *Rothstein*, 708 F.3d at 97. Here, by contrast, respondents spelled out the connection with detailed allegations about how petitioners' "bribes and free goods" to Jaysh al-Mahdi directly "supported its terrorist attacks." App.46a-47a. Petitioners cite no case dismissing causation allegations when the defendants' resources reached the responsible terrorist group.

Second, the D.C. Circuit correctly rejected petitioners' argument that the Ministry was a causation-defeating intermediary. The complaint, the court noted, "extensively details Jaysh al-Mahdi's control over the Ministry." App.44a. Given that control, petitioners' "bribes and free goods were aid to Jaysh al-Mahdi" that "supported its terrorist acts." App.46a-47a. Put differently, petitioners' "dealings with the Ministry were equivalent to dealing with the terrorist organization directly." App.7a.

The Ministry "is markedly different from" Iran, the intermediary in petitioners' cases. App.44a. Iran is "an autonomous nation with many functions and priorities." *Id.*; *see Kemper*, 911 F.3d at 393-94; *Rothstein*, 708 F.3d at 97. And its status as "a U.S.-designated sponsor of terrorism," Pet.18, only shows why causation was missing in *Kemper* and *Rothstein*: Iran made its own independent choice to funnel

resources to terrorists with whom the defendants never dealt. *See Kemper*, 911 F.3d at 393 ("[A] sovereign's affirmative choice to engage in a wrongful act will usually supersede a third party's choice to do business with that sovereign."). For that reason, "[t]he United States has regularly differentiated between providing support to state sponsors of terror," such as Iran, "and providing support to terrorist organizations" themselves. *Id.* at 394. Petitioners did the latter. *See* App.44a. Such dealings would create ATA liability in every circuit.

3. Petitioners' factbound disagreement with the D.C. Circuit's decision does not warrant further review. Other circuits, petitioners say, would not hold them liable for merely "selling medical goods that Jaysh al-Mahdi supporters in the Ministry later diverted to the black market." Pet.19. But respondents allege more. As the court recognized, respondents alleged that the Ministry "was thoroughly dominated by Jaysh al-Mahdi and functioned more as a terrorist apparatus than a health organization." App.44a (citation omitted). Petitioners' renewed request for this Court "to infer that Jaysh al-Mahdi actually did not control the Ministry" reflects "an untenably skeptical reading of the complaint." App.45a. Petitioners made all these same factual arguments—based on the same out-of-context complaint citations and the same dubious internet research—to the D.C. Circuit. The court's refusal to credit petitioners' flawed factual narrative created no circuit split and does not warrant review.

B. The D.C. Circuit's Aiding-Abetting Holding Does Not Warrant Review

Secondary liability covers injuries from attacks "committed, planned, or authorized by" a designated

terrorist organization. 18 U.S.C. § 2333(d)(2). The D.C. Circuit held correctly that respondents "plausibly allege that Hezbollah both planned and authorized the attacks against them." App.23a. That factbound conclusion is sound, and petitioners' attempt (at 22) to rewrite the complaint to allege only "generalized support and encouragement" lacks merit.

1. Hezbollah planned, authorized, and sometimes jointly committed Jaysh al-Mahdi's terrorist attacks. The D.C. Circuit surveyed the "many . . . allegations of close integration" between Hezbollah and Jaysh al-Mahdi. App.26a. It held that Hezbollah's "deep and far reaching" role in each of "the attacks that injured and killed" respondents created a plausible inference of "planning" and "authorization." App.25a; C.A.App.250-74 (¶¶ 364-407).

First, Hezbollah planned the attacks that killed or injured respondents. Hezbollah provided "weaponry, training, and knowledge to Jaysh al-Mahdi with the intent of harming Americans in Iraq." App.25a. It detailed in a "planning guide" how Jaysh al-Mahdi fighters should deploy the training and weaponry. *Id.*; C.A.App.267, 268-69 (¶¶ 399, 402). And it deployed operatives to Iraq to impart those "planning" lessons to the Jaysh al-Mahdi cells and fighters that attacked respondents. C.A.App.263-64 (¶ 390). Each ensuing attack against respondents reflected a tactical and geographic connection to Hezbollah, raising a plausible inference of Hezbollah's direct involvement. C.A.App.265-68, 269-73 (¶¶ 393-401, 403).

Penetrator attacks, which account for most of the attacks against respondents, highlight the point. Hezbollah instructed Jaysh al-Mahdi to use explosive "penetrators" because of their unique ability to pierce American armor. C.A.App.265-66 (¶¶ 395-396). This

weapon was "a signature Hezbollah tool," App.10a, that was "exclusively associated with Hezbollah," App.25a. Hezbollah not only provided penetrators to Jaysh al-Mahdi, but also "identif[ied] specific target locations in Iraq" for their use, including against respondents. App.25a-26a. These allegations, the court correctly held, "readily meet the minimum required to plead that Hezbollah 'planned' the attacks." App.26a.

Second, Hezbollah authorized the attacks that killed or injured respondents. For example, Hezbollah "issu[ed] a *fatwa* declaring a religious duty to attack Americans in Iraq." *Id.* That religious imprimatur offered necessary authority for Jaysh al-Mahdi's acts of violence. C.A.App.259-60 (¶¶ 380-381). These allegations "support the contention that Hezbollah authorized the attacks," App.26a, and so independently support respondents' claims.

Third, Hezbollah itself committed some attacks that killed or injured respondents. As even petitioners acknowledge, Pet.7, a joint Hezbollah–Jaysh al-Mahdi cell committed 22 of the attacks at issue, injuring 35 respondents. App.20a-21a.

2. No circuit has rejected similar allegations. Petitioners' cases involved lone-wolf shooters who received no help at all from any designated group. Pet.20-21. In *Crosby*, a "self-radicalized" shooter attacked a Florida nightclub "by himself and without ISIS's help." 921 F.3d at 626. *Colon v. Twitter, Inc.* involved the same attack; the Eleventh Circuit merely "agree[d] with the Sixth Circuit's resolution of the same issue." 14 F.4th 1213, 1222 (11th Cir. 2021). And *Gonzalez v. Google LLC* involved a similar lone-wolf shooter who also received no help from ISIS. 2 F.4th 871, 911-12 (9th Cir. 2021), *rev'd on other grounds sub nom. Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023).

Each of those cases turned on whether designated terrorists can plan or authorize a lone-wolf attack solely by claiming "credit after-the-fact" while doing nothing "beforehand." *Colon*, 14 F.4th at 1222; *accord Gonzalez*, 2 F.4th at 912; *Crosby*, 921 F.3d at 619. The D.C. Circuit accurately described those cases as "markedly different from" this one. App.23a.

3. Petitioners identify no legal error in the D.C. Circuit's aiding-abetting analysis; they simply disagree with the result. For example, petitioners offer an extended interpretation of the statutory terms "plan" and "authorize" but never identify where their interpretation departs from the D.C. Circuit's. Petitioners argue that to "'plan' means to 'decide on and arrange in advance.'" Pet.22 (citation omitted). The court below said it means the same thing: "to arrange the parts of" or "to design." App.21a (cleaned up). Petitioners argue that to "'authorize' means to 'give official permission for.'" Pet.22 (citation omitted). The court below agreed again, saying it means "to endorse, empower, justify, or permit . . . through some recognized or proper authority." App.21a (cleaned up). Even on petitioners' view, the D.C. Circuit was looking in the right places. This Court "rarely grant[s]" certiorari to review the asserted "misapplication of a properly stated rule of law." Sup. Ct. R. 10.

With no legal issue meriting review, petitioners turn to the facts. The heart of their argument is that Hezbollah provided only "generalized support and encouragement" to Jaysh al-Mahdi. Pet.22. But the complaint is far more detailed. As the D.C. Circuit found, the allegations describe the "geographical connections between Hezbollah's presence and the attacks at issue in this case," "Hezbollah's planning role . . . in attacks using Penetrators," and Hezbollah's

"religious, personal, and operational authority over Jaysh al-Mahdi." App.25a-26a. Together, these allegations showed that "Hezbollah's alleged involvement in planning *the attacks that injured and killed [respondents]* was deep and far reaching." App.25a (emphasis added). And as a result, respondents "plausibly plead[ed] that Hezbollah planned and authorized Jaysh al-Mahdi's *challenged attacks*." App.26a (emphasis added). That factbound conclusion does not merit review.

C. Petitioners' Policy Arguments Are Unpersuasive

The D.C. Circuit's decision threatens none of the foreign-policy consequences petitioners invent. Pet.23-26. Congress provided "the broadest possible basis" for secondary liability under the ATA, JASTA § 2(b), 130 Stat. 853, because "terrorism is a serious and deadly problem that threatens" national security, *id*. § 2(a)(1), 130 Stat. 852. The D.C. Circuit correctly applied the statute. Petitioners' speculation about the consequences should be "addressed to Congress, not the courts." *Sandoz Inc. v. Amgen Inc.*, 582 U.S. 1, 21 (2017).

Petitioners' assertions also are unfounded. The D.C. Circuit did not "overrule[]" any "'strategic diplomatic decision' not to designate Jaysh al-Mahdi," Pet.24 (quoting C.A.App.246 (¶ 355)); it accepted factual allegations about Hezbollah's role in Jaysh al-Mahdi's attacks. One of "the realities of modern terrorism" is "that terrorist organizations, and Hezbollah in particular, often operate by proxy." App.22a. Congress did not intend to exempt entities that aid those undesignated proxies from ATA liability. *See* Commanders C.A. Br. 17-24. The very complaint paragraph petitioners quote explains that the non-designation

"was [not] intended to allow private companies to deliver support to Jaysh al-Mahdi." C.A.App.246 (¶ 355).

