

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 OF ANTI-DEFAMATION LEAGUE
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST¹

Founded in 1913 in response to an escalating climate of antisemitism and bigotry, ADL's timeless mission is to stop defamation of the Jewish people and to secure justice and fair treatment for all. A recognized leader in exposing extremism, fighting terrorism, delivering anti-bias education, and fighting hate online, ADL's ultimate goal is a world in which no group or individual suffers from bias, discrimination, or extremist violence.

Given the overarching importance of online platforms to the dissemination of information and social interaction, ADL believes that fighting online hate and extremism is central to robustly pursuing its mission of fighting antisemitism and securing justice and fair treatment for all. ADL has devoted resources and attention to the issue of online hate since the early days of dial-up internet. Today, ADL brings decades of experience and expertise to the fight against online hate and extremism. Its Center on Extremism ("COE") examines the ways extremists across the ideological spectrum exploit the online ecosystem to spread their messages, recruit adherents, finance hate, and support and commit acts of terrorism. COE works directly with threatened communities on the ground as well as law enforcement agencies across the country to

¹ Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored any part of this brief and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. Only the *amicus* has paid for the filing and submission of this brief.

prevent attacks and identify perpetrators. ADL’s Center for Technology and Society (“CTS”) works across four key areas—policy, research, advocacy, and incident response—to generate advocacy-focused solutions to make digital spaces safer and more equitable.

For years, CTS has researched how social media platforms amplify hate and extremism through their user interfaces, recommendation engines, and algorithms. CTS also has years of experience researching the consequences of that amplification, including the radicalization of users and the spread of online hate to offline violence. CTS engages directly and regularly with major social media platforms, as well as with legislators and regulators, to push for policy and product changes, making a measurable difference in fighting online extremism.

ADL also has been a constant advocate of civil liberties and the First Amendment. In pursuing its historical fight against racism, antisemitism, and other forms of bigotry, ADL always has defended free speech. Importantly, however, ADL recognizes the difference between speech and conduct, and the difference between protected speech and the facilitation of violence.

ADL submits this brief to urge the Court to affirm the Ninth Circuit’s interpretation that aiding-and-abetting liability under Section 2333(d) of the Anti-Terrorism Act (“ATA”) (18 U.S.C. § 2333(d)) encompasses providing knowing substantial assistance to the terrorist enterprise of a foreign terrorist organization (“FTO”) that commits, plans, or authorizes an act of international terrorism that injures a United States national, without requiring

that such assistance be given to the specific terror attack in which the United States national was injured. The extremely narrow interpretation urged by Petitioner would effectively eviscerate Section 2333(d) because, given the clandestine operations of government-designated FTOs, it is rarely possible to demonstrate that an FTO used particular support and resources to commit a specific terrorist attack.

In addition, by way of background, ADL respectfully submits that it is uniquely qualified to provide the Court with information concerning how social media platforms amplify terrorist content. An important purpose of this brief is to highlight for the Court how terrorists and terrorist organizations have used and currently use social media to advance their agendas and commit acts of terrorism, and what the social media platforms know about the role they play.

Amicus takes no position as to the legal sufficiency of Respondents' allegations against Twitter, or the ultimate merit of Respondents' claims. *Amicus* does not contend that merely hosting user-generated content, and even failing to aggressively enforce their own policies against violent, bigoted, or hateful content, should automatically subject social media platforms to secondary liability under the ATA. Still, liability under the ATA for aiding-and-abetting terrorism should not be so narrowly construed as to eliminate any possibility of holding social media platforms, or other global businesses, accountable if they are found to have knowingly provided substantial assistance to FTOs.

SUMMARY OF ARGUMENT

Terrorists and terrorist organizations have used mainstream social media platforms like Twitter, Facebook, and YouTube successfully to disseminate propaganda that is intended both to attract supporters and to terrify the world at large. FTOs like ISIS and al-Qaeda have made extensive use of social media in multiple languages for purposes of recruitment and training, as well as to generally inspire terror attacks. Use of social media to raise funds for terror attacks is a matter of international concern.

The social media companies are not merely passive by-standers to this nefarious use of their infrastructure. In addition to hosting terrorist content posted by FTOs and their supporters and sympathizers, social media platforms play an active role in auto-generating, recommending, and amplifying radicalizing content, as well as connecting users and recommending groups and communities for them to join. There is now a significant body of research, including from the companies themselves, indicating that social media platforms knowingly design their recommendation engines, algorithms, and other technical tools to draw users ever-more efficiently into deeper engagement with extreme, hateful, and divisive content. Far too often, that can result in spreading hate, radicalizing users, and recruiting extremists, at times significantly influencing and enabling violent actors. It is impossible to determine the extent to which this occurs because of the platforms' lack of transparency concerning the way their recommendation engines and targeting tools work.

Just as social media companies should not be immunized from accountability by Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230(c)(1),² so too Section 2333(d) of the ATA should not be construed so narrowly as to effectively preclude the possibility of aiding-and-abetting liability unless the substantial assistance was provided for the specific attack in which the plaintiff was injured.

ARGUMENT

I. SOCIAL MEDIA PLATFORMS LIKE TWITTER PROVIDE CRUCIAL RESOURCES FOR TERRORISTS AND TERRORIST ORGANIZATIONS

According to the National Center for Counterterrorism, nearly every U.S. government-designated FTO has a social media presence.³ FTOs, such as the Islamic State of Iraq and Syria (“ISIS”), have exploited social media platforms to disseminate and normalize their propaganda, recruit and train new terrorists, and plan and finance acts of terrorism.⁴ Indeed, ISIS’s

² See Brief of Anti-Defamation League as *Amicus Curiae* in Support of Neither Party (Dec. 7, 2022) in *Gonzalez v. Google LLC*, No. 21-1333 (U.S.).

³ See Press Release, U.S. Rep. Brian Fitzpatrick, *Reps. Fitzpatrick, Gottheimer Introduce Bill to Restrict Online Terrorism* (Jan. 5, 2021), <https://fitzpatrick.house.gov/2021/1/rep-fitzpatrick-gottheimer-introduce-bill-to-restrict-online-terrorism>

⁴ See, e.g., J.M. Berger, *Social Media: An Evolving Front in Radicalization*, Testimony for the U.S. Senate Committee on Homeland Security and Governmental Affairs (May 7, 2015).

sophisticated and successful use of social media, in particular Twitter, provides a blueprint that other terrorist organizations have copied and expanded.⁵

A. Terrorist Organizations Use Social Media Platforms to Disseminate Their Propaganda Widely and Rapidly

Although various terrorist organizations have maintained Twitter accounts since at least 2010, they often did so as a secondary means of communication until the mid-2010s. Prior to this shift, terrorist propaganda was generally made available on extremist forums, featuring downloadable content such as magazines, videos, and brochures. However, as of 2014, ISIS began disseminating information almost exclusively via Twitter, where it was able to quickly share its ideas around the world, inspire its supporters to action, and conveniently connect adherent extremists. At the time, ISIS's use of Twitter was facilitated by the fact that Twitter users could conceal their identities more effectively than users of other social media platforms.⁶ While Twitter did shut down some

<https://www.hsgac.senate.gov/imo/media/doc/Testimony-Berger-2015-05-07>

⁵ Anti-Defamation League, *Hashtag Terror: How ISIS Manipulates Social Media* (Updated Aug. 21, 2014) (hereafter, "ADL, *Hashtag Terror*").

<https://www.adl.org/resources/report/hashtag-terror-how-isis-manipulates-social-media>

⁶ *Id.*

terrorist accounts, the banned users almost always opened new accounts immediately.⁷

In the years leading up to the Istanbul terror attack that prompted this litigation, ISIS maintained Twitter accounts for several of its official media outlets which tweeted news and official statements in Arabic and other languages, including English, and distributed professional quality videos. “Only a fraction of [ISIS’s] online output depict[ed] the kind of sadism for which the group is notorious: far more common [were] portrayals of public-works projects, economic development, and military triumphs, frequently aimed at specific Muslim enclaves throughout the world.”⁸ Several ISIS Twitter feeds (as well as accounts on Facebook and other social media platforms) regularly distributed images of ISIS militants engaging with children, distributing food and performing other social services. Other ISIS propaganda focused on the organization’s efforts to establish a supposedly model Islamic state, or touted ISIS’s military strength and called on followers to join in the fighting. In June 2014, ISIS began posting a series of short videos called “Mujatweets” on YouTube depicting ISIS as a charitable organization beloved

⁷ ADL, *Hashtag Terror*, *supra* note 5; Shaun Wright, *et al.*, *Resurgent Insurgents: Quantitative Research Into Jihadists Who Get Suspended but Return on Twitter*, JOURNAL OF TERRORISM RESEARCH 7(2) (2016); Brendan Koerner, *#jihad: Why Isis Is Winning the Social Media War*, WIRED (April 2016) at 6 (“In most suspension cases, a new (and often more than one) account with a variation of the previous username is created within hours.”).

⁸ *Koerner*, *supra* note 7 at 4.

by civilians that works tirelessly to establish a better society.⁹

Like other terrorist organizations, ISIS also was using social media to spread terror by regularly posting images of shootings, crucifixions, beheadings and mass executions for which it claimed responsibility.¹⁰ ISIS's video of the August 2014 beheading of U.S. journalist James Foley began this gruesome trend.¹¹ ISIS posted the video of Mr. Foley's murder on YouTube, with the caption "A Message to America,"¹² and links to the video spread through Twitter in minutes.¹³ Although YouTube removed the video within an hour, copies remained available weeks later.¹⁴

In September 2014, ISIS posted "A Second Message To America"—the beheading of U.S. journalist Steven Sotloff. This was followed by videos of the beheadings of two British humanitarian aid workers (David Haines in September and Alan Henning in October 2014) and

⁹ ADL, *Hashtag Terror*, *supra* note 5.

¹⁰ *Id.*

¹¹ See *ISIS Fast Facts*, CNN WIRE (Aug. 8, 2014; Updated Dec. 6, 2022).

¹² See *Beheading Video Fuels Lawmaker Demands for Continued Action in Iraq*, CONGRESSIONAL QUARTERLY NEWS (Aug. 20, 2014).

¹³ Angi English, *The Social Influence of ISIS Beheadings*, HOMELAND SECURITY (Sept. 24, 2014). <https://medium.com/homeland-security/the-social-influence-of-isis-beheadings-9fce5c8ceb40>

¹⁴ James Dean, *Sharing "Beheading" Video is a Terror Crime*, THE TIMES (UK) (Aug. 21, 2014).

an American aid worker (Peter Kassig in November 2014).¹⁵

In the immediate aftermath of the dissemination of the Foley beheading video, Twitter announced that it was “actively suspending accounts as we discover them related to this graphic imagery.”¹⁶ “Nevertheless, the release of the videos of ISIS’s next four beheadings of Americans and Britons were all announced via Twitter—with more graphic images of the beheadings and their aftermath.”¹⁷ Four months later, the number of graphic jihadi tweets of beheadings and executions was at a peak.¹⁸

An estimated 46,000 to 90,000 ISIS-supporting accounts were active on Twitter in 2014.¹⁹ ISIS leveraged the Twitter accounts of its supporters by organizing hashtag campaigns, encouraging supporters to repeatedly tweet hashtags such as

¹⁵ Steven Stalinksy, R. Sosnow, and M. Khayat, *ISIS’s Use of Twitter, Other U.S. Social Media to Disseminate Images, Videos of Islamic Religious Punishments—Beheading, Crucifixion, Stoning, Burning, Drowning, Throwing From Buildings—Free Speech?*, MEMRI (Jan. 6, 2016).
<https://www.memri.org/jttm/isiss-use-twitter-other-us-social-media-disseminate-images-videos-islamic-religious-punishments>

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ J.M. Berger and Jonathon Morgan, *The ISIS Twitter Census: Defining and Describing the Population of ISIS Supporters on Twitter*, THE BROOKINGS PROJECT ON U.S. RELATIONS WITH THE ISLAMIC WORLD (March 2015) at 7-9.

#AllEyesonISIS or #CalamityWillBefallUS.²⁰ The goal was to have these hashtags trend on Twitter, vastly increasing the visibility of tweets with ISIS’s messages.

ISIS also encouraged its supporters to attach ISIS messages to popular “active hashtags,” such as #worldcup, so that people searching for these hashtags would inadvertently come across pro-ISIS posts.²¹ In 2014, ISIS created an Arabic-language Android app—since discontinued—that gave ISIS the ability to post tweets from users’ Twitter accounts, which thus became *de facto* ISIS propaganda outlets.²²

Twitter has also enabled accounts that are attributed to major media outlets for other U.S.-designated terrorist organizations such as Hamas, Hezbollah, and Palestinian Islamic Jihad.²³ These

²⁰ In June 2014, ISIS launched a social media campaign called “Warning to the American People” that encouraged its supporters to use the hashtag #CalamityWillBefallUS to post threats against U.S. citizens, such as, “This is a message for every American citizen. You are the target of every Muslim in the world wherever you are.” See ADL, *Hashtag Terror*, *supra* note 5.

²¹ *Id.*

²² *Id.*

²³ See *Holding Big Tech Accountable: Legislation to Build a Safer Internet*, Before House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce (Dec. 9, 2021) (Statement of Jonathan Greenblatt, CEO & National Director, Anti-Defamation League) at 5 (hereafter “ADL, *Holding Tech Accountable Testimony*”).

accounts are used to glorify terrorism and spread antisemitic hate and conspiracies. Ayatollah Ali Khamenei, the Supreme Leader of Iran, a U.S.-designated state sponsor of terrorism, has over a dozen current accounts on Twitter that he uses to promote Hamas and Hezbollah terrorists and spread antisemitic tropes in various languages.²⁴

B. Terrorist Organizations Use Social Media Platforms to Recruit Terrorist Operatives

During the period immediately prior to the Istanbul attack in which Respondents' family member was killed, Twitter, Facebook, and similar mainstream platforms were "the primary means utilized by extremist groups to recruit, educate, and ultimately, equip their followers to go and kill."²⁵ The use of social media to pursue recruits has been "a regular topic of coaching and education in ISIS publications."²⁶ Estimates from 2014 indicate that at that time ISIS had recruited more than 16,000 members from around the world using social media.²⁷ Social media was one of "the most useful

<https://www.adl.org/sites/default/files/adl-testimony-house-cmte-energy-commerce-holding-big-tech-accountable-2021-12-09.pdf>

²⁴ *Id.* at 5-6.

²⁵ Anna Goodman, Note & Comment, *When You Give a Terrorists a Twitter: Holding Social Media Companies Liable for their Support of Terrorism*, 464 Pepp. L. Rev. 147, 149 (2018).

²⁶ *Id.* at 152.

²⁷ Susan Klein and Crystal Flinn, *Social Media Compliance Programs and the War Against Terrorism*, 8 HARV. NAT'L SEC. J. 53, 65 (2017) (citations omitted).

terror recruiting tools” and Twitter and Facebook were used to recruit U.S. residents to join ISIS or carry out attacks in ISIS’s name.²⁸

A vast majority of the U.S. residents engaged in activity motivated by Islamic extremist ideology are known to have accessed propaganda materials, communicated with other extremists, or researched material support or other plots online.²⁹ One of the best-known social media terrorist recruiters was the U.S.-born al-Qaeda leader Anwar Al-Awlaki, whose English-language YouTube videos “helped shape a generation of American terrorists, including the Fort Hood gunman, the Boston Marathon bombers and the perpetrators of massacres in San Bernardino, Calif., and Orlando, Fla.”³⁰ Although Awlaki’s prolific presence on YouTube first became a subject of complaints to the platform in November 2009—when he praised the perpetrator of the fatal Fort Hood attack as a “hero”—it was not until late 2017 that YouTube, under growing pressure from governments and counterterrorism advocates, began

²⁸ *Id.* at 66.

²⁹ Anti-Defamation League, *The ISIS Impact on the Domestic Islamic Extremist Threat: Homegrown Islamic Extremism 2009-2015*, at 22 (hereafter “ADL, *ISIS Impact 2009-2015*”).

³⁰ Scott Shane, *In “Watershed Moment,” YouTube Blocks Extremist Cleric’s Message*, NEW YORK TIMES (Nov. 12, 2017), <https://www.nytimes.com/2017/11/12/us/politics/youtube-terrorism-anwar-al-awlaki.html>
See also Counter Extremism Project, *Anwar Al-Awlaki* (documenting 56 cases in which Awlaki’s radicalizing influence was a key factor inspiring Americans arrested for attempting to join jihadist groups or carry out domestic terror attacks), <https://www.counterextremism.com/anwar-al-awlaki> (last visited Jan. 17, 2023).

to remove Awlaki's more than 70,000 videos from its platform.³¹

At least 18 U.S. citizens and permanent residents motivated by the ideology propagated by ISIS and other international Islamic terrorist groups were charged in 2014 with terror-related offenses. Three others died fighting abroad, and five U.S. minors are believed to have attempted to join foreign terrorist groups. Of these 26 individuals, nearly all engaged to some degree with online terrorist propaganda, and 20 are believed to have attempted to join or aid ISIS.³²

In 2015, Wisconsin resident Joshua Van Haftan attempted to join ISIS in Syria after consuming massive amounts of terrorist propaganda online, including videos produced by ISIS and Jabhat al Nusra, and ISIS's English-language online magazine, Dabiq. Van Haftan had been active in extremist circles on Twitter and Facebook, where he was friends with known extremists.³³ Pennsylvania resident Jalil Ibn Ameer Aziz used at least 72 different Twitter accounts to disseminate ISIS propaganda. On at least three occasions, Aziz used his Twitter accounts to assist people who were seeking to travel to, and fight for, ISIS. He also used one of his Twitter accounts to disseminate a "kill list" that contained the names, addresses, photographs, and military branches of approximately 100 U.S. servicemen with

³¹ Shane, *supra* note 30.

³² Anti-Defamation League, *Homegrown Islamic Extremism in 2014* (Feb. 17, 2015).

³³ ADL, *ISIS Impact 2009-2015*, *supra* note 29, at 22.

instructions “kill the [service members] in their own lands, behead them in their own homes, stab them to death as they walk their street thinking they are safe.”³⁴

Through the years immediately prior to the 2017 Istanbul attack, terrorist organizations were using social media “to train, educate, weaponize, and mobilize” recruits by taking advantage of the platforms’ direct messaging capabilities. Those functions enabled the recruiters to “shift from public, open source communications such as Facebook and Twitter posts to private communications” that were more difficult—if not impossible—for law enforcement to monitor.³⁵ In 2015, Joshua Goldberg of Florida used his very active pro-ISIS Twitter account and a private messaging application to plan the bombing of a Kansas City, Missouri firefighters’ event commemorating the September 11th attacks. Goldberg provided an FBI informant with website

³⁴ Press Release, U.S. Department of Justice, *Jalil Ibn Ameer Aziz Sentenced for Conspiracy to Provide Material Support and Resources to a Designated Foreign Terrorist Organization and Transmitting a Communication containing a Threat to Injure* (Dec. 20, 2017).

<https://www.justice.gov/opa/pr/jalil-ibn-ameer-aziz-sentenced-conspiracy-provide-material-support-and-resources-designated>

³⁵ Goodman, *supra* note 25, at 158. *See also Counterterrorism, Counterintelligence, and the Challenges of “Going Dark”* Before Senate Select Committee on Intelligence (July 8, 2015) (Statement of James B. Comey, Director, Federal Bureau of Investigation).

<https://www.fbi.gov/news/testimony/counterterrorism-counterintelligence-and-the-challenges-of-going-dark>

links containing instructions for making an explosive device, and a list of items to include in a pressure cooker bomb, including shards of metal, screws, nails, and broken glass, all of which Goldberg instructed should be first dipped in rat poison.³⁶

C. Terrorist Organizations Use Social Media Platforms to Organize, Inspire, and Finance Terror Attacks

Terrorists and terrorist organizations also use social media to facilitate terror attacks by disseminating instructional information concerning, for example, manufacturing and deploying bombs, building biological weapons, and even using motor vehicles as weapons of terror.³⁷ In November 2016, ISIS posts on Twitter and Facebook praised the “deadly and destructive capability of the motor vehicle” and offered ideas for conducting such attacks.³⁸ A month later, a vehicle attack was carried out in Berlin, followed by similar attacks in France, Spain, and New York.³⁹

³⁶ ADL, *ISIS Impact 2009-2015*, *supra* note 29, at 24; Press Release, U.S. Department of Justice, *Florida Man Sentenced to 10 Years in Federal Prison on Bomb Charge* (June 25, 2018), <https://www.justice.gov/opa/pr/florida-man-sentenced-10-years-federal-prison-bomb-charge>

³⁷ Goodman, *supra* note 25, at 162.

³⁸ *Id.*

³⁹ Greg Myre, *As ISIS Promotes Vehicle Attacks, Terrorists Strike in Europe and U.S.*, NPR (Nov. 1, 2017, 12:35 PM), <https://www.npr.org/sections/thetwo-way/2017/11/01/561327621/as-isis-promotes-vehicle-attacks-terrorists-strike-in-europe-and-u-s>

Terrorist organizations also regularly use social media platforms to finance their operations. Addressing the “No Money for Terror” international conference in November 2022, India’s Prime Minister Narendra Modi stated that “[s]ocial media platforms are used as crowdfunding platforms, and finances raised through such sources are ultimately used for terror purposes.”⁴⁰

In 2020, the U.S. Department of Justice seized millions of dollars’ worth of cryptocurrency that three designated FTOs had solicited using social media.⁴¹ Hamas’s military wing, the al-Qassam Brigades, had posted calls on social media for bitcoin donations, which it boasted (incorrectly) would be untraceable and which it stated would be used for violent causes.⁴² Al-Qaeda used social media platforms to openly and explicitly solicit bitcoin to be used, among other things, to equip terrorists in Syria with weapons.⁴³

Terrorist organizations employ social media in other diverse ways to finance their operations. For example, ISIS used Facebook and a website to sell fake N95 respirator masks to customers all over the

⁴⁰ *Crowd funding: Another Ploy of Terror Groups to Raise Funds*, EARLY TIMES (INDIA) (Nov. 17, 2022).

⁴¹ Press Release, U.S. Department of Justice, *Global Disruption of Three Terror Finance Cyber-Enabled Campaigns – Largest Ever Seizure of Terrorist Organizations’ Cryptocurrency Accounts* (Aug. 13, 2020).
[justice.gov/opa/pr/global-disruption-three-terror-finance-cyber-enabled-campaigns](https://www.justice.gov/opa/pr/global-disruption-three-terror-finance-cyber-enabled-campaigns)

⁴² *Id.*

⁴³ *Id.*

world, including in the U.S.⁴⁴ The State of Qatar has provided a safe haven for fundraising networks that use social media to solicit donations for terrorists and to communicate with both donors and recipient radicals on the battlefield.⁴⁵ Respondents' operative complaint alleges that Google has shared advertising revenue with ISIS-affiliated users⁴⁶

II. SOCIAL MEDIA PLATFORMS' ACTIONS AMPLIFY TERRORIST CONTENT AND TARGET IT TOWARDS VULNERABLE USERS

There is little doubt that social media platforms have helped radicalize users and normalize both online and offline extremism.⁴⁷ It has long been clear to ADL and other researchers that social media companies take extremist views from the fringe to the mainstream.

⁴⁴ *Id.*

⁴⁵ Press Release, U.S. Department of the Treasury, *Remarks of Undersecretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on "Confronting New Threats in Terrorist Financing"* (Mar. 4, 2014), home.treasury.gov/news/press-releases/jl2308

⁴⁶ See J.A. at 137-41, ¶¶ 416-37.

