

No. 26-245

In the Supreme Court of the United States

ASTRAZENECA UK LIMITED, ET AL.,
Petitioners,

v.

JOSHUA ATCHLEY, ET AL.,
Respondents.

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

**BRIEF OF THE CHAMBER OF
COMMERCE OF THE UNITED STATES
OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page(s)
INTEREST OF THE <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
The Court Should Grant The Petition And Reverse The Judgment Below	5
A. The D.C. Circuit’s Ruling Conflicts With <i>Twitter</i> ’s Stringent Pleading Standard For The Knowing And Substantial Assistance Element.	5
B. <i>Twitter</i> Undermines The D.C. Circuit’s Ruling Regarding Proximate Causation.	16
C. Allowing The D.C. Circuit’s Ruling To Stand Would Harm Legitimate Business.	18
CONCLUSION	24

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Associated Gen. Contractors of Cal., Inc.</i> v. <i>Cal. State Council of Carpenters</i> , 459 U.S. 519 (1983)	17
<i>Bell Atl. Corp.</i> v. <i>Twombly</i> , 550 U.S. 544 (2007)	19
<i>Crosby</i> v. <i>Twitter, Inc.</i> , 921 F.3d 617 (6th Cir. 2019)	17
<i>CSX Transp., Inc.</i> v. <i>McBride</i> , 564 U.S. 685 (2011)	17
<i>Direct Sales Co.</i> v. <i>United States</i> , 319 U.S. 703 (1943)	12
<i>Dura Pharms., Inc.</i> v. <i>Broudo</i> , 544 U.S. 336 (2005)	19
<i>Fields</i> v. <i>Twitter, Inc.</i> , 881 F.3d 739 (9th Cir. 2018)	17
<i>Halberstam</i> v. <i>Welch</i> , 705 F.2d 472 (D.C. Cir. 1983)	10, 14, 15, 16
<i>Holmes</i> v. <i>Sec. Inv. Prot. Corp.</i> , 503 U.S. 258 (1992)	17, 18
<i>Kemper</i> v. <i>Deutsche Bank AG</i> , 911 F.3d 383 (7th Cir. 2018)	17

TABLE OF AUTHORITIES—continued

	Page(s)
Cases (continued)	
<i>Nye & Nissen v. United States</i> , 336 U.S. 613 (1949)	11
<i>Owens v. BNP Paribas, S.A.</i> , 897 F.3d 266 (D.C. Cir. 2018)	17
<i>Passaic Daily News v. Blair</i> , 308 A.2d 649 (N.J. 1973)	12
<i>Rothstein v. UBS AG</i> , 708 F.3d 82 (2d Cir. 2013)	3, 17, 19
<i>Siegel v. HSBC N. Am. Holdings, Inc.</i> , 933 F.3d 217 (2d Cir. 2019)	19
<i>Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025)	8, 9, 11, 12, 13
<i>Twitter, Inc. v. Taamneh</i> , 598 U.S. 471 (2023)	2-16, 18
<i>United States v. Peoni</i> , 100 F.2d 401 (2d Cir. 1938)	11
Statutes and Rule	
18 U.S.C. § 2333	1, 16
Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 852 (2016)	3

TABLE OF AUTHORITIES—continued

	Page(s)
Statutes and Rule (continued)	
S. Ct. R. 37.6.....	1
Other Authorities	
Thomas J. Curry, Comptroller of the Currency, <i>Remarks before the Institute of International Bankers</i> (Mar. 7, 2016)	22
Tracey Durner & Liat Shetret, Global Ctr. on Coop. Security/Oxfam, <i>Understanding Bank De-Risking and its Effects on Financial Inclusion</i> (2015)	21
Financial Action Task Force, <i>FATF takes action to tackle de-risking</i> (Oct. 23, 2015)	21
Staff of House of Representatives Task Force to Investigate Terrorism Financing, 114th Cong., <i>Stopping Terror Finance: Securing the U.S. Financial Sector</i> (2016)	21
Alan Sykes, <i>Corporate Liability for Extraterritorial Torts Under the Alien Tort Statute and Beyond: An Economic Analysis</i> , 100 GEO. L.J. 2161 (2012)	19

TABLE OF AUTHORITIES—continued

	Page(s)
Other Authorities (continued)	
<i>Syria’s sovereign fund, US firms discuss investment opportunities</i> , Arab News (Sept. 16, 2026)	23
U.S. Dep’t of Treasury, <i>The Department of the Treasury’s De-Risking Strategy</i> 36 (2023)	21, 22
<i>US energy producer to unveil Venezuela investment, energy secretary says</i> , Reuters (Sept. 16, 2026).....	23
Alexander Ward, et al., <i>U.S. Pitches ‘Project Sunrise’ Plan to Turn Gaza Into High-Tech Metropolis</i> , The Wall Street Journal (Dec. 19, 2025)	23
World Bank, <i>De-risking in the Financial Sector</i> (Oct. 17, 2016)	22

INTEREST OF THE *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amicus has a strong interest in the proper interpretation of the Anti-Terrorism Act (ATA), which, if interpreted too broadly, would threaten businesses with liability for engaging in legitimate, non-culpable conduct. Congress enacted the civil-liability provisions of the ATA, 18 U.S.C. § 2333, to enable U.S. citizens who are victims of terrorism to hold accountable the terrorists who engage in those horrific acts, as well as the individuals or entities intimately involved in supporting those acts. That is a laudable and important goal.

In recent years, however, legitimate businesses have become a frequent target of these claims. *Amicus* therefore has a strