

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

**BRIEF ON BEHALF OF JEWISH ORGANIZATIONS
AND ALLIES, AS *AMICI CURIAE*,
IN SUPPORT OF PETITIONERS**

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Dedicated to the memory of the many innocent men,
women, and children whose lives were prematurely
taken at the hands of Hamas terrorists.

יהי זכרם ברוך
לעולם ועד

May their memories be forever blessed.

לֹא-יִשְׁמַע עוֹד חֶמְס בְּאַרְצֶךָ שָׂד וְשָׂבָר בְּגְבוּלֶיךָ וְקִרְאֹת יְשׁוּעָה.
חֹמֹתֶיךָ וְשַׁעֲרֶיךָ תְּהִלָּה.

ישעיהו ס:יח

Violence [in Hebrew, *hamas*] shall no longer be heard
in your land, neither robbery nor destruction within your
borders, and you shall call salvation your walls and your
gates praise [in Hebrew, *Tehilla*].

Isaiah 60:18

INTEREST OF *AMICI CURIAE*¹

Amici reflect a broad spectrum of American Jewish organizations and their allies, whose members include American victims of Hamas terrorist attacks in Israel and the families of those victims. Though the missions of *Amici* vary and their views on some issues may differ, they are united in their shared interest in ensuring that all victims of international terrorism are compensated to the fullest extent allowed by the secondary liability provision of the Justice Against Sponsors Of Terrorism Act (JASTA). *See* JASTA, Pub. L. No. 114-222, § 2, 130 Stat. 852 (2016) (noting purpose of JASTA “to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States”).

While no financial compensation can ever make terrorism victims or their loved ones whole, JASTA’s secondary liability provision offers one of very few avenues to hold accountable both terrorist organizations and their aiders and abettors, and to deter their future illegal conduct.

¹ No counsel for any party either (a) authored this brief in whole or in part or (b) made a monetary contribution intended to fund the preparation or submission of the brief. *See* SUP. CT. R. 37.6. All parties received timely notice and have consented to the filing of this brief.

Agudath Israel of America (Agudath Israel).

Agudath Israel, founded in 1922, is a national grassroots Orthodox Jewish organization. Among its other functions and activities, Agudath Israel articulates and advances the position of the Orthodox Jewish community on a broad range of legal issues affecting religious rights and religious liberty. Agudath Israel regularly intervenes at all levels of government, including through the submission of or participation in *amicus curiae* briefs, to advocate and protect the interests of the Orthodox Jewish community throughout the United States, and in other countries as well. Agudath Israel has a strong interest in safeguarding the authority of United States courts to hold responsible the primary actors who commit acts of international terrorism against American citizens, as well as those secondarily liable for aiding and abetting terrorism.

American Association of Jewish Lawyers and Jurists (AAJLJ). The AAJLJ, an affiliate of the International Association of Jewish Lawyers and Jurists, is an association of lawyers and jurists open to all members of the profession regardless of religion. The AAJLJ's mission includes representing the human rights interests of the American Jewish community on legal issues implicating the interests of that community. The AAJLJ seeks legal remedies to achieve justice for the victims of terrorism through its participation in legal cases in the United States and abroad. The AAJLJ's mission statement, "Justice, Justice Shall You Pursue" (Deuteronomy 16:20) compels support for the Petitioners in this case, who

deserve an opportunity to seek Justice under American law.

The Anti-Defamation League (ADL). ADL is a 501(c)(3) not-for-profit anti-hate organization founded in 1913 “to stop the defamation of the Jewish people and to secure justice and fair treatment to all.” As part of its mission, ADL has for decades been at the forefront of analyzing and reporting on the actions of extremist and terrorist groups domestically and internationally. Such groups pose a threat to the physical safety and security of Americans and others throughout the world, and it is ADL’s belief that this threat can be addressed in a manner that respects the basic civil rights and liberties that allow a diverse society to flourish. ADL previously offered the Court its expertise on issues relevant to this case in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), and is pleased to do so again.

Hadassah. Hadassah, The Women’s Zionist Organization of America, Inc. is the largest Jewish women’s organization in the United States. Hadassah brings women together to effect change on such critical issues as ensuring Israel’s security, combating antisemitism, and promoting women’s health. Through Hadassah’s two Jerusalem hospitals, Hadassah delivers exemplary patient care and supports world-renowned medical research. Hadassah supports strong and decisive action to root out international terrorism and its support structure.

Israeli-American Civic Action Network (ICAN). ICAN is dedicated to empowering Israeli immigrants and American allies to create change for a better

America, a more secure Israel, and a stronger U.S.-Israel alliance through advocacy, education, and civic action.

