

No. 23-208

---

IN THE  
**Supreme Court of the United States**

---

KEREN KAYEMETH LEISRAEL, *et al.*,

*Petitioners,*

*v.*

EDUCATION FOR A JUST PEACE  
IN THE MIDDLE EAST,

*Respondent.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DC CIRCUIT

---

---

**BRIEF FOR *AMICUS CURIAE*  
ZIONIST ORGANIZATION OF AMERICA  
IN SUPPORT OF PETITIONERS**

---

SUSAN B. TUCHMAN  
*Counsel of Record*  
ZIONIST ORGANIZATION OF AMERICA  
633 Third Avenue, Suite 31-B  
New York, New York 10017  
(212) 481-1500  
stuchman@zoa.org

*Counsel for Amicus Curiae*



**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	ii
INTERESTS OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	5
I.    Petitioners Satisfied the Plausibility Pleading Standard under Federal Rule of Civil Procedure 8(a)(2) .....	5
II.   Judicial Experience and Common Sense Should Lead the Court to Conclude that Petitioners Stated a Plausible Claim for Relief Against Respondent .....	9
CONCLUSION .....	19

## TABLE OF CITED AUTHORITIES

*Page*

### CASES

*Ashcroft v. Iqbal*,  
556 U.S. 662 (2009).....6, 7, 9

*Atchley v. AstraZeneca UK Ltd.*,  
22 F.4th 204 (D.C. Cir. 2022).....9, 10, 11, 14, 18

*Bell Atl. Corp. v. Twombly*,  
550 U.S. 544 (2007) .....6, 7, 9

*Halberstam v. Welch*,  
705 F.2d 472 (D.C. Cir. 1983).....10

### STATUTES, RULES AND EXECUTIVE MATERIALS

18 U.S.C. § 2333(a).....6

18 U.S.C. § 2333(d)(2) .....6

2004’s Koby Mandell Act .....1

Fed. R. Civ. P. 8(a)(2).....3, 4, 5, 6

S. Ct. Rule 37.2. ....1

Saudi Arabia Accountability Act.....1

Syria Accountability Act .....1

Taylor Force Act, 22 U.S.C. § 2378c-1 .....2

*Cited Authorities*

	<i>Page</i>
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, <i>West Bank and Gaza Strip 2022 Human Rights Report</i> , <a href="https://www.state.gov/wp-content/uploads/2023/03/415610_WEST-BANK-AND-GAZA-2022-HUMAN-&lt;br/&gt;RIGHTS-REPORT.pdf">https://www. state.gov/wp-content/uploads/2023/03/415610_ WEST-BANK-AND-GAZA-2022-HUMAN- RIGHTS-REPORT.pdf</a> . . . . .	12, 13
 <b>MISCELLANEOUS</b>	
As'ad Abukhalil, <i>A Critique of Norman Finkelstein on BDS</i> , Al-Akhbar English, Feb. 17, 2012, <a href="https://web.archive.org/web/20160427221237/http://english.al-akhbar.com/node/4289">https://web.archive.org/web/20160427221237/ http://english.al-akhbar.com/node/4289</a> . . . . .	17
Associated Press, <i>Hamas Executed 3 Palestinian Men Accused of Killing a Senior Member</i> , May 25, 2017, <a href="https://www.businessinsider.com/ap-gazas-hamas-rulers-put-to-death-3-accused-of-killing-member-2017-5">https://www.businessinsider. com/ap-gazas-hamas-rulers-put-to-death-3- accused-of-killing-member-2017-5</a> . . . . .	12
Canary Mission, <i>As'ad Abukhalil</i> , <a href="https://canarymission.org/professor/Asad_Abukhalil">https:// canarymission.org/professor/Asad_ Abukhalil</a> (linking to video footage of Abukhalil's speech at <a href="https://www.youtube.com/watch?v=3xb4F8JpUL8&amp;t=656s">https://www.youtube. com/watch?v=3xb4F8JpUL8&amp;t=656s</a> ) . . . . .	17
Canary Mission, <i>Omar Barghouti</i> , <a href="https://canarymission.org/individual/Omar_Barghouti">https:// canarymission.org/individual/Omar_ Barghouti</a> (linking to video of Barghouti at his 2013 "Networkers South-North" talk in Norway, <a href="https://vimeo.com/75201955">https://vimeo.com/75201955</a> ). . . . .	16

