

No. 21-381

IN THE
Supreme Court of the United States

TZVI WEISS, *et al.*,
Petitioners,

v.

NATIONAL WESTMINSTER BANK PLC,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF FOR *AMICUS CURIAE* FOUNDATION
FOR DEFENSE OF DEMOCRACIES
IN SUPPORT OF PETITIONERS**

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STATEMENT OF INTEREST¹

The Foundation for Defense of Democracies (“FDD”) is a non-profit, non-partisan section 501(c)(3) policy institute focusing on foreign policy and national security. Through its Center on Economic and Financial Power and its Israel Project, FDD conducts extensive research and produces voluminous scholarship and commentary on, among other topics, terrorism, terror financing, and the effective use of sanctions and federal statutes to combat terrorism and Foreign Terrorist Organizations (“FTOs”).

FDD’s work has informed numerous pieces of enacted and proposed legislation regarding terror financing, including, for example, the Iran Freedom and Counter-Proliferation Act of 2012 (codified at 22 U.S.C. §§ 8801-8811) and the Iran Terror Finance Transparency Act (114 H.R. 3662). FDD’s work also includes testimony at numerous congressional hearings regarding many different terror groups, such as Hamas, Hezbollah, Al-Qaeda, ISIS, Boko Haram, Al Shabab, and others. FDD’s congressional testimony has also focused on how terror groups finance themselves, including through charities, together with strategies and assessments of efforts to interrupt terror financing, for example: *Hamas’s Benefactors: A Network of Terror* (Sept. 9, 2014) before the House Committee on Foreign Affairs, *A Survey of Global Terrorism and Terrorist Financing* (Apr. 22, 2015)

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented to this filing.

before the House Financial Services Committee, and *The Muslim Brotherhood's Global Threat* (July 11, 2018) before the House Committee on Oversight and Government Reform.

FDD has a significant interest in this case because the Second Circuit's decision relies on a critically erroneous factual premise, that money provided to a "charity" controlled by a terrorist organization does not necessarily contribute to the organization's terrorist activities. Terrorist organizations routinely use ostensibly "charitable" entities to financially support their operatives who plan and commit terrorist attacks—such that funds provided to a terrorist "charity," even if used for nominally charitable purposes, support the terror group's violent mission. Hamas's use of charitable donations to further its violent terrorist aims is particularly well documented, and the record below provides examples of employees of Hamas "charities" transporting suicide bombers to their targets, A-363, and paying subsidies to the families of Hamas "martyrs," A-308, A-313-315.² The erroneous assumption underlying the Second Circuit's decision in this case, and in *Strauss v. Crédit Lyonnais, S.A.*, No. 21-382,³ is harmful to FDD's continuing effort to educate and inform the public and government officials about the nature of terror threats and the best means to combat those threats, to include restricting the flow of terrorist financing.

² Citations to A-____ are to the joint appendix in the court of appeals.

³ The arguments set forth in this brief apply with equal force to the companion petition in *Strauss v. Crédit Lyonnais, S.A.*, No. 21-382 (U.S. docketed Sept. 9, 2021).

SUMMARY OF ARGUMENT

Respondent NatWest admitted (for present purposes) that the evidence presented a triable issue of fact as to whether it *knowingly* transferred funds to “charitable” organizations controlled by the FTO Hamas. The Second Circuit nonetheless held that Petitioners’ claims under the Justice Against Sponsors of Terrorism Act (“JASTA”), Pub. L. No. 114-222 (2016), for aiding and abetting Hamas are barred because “the charities to which NatWest transferred funds as instructed by Interpal performed charitable work,” that NatWest’s customer Interpal (known by NatWest to be linked to Hamas) “did not indicate to NatWest that the transfers were for any violent or terroristic purpose,” and that “plaintiffs proffered no evidence that the charities funded terrorist attacks or recruited persons to carry out such attacks.” *Weiss v. Nat’l Westminster Bank, PLC.*, 993 F.3d 144, 161 (2d Cir. 2021). This is an obvious and critical error.