Jerusalem Institute of Justice (JIJ). JIJ, along with its U.S. affiliate, is a legal and research institute dedicated to cultivating and defending human rights, the rule of law and democracy. JIJ works in the international legal arena to fight antisemitism and present charges against perpetrators of heinous crimes against humanity to tribunals and governmental bodies around the globe. This includes JIJ's complaint against Hamas Leader Ismail Haniyeh, presented to the International Criminal Court. JIJ strongly supports holding terrorist organizations like Hamas, and Hamas' supporters, accountable for their violations of human rights.

The Lawfare Project (Lawfare). Lawfare is a non-profit legal think tank and litigation fund based in New York City focusing on matters of civil and human rights, discrimination, antisemitism, and counter-terrorism. Lawfare has a strong interest in securing justice for victims of acts of international terrorism, and in combatting antisemitism funded through the same channels that finance acts of international terrorism.

StandWithUs. StandWithUs is an international, nonprofit Israel education organization founded in 2001. StandWithUs is dedicated to educating people of all ages about Israel and combating the extremism and antisemitism that often distort Israel-related issues. As a United States-based organization with staff and volunteers who live in Israel and regularly travel

throughout the world where they may be targets of terrorism, StandWithUs has a strong interest in preserving the ability to pursue such financiers of terrorism in United States courts.

Union of Orthodox Jewish Congregations of America (the OU). The OU is the nation's largest Orthodox Jewish synagogue organization, representing nearly 1000 congregations across the nation. The OU, through its OU Advocacy Center, has participated in many cases before courts across the nation that implicate important matters of concern to the Orthodox Jewish community. Through *amicus curiae* briefs, the Orthodox Union seeks to inform courts of the perspective of the Orthodox Jewish community and the impact a ruling in a given case will have. The OU is especially concerned about the devastating impact that foreign terrorist organizations and those who fund them have on the OU's constituents and American citizens around the world. The OU is committed to ensuring that terrorists and their supporters are brought to justice.

Zachor Legal Institute (Zachor). Zachor is a 501(c)(3) non-profit legal advocacy organization focusing on eliminating discrimination. Among Zachor's areas of focus is confronting discriminatory boycotts promoted by the Boycott, Divestment and Sanction ("BDS") movement. BDS has deep and extensive ties to designated foreign terrorist organizations, including Hamas and the Popular Front for the Liberation of Palestine and has infiltrated a number of organizations to spread a discriminatory agenda aimed at Jews and companies that do business with and in Israel. Zachor's

interest is in ending all forms of support to foreign terrorist organizations, and in holding their supporters accountable under law.

[T]he Islamic Resistance Movement [Hamas] aspires to realize the promise of Allah, no matter how long it takes. The Prophet, Allah's prayer and peace be upon him, says: "The hour of judgment shall not come until the Muslims fight the Jews and kill them, so that the Jews hide behind trees and stones, and each tree and stone will say: 'Oh Muslim, oh servant of Allah, there is a Jew behind me, come and kill him,' except for the Gharqad tree, for it is the tree of the Jews." (Recorded in the Hadith collections of Bukhari and Muslim).²

* * *

Interpal, headquartered in the UK, has been a principal charity utilized to hide the flow of money to HAMAS. Reporting indicates it is the conduit through which money flows to HAMAS from other charities * * * * Reporting also indicates that Interpal is the fundraising coordinator of HAMAS, a coordination point for other HAMAS-affiliated charities.³

² Hamas Charter art. 7, para. 4 (1988), <https://www.memri.org/reports/covenant-islamic-resistance-movement-%E2%80%93-hamas>.

³ Press Release, U.S. Dep't of Treasury, U.S. Designates Five Charities Funding Hamas and Six Senior Hamas Leaders as Terrorist Entities (Aug. 23, 2003), <https://www.treasury.gov/press-center/press-releases/Pages/js672.aspx>.