*Cited Authorities*

	<i>Page</i>
Emanuel Fabian, <i>IDF Strikes Hamas Posts in Gaza After Incendiary Balloons Spark Brushfires in South</i> , The Times of Israel, Sept. 22, 2023, <a href="https://www.timesofisrael.com/gaza-incendiary-balloons-spark-brushfires-in-south-for-first-time-in-two-years/">https://www.timesofisrael.com/gaza-incendiary-balloons-spark-brushfires-in-south-for-first-time-in-two-years/</a> . . . . .	19
Geoffrey Aronson, <i>Hamas is Firmly in Power, But It Has Yet to Deliver</i> , Aljazeera, June 26, 2016, <a href="https://www.aljazeera.com/opinions/2016/6/26/hamas-is-firmly-in-power-but-it-has-yet-to-deliver">https://www.aljazeera.com/opinions/2016/6/26/hamas-is-firmly-in-power-but-it-has-yet-to-deliver</a> . . . . .	12
Jewish Journal, <i>Omar Barghouti at UCLA: A Speaker Who Brings Hate</i> , Jan. 16, 2014, <a href="https://jewishjournal.com/commentary/opinion/126186/">https://jewishjournal.com/commentary/opinion/126186/</a> . . . . .	16
John Spritzler, <i>Norman Finkelstein's Criticism of BDS: Wrong, But With a Germ of Truth</i> , NewDemocracyWorld.org, Feb. 10, 2013, <a href="https://web.archive.org/web/20150612130205/http://newdemocracyworld.org/palestine/bds.html">https://web.archive.org/web/20150612130205/http://newdemocracyworld.org/palestine/bds.html</a> . . . . .	17
NGO Monitor, <i>BDS (Boycotts, Divestment, and Sanctions)</i> , <a href="https://www.ngo-monitor.org/key-issues/bds/bds-and-antisemitism/">https://www.ngo-monitor.org/key-issues/bds/bds-and-antisemitism/</a> . . . . .	15
The Covenant of the Islamic Resistance Movement, Aug. 18, 1988, <a href="https://avalon.law.yale.edu/20th_century/hamas.asp">https://avalon.law.yale.edu/20th_century/hamas.asp</a> . . . . .	18

*Cited Authorities*

	<i>Page</i>
<i>Thousands Take to Streets in Gaza in Rare Public Display of Discontent with Hamas</i> , AP News, July 30, 2023, <a href="https://apnews.com/article/gaza-hamas-demonstration-israel-blockade-palestinians-306b19228f9dd21f1036386ce3709672">https://apnews.com/article/gaza-hamas-demonstration-israel-blockade-palestinians-306b19228f9dd21f1036386ce3709672</a> .....	11
Yolande Knell, <i>Gaza Economic Protests Expose Cracks in Hamas's Rule</i> , BBC News, Mar. 18, 2019, <a href="https://www.bbc.com/news/world-middle-east-47616809">https://www.bbc.com/news/world-middle-east-47616809</a> .....	12
Zachary Laub & Kali Robinson, <i>What is Hamas?</i> , Council on Foreign Relations, last updated Aug. 8, 2023, <a href="https://www.cfr.org/background/what-hamas">https://www.cfr.org/background/what-hamas</a> .....	14

## INTERESTS OF AMICUS CURIAE<sup>1</sup>

Amicus curiae is the Zionist Organization of America (ZOA), the oldest pro-Israel organization in the United States, whose leaders have included United States Supreme Court Justice Louis Brandeis. Established in 1897, the ZOA played a key role in mobilizing American support for the establishment of the State of Israel. Since then, the ZOA has been on the front lines of Jewish activism, fighting antisemitism in all its forms – including when hatred of Jews is masked as criticism of the Jewish State of Israel – and seeking justice for American victims of international terrorism.

The ZOA initiated and supported federal legislation to hold accountable countries that promote and support terrorism against the United States and Israel, including the Saudi Arabia Accountability Act and the Syria Accountability Act. The ZOA also pressed the U.S. government to offer rewards for the capture of terrorists who were killing American citizens in the Middle East, achieving a partial victory when some information about wanted terrorists was posted on the U.S. Department of State’s Rewards for Justice website.