⁴⁷ See *Domestic Terrorism and Violent Extremism: Examining the Threat of Racially, Ethnically, Religiously, and Politically Motivated Attacks, Part II* Before the S. Comm. on Homeland Security and Government Affairs (Aug. 5, 2021) (Statement of Jonathan Greenblatt, CEO & National Director, Anti-Defamation League), <https://www.adl.org/sites/default/files/adl-testimony-hsgac-domestic-terrorism-violent-extremism-2021-08-05.pdf>

More importantly, social media platforms' relentless pursuit of user engagement produces environments that foster hate and extremism at a scale that otherwise would not exist. First, social media platforms leverage the troves of user data they collect to identify and target individuals susceptible to hateful and extremist content, and then recommend more of the same content to them. Second, they build online communities by effectively mobilizing and rewarding outrage, one of the best ways to ensure more and deeper user engagement.

A landmark 2021 ADL survey of exposure to YouTube recommendations found that YouTube, a platform with currently over 2.6 billion active monthly users,⁴⁸ has targeted and delivered extremist content to highly susceptible users.⁴⁹ When a user is watching a video on YouTube, the platform's algorithm, which relies heavily on user engagement, places "recommended" videos in an adjacent sidebar. The ADL survey focused on videos from extremist white supremacist channels, and videos from "alternative" channels that can serve as gateways to more extremist racist content. One in ten of the survey participants had viewed at least one video from an extremist channel, and two in ten

⁴⁸ Alexander Maxham, *80 Million People Are Paying for Ad-Free YouTube*, NEWSTEX BLOGS (Nov. 9, 2022).

⁴⁹ *See Exposure to Alternative and Extremist Content on YouTube*, ANTI-DEFAMATION LEAGUE CENTER FOR TECHNOLOGY & SOCIETY (May 3, 2022).
https://www.adl.org/sites/default/files/pdfs/2022-05/FINAL_FINAL_ADL-Report-Single-Final-Design.pdf

had viewed at least one video from an alternative channel.⁵⁰

Consumption of this content was concentrated among a highly engaged subset of survey participants: the mean number of videos watched by each participant who had watched at least one video of a given type was 11.5 videos on extremist channels and 64.2 videos on alternative channels.⁵¹ Participants who reported high levels of racial resentment were more likely to have consumed this content: one in six participants who reported high racial resentment had watched at least one video from an extremist channel, and one in five had watched at least one video from an alternative channel.⁵² Overall, participants who reported high racial resentment were responsible for more than 90% of views of videos from extremist and alternative channels. Despite YouTube reportedly having made “over 30 different changes to reduce recommendations’ of potentially harmful content” prior to the period surveyed, 29.3% of recommendations accompanying videos on extremist channels, and 37.6% of recommendations accompanying videos on alternate channels, were to other videos of the same type.⁵³

In the case of the leading English-language al-Qaeda recruiter, Anwar al-Awlaki, the Counter Extremism Project has noted that YouTube’s recommendation tools would often suggest Awlaki’s

⁵⁰ *See id.* at 6.

⁵¹ *See id.* at 7.

⁵² *See id.*

⁵³ *See id.*

more sinister videos to people who viewed the uncontroversial lectures on Islamic history that Awlaki recorded when he was a mainstream imam working in Denver and D.C.⁵⁴

Numerous studies have shown that extremist and outrage-provoking content is among the best-performing content for securing user engagement.⁵⁵ User engagement is central to the social media companies' revenue model: the more time a user spends on the platform, the more data can be extracted about that user, which enables the platform to serve more and more targeted content and advertising to the user—ultimately increasing revenue.⁵⁶ According to internal Facebook documents leaked by whistleblower Frances Haugen, efforts to combat the proliferation of negative content and polarization on that platform would be “antigrowth” and would “requir[e] Facebook to ‘take a moral stance.’”⁵⁷

⁵⁴ See *Shane*, *supra* note 30.

⁵⁵ See Paul Lewis, “*Fiction is Outperforming Reality: How YouTube’s Algorithm Distorts Truth*,” *GUARDIAN* (Feb. 2, 2018), <https://www.guardian.com/technology/2018/feb/02/how-youtube-algorithm-distorts-truth>

⁵⁶ See ADL, *Holding Tech Accountable Testimony*, *supra* note 23, at 6.

⁵⁷ Jeff Horowitz and Deepa Seetharam, *Facebook Executives Shut Down Efforts to Make the Site Less Divisive*, *WALL ST. J.* (May 26, 2020), <https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>

III. SOCIAL MEDIA PLATFORMS ARE AWARE THAT THEIR CONDUCT AIDS TERRORISTS, YET TAKE LITTLE MEANINGFUL ACTION

Social media platforms know that terrorists and terrorist organizations benefit from using their services. U.S. government officials have continuously called for Twitter to suspend the accounts of designated FTOs, such as al-Shabab.⁵⁸ In March 2015, Members of Congress, including senior members of the House Foreign Affairs Committee, sent a bipartisan letter to then-Twitter CEO Dick Costolo “urging him to increase effort to combat foreign terrorist organizations that use the American social media company to fundraise, spread their propaganda and recruit new jihadists.”⁵⁹

In February 2016, Twitter issued a public statement pledging to step up its efforts to combat “the use of Twitter to promote terrorism” and announced that it had suspended over 125,000 accounts “for threatening or promoting terrorist acts, primarily related to ISIS.”⁶⁰ In October 2019, a bipartisan group of Members of Congress sent a letter to then-Twitter CEO Jack Dorsey demanding that the company remove all Hamas- and Hezbollah-

⁵⁸ Jeffrey Gettleman, *U.S. Considers Combating Somali Militant’s Twitter Use*, THE NEW YORK TIMES (Dec. 19, 2011).