INTRODUCTION

The *raison d'être* of the Palestinian Islamic Resistance Movement, known by its acronym “*Hamas*,” is—as explicitly stated in *Hamas’ Charter of 1988*,⁴ and oft repeated by its leadership—the murder of Jews and

⁴ The terrorist attacks at issue took place in Israel between December 1, 2001, and September 24, 2004. *Weiss v. Nat’l Westminster Bank, PLC*, 993 F.3d 144, 151 (2d Cir. 2021); *Weiss v. Nat’l Westminster Bank, PLC*, 381 F. Supp. 3d 223, 227 (E.D.N.Y. 2019). Accordingly, the operative *Hamas Charter* during the relevant time period is the 1988 version. Later attempts to soften the original, more explicit exhortations to murder Jews, including by more recently seeking to distinguish between “*Jews*” and “*Zionists*” as the targets of *Hamas* terror, are hard to take seriously, given the statements of *Hamas* leaders. See, e.g., Al-Jazeera Network (Qatar), *Hamas Celebration in Honor of its Members Killed in Recent Fighting—Speech of Son of Jamal Al-Zabeda*, MEMRI (May 24, 2021), <https://www.memri.org/tv/hamas-celebration-skulls-body-parts-children-with-guns> (“We will pave the path of liberation with your [Jewish] body parts, and turn your [Jewish] skulls into stairs that will lead us to the Al-Aqsa Mosque and all the plundered villages and cities.”); Al-Aqsa TV (Hamas/Gaza), *Hamas Political Bureau Member and Former Minister of the Interior Fathi Hammad*, MEMRI (May 7, 2021), <https://www.memri.org/tv/snr-hamas-official-fathi-hammad-urges-people-jerusalem-cut-off-heads-jews-knives-day-reckoning-moment-destruction> (“People of Jerusalem, we want you to cut off the heads of the Jews with knives. With your hand, cut their artery from here. A knife costs five shekels. Buy a knife, sharpen it, put it there, and just cut off [their heads]. It costs just five shekels. With those five shekels, you will humiliate the Jewish state.”); Al-Aqsa TV (Hamas/Gaza), *Fathi Hammad Hamas Political Bureau*, MEMRI (July 12, 2019), <https://www.memri.org/tv/hamas-political-bureau-fathi-hammad-explosive-belts-knives-slaughter-kill-jews-all-over-world-israel-one-week-ultimatum> (“We must attack every Jew on planet earth—we must slaughter them and kill them with Allah’s help.”).

the violent expulsion of Jews from their biblical ancestral homeland, the Land of Israel. Petitioners and their loved ones were injured or killed in Hamas' pursuit of its goals. And Respondent National Westminster Bank PLC (NatWest) knowingly aided and abetted those goals, through its facilitation of financial transactions for Interpal, knowing of Interpal's connections to Hamas, and the foreseeable consequences of those financial transactions.

SUMMARY OF THE ARGUMENT

Certiorari review is warranted because the Second Circuit's opinion below⁵ conflicts with the decisions of other courts of appeals, conflicts with a decision of this Court, and "decided an important question of federal law that has not been, but should be, settled by this Court." SUP. CT. R. 10(a), (c). The resulting conflict creates confusion regarding the scope of secondary "aiding and abetting" liability under JASTA. This Court's clarification is essential.

Weiss v. National Westminster Bank, PLC, 993 F.3d 144 (2d Cir. 2021) (*Weiss III*) conflicts irreconcilably with the opinions of two courts of appeals and a decision of this Court: (1) *Weiss III* conflicts with the D.C. Circuit's decision in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), and its conception of

⁵ Although this brief is in support of the petition for certiorari in *Weiss v. National Westminster Bank, PLC*, 993 F.3d 144 (2d Cir. 2021), *Amici* respectfully request that the Court consider it in support of the Petitioners in the companion case *Strauss v. Crédit Lyonnais, S.A.*, 842 F. App'x 701 (2d Cir. 2021) as well, also on petition for writ of certiorari. See Docket No. 21-382.

foreseeability, which established the very elements for civil aiding and abetting liability upon which Congress explicitly relied in drafting JASTA's secondary liability provision; and (2) *Weiss III* conflicts with the widely accepted understanding of the fungibility of ostensibly charitable financing to terrorist groups, as articulated in this Court's decision in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) (*HLP*) and the Seventh Circuit's decision in *Boim v. Holy Land Foundation for Relief & Development*, 549 F.3d 685 (7th Cir. 2008) (*en banc*). As this conflicting case law reveals, Petitioners should have been permitted to amend their complaint to assert that Hamas' terrorist attacks were foreseeable results of financing any part of Hamas' activities.

In sum, the important federal question warranting review is whether a financial institution's knowing facilitation of financial transactions with a counterparty the bank *knows* to be affiliated with a foreign terrorist organization is insufficient as a matter of law to permit a jury to even consider whether the bank's conduct could render it secondarily liable under JASTA. Here, NatWest facilitated financial transactions to a purportedly charitable organization (Interpal) that the U.S. Department of the Treasury had designated a Specially Designated Global Terrorist (SDGT),⁶ knowing of the ostensibly charitable organization's reported ties to a U.S. State Department designated Foreign Terrorist Organization (FTO),

⁶ Interpal was designated a SDGT on August 22, 2003. See A-1032-36; Press Release, U.S. Dep't of Treasury, U.S. Designates Five Charities Funding Hamas and Six Senior Hamas Leaders as Terrorist Entities (Aug. 23, 2003) (Interpal Designation).