The ZOA spearheaded the bill that became 2004’s Koby Mandell Act, which created a new office in the U.S.

---

1. Pursuant to S. Ct. Rule 37.2, counsel of record for all parties received notice of amicus curiae’s intention to file an amicus brief at least 10 days prior to the deadline for filing the brief. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its respective members, or its counsel made a monetary contribution to the brief’s preparation and submission.

Department of Justice dedicated to investigating and prosecuting foreign nationals who have killed or harmed Americans overseas. The legislation was named for an American child who immigrated to Israel with his family in 1994. In 2001, 13-year-old Koby Mandell and a friend were stoned to death by Palestinian Arab terrorists. When the Koby Mandell Act was passed, Koby's mother "thank[ed] the Zionist Organization of America and Congress for initiating this fight for justice." Stephen Flatow, Esq., the father of Alisa Flatow, another American victim of Palestinian Arab terrorism, also "thank[ed] the Zionist Organization of America for being the only organization to have made this Bill and this fight a priority and being relentless in their pursuit of justice."

More recently, the ZOA worked with the family of American terror victim Taylor Force and with legislators to pass the Taylor Force Act (22 U.S.C. § 2378c-1), which was signed into law in 2018. Taylor Force was a former U.S. army officer, a veteran of the wars in Iraq and Afghanistan, and a West Point graduate, who was stabbed and killed by a Palestinian Arab terrorist while he was visiting Tel Aviv, Israel as part of his MBA program at Vanderbilt University. The terrorist also stabbed and wounded ten others before he was killed by the Israel Defense Forces. The terrorist's family immediately began receiving a monthly pension from the Palestinian Authority (PA) pursuant to the PA's policy of paying terrorists and their families a financial reward. The more people the terrorists murder and the longer their prison term, the larger their monthly pension. The Taylor Force Act is designed to end incentives for terrorism by blocking American economic aid to the PA until the PA ceases its "pay to slay" policy. Currently, the ZOA is working on

building support for pending legislation – including the Taylor Force Martyr Payment Prevention Act of 2023 – that would eliminate some of the financial maneuvers that terrorism supporters have used to evade the U.S. sanctions.

Americans continue to face violence and terrorism daily in Israel and around the world. The ZOA has an ongoing interest in ensuring that if they are killed or injured in an act of international terrorism, they and their families can obtain justice under the law, not only against the terrorists but also against those who aid and abet the terrorists. In this brief, the ZOA explains why the Court of Appeals erred in dismissing Petitioners' Complaint, which plausibly alleged that Respondent funneled funds to a U.S.-designated Foreign Terrorist Organization and thus aided and abetted terrorist attacks that caused harm and suffering to Petitioners and other innocent victims. Given that Congress has directed U.S. courts to provide litigants with the broadest possible relief under our anti-terrorism laws, the ZOA respectfully urges the Court not to give Respondent and other aiders and abettors of terrorism a free pass.

### **SUMMARY OF ARGUMENT**

Contrary to the Court of Appeals' decision to dismiss their Complaint, Petitioners satisfied the pleading standard under Federal Rule of Civil Procedure 8(a)(2) and their case against Respondent should be allowed to proceed. Under Rule 8(a)(2), a pleading must simply contain "a short and plain statement of the claim showing that the pleader is entitled to relief." To withstand a motion to dismiss, a complaint's allegations must plausibly give rise

to an entitlement to relief. Petitioners' Complaint – which alleges in detail that Respondent aided and abetted the U.S.-designated Foreign Terrorist Organization Hamas and its affiliates in carrying out the terrorist attacks that harmed them – satisfies Rule 8(a)(2)'s plausibility standard.

The Court of Appeals' determination – that Petitioners failed to plausibly plead that Hamas was responsible for the terrorist attacks that injured and terrorized them – defies common sense. It is widely known and substantiated by media, U.S. government and other credible reports, that Hamas rules Gaza with an iron fist and that, as Petitioners alleged in their Complaint, virtually nothing happens in Gaza that Hamas does not know about, approve and support.

The Court of Appeals' determination – that the Complaint failed to allege sufficient facts to infer that Respondent was generally aware that its provision of funds to the Boycott National Committee, a Hamas affiliate, was part of an overall illegal or tortious activity – is equally unsustainable. These groups are promoters of the anti-Israel boycott, divestment and sanctions movement, whose leaders make no secret of the fact that they share Hamas' goal to eliminate Israel and support the use of violence and terrorism to achieve that goal.