Petitioners' humanitarian arguments are even hollower. For "legitimate multinational businesses," Chamber Br. 18, or any other "companies and nonprofits" to answer the "call[] for aid," Pet.25, they need only refrain from knowingly funding terrorists. Neither petitioners nor their amicus offer any evidence that doing so is impossible—or even difficult. After all, it already is a crime to provide material support to undesignated terrorists. *See* 18 U.S.C. § 2339A.

Nor would petitioners' rule even lessen the humanitarian crises they invent. They acknowledge Hezbollah's alleged role in 22 of the attacks here. Pet.7. But from the perspective of petitioners' hypothetical nonprofits, those 22 attacks are no different from the others. All that differentiates them are tactical details—whether Hezbollah fighters personally performed the operational minutiae—about which no legitimate nonprofit would ever know. Petitioners cannot explain why the D.C. Circuit's rule would deter "companies and nonprofits" from working with undesignated terrorists any more than their own theory would. Pet.25.

Petitioners' final policy argument—that the D.C. Circuit will become a magnet for ATA claims—is incorrect. In the 19 months since the D.C. Circuit issued the opinion below, litigants have filed at least 17 ATA cases of which respondents are aware. *See* Appendix. Most of those cases are in New York district courts; respondents know of only three in D.C. *Id.* And the D.C. Circuit has shown that it is not uniquely hospitable to ATA claims, rejecting liability in every case it has considered since the decision below. *See Keren*

Kayemeth LeIsrael – Jewish Nat'l Fund v. Education for a Just Peace in the Middle E., 66 F.4th 1007, 1017 (D.C. Cir. 2023) (calling allegations "far less convincing" than those here); *Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856, 865 (D.C. Cir. 2022) (noting the "stark contrast" with this case), *cert. pet. pending*, No. 23-18 (U.S. July 3, 2023). The rule in the D.C. Circuit is the same as the rule everywhere: bribing terrorists creates ATA liability, but non-culpable, passive behavior does not.

D. The Interlocutory Posture Of This Case Confirms That Review Is Unwarranted

The petition's interlocutory status furnishes another reason to deny it. This case "comes to [this Court] at the motion-to-dismiss stage, and the interlocutory posture is a factor counseling against this Court's review at this time." *NFL v. Ninth Inning, Inc.*, 141 S. Ct. 56, 56-57 (2020) (Kavanaugh, J., respecting denial of certiorari); *see Abbott v. Veasey*, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., respecting denial of certiorari). Much remains to be done below: the D.C. Circuit "remand[ed] the balance of the issues" for the district court to consider in the first instance. App.6a. Petitioners' issues may "become quite unimportant by reason of the final result." *American Constr. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 384 (1893).

If the Questions Presented prove worthy of this Court's attention, there will be ample time to address them "in a later petition following entry of a final judgment." *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945-46 (2012) (Alito, J., respecting denial of certiorari). But at this point, no discovery has occurred. And petitioners' repeated mischaracterizations of the complaint make clear that their defense

is really a factual one. Petitioners will have their chance to prove that all they did was "answer[] th[e] call" for private aid in Iraq. Pet.6. But for now, granting certiorari would just further delay respondents' chance to finally prove their claims.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 23, 2023

APPENDIX

District of Columbia

1. *Chand v. MTN Irancell Telecomms. Servs. Co.*, No. 22-0830, filed March 27, 2022.

2. *Davis v. MTN Grp. Ltd.*, No. 22-0829, filed March 27, 2022.

3. *Schmitz v. Ericsson Inc.*, No. 22-2317, filed August 5, 2022.

Southern District of Florida

1. *Sotloff v. Qatar Charity*, No. 22-80726, filed May 13, 2022.

Southern District of Indiana

1. *Weinschenk v. United States*, No. 22-1150, filed June 6, 2022.

Eastern District of New York

1. *Fields v. Lafarge S.A.*, No. 23-0169, filed January 10, 2023.

2. *Finan v. Lafarge S.A.*, No. 22-7831, filed December 22, 2022.

3. *Foley v. Lafarge S.A.*, No. 23-5691, filed July 27, 2023.

4. *Lau v. ZTE Corp.*, No. 22-1855, filed April 3, 2022.

5. *Long v. MTN Grp. Ltd.*, No. 23-5705, filed July 28, 2023.

Southern District of New York

1. *Bonacasa v. Standard Chartered PLC*, No. 22-3320, filed April 22, 2022.

2. *Bushnell v. Islamic Emirate of Afghanistan*, No. 22-8901, filed October 19, 2022.

3. *Grazioso v. Islamic Emirate of Afghanistan*, No. 22-1188, filed February 11, 2022.

4. *Hughes v. Zarrab*, No. 23-6481, filed July 26, 2023.

5. *Moore v. Standard Chartered PLC*, No. 23-2834, filed April 4, 2023.

6. *Owens v. Taliban*, No. 22-1949, filed March 8, 2022.

7. *Smedinghoff v. Standard Chartered Bank*, No. 23-2865, filed April 5, 2023.