⁵⁹ Press Release, U.S. Rep. Brad Sherman, *Poe, Sherman, Royce, Engel: Shut Down Terrorists on Twitter* (Mar. 12, 2015).

<https://sherman.house.gov/media-center/press-releases/poe-sherman-royce-engel-shut-down-terrorists-on-twitter>

⁶⁰ Twitter, Inc., *Combating Violent Extremism* (Feb. 5, 2016). https://blog.twitter.com/official/en_us/a/2016/combating-violent-extremism.html

affiliated content, and pointing out that providing “material support or resources” for these government-designated FTOs was against the law.⁶¹

While their lack of transparency makes it difficult to prove, there can be little doubt that social media companies are aware that their core product mechanics—including user interfaces, recommendation engines, and algorithms, as well as other targeting tools—promote terrorist content. Leaked internal Facebook documents acknowledge the role played by that platform’s engagement-based business model in spreading disinformation, extremism and hate. Those documents state that Facebook has “evidence from a variety of sources that hate speech, divisive political speech, and misinformation on Facebook and the family of apps are affecting societies around the world. . . . Our core products’ mechanics, such as virality, recommendations, and optimizing for engagement, are a significant part of why these types of speech flourish.”⁶²

Even before discoveries in the wake of Frances Haugen’s whistleblowing, a 2018 leaked internal Facebook presentation stated that “[o]ur algorithms exploit the human brain’s attraction to divisiveness,” leading users to “more and more divisive content in an effort to gain user attention &

⁶¹ Press Release, U.S. Rep. Josh Gottheimer, *Joint Release: Hamas and Hezbollah Twitter Accounts Taken Down, Following Bipartisan Push Against Terror* (Nov. 4, 2019), <https://gottheimer.house.gov/news/documentsingle.aspx?DocumentID=1533>

⁶² *Id.*

increase time on the platform.”⁶³ A 2016 internal Facebook presentation noted that one-third of large German political groups on Facebook included extremist content, and that “64% of all extremist group joins are due to our recommendation tools. . . . Our recommendation systems grow the problem.”⁶⁴ This finding is not unique to German Facebook users or Facebook’s “Groups” product.⁶⁵ The company’s Chairman and CEO Mark Zuckerberg and other senior executives largely shelved this research, and weakened or blocked efforts to apply its conclusions to Facebook’s products.⁶⁶

Although social media platforms have been slow to act, and have done so mostly in response to public and governmental pressure, almost every major social media platform now has a written policy prohibiting extremism, terrorism, incitement-to-violence, and hate.⁶⁷ For example, Twitter has a policy that prohibits users from promoting, recruiting for, providing services to, or using the symbols or insignia of violent organizations, including terrorist organizations and violent extremist groups, or individuals who affiliate with and promote their illicit activities.⁶⁸

⁶³ Horowitz and Seetharam, *supra* note 57.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ ADL, *Holding Tech Accountable Testimony*, *supra* note 23 at 10.

⁶⁸ Twitter, Help Center, Safety and Cybercrime, Violent Organizations Policy.

Still, policies are only as good as their consistent enforcement. ADL has made clear its position that even until today, the social media platforms have not done enough to address the amplification of extremism, disinformation, and conspiracy theories by terrorists and terrorist organizations or the impact of their hateful messages upon the safety of communities worldwide.⁶⁹ Major social media companies have the resources to improve systems, hire additional staff to monitor content, develop better products, and provide real transparency into how their products work.⁷⁰

IV. THE NINTH CIRCUIT CORRECTLY DETERMINED THAT ATA AIDING-AND-ABETTING LIABILITY IS NOT LIMITED TO ASSISTING THE COMMISSION OF THE SPECIFIC TERROR ATTACK THAT INJURED A UNITED STATES NATIONAL

The Ninth Circuit correctly interpreted Section 2333(d) as imposing aiding-and-abetting liability on any individual, entity, or nation that knowingly and substantially assists the terrorism campaign or enterprise of an FTO that commits, plans, or authorizes an act of international terrorism that results in injury to a U.S. national.

That interpretation is mandated by the Justice Against Sponsors of Terrorism Act (“JASTA”) which explicitly states that Congress’s intention in creating secondary civil liability under the ATA was

<https://help.twitter.com/en/rules-and-policies/violent-groups>

⁶⁹ ADL, *Holding Tech Accountable Testimony*, *supra* note 23 at 1.

⁷⁰ *Id.*

to provide injured U.S. nationals with “the broadest possible basis” to seek relief from those who provide direct or indirect support to FTOs. *See* Pub. L. No. 114-222, §2(b) (Sept. 28, 2016).