FTOs do not segregate “charitable” and “non-charitable,” *i.e.*, terror, funds. Any money provided to an FTO advances its violent, terrorist aims for numerous well-recognized reasons, including, as described below, by freeing up funds for terrorism, funding propaganda, and providing social infrastructure for recruiting terrorists. This is especially true of Hamas—the FTO at issue in this case, in *Strauss*, and in many other civil cases under JASTA. Hamas uses its social network of charitable societies and *zakat* (the Arabic word for “tithing”) committees called the *da’wa*, together with a web of worldwide “charities,” to fund its operations. These ostensibly charitable entities are entirely integrated in Hamas’s structure, such that even what appear to be charitable expenditures are intended to further Hamas’s violent terrorist aims.

The Executive Branch, Congress, and this Court, together with the Fifth and Seventh Circuits, have all reached the same ineluctable conclusion: money provided to a terrorist organization for purportedly charitable purposes also supports the terrorist organization's violent ends. The Executive Branch has repeatedly and consistently found that FTOs, and in particular Hamas, use "charitable" donations for violent purposes. Congress when both enacting the Anti-Terrorism Act (ATA), 18 U.S.C. § 2333, and amending and expanding it via JASTA, specifically found that FTOs work indirectly through intermediaries to raise money and that even indirect support of FTOs, through these intermediaries, should be subject to civil liability. Finally, this Court in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), together with the Fifth and Seventh Circuits, has held that providing any support to an FTO, even to an FTO's "charity," supports the FTO's terrorism.

ARGUMENT

I. FTOs Like Hamas Use "Charities" To Further Their Violent Ends.

1. Funds provided to ostensibly charitable organizations run by FTOs actually support the FTO's violent mission, for several widely recognized reasons. Most obviously, the fungibility of money means that when an FTO's "charity" receives funds, the FTO can free up money previously earmarked for "charitable" purposes for other uses, including violent terrorist attacks.

Moreover, FTOs ordinarily do not maintain separate books and records for funds raised for their purportedly charitable entities and for funds to be used in their militant terrorist operations. Instead, FTOs customarily co-mingle "charitable" funds with funds

used to finance attacks, so that money provided to an FTO's "charity" helps finance terrorist attacks, including subsidizing the families of suicide bombers and other terror operatives. For example, the Jenin Zakat Committee maintained lists of martyrs, including suicide bombers and paid pensions to their families, including 33 relatives of Hamas operatives. A-431-32.

Even if funds are not used to finance a specific attack, any money provided to an FTO's "charity" supports terrorism. FTOs use putatively social programs to enhance incentives for terror activity, for example, by providing financial assistance to the families of terrorists, including those who have been wounded, killed, or captured. FTOs also provide social services broadly to the community, such as hospitals, education, welfare, and religious institutions, thereby winning the allegiance of the broader populace. Moreover, these services subvert and displace any state authority. As state-provided social services are replaced by FTO-provided services, FTOs will coerce the population into allegiance because those who fail to submit or who defect will be denied those services.

FTO "charities," such as schools and mosques, also indoctrinate students and members and recruit them to participate in the FTO's activities, including terrorist attacks. *See, e.g.*, A-362-63. These "charities" also generate propaganda to inspire attacks and create enthusiasm among the broader populace.

Finally, FTOs often raise money through illegal activities, such as drug trafficking, fraud, and other organized crime. An FTO's "charitable" organizations can help the FTO launder those illegal proceeds both by disguising them as charitable contributions and then concealing funding for the FTO's operatives as payments for charitable services. Historically, FTOs

have created groups in the United States that are disguised as charities, but whose beneficiaries are actually an FTO.