Given the daily threats of violence and terrorism that Americans continue to face in Israel and around the world, it is crucial that not only terrorist organizations, but also those who financially enable and support their terrorist acts, be brought to justice. Respondent should be held accountable for aiding and abetting the terrorist attacks that harmed Petitioners.

## ARGUMENT

### **I. Petitioners Satisfied the Plausibility Pleading Standard under Federal Rule of Civil Procedure 8(a)(2)**

As recited in their detailed Complaint, Petitioners are United States citizens residing in southern Israel (in an area known as the Gaza Envelope) who have been deliberately targeted by terrorism emanating from nearby Gaza, a territory controlled by Hamas, a U.S.-designated Foreign Terrorist Organization.<sup>2</sup> Petitioners endured terror attacks from incendiary balloons and kites launched from Gaza, all organized and directed by Hamas. According to the Complaint, these incendiary balloons and kites caused fires, harmed property and endangered Petitioners' safety and lives, forcing them to live in a constant state of terror.

Petitioners claim that Respondent – an American non-profit corporation known as “Education for a Just Peace in the Middle East,” also doing business as “US Campaign for Palestinian Rights” (USCPR) – supported and assisted Hamas in carrying out these acts of terrorism, by soliciting tax-deductible funds in the United States and funneling those funds to Hamas through various intermediaries, including the Boycott National Committee. Petitioners seek to hold Respondent accountable for its actions under the Anti-Terrorism Act (ATA), as amended by the Justice

---

2. The Secretary of State designated Hamas a Foreign Terrorist Organization on October 8, 1997. U.S. Department of State, Bureau of Counterterrorism, Foreign Terrorist Organizations, <https://www.state.gov/foreign-terrorist-organizations/>.

Against Sponsors of Terrorism Act (JASTA). *See* 18 U.S.C. §§ 2333(a), (d)(2).

The district court granted Respondent’s motion to dismiss Petitioners’ Complaint for failure to state a claim. Affirming the district court’s judgment, the Court of Appeals stated that “[t]he Complaint does not adequately plead that [Respondent] USCPR provided funds to Hamas or otherwise aided or abetted Hamas.” App. 18-19.<sup>3</sup> In reaching this conclusion, the Court of Appeals misapplied the pleading standard under the Federal Rules of Civil Procedure.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” While “labels and conclusions” are not enough to sustain a complaint under Rule 8, the rule does not require “detailed factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*, 556 U.S. at 678 (*quoting Twombly*, 550 U.S. at 570). The plausibility standard is met “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

---

3. References to “App.” are references to Appendix A to the Petition for Writ of Certiorari. Appendix A contains the Opinion of the United States Court of Appeals for the District of Columbia Circuit in this case, dated May 2, 2023.

misconduct alleged.” *Ashcroft*, 556 U.S. at 678 (*quoting Twombly*, 550 U.S. at 556).

Petitioners’ 271-paragraph Complaint satisfies the plausibility standard under Federal Rule of Civil Procedure 8(a)(2). The Complaint alleges that Hamas controls Gaza and that “[t]here is little to nothing that happens in Gaza that H[amas] does not know about, approve[,] and support.”

The Complaint also alleges that Hamas has claimed membership in two groups: the Boycott National Committee and the Palestinian National and Islamic Forces (PNIF). PNIF, according to Petitioners, is a “coordinating framework” for various Palestinian Arab groups, including Hamas and other internationally designated foreign terrorist organizations. PNIF, the Complaint alleges, seeks “to lead and coordinate terrorist activities” and is “intertwined” with the Boycott National Committee. A PNIF representative sits on the Boycott National Committee and the two groups share personnel, according to the Complaint. Petitioners allege that the “real purpose” of the Boycott National Committee and the boycott, divestment and sanctions (BDS) movement “is the elimination of Israel as a sovereign nation-state” – a goal shared by Hamas.

The Sons of al-Zawari, which the Complaint alleges launched incendiary devices from Gaza into Israel and “frequently take credit” for these actions, is also part of Hamas, according to the Complaint. The group was named as a tribute to engineer Mohammed al-Zawari, who built and operated drones for Hamas and another U.S.-designated Foreign Terrorist Organization, Hezbollah.