Hamas.⁷ Nonetheless, the Second Circuit concluded, *as a matter of law*, that Petitioners would not be permitted to amend their complaint to allege that NatWest was “generally aware” of its role and substantially assisted the FTO’s terrorist activities. The Second Circuit ignored the evidence of NatWest’s general awareness of Interpal’s role in unlawfully financing Hamas and prior court decisions finding the same. As a result, no jury will ever be able to decide whether the evidence of NatWest’s knowledge of Interpal’s terror connections was sufficient to satisfy the element of “general awareness” under JASTA’s secondary liability provision. If permitted to stand, *Weiss III* will create uncertainty as to whether JASTA plaintiffs must satisfy *Halberstam*—as Congress explicitly intended—or some different, higher standard of proof. This Court’s review and clarification is therefore essential.

⁷ By Executive Order 12947 of January 25, 1995, Hamas was designated a Specially Designated Terrorist (SDT). See A-941; Executive Order 12947—Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process, 60 Fed. Reg. 5079 (Jan. 25, 1995), <https://www.hsdl.org/?view&did=456954>.

On October 8, 1997, the United States Secretary of State designated Hamas a FTO, a designation that has remained in place ever since. See A-941; U.S. Dep’t of State Bureau of Counterterrorism, Designated Foreign Terrorist Organizations, <https://www.state.gov/foreign-terrorist-organizations/>.

ARGUMENT

I. The Second Circuit’s Decision Conflicts With The D.C. Circuit’s Civil Aiding And Abetting Standard As Incorporated By Congress In JASTA

The Second Circuit held that amendment to assert a JASTA aiding and abetting claim would be futile because even assuming NatWest was knowingly providing material support for terrorism, the “plaintiffs could not show that NatWest was knowingly providing substantial assistance to Hamas, or that NatWest was generally aware that it was playing a role in Hamas’s acts of terrorism.” *Weiss III*, 993 F.3d at 167. This standard is inconsistent with *Halberstam*.

A. The Second Circuit Departed from the D.C. Circuit’s “General Awareness” Requirement for Aiding and Abetting Liability

JASTA created a private cause of action for civil damages arising from secondary or “aiding and abetting” liability “arising from an act of international terrorism.” 18 U.S.C. 2333(d)(2). Specifically, JASTA established that secondary liability exists when (1) a designated FTO (*i.e.*, the principal) commits, plans, or authorizes an act of international terrorism, and (2) the defendant aids and abets the principal by knowingly providing substantial assistance to the principal who committed the act of international terrorism. *Ibid.* Such assistance can incur liability whether given “directly or indirectly.” *See* JASTA § 2(b); *see also*

Kaplan v. Lebanese Canadian Bank, SAL, 999 F.3d 842, 856 (2d Cir. 2021).

Significantly, in enacting JASTA, Congress explicitly incorporated by reference the civil elements for aiding and abetting liability set forth in *Halberstam*. JASTA § 2(a)(5). In *Halberstam*, the D.C. Circuit held that:

[a]iding-abetting includes the following elements: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) ***the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance***; (3) ***the defendant must knowingly and substantially assist the principal violation***.

Halberstam, 705 F.2d at 477 (emphasis added). The second and third elements—namely, “general awareness” and “substantial assistance”—are particularly relevant here.

To satisfy the “general awareness” element, *Halberstam* did not require that defendant Linda Hamilton specifically intend to commit the ultimate criminal act—*i.e.*, murder—or even that she know the principal was going to murder the victim. She was civilly liable because she contributed to and benefited from what she was generally aware was illegal activity, and under the circumstances violence and killing were foreseeable risks of that activity. *Id.* at 488.

Properly read, *Halberstam* should have led the Second Circuit to an inescapable common sense

conclusion: NatWest was “generally aware” of its role in funding Hamas’ terrorist activities because of its facilitation of transfers for Interpal—a known Hamas intermediary—from which NatWest benefited, and the results of which were plainly foreseeable. As in *Halberstam*, it would “def[y] credulity” to suggest that NatWest did not know “that something illegal was afoot.” See *Halberstam*, 705 F.2d at 486. Indeed, NatWest’s summary judgment motion asked the court to **presume** that Petitioners could prove that NatWest had knowingly provided material support to an FTO. See *Weiss v. Nat’l Westminster Bank PLC*, 381 F. Supp. 3d 223, 231 (E.D.N.Y. 2019). Given the view of this Court (in *HLP*) and the Seventh Circuit (in *Boim*), see *infra*, that **any** assistance to **any** wing of an FTO foreseeably facilitates the FTO’s terrorist activity, violence and killing, NatWest’s concession is dispositive. Under *Halberstam*, NatWest’s concession means it was “generally aware” that it was involved in an illegal activity, and under *HLP* and *Boim* the terrorist attacks on Petitioners and their loved ones were foreseeable results of that activity. Nothing more was required for liability to attach.

Nonetheless, the Second Circuit noted Interpal and other Hamas-affiliated charities provided some charitable services and “did not indicate to NatWest that the transfers were for any terroristic purpose.” *Weiss III*, 993 F.3d at 166. It thus held no reasonable jury could find NatWest was generally aware of its role in “terrorist activities.” *Id.* at 165–167. In doing so, the Second Circuit effectively required victims of terrorism to meet a higher standard than other aiding and abetting plaintiffs: showing not just that JASTA

defendants were “generally aware” of their role in unlawful activities (such as material support) that foreseeably led to violence, but that they were generally aware of their role in the violent act itself. There is no basis in JASTA for this additional burden.

Finally, the “substantial assistance” NatWest provided Hamas, indirectly through Interpal, cannot be denied. Financing is the lifeblood of terrorist activity. *See* Dennis M. Lormel, Chief Financial Crimes Sections, Federal Bureau of Investigations, Speech before House Committee on Financial Services, (October 3, 2001), <https://archives.fbi.gov/archives/news/testimony/cutting-off-the-financial-lifeblood-of-the-terrorists> (“Identifying, tracking and dismantling the financial structure supporting terrorist groups is critical to successfully dismantling the organizations and preventing future terrorist attacks.”). And just as Hamilton provided “invaluable service to the enterprise as banker, bookkeeper, recordkeeper, and secretary,” *Halberstam*, 705 F.2d at 487, NatWest’s financial services were essential to Hamas and Interpal, particularly given the strict sanctions regime that limits the access of such designated FTOs and SDGTs to sources of capital.

B. At The Time, Hamas was (and Remains) a Known FTO, and Used Charities Like Interpal to Evade Terror Funding Restrictions

Throughout the period when Petitioners and their loved ones were attacked, Hamas was a U.S.- and European Union-designated terrorist organization. Matthew Levitt, *Hamas: Politics, Charity, and*

Terrorism in the Service of Jihad, 50–51 (Yale University Press 2006). To further its genocidal goal of murdering Israel’s Jewish inhabitants, and replacing the Jewish State with an Islamist state, Hamas has committed countless acts of violence against civilian targets. *Id.* at 12. Its members have detonated bombs on public buses, and in restaurants, markets, and universities; fired rockets indiscriminately into Israeli cities; and otherwise killed, maimed, and terrorized people going about their daily lives—including Petitioners and their loved ones. *Id.* at 12–13.

Hamas “openly admits that there is no distinguishing the political and military wings of Hamas.” Interpal Designation. Hamas uses civilian infrastructure as a cover for its violent acts. It plans military operations from mosques, and it uses medical transports as a cover to smuggle terrorists. Levitt at 101, 137 (citing Majeda El-Batsch, Parents Fear Their Children Could Take on Suicide Missions (Agence France-Presse July 8, 2003); Israeli Missions Around the World, Terrorist Misuse of Medical Services to Further Terrorist Activity (MFA Library August 26, 2002)).

Hamas incentivizes terrorists by providing them with financial support, including paying rewards to the families of suicide bombers or those imprisoned for terrorist attacks. *Id.* at 59. These rewards include an initial payment that may amount to more than a year’s worth of average salary, as well as an ongoing monthly allowance. *Ibid.*

Hamas also uses a network of ostensibly social and religious organizations to facilitate terrorism in other

ways. Among other things, the organizations raise money to fund terrorist operations, launder and transfer funds to terrorists, recruit and hide militants, and provide administrative support to terrorist cells. *Id.* at 52. As the Department of the Treasury Interpal Designation concluded, “charitable donations to non-governmental organizations are co-mingled, moved between charities in ways that hide the money trail, and then often diverted or siphoned to support terrorism.” Interpal Designation.