2. Hamas unquestionably uses allegedly charitable activity to encourage and subsidize its violent attacks, including against U.S. nationals. Hamas was founded by leading Palestinian members of the Egyptian-based Muslim Brotherhood in December 1987. Its express purpose is the destruction of the State of Israel, and its 1988 charter rejects any permanent peace with Israel and any peace agreements made with Israel. Hamas is the largest Islamist organization in the Palestinian Territories, and has, since its inception, encouraged, sponsored, and committed violent terrorist acts.

Hamas loosely consists of three nominal “wings,” performing different functions within an integrated whole: (1) a military wing, the *Izz-a-Din al Qassam Brigades*, responsible for carrying out terror attacks; (2) a social wing, the *da’wa*, which provides social and charitable services, while proselytizing and recruiting for the military wing and employing its operatives; and (3) a political wing responsible for setting policy and whose members may also serve in leadership roles within the Hamas *da’wa*.

The United States has designated Hamas as a terrorist organization in three different and overlapping ways that prohibit U.S. persons or persons within the United States from, among other things, conducting any financial or business transactions with Hamas, including making charitable contributions. In 1995, the United States designated Hamas a Specially Designated Terrorist. *See* Exec. Order 12947, 60 Fed. Reg. 5079-81 (Jan. 23, 1995). In 1997, the United States designated Hamas a Foreign Terrorist

Organization. *See* Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52,650-01 (Oct. 8, 1997). In 2001, the United States designated Hamas a Specially Designated Global Terrorist. *See* Exec. Order 13224, 66 Fed. Reg. 13,224 (Sept. 23, 2001). The FTO designation remains in effect to this day.

Hamas undeniably uses its *da'wa* network to further its violent terrorist aims. The U.S. Treasury Department has explained that “[t]errorist groups such as Hamas continue to exploit charities to radicalize vulnerable communities and cultivate support for their violent activities.”⁴ The U.S. Department of State has similarly explained that “donations to Hamas for charitable purposes free up funds for use in terrorism.”⁵ In addition, the Federal Bureau of Investigation has explained that Hamas also co-mingles charitable giving with terror funding, such that “a portion of these charitable contributions . . . support the terrorist organization’s military wing.”⁶

Hamas uses ostensibly “charitable” donations for its violent mission in all the ways described above. The *da'wa* network’s institutions provide education, health

⁴ Press Release, “Treasury Designates the Union of Good,” U.S. Department of Treasury (Nov. 12, 2008), *available at* <https://www.treasury.gov/press-center/press-releases/pages/hp1267.aspx>.

⁵ Testimony of E. Anthony Wayne, Assistant Secretary for Economic and Business Affairs, U.S. Department of State, to the House of Representatives Committee on Financial Services (Sept. 24, 2003), *available at* <https://archives-financialservices.house.gov/media/pdf/092403eaw.pdf>.

⁶ Testimony of John Pistole, FBI Assistant Director, Counterterrorism Division, to the House Committee on Financial Services, Subcommittee on Oversight and Investigations (Sept. 24, 2003), *available at* <https://archives-financialservices.house.gov/media/pdf/092403jp.pdf>.

care, and other social assistance as a means to both generate good will among the general population and to contribute and reinforce Hamas's extensive propaganda network, which includes radicalizing children from a very young age via in-school indoctrination and providing financial support and encouragement for the commission of violent terrorist acts. The *da'wa* network also provides a means to identify new recruits to Hamas, and in particular, to identify civilians willing to commit violent terrorist attacks. Finally, experienced Hamas operatives are often placed in positions of leadership within *da'wa* organizations, which facilitates Hamas's ability to embezzle and launder "charitable" contributions for non-charitable uses, such as funding terror attacks.

II. Each Branch Of The U.S. Government Agrees That Providing Funds To An FTO's "Charity" Constitutes Financial Support For That FTO's Terrorism.

