

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 21-1496

TWITTER, INC.,

Petitioner,

v.

MEHIER TAAMNEH, et al.

Respondents.

UNOPPOSED MOTION FOR DIVIDED AND ENLARGED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, Respondents supporting Petitioner and Defendants in this action, Facebook, Inc., and Google LLC, respectfully move for divided argument so that the Court can hear from all parties in this case, along with the United States.

This Court set this case as the sole case to be heard for oral argument on February 22, 2023. The United States has separately moved for divided and enlarged argument so that it can present its views in support of the Defendants in this action. This Court has received merits briefs from all the parties in this case including Facebook and Google, who have filed a single joint brief in this case separately from Petitioner Twitter. Facebook and Google believe the Court would benefit from hearing from all the parties in this case, and that given the absence of a second case scheduled for the day of argument, an enlarged argument would be appropriate. Facebook and Google thus respectfully move that the argument time for the Defendants be divided between Petitioner Twitter and the Respondents Supporting

Petitioner, with a single advocate presenting argument on behalf of Facebook and Google, and with counsel for Petitioner Twitter presenting rebuttal argument. Under this approach, Twitter would receive 15 minutes (including rebuttal), Facebook and Google would receive 10 minutes, the United States would receive 15 minutes, and Taamneh would receive 40 minutes. Counsel for Twitter does not oppose this motion. Counsel for Respondents/Plaintiffs also does not oppose this motion.

1. The Anti-Terrorism Act (ATA) authorizes a United States national who is injured by an “act of international terrorism” to recover treble damages from the perpetrator(s) of the act. 18 U.S.C. §2333(a). In 2016, Congress expanded the ATA to allow victims to recover from “any person who aids and abets” or “conspires with the person who committed such an act of international terrorism.” *Id.* §2333(d)(2). Congress cabined aiding-and-abetting liability to those who “knowingly provid[e] substantial assistance” to the specific “act of international terrorism” that injured the plaintiff. *Id.*

2. This case arises out of an ATA lawsuit against Facebook, Google, and Twitter brought by family members of a victim of the 2017 Reina nightclub shooting in Istanbul, Turkey. The Plaintiffs do not claim that any of the Defendants knowingly aided that horrific act of terrorism. Nor do they claim that the perpetrators used any of the Defendants’ online services in any way, including to aid in the commission of the attack. Instead, they claim that the Defendants “aided and abetted” the Reina attack by failing to adequately enforce their policies prohibiting terrorism-related content when it came to removing content that was generally supportive of ISIS. The

district court held that those allegations are insufficient to sustain a claim that any Defendant “knowingly provid[ed] substantial assistance” to the Reina attack, but the court of appeals disagreed. It found it sufficient that Plaintiffs alleged that the companies assisted ISIS generally by failing to do more to keep ISIS supporters from exploiting the companies’ services. And rather than require Plaintiffs to plead (and ultimately prove) that Defendants “knowingly provid[ed] substantial assistance” to the Reina attack, the Ninth Circuit found it sufficient that Plaintiffs alleged that the companies were generally aware that terrorists were exploiting their services—in contravention of their terms of use and despite extensive efforts to prevent that activity—and did not undertake even more aggressive prevention efforts. Of the three Defendants, only Twitter filed a conditional cross-petition asking this Court to grant certiorari here in the event that this Court granted certiorari in No. 21-2333. Defendants Facebook and Google instead filed letters with this Court indicating their continuing interest and party-status in the matter. *See* S. Ct. R. 12.6 (“All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court.”). This Court granted certiorari to consider (1) whether a defendant whose services were *not* used in connection with the specific “act of international terrorism” that injured the plaintiff may nonetheless be liable for aiding and abetting, and (2) whether a defendant that provides such services thereby “knowingly provid[ed] substantial assistance” merely because it allegedly could have taken more aggressive action to prevent terrorists from using its services.

3. As Defendants in this action who will either have the decision dismissing the action against them affirmed or face additional proceedings on remand, Facebook and Google are parties in this Court with an obvious and direct interest in this case. They were haled into court in this action and threatened with severe penalties under the ATA and, depending on the outcome of this Court's proceedings, they face potential stigma for being deemed aiders and abettors of terrorism. Divided argument is warranted so that the Court can hear directly from all the parties in this case and because Facebook and Google have distinct perspectives on the legal issues at stake. While Facebook, Google, and Twitter were all named Defendants in this action, they have taken different approaches to matters of legal strategy (as evidenced by Twitter's decision alone to file a conditional cross-petition). Although the Defendants agree that the ATA does not entitle Plaintiffs to relief, they have emphasized different aspects of the ATA's text, structure, and common law backdrop to support their interpretation. *See, e.g.*, Facebook & Google Br. 21-27; Twitter Br. 41-42, 45-47.

This Court has already recognized that the presence of multiple top-side parties and their distinctive briefing justified a substantial extension of Respondents' briefing. *See* Order, No. 21-1496 (Dec. 8, 2022). A comparable approach to oral argument would benefit the Court. Divided argument will illuminate these distinct lines of argument and allow the Court to explore each. In recent Terms, this Court has granted divided argument where the parties emphasized different arguments in support of the same basic legal conclusion. *See, e.g., Fulton v. City of Philadelphia,*

141 S.Ct. 230 (2020) (mem.); *Kelly v. United States*, 140 S.Ct. 661 (2019) (mem.); *Rucho v. Common Cause*, 139 S.Ct. 1316 (2019) (mem.); *Am. Legion v. Am. Humanist Ass'n*, 139 S.Ct. 951 (2019) (mem.). That approach is equally appropriate when one of the top-side parties is a Respondent Supporting Petitioner. *See, e.g., McDonald v. City of Chicago*, 559 U.S. 902 (2010) (mem.). Divided argument is similarly appropriate here.

4. This case also warrants divided argument because of the interrelationship of this case with No. 21-13333. Facebook and Google have emphasized that the disposition of this case could affect the Court's disposition of *Gonzalez v. Google*, No. 21-1333, which arises out of the same Ninth Circuit opinion. Facebook & Google Br. 50-51. Counsel representing Google, the sole defendant in *Gonzalez*, is uniquely positioned to address the implications of that case for this case, especially because this case is being argued second.

5. The United States is simultaneously moving for an extended and divided argument. Facebook and Google fully support that request and urge the Court to enlarge the argument so that the argument time of the Defendants is equally divided between counsel for Petitioner Twitter (who would go first and have the sole rebuttal) and counsel presenting argument for the other two Defendants. This Court has only one case scheduled for oral argument on February 22, so an enlarged argument would not unduly inconvenience the Court or prejudice its consideration of any other case. As noted, this Court has already recognized that the presence of multiple Defendants making distinct arguments justified an enlarged brief for Respondents. Those same

considerations and those outlined above also support an enlarged and divided argument.

Respectfully submitted,

/s/ Paul D. Clement

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January 18, 2023