C. NatWest’s General Awareness of Interpal’s Connections to Hamas is Plain from the Record Below and Clearly Satisfied *Halberstam*

Evidence of Interpal’s ties to Hamas—and NatWest’s awareness of this connection—was extensively documented both in the public domain and within NatWest’s own compliance files even prior to Interpal’s designation as an SDGT. This evidence was sufficient to demonstrate to a jury that NatWest was at the very least “generally aware” of Interpal’s connection to Hamas, as well as of NatWest’s overall role in Interpal’s and Hamas’ illegal conduct.

1. NatWest’s *constructive* “general awareness” of the Interpal-Hamas connection, and its willful blindness to that nexus, is apparent from publicly available contemporaneous resources

As Petitioners pleaded below, ties between Interpal and Hamas were well-documented in the public record well before the terrorist attacks at issue. Thus, they were readily discoverable by any bank compliance official who had taken the time to conduct a simple media search. These reports—including in papers published in the United Kingdom—showed that:

- As early as 1996, an article in *The Times* noted that “[p]olice sources believe up to Pounds 1 million a year is being raised by the Palestinians Relief and Development Fund, also known as Interpal.” A-1202. The article noted that “[t]he information collected * * * also raises questions over alleged links between the charity * * * and a number of Palestinian refugees described as former Hamas militants living in London” and quoted “a senior Israeli army officer who has studied the group” and observed that “[w]ithout the support and activity of [Hamas] civilian wing, the military wing could not exist.” *Ibid.*⁸

⁸ *Stewart Tendler & Christopher Walker, MI5 Study ‘Charity Cash Link to Hamas’, THE TIMES, Mar. 6, 1996; see also Adrian Lee & Michael Evans, MI5 Traces Network of Hamas Funding, THE TIMES, Mar. 11, 1996 (“MI5 has uncovered a network of organisations in Britain raising funds for Palestinian causes which*

- During this same time, while Hamas suicide bus bombings were widely reported in the media,⁹ a *New York Times* article noted that “Israeli officials say that among the key Hamas fund-raising operations are the Holy Land Foundation of Richardson, Texas and the London-based Palestine and Lebanon Relief Fund, known, for its telex address, as Interpal.” A-1208–14.¹⁰
- After a brief freeze of Interpal’s bank accounts in the United Kingdom in March 1996, following public reporting of British intelligence’s investigation of links between Interpal and Hamas, and “after a two-month inquiry, the Charity Commission gave [Interpal] a clean bill of health in May 1996.” A-1226.¹¹ Israeli intelligence criticized

could be providing a vital lifeline to Hamas, the Islamic Resistance Movement, whose attacks with suicide bombers have killed nearly 60 Israelis in the past two weeks.”).

⁹ See Water Rodgers, *Hamas admits to fatal Israeli bus bombings*, CNN.COM, Feb. 25, 1996, http://www.cnn.com/WORLD/9602/israel_explosion/02-25/pm/.

¹⁰ John Kifner, *Roots of Terror: A special report: Alms and Arms: Tactics in a Holy War*, N.Y. TIMES, Mar. 15, 1996.

¹¹ Julian Borger, *Close Trust, Israel Pleads: Britain is Being Asked to Clamp Down on Palestinian Fundraisers*, THE GUARDIAN, Aug. 7, 1997 (“Israel last year accused Interpal, or the Palestinian Relief and Development Fund, of having links with Hamas. Interpal’s British accounts were frozen, but after a two-month inquiry, the Charity Commission gave it a clean bill of health in May 1996.”).

the investigation as superficial. *Ibid.*¹² Meanwhile, Ibrahim Hewitt, an Interpal trustee, did not deny that funds collected by Interpal—even after the Charity Commission’s inquiry—were delivered to Hamas affiliates; he merely distinguished between Hamas wings: “Mr Hewitt said it was possible that some of Interpal’s beneficiaries in the Palestinian territories had been established by Hamas, but argued that Hamas runs a social welfare and religious network separate from its military wing, Izz el-Deen al-Qassam. ‘It’s like the difference between Sinn Fein and the IRA,’ Mr Hewitt said.” A-1226–27.

- The Government of Israel publicly declared Interpal an “unlawful organization” in 1997, and a “terrorist organization” in 1998. A-692.
- Finally, the United States Department of State designated Interpal an SDGT on August 22, 2003, following a Jerusalem bus bombing killing 13, including three-year-old Tehilla Nathansen, who was sitting on the lap of her mother, Petitioner Chana Nathansen, at the time of the bombing. *See* A-981, 1032–37.

Thus, long before the attacks against Petitioners and their loved ones, publicly available sources were sufficient to put NatWest on notice of Interpal’s

¹² Significantly, the Charity Commission explained that where Interpal’s funds ultimately arrived, including whether they were “going to supporters of Hamas and in particular the families of suicide bombers was not of direct concern so long as the funds were being applied within the objects of the charity.” A-202.

connection to Hamas and thus render it generally aware of its indirect role in financing Hamas via Interpal.

2. NatWest’s *actual* “general awareness” of the Interpal-Hamas connection is documented in NatWest’s compliance files

Had the Second Circuit allowed Petitioners to amend their complaint to assert a claim for secondary liability, a jury could have evaluated NatWest’s “general awareness” not only through public information readily available to NatWest, but also from information in NatWest’s possession at the time:

- NatWest began noting terrorism concerns regarding the accounts of Interpal and its predecessor/alias the Palestine & Lebanon Relief Fund (PLRF) in May 1990 when it created a suspicious activity report (SAR) in its internal database. *See* A-942. In March 1992, NatWest made a report to the predecessor of the U.K. National Criminal Intelligence Service (NCIS) under the U.K. Money-Laundering Prevention of Terrorism Act. *Ibid.*
- In March 1996, the *Financial Times* reported on Israeli intelligence that Interpal “raised money exclusively for Hamas institutions and directly provided support to families of Hamas guerillas and suicide bombers.” A-1054.¹³ And, when Interpal’s Chairman, Abdul Rahman Daya, was asked

¹³ Julian Ozanne & Clay Harris, *Palestinian charity in UK under attack*, FINANCIAL TIMES, Mar. 13, 1996.

whether any of 36 of Interpal’s charities were tied to Hamas, Daya said, “Maybe.” *Ibid.* A copy of this article was attached to an internal NatWest money laundering report. *See* A-1048–54.

- Between 1999 and 2001, Interpal’s transactions doubled twice. NatWest suspected parties to these transactions were involved in terror financing. *See* A-951–52 ¶¶ 41–42.
- On September 27, 2001, Mike Hoseason, the manager of Royal Bank of Scotland’s¹⁴ Operations Group Security & Fraud, delivered to British law enforcement what appeared to be a South African intelligence report identifying several Interpal account names and numbers, as well as identifying information for Interpal counterparties that were in NatWest records. *See* A-954 ¶ 50; A-1064, A-1171–1200. That report states: “HAMAS through INTERPAL operate on an international basis through a global network of AL-AQSA structures (HAMAS = INTERPAL = AL-AQSA).” *See* A-1189–90. Hoseason delivered the document to the UK’s National Criminal Intelligence Service, and entered a report in NatWest’s compliance system, red-flagging Interpal for its terrorist financing risk. *See* A-651–52 ¶ 36, A-1345–56.
- NatWest’s Relationship Manager (RM) for Interpal, Interpal’s primary contact at the bank, was contacted about Interpal five times by the Bank’s money laundering unit, which she considered

¹⁴ NatWest merged with the Royal Bank of Scotland. *See* A-948–49 ¶ 31; A-1105.

“irregular” and more than she had been contacted regarding any other customer she could recall. *See* A-953 ¶ 45.

- Shortly after the September 11, 2001 terrorist attacks, Jihad Qundil, Interpal’s Secretary, told the RM that Interpal was receiving more money specifically because of the attacks. Qundil told the RM donations to Interpal were increasing “because of terrorism,” which the RM thought was “logical.” A-953 ¶ 49.
- NatWest employees noted “suspected terrorist funding,” A-963 ¶ 82; “vulnerability to terrorist funding,” A-964 ¶ 85; and “[t]he concern is obviously terrorist funding,” A-966 ¶ 90.

In sum, there is little wonder previous courts in this case found (and NatWest, for purposes of this submission, conceded) that the evidence creates a triable issue as to NatWest’s knowing material support of Hamas. *See Weiss v. Nat’l Westminster Bank PLC*, 278 F. Supp. 3d 636, 644 (E.D.N.Y. 2017) (concluding that “a reasonable jury could find that the 13 Charities [to which Interpal funds were sent] are Hamas alter egos”); *Weiss v. Nat’l Westminster Bank PLC*, 768 F.3d 202, 205, 211 (2d Cir. 2014) (concluding that, for purposes of material support statute, “Plaintiffs have presented sufficient evidence to create a triable issue of fact as to whether NatWest fulfilled § 2339B(a)(1)’s scienter requirement”—*i.e.*, “that NatWest had knowledge that, or exhibited deliberate indifference to whether, Interpal provided material support to a terrorist organization”).

II. The Second Circuit’s Decision Conflicts With The Common Sense Recognition—By This Court And The Seventh Circuit—That Terrorist Violence Is A Foreseeable Result Of Any Material Support To An FTO

The Second Circuit seems to have given disproportionate weight to Petitioners’ expert witnesses’ acknowledgement that “the charities to which NatWest transferred funds as instructed by Interpal performed charitable work”; that (unsurprisingly) “Interpal did not indicate to NatWest that the transfers were for any terroristic purpose”; and that “plaintiffs proffered no evidence that the charities funded terrorist attacks or recruited persons to carry out such attacks.” *Weiss III*, 993 F.3d at 165–167.

Based on this evidence, the Second Circuit concluded that no reasonable jury could find that NatWest was “generally aware” of its indirect role in Hamas’ terror financing. This, respectfully, reflects a startling naïveté, and is inconsistent with the holdings of this Court and the Seventh Circuit in related contexts.

As this Court has recognized:

Money is fungible, and “[w]hen foreign terrorist organizations that have a dual structure raise funds, they highlight the civilian and humanitarian ends to which such moneys could be put.” But “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.” Thus, “[f]unds raised ostensibly for charitable purposes have in the past been redirected by some terrorist groups to fund the purchase of arms and explosives.”

HLP, 561 U.S. at 31. Thus, Interpal’s engagement in some charitable works could never cure its funding of terror-related activities.

In *HLP*, quoting Petitioners’ expert in *this* litigation, Dr. Matthew Levitt, this Court noted: “[I]nvestigators have revealed how terrorist groups systematically conceal their activities behind charitable, social, and political fronts.” *Id.* at 30 (quoting Levitt 2–3).

Indeed, it was publicly reported as early as 1996 that Hamas did just that:

Most of Hamas’s estimated \$70 million annual budget goes to support a network of hundreds of mosques, schools, orphanages, clinics and hospitals that permeates virtually every village, town and refugee camp on the West Bank and Gaza Strip. But these social services provide both a cover and a recruiting ground for young terrorists. One of the important uses of charitable donations to Hamas is to provide lifetime annuities to the families of suicide bombers.¹⁵

¹⁵ Kifner, *supra* n.10.

The Seventh Circuit, in an en banc opinion, has drawn the same logical inference: “If Hamas budgets \$2 million for terrorism and \$2 million for social services and receives a donation of \$100,000 for those services, there is nothing to prevent its using that money for them while at the same time taking \$100,000 out of its social services ‘account’ and depositing it in its terrorism ‘account.’” *Ibid.*; see also *HLP*, 561 U.S. at 30 (“‘Material support’ is a valuable resource by definition. Such support frees up other resources within the organization that may be put to violent ends. It also importantly helps lend legitimacy to foreign terrorist groups—legitimacy that makes it easier for those groups to persist, to recruit members, and to raise funds—all of which facilitate more terrorist attacks.”). Consequently, “if you give money to an organization that you know to be engaged in terrorism, the fact that you earmark it for the organization’s nonterrorist activities does not get you off the liability hook.” *Boim*, 549 F.3d at 698.

Moreover, even without such financial sleight of hand, “charitable” donations serve a terrorist organization’s violent ends:

Hamas’s social welfare activities reinforce its terrorist activities both directly by providing economic assistance to the families of killed, wounded, and captured Hamas fighters and making it more costly for them to defect (they would lose the material benefits that Hamas provides them), and indirectly by enhancing Hamas’s popularity among the Palestinian

population and providing funds for indoctrinating schoolchildren.

Boim, 549 F.3d at 698.

As this Court has similarly noted, even “[m]aterial support meant to ‘promot[e] **peaceable, lawful conduct**,’ can further terrorism by foreign groups in multiple ways.” *HLP*, 561 U.S. at 30 (emphasis added); *id.* at 7 (noting Congress’ finding, in enacting material support statute, that FTOs “are so tainted by their criminal conduct that **any** contribution to such an organization facilitates that conduct” (emphasis added)). Thus, even seemingly peaceful material support “facilitate[s] terrorist acts,” “bolster[s] terrorist activities,” and “makes [terrorist] attacks more likely to occur.” *Id.* at 30–36. This Court found this was true even of training “on how to use humanitarian and international law to peacefully resolve disputes,” *id.* at 36, specifically because it was “wholly foreseeable” that FTOs would use these skills “as part of a broader strategy to promote terrorism.” *Id.* at 36-37.

CONCLUSION

For the above reasons, the petition for certiorari should be granted.

Respectfully submitted,

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