Although FDD has expertise in the operation of terror groups and terror financing generally, and in Hamas specifically, the Court need not accept FDD's views alone as true given that they are consistent with those expressed by Congress and the Executive Branch. In fact, each of the three branches of government, including the Court itself, has taken essentially the same position: that funds provided to an FTO's charity support the FTO's violent aims.

A. The Executive Branch's Litigation Position Has Consistently Embraced Petitioners' View.

The Executive Branch has repeatedly explained how FTOs use donations earmarked for ostensibly charitable purposes to further terrorist activities. For example,

at oral argument in *Holder v. Humanitarian Law Project*, Nos. 08-1498, 09-89, then-Solicitor General Kagan precisely encapsulated this critical premise:

Hezbollah builds bombs. Hezbollah also builds homes. What Congress decided was when you help Hezbollah build homes, you are also helping Hezbollah build bombs.

Oral Arg. Tr. 40:14-18 (Feb. 23, 2010). This statement regarding the FTO Hezbollah applies equally to the FTO Hamas and to the civil analog, 18 U.S.C. § 2333, of the criminal material support statute at issue in *Holder*, 18 U.S.C. § 2339B.

In its brief to this Court in opposition to a petition for a writ of certiorari in *Elashi v. U.S.*, Nos. 11-1390, 11-10437, 2012 WL 4181947 (Sept. 17, 2012), the Department of Justice affirmed that:

[The] social wing of Hamas is “crucial to Hamas’s success” because, among other things, it “helps win the ‘hearts and minds’ of Palestinians while promoting its anti-Israel agenda and indoctrinating the populace in [Hamas’s] ideology”; “supports the families of Hamas prisoners and suicide bombers, thereby providing incentives for bombing”; and “launders money for all of Hamas’s activities.” For these reasons, “aid to Hamas’s social wing critically assists Hamas’s goals while also freeing resources for Hamas to devote to its military and political activities.”

Br. in Opp. at 3 (internal citations omitted).

Indeed, the Executive Branch has explained that both the civil and criminal anti-terrorism statutes contain the same logic regarding how FTOs use

purportedly charitable donations to fund their violent aims. In an amicus brief submitted to the Seventh Circuit in the civil case, *Boim v. Holy Land Foundation*, Nos. 05-1815, 05-1816, 05-1821, 05-1822, 2008 WL 3993242 (Aug. 21, 2008), the Department of Justice explained that “[t]aking Halberstam’s reasoning and the Congressional intent behind Section 2333(a) and Section 2339B into account . . . a donor to a terrorist organization can be civilly liable for a terrorist act on an aiding/abetting theory even if the donor does not intend to advance the violent component of the recipient organization’s activities.” *Id.* at *26.

The Department of Justice further explained that “[b]ecause of the fungibility of financial resources and other types of material support, any such support helps defray the cost to the terrorist organization of running the ostensibly legitimate activities. This in turn frees an equal sum that can then be spent on terrorist activities.” *Id.* at *24 (internal quotation marks and citations omitted). Moreover, “given its fungibility, material support can further an organization’s terrorist activities whether or not the donor intends that result.” *Id.* And “even if monetary support were not fungible and even if a donor could somehow ensure that his donation would be used only for legal purposes, that support could still further terrorist activities by allowing terrorist entities to gain goodwill that can be used for terrorist recruitment or other assistance, or to gain political legitimacy for those who carry out deadly terrorist acts.” *Id.* at *25.

The Executive Branch has also explained, at length, how Hamas in particular uses charities to further that FTO’s terrorist aims. Before the District of Columbia Circuit in *Holy Land Foundation for Relief v. Ashcroft*, No. 02-5307, 2003 WL 25586055 (Jan. 24, 2003), the

Department of Justice described how “[t]he social and charitable elements of Hamas are inexorably intertwined with the terrorist elements in the organization’s overall mission.” In this way, “Hamas’[s] charitable associations serve in part as a screen for its covert activities, providing a benign cover through which money can be transferred from overseas into Hamas-controlled institutions.” *Id.*

More specifically, “[t]he overseas funds flowing into Hamas’[s] social and charitable infrastructure free other resources for use in terrorist operations.” *Id.* Moreover, “Hamas’[s] charitable network helps it maintain popular support, to compete with the Palestinian Authority, and to recruit activists, including individuals for[] its deadly terrorist attacks.” *Id.* Indeed, “[t]he Hamas charter emphasizes the importance of indoctrinating the young and providing a political, social, and charitable network to develop overall support for the movement.” *Id.* And “Hamas leaders have noted the critical role such social support plays in the overall Hamas strategy.” *Id.* The Department of Justice further explained that the Palestinian Authority—which is opposed to Hamas—“has closed Hamas-linked charities . . . not[ing] that these charities target vulnerable segments of society[] and use the provision of basic social services as a means of widening public support for their organization’s agenda and ideology at the expense of the Palestinian national interest.” *Id.* (internal quotation marks and citations omitted).

The Executive Branch provided essentially the same description of how Hamas is organized and operates approximately eight years later, before the Fifth Circuit in *United States v. El-Mezain*, No. 09-10560, Doc. 00511365426 (Jan. 28, 2011). The Department of Justice explained that “Hamas is organized into three

distinct but overlapping wings—a military wing, a political wing, and a social wing.” *Id.* at 8. Moreover, “[w]hile Hamas glorifies the violent attacks carried out by its military wing, it also emphasizes its social welfare efforts, including indoctrinating youth in Hamas ideology and providing a political, social, and charitable network to build the movement’s base of support.” *Id.* Accordingly, “Hamas operates myriad social institutions, including schools, hospitals, libraries, sports clubs, and mosques . . . [and] also provides support for the families of suicide bombers and others killed or captured in carrying out Hamas operations.” *Id.* at 8. The Department of Justice then described how “Hamas gets the majority of its funding through charitable donations collected abroad” and that “Hamas’s foreign fund-raising organizations and its social committees are a critical part of the social and charitable infrastructure that support the overall Hamas movement, including its terrorist activities.” *Id.* at 9.

B. Congress Has Expressly Provided For Broad Liability, Including For Indirect Support Of FTOs Through Their Fundraising Intermediaries.

Congress’s express legislative findings and JASTA’s legislative history reflect the view that FTOs operate through intermediaries, including charities, to further their violent terrorist ends.

1. Congress’s findings demonstrate that JASTA’s purpose is to create civil liability for indirectly supporting FTOs through fundraising intermediaries, such as charities. Congress has specifically found:

- Some foreign terrorist organizations, *acting through affiliated groups* or individuals, *raise significant funds* outside of the United States

for conduct directed and targeted at the United States.

- Persons, entities, or countries that knowingly or recklessly contribute material support or resources, *directly or indirectly*, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities.

Pub. L. 114-222, JASTA §§ 2(a)(3), 2(a)(6) (emphasis added). These findings are consistent with Congress’s prior finding that:

- Foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that *any contribution* to such an organization facilitates that conduct.

Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, § 301(a)(7) (emphasis added).

These findings reflect the description provided above about how FTOs operate. Congress found that FTOs raise funds not only directly, but through affiliated groups, and that contributions through those affiliates provide *direct or indirect* support to FTOs, which then commit acts of terrorism. Congress has further emphasized that FTOs are “so tainted” that “any contribution” to the organization contributes to violent terrorist conduct. Indeed, Congress has expressly found that JASTA’s purpose is to “provide civil litigants with the broadest possible basis” to seek relief against those who “have provided material

support, directly *or indirectly*, to foreign organizations or persons that engage in terrorist activities against the United States.” JASTA § 2(b) (emphasis added).

2. The uncontradicted legislative history of the Anti-Terrorism Act, as amended by JASTA, confirms that the statute is intended to interrupt the flow of terror financing by imposing civil liability at any point along the causal chain of terrorism.