The Complaint also alleges that Hamas and its affiliate PNIF support the Sons of al-Zawari by hosting funeral ceremonies for its members and posting photos and videos on Facebook of the group's launches of incendiary devices.

The Complaint details how Respondent raises tax-deductible contributions in the U.S. and transmits funds to Hamas circuitously, through intermediaries like the Boycott National Committee, thereby enabling Hamas to launch incendiary devices as part of its terror campaign against Israel. But instead of concluding that the Complaint states a plausible claim for relief against Respondent, the Court of Appeals focused on purported shortcomings in the Complaint that go beyond what should be considered in determining whether a motion to dismiss should be granted. The Court of Appeals stated:

Notably, the Complaint contains no allegations about the nature and extent of [Respondent] USCPR's donations to the Boycott National Committee, how the Boycott National Committee spends its funds, or how donations to the Boycott National Committee are funneled to the PNIF or Hamas . . . .The web of connections alleged in the Complaint falls far short of establishing that the Boycott National Committee is an extension of Hamas or has been taken over by Hamas.

App. 11.

To meet the plausibility standard, Petitioners were not required to plead all these specifics. How much money Respondent has donated to the Boycott National

Committee, how the Boycott National Committee spends the funds it receives, and how it funnels funds to Hamas are all evidentiary details to be fleshed out in discovery and established at trial. As the Court of Appeals itself recognized, a complaint need only “allege ‘enough fact[s] to raise a reasonable expectation that discovery will reveal evidence’ supporting the plaintiff’s claims.” App. 13 (*quoting Twombly*, 550 U.S. at 556). Petitioners have met that burden and should be permitted to proceed, so that they can gather evidence and secure justice against Respondent as an aider and abettor of the terrorist attacks that caused their injuries.

## **II. Judicial Experience and Common Sense Should Lead the Court to Conclude that Petitioners Stated a Plausible Claim for Relief Against Respondent**

Whether a complaint states a plausible claim for relief “requires the reviewing court to draw on its judicial experience and common sense.” *Ashcroft*, 556 U.S. at 679. In dismissing Petitioners’ detailed Complaint in violation of the plausibility standard under the Federal Rules of Civil Procedure, the Court of Appeals failed to satisfy that requirement. The analysis that the court employed is markedly different from, and more stringent than, its analysis in *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204 (D.C. Cir. 2022). The analysis in *Atchley*, based on a common sense understanding of the realities of modern terrorism, led the court in that case to deny a motion to dismiss and permit the litigation to proceed.

The plaintiffs in *Atchley* were Americans victimized in terrorist attacks in Iraq. *Id.* at 208. They sought to hold large pharmaceutical companies liable for aiding and

abetting the attacks in violation of the ATA, as amended by JASTA. *Id.* at 209. These plaintiffs claimed that the pharmaceutical companies provided bribes and medical goods to the Iraqi Ministry of Health, which was allegedly controlled by Jayesh al-Mahdi, a local terrorist group. *Id.* at 210. Jayesh al-Mahdi, the plaintiffs alleged, was in turn acting under the authority and direction of Hezbollah, a U.S.-designated Foreign Terrorist Organization. *Id.* at 209.

The allegations against the pharmaceutical companies were complicated and confusing. Nevertheless, the Court of Appeals concluded that they satisfied the plausibility pleading standard. *Id.* at 215. The court evaluated the rather convoluted allegations in the context of the “wide net” that Congress had cast in amending the ATA to spell out a claim for aider-and-abettor liability. *Id.* The court emphasized JASTA’s express goal of providing American victims of international terrorism with “the broadest possible basis for relief” under the law. *Id.* at 217.

In addition, the court in *Atchley* evaluated the complaint in the context of “the realities of modern terrorism” – i.e., that terrorist organizations like Hezbollah (and Hamas) “often operate by proxy.” *Id.* Noting the critical importance of financial support to the operation of terrorist organizations, and that any money provided to them “may aid its unlawful goals,” the court stated that “even ‘relatively trivial aid’ could count as substantial.” *Id.* at 222 (*quoting Halberstam v. Welch*, 705 F.2d 472, 484 n.13 (D.C. Cir. 1983)). Moreover, even a “general awareness of aiding some type of tort or crime” would be enough to sustain a claim against an alleged aider-and-abettor. *Id.* at 224.