In addition, by expressly incorporating into Section 2333(d) the elements of aiding-and-abetting liability elucidated in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983) (*see JASTA* § 2(a)(5)), Congress made clear that substantially assisting the wrongful enterprise of an FTO, with the appropriate mental state, gives rise to liability for injuries to U.S. nationals that foreseeably result from the FTO’s enterprise. *See* Brief for Respondents at 22-33.

The extremely narrow interpretation of Section 2333(d) that Petitioner, Respondents Google and Facebook, and several *amici* promote—namely, that ATA aiding-and-abetting liability must be limited to those who knowingly and substantially assist the *commission of the specific act of international terrorism that injured the plaintiff*—would effectively render the ATA’s aiding-and-abetting cause of action a dead letter because of the difficulty of tracing specific dollars, goods, or services to specific acts of terrorism.

As courts have repeatedly recognized in the terrorism context, the surreptitious nature of terrorist organizations and the fungible nature of, in particular, the financial support they receive from multiple sources makes it all but impossible for plaintiffs to prove that a defendant provided assistance for a specific terrorist attack. *See, e.g., Strauss v. Credit Lyonnais, S.A.*, 925 F. Supp. 2d 414, 433-34 (E.D.N.Y. 2013) (“[P]laintiffs who bring an ATA action [under 18 U.S.C. § 2333(a)] are not

required to trace specific dollars to specific attacks. . . . Such a task would be impossible and would make the ATA practically dead letter because . . . ‘[m]oney is fungible.’”) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 31 (2010)); *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1136 (9th Cir. 2000) (“[T]errorist organizations do not maintain open books. Therefore, when someone makes a donation to them, there is no way to tell how the donation is used.”).⁷¹

Under Petitioner’s proposed interpretation, there would be no liability for someone who, aware of their role in an FTO’s campaign of terrorism directed against the United States, provided billions of dollars’ worth of assistance to the FTO but was not privy to the planning of the specific terror attack

⁷¹ That observation is echoed by law enforcement and academic commentators. See, e.g., U.S. Department of Justice, *Terrorist Financing*, UNITED STATES ATTORNEYS’ BULLETIN Vol. 51, No. 4 (July 2003) at 9 (“[I]t would be an almost insurmountable law enforcement challenge if we were required to trace the dollars coming from United States sources . . . to their ultimate use in purchasing bombs and bullets.”); *Recent Case: Boim v. Quranic Literacy Institute*, 291 F.3d 1000 (7th Cir. 2002), 116 HARV. L. REV. 713, 717 n. 38 (Dec. 2002) (“[B]ecause many terrorist operations are organized so that few people within a cell have detailed knowledge of future operations, a rule requiring specific knowledge [of the act of terrorism that injured the plaintiff] would be particularly ill-suited for effectively addressing the challenges of terrorism.”); Note, *How Far is Too Far?: The Proper Framework for Civil Remedies Against Facilitators of Terrorism*, 80 BROOKLYN L. REV. 1057, 1081 (Spring 2015) (“With so many streams of money and supplies being funneled to terrorist groups, it would be virtually impossible for plaintiffs to isolate a particular donation as being involved in the commission of the attack that caused their injuries.”).

that resulted in the plaintiff's injury. Petitioner's narrow reading of aiding-and-abetting liability would also insulate individuals and entities that fomented terrorism by advocating non-specific violent conduct, a function that terrorist organizations and their adherents frequently employ new media to promote. This broad-based support for FTOs can induce far more devastating acts of terrorism than the individual attack-specific support to which Petitioner seeks to limit aiding - and-abetting liability.

Such a narrow interpretation of JASTA is irreconcilable with the statute's broad, unequivocal statement of purpose and Congress's adoption of *Halberstam* as the controlling substantive standard for aiding-and-abetting liability. *See N.Y. State Department of Social Services v. Dublino*, 413 U.S. 405, 419 (1973) ("We cannot interpret federal statutes to negate their own stated purposes."). The Court should therefore reject Petitioner's invitation to engraft an impractical requirement that plaintiffs trace material support to a particular attack because that requirement would negate JASTA's plain meaning and Congress's clearly manifested intent in adopting the statute. There has to be a world in which social media platforms that act in a manner that aids and abets terrorist groups are called to account.

CONCLUSION

Amicus urges the Court to affirm the Ninth Circuit's interpretation of the Anti-Terrorism Act's aiding-and-abetting cause of action as creating liability for any defendant that knowingly provides substantial assistance to the terrorism campaign of

a U.S. government designated foreign terrorist organization that commits, plans, or authorizes an act of international terrorism that injures a U.S. national. Whether or not Respondents' complaint sufficiently alleges that Twitter is liable under Section 2333(d), future plaintiffs should not be denied the opportunity to state a case of aiding-and-abetting liability against a social media company that knowingly substantially assists the terror campaign of a designated foreign terrorist organization.

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