In April 1990, Senator Chuck Grassley introduced S.2465, the “Anti-Terrorism Act of 1990,” which received strong bipartisan support in Congress. *See* Statement of Sen. Grassley, 136 Cong. Rec. S4567, S4593 (daily ed. Apr. 19, 1990). The legislation aimed not merely to address the issue of victim compensation, but also to harness the initiative and resources of the private sector in pursuit of the larger aims of U.S. counterterrorism policy. In the course of introducing the bill, Senator Grassley explained that it “will serve as a further incentive to those with the deep pockets, such as the airline industry, to spend resources and go after terrorists: This bill establishes an express cause of action to gain compensation as fruit of their efforts.” *Id.*

In the summer of 1990, the Senate Judiciary Committee’s Subcommittee on Courts and Administrative Practice held a hearing on S.2465. Participants repeatedly took the opportunity to underscore their understanding that § 2333(a) was to be more than just a mechanism for victim compensation; it was also a mechanism for deterring terrorists and disrupting their financial foundations, and thus formed an integral part of U.S. counterterrorism policy.

The first witness, State Department Deputy Legal Advisor Alan J. Kreczko, told the Committee that

S.2465 would “add to the arsenal of legal tools that can be used against those who commit acts of terrorism against U.S. citizens abroad.” *Antiterrorism Act of 1990: Hearing on S.2465*, Testimony before Senate Subcomm. on Courts and Admin. Practice of the Senate Comm. on the Judiciary, S. Hrg. 101-1198, at 11 (1990) (“Senate Hearing”). He explained that the State Department endorsed the bill “as a useful addition to our efforts to strengthen the rule of law against terrorists.” *Id.* at 11, 12.

Following Mr. Kreczko, Deputy Assistant Attorney for the Civil Division Steven Valentine offered the views of the Justice Department regarding S.2465. Echoing the State Department’s position, Mr. Valentine provided a robust endorsement of § 2333(a):

The department strongly supports the fundamental objectives of Senate bill 2465. They are of great importance to the United States. The enactment of Senate bill 2465 would bring to bear a significant new weapon against terrorists by providing a means of civil redress for those who have been harmed by terrorist acts Senate bill 2465 would supplement our criminal law enforcement efforts by creating [such a remedy].

Senate Hearing at 25.

In similar fashion, Joseph A. Morris, the President and General Counsel of the Lincoln Legal Foundation, testified that “by its provisions for compensatory damages, treble damages, and *the imposition of liability at any point along the causal chain of terrorism*, [§ 2333(a)] would interrupt, or at least imperil, the flow of terrorism’s lifeblood: money.” *Id.* at 85 (emphasis added).

In addition, Daniel Pipes, then-director of the Foreign Policy Research Institute, explained that “it is absolutely critical to go after the funds because he who controls the funds controls the organization. It is not enough simply to go after the footmen, the soldiers, the terrorists, the individuals. One must strike at the heart of the organization, and that means going after the funding.” *Id.* at 110.

In the wake of this hearing, in late September 1990, the Subcommittee on Courts and Administrative Practice favorably reported the Antiterrorism Act bill. *See* Statement of Sen. Grassley, 136 Cong. Rec. S14279, S14284 (daily ed. Oct. 1, 1990). In the course of introducing an amended bill, Senator Grassley explained that the bill would “strengthen our ability to both deter and punish acts of terrorism.” *Id.*

He concluded by emphasizing the connection between § 2333 and the overall goal of suppressing terror financing:

We must make it clear that terrorists’ assets are not welcome in our country. And if they are found, terrorists will be held accountable where it hurts them most: at their lifeline, their funds. With the Grassley-Heflin bill, we put terrorists on notice: To keep their hands off Americans and their eyes on their assets.