According to the court in *Atchley*, Jaysh al-Mahdi's dominance "was obvious to anyone physically present at Ministry headquarters." *Id.* at 212. The pharmaceutical companies, the Court of Appeals noted, "would have become aware of frequent mainstream media reports" describing the local terrorist group leader's control of the Ministry and use of that position to support terrorist attacks against Americans. *Id.* at 213. The Court of Appeals also noted that the terrorist group's control over the Ministry was referenced by "multiple reports to that effect by people on the ground in Iraq." *Id.* at 228.

The rather nebulous "web of connections" alleged in *Atchley* satisfied the Court of Appeals. Even though these allegations lacked the level of detail of Petitioners' Complaint, the court in *Atchley* concluded that they met the plausibility standard.

Seemingly less focused on JASTA's objective of providing American terror victims with the broadest basis for relief and on the realities of modern terrorism, the Court of Appeals applied a more stringent analysis in the present case in deciding the motion to dismiss. According to the court, Petitioners' purported "uncertainty" about who exactly perpetrated the incendiary terrorist attacks was "fatal to their ability to plead that" Respondent aided and abetted them. App. 15. This conclusion flies in the face of logic.

As reflected in decades of credible media reports, when Hamas seized control of Gaza in 2007, this terrorist organization has ruled the region with an iron fist. *See, e.g., Thousands Take to Streets in Gaza in Rare Public Display of Discontent with Hamas*, AP News, July 30, 2023,

<https://apnews.com/article/gaza-hamas-demonstration-israel-blockade-palestinians-306b19228f9dd21f1036386ce3709672>; Yolande Knell, *Gaza Economic Protests Expose Cracks in Hamas's Rule*, BBC News, Mar. 18, 2019, <https://www.bbc.com/news/world-middle-east-47616809>; Associated Press, *Hamas Executed 3 Palestinian Men Accused of Killing a Senior Member*, May 25, 2017, <https://www.businessinsider.com/ap-gazas-hamas-rulers-put-to-death-3-accused-of-killing-member-2017-5>. See also Geoffrey Aronson, *Hamas is Firmly in Power, But It Has Yet to Deliver*, Aljazeera, June 26, 2016, <https://www.aljazeera.com/opinions/2016/6/26/hamas-is-firmly-in-power-but-it-has-yet-to-deliver> (opining that since Hamas assumed power in Gaza in 2007, “Hamas’ hold on Gaza has been consolidated” and “[a]lmost a decade after it came to power, Hamas rules all but unchallenged”).

Reports issued by the U.S. government and by an independent non-partisan organization (the Council on Foreign Relations) buttress the fact that Hamas rules Gaza with an iron fist and that, as alleged by Petitioners, “[t]here is little to nothing that happens in Gaza that H[amas] does not know about, approve[,] and support.” The U.S. Department of State’s West Bank and Gaza Strip 2022 Human Rights Report provides: “In Gaza, the designated terrorist organization Hamas exercised de facto authority.” U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *West Bank and Gaza Strip 2022 Human Rights Report*, [https://www.state.gov/wp-content/uploads/2023/03/415610\\_WEST-BANK-AND-GAZA-2022-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2023/03/415610_WEST-BANK-AND-GAZA-2022-HUMAN-RIGHTS-REPORT.pdf), at 2.

The State Department’s report also identifies a litany of human rights abuses by Hamas in Gaza, confirming

what Petitioners alleged in their Complaint – that Hamas firmly controls Gaza and that little to nothing happens there that Hamas does not know about, approve and support:

With respect to Hamas: credible reports of unlawful or arbitrary killings by Hamas personnel; torture or cruel, inhuman, or degrading treatment or punishment by Hamas personnel; arbitrary arrest or detention; political prisoners or detainees; serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression, including violence, threats of violence, arbitrary arrests or prosecutions of journalists, censorship, and criminalization of libel and slander; serious restrictions on internet freedom; substantial interference with the freedom of peaceful assembly and freedom of association; serious and unreasonable restrictions on political participation; serious government corruption; lack of investigation of and accountability for gender-based violence; crimes, violence, and threats of violence motivated by antisemitism; unlawful recruitment and use of child soldiers; crimes involving violence and threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons; and the worst forms of child labor.

*Id.* at 3-4.

The Council on Foreign Relations (CFR), a nonpartisan American think tank that specializes in international

relations, has drawn similar conclusions about Hamas's dictatorial grip on Gaza. CFR has documented the "authoritarian institutions" Hamas put in place when it assumed control over the territory in 2007. Zachary Laub & Kali Robinson, *What is Hamas?*, Council on Foreign Relations, last updated Aug. 8, 2023, <https://www.cfr.org/background/what-hamas>. Quoting from 2020 findings by the watchdog group Freedom House, CFR's report states:

[T]he 'Hamas-controlled government has no effective or independent mechanisms for ensuring transparency in its funding, procurements, or operations.' Hamas also represses the Gazan media, civilian activism on social media, the political opposition, and nongovernmental organizations (NGOs), leaving it without mechanisms for accountability.

*Id.*

In short, Hamas' tight control over Gaza, and over everything that goes on in that region, is widely known. The Court of Appeals' conclusion that Hamas did not sponsor or authorize the incendiary balloon and kite attacks that terrorized and harmed Petitioners is contrary to reason. Unlike in *Atchley*, the court failed to give due consideration to JASTA's objective – to give American victims of international terrorism like Petitioners the broadest possible basis for relief – and to the well-known fact that terrorist groups like Hamas often act by proxy and require funding in order to carry out their terror campaigns.

In affirming the district court's dismissal of the Complaint, the Court of Appeals also concluded that

there were “no facts from which we can infer that [Respondent] USCPR was ‘generally aware’ that its role of providing funds to the Boycott National Committee was ‘part of an overall illegal or tortious activity.’” App. 15 (citation omitted). Amazingly, the Court of Appeals of its own accord ascribed a completely benign purpose to Respondent and to the Boycott National Committee, painting them both as simply advocating for “lawful civil resistance” by promoting the BDS movement against Israel. *See* App. 15, 18.

While this may be the way the BDS movement seeks to market itself – as lawful, peaceful and non-violent – it is well known that the movement’s goals are far more sinister. The BDS movement uses falsehoods to incite hatred of Israel – labeling Israel as an “apartheid” state or accusing Israel of “genocide.” BDS activists also offensively use Holocaust rhetoric to demonize Jews and the Jewish State of Israel, by comparing Israeli leaders and soldiers to “Nazis” and referring to Gaza as a “concentration camp” or a “ghetto.” *See generally* NGO Monitor, BDS (Boycotts, Divestment, and Sanctions), <https://www.ngo-monitor.org/key-issues/bds/bds-and-antisemitism/>.

Indeed, the leaders of the BDS movement are open about the real agenda of the movement. It is not lawful civil resistance, as the Court of Appeals opined. The movement’s goal is Israel’s destruction, and “armed resistance” – i.e., physical violence – are legitimate and appropriate means to achieve this goal.

For example, Omar Barghouti, the co-founder and leader of the BDS movement, has stated:

A Jewish state in Palestine, in any shape or form, cannot but contravene the basic rights of the land's indigenous Palestinian population and perpetuate a system of racial discrimination that ought to be opposed categorically . . . . Definitely, most definitely we oppose a Jewish state in any part of Palestine. No Palestinian, rational Palestinian, not a sell-out Palestinian, will ever accept a Jewish state in Palestine.

Canary Mission, *Omar Barghouti*, [https://canarymission.org/individual/Omar\\_Barghouti](https://canarymission.org/individual/Omar_Barghouti) (linking to video of Barghouti at his 2013 “Networkers South-North” talk in Norway, at <https://vimeo.com/75201955>).

Even worse, Barghouti has endorsed physical violence to achieve the objective of destroying Israel. In a 2014 speech at UCLA, Barghouti justified violence and terrorism against Jews in Israel, stating:

[Palestinians have a right to] resistance by any means, including armed resistance. [Jews] aren't indigenous just because you say you are . . . . [Jews] are not a people . . . the UN's principle of the right to self-determination applies only to colonized people who want to acquire their rights.”

Jewish Journal, *Omar Barghouti at UCLA: A Speaker Who Brings Hate*, Jan. 16, 2014, <https://jewishjournal.com/commentary/opinion/126186/>.