Id. The Senate subsequently agreed to the bill as an amendment to a larger bill (the Military Construction Appropriations Act for FY1991) without further debate, and the amended bill went on to be enacted as Pub. L. No. 101-519, 104 Stat. 2250 (1990). The Antiterrorism Act of 1990 thus became law in

November 1990. *See id.* § 132(b)(4), 104 Stat. 2250, 2251.⁷

C. The Judicial Branch, Including This Court, Has Also Held That Providing Support To Charities Controlled By An FTO Furthers Terrorism.

The Seventh and Fifth Circuits, consistent with this Court’s reasoning in *Holder*, have rejected the Second Circuit’s critical error—that terrorism is not necessarily a foreseeable risk of providing support to a “charity” controlled by an FTO. In *Holder*, this Court upheld the “material support” statute, 18 U.S.C. § 2339B, a criminal analog to JASTA, from a constitutional challenge. In so doing, the Court explained at length why providing any support to an FTO furthers the FTO’s terrorist goals. *Id.* at 30-31.

Indeed, the Court’s holding tracks the reasons provided above why support to an FTO’s “charitable” organizations supports an FTO’s terrorist activities. The Court found that “money is fungible” and that “[material] support frees up other resources within the organization that may be put to violent ends.” *Id.* at 30, 31. The Court also explained that “there is reason to believe that foreign terrorist organizations do not maintain legitimate *financial* firewalls between those funds raised for civil, nonviolent activities, and those ultimately used to support violent, terrorist operations.” *Id.* at 31 (internal citations omitted). As a result, “funds raised ostensibly for charitable purposes have in the past been redirected by some terrorist groups to fund the purchase of arms and explosives.”

⁷ The law was repealed for technical reasons and then again enacted in 1992 as part of the Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 1003, 106 Stat. 4506, 4521-24.

Id. (internal citations omitted). Furthermore, “some designated foreign terrorist organizations use social and political components to recruit personnel to carry out terrorist operations, and to provide support to criminal terrorists and their families in aid of such operations.” *Id.* at 30-31 (internal citations omitted).

Even though Hamas was not one of the FTOs directly at issue in *Holder*, the Court quoted and relied on scholarly research regarding Hamas. The Court noted that “[i]nvestigators have revealed how terrorist groups systematically conceal their activities behind charitable, social, and political fronts.” *Id.* at 30 (quoting M. Levitt, *Hamas: Politics, Charity, and Terrorism in the Service of Jihad* 2-3 (2006)). The Court also held that by “[m]uddying the waters between its political activism, good works, and terrorist attacks, Hamas is able to use its overt political and charitable organizations as a financial and logistical support network for its terrorist operations.” *Id.* at 31 (quoting Levitt, *supra*, at 2). This Court has therefore clearly explained why there cannot be such a thing as a purely charitable contribution to an FTO.

The Seventh and Fifth Circuits have also rejected, both in cases related to Hamas, the Second Circuit’s erroneous assumption and have employed the same reasoning reflected in *Holder*. In *Boim v. Holy Land Foundation for Relief & Development*, 549 F.3d 685, 698 (7th Cir. 2008) (en banc), the court, reversing in part a judgment for certain defendants in an ATA case, held that “[a]nyone who knowingly contributes to the nonviolent wing of an organization that he knows to engage in terrorism is knowingly contributing to the organization’s terrorist activities.” In *United States v. El-Mezain*, 664 F.3d 467, 483-84 (5th Cir. 2011), the court upheld convictions under 18 U.S.C. § 2339B for

providing money to organizations that “were actually Hamas social institutions” and held that “[b]y supporting such entities, the defendants facilitated Hamas’s activity . . . among Palestinians and by providing a funding resource. This, in turn, allowed Hamas to concentrate its efforts on violent activity.”

* * *

In sum, violence and killing is always a foreseeable risk of knowingly providing substantial assistance to an FTO, including through organizations controlled by an FTO that also “performed charitable work.”

CONCLUSION

For the foregoing reasons, the Court should grant the petition and reverse the Second Circuit’s decision.

Respectfully submitted,

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