Other BDS activists have expressed the same view: that the movement's real goal is Israel's destruction,

and that violence and terrorism are acceptable means to achieve it. For example, in 2012, As'ad Abukhalil wrote:

The real aim of BDS is to bring down the state of Israel . . . . That should be stated as an unambiguous goal. There should not be any equivocation on the subject. Justice and freedom for the Palestinians are incompatible with the existence of the state of Israel.

As'ad Abukhalil, *A Critique of Norman Finkelstein on BDS*, Al-Akhbar English, Feb. 17, 2012, <https://web.archive.org/web/20160427221237/http://english.al-akhbar.com/node/4289>.

In 2013, Abukhalil stated, “BDS is part of a larger resistance movement, and it is not a peaceful alternative.” Canary Mission, *As'ad Abukhalil*, [https://canarymission.org/professor/Asad\\_Abukhalil](https://canarymission.org/professor/Asad_Abukhalil) (linking to video footage of Abukhalil's speech at <https://www.youtube.com/watch?v=3xb4F8JpUL8&t=656s>).

Pro-BDS author Jonathan Spritzler similarly wrote, “I think the BDS movement will gain strength from forthrightly explaining why Israel has no right to exist.” John Spritzler, *Norman Finkelstein's Criticism of BDS: Wrong, But With a Germ of Truth*, NewDemocracyWorld.org, Feb. 10, 2013, <https://web.archive.org/web/20150612130205/http://newdemocracyworld.org/palestine/bds.html>.

Hamas shares the same goals – and worse. The Hamas Charter, which sets forth the terrorist organization's ideology, calls for Israel's elimination in its preamble: “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.” The

Covenant of the Islamic Resistance Movement, Aug. 18, 1988, [https://avalon.law.yale.edu/20th\\_century/hamas.asp](https://avalon.law.yale.edu/20th_century/hamas.asp).

Chillingly, the Hamas Charter also calls for the murder of every Jew. Article 7 states: “The Day of Judgment will not come about until Moslems fight Jews and kill them. Then, the Jews will hide behind rocks and trees, and the rocks and trees will cry out: ‘O Moslem, there is a Jew hiding behind me, come and kill him.’” *Id.*

Given the Complaint’s detailed allegations, it defies common sense for the Court of Appeals to have concluded that Petitioners failed to plausibly plead that Hamas was responsible for the terror attacks emanating from Gaza, and that Respondent aided and abetted those terror attacks by funneling funds to Hamas through entities that shared Hamas’s terrorist goals. The Court of Appeals’ ill-founded conclusions should not stand.

For the safety and protection of Americans around the world, it is imperative to hold those who financially support terror campaigns – and who thus aid and abet the terrorism – liable under the law. Funding is essential to the operation of terrorist organizations like Hamas, as the Court of Appeals emphasized in *Atchley*. *Atchley*, 22 F.4th at 222. Terrorist organizations need money to grow, to recruit and obtain members, and to obtain weapons and other equipment so that they can carry out their terrorist acts. *Id.* at 227.

American Jews in Israel, like Petitioners, are particularly at risk. They face deadly threats of violence and terrorism every day from Hamas and other terrorist organizations who receive aid and financial support for their terror campaigns.

Incendiary balloon devices were launched from Gaza as recently as September 22, 2023, sparking three fires in southern Israel. Emanuel Fabian, *IDF Strikes Hamas Posts in Gaza After Incendiary Balloons Spark Brushfires in South*, The Times of Israel, Sept. 22, 2023, <https://www.timesofisrael.com/gaza-incendiary-balloons-spark-brushfires-in-south-for-first-time-in-two-years/>. The violence and terrorism will go on, and innocent Americans will continue to endure physical and emotional injuries, property damage and the irretrievable loss of innocent lives, until Hamas and its financial supporters and other aiders and abettors are brought to justice.

### CONCLUSION

The ZOA respectfully urges the Court to grant certiorari, reverse the decision of the Court of Appeals, and uphold the adequacy of Petitioners' Complaint based on a pleading standard that is just and consistent with the requirements of the Federal Rules of Civil Procedure.

Respectfully submitted,

SUSAN B. TUCHMAN  
*Counsel of Record*  
ZIONIST ORGANIZATION OF AMERICA  
633 Third Avenue, Suite 31-B  
New York, New York 10017  
(212) 481-1500  
stuchman@zoa.org

*Counsel for Amicus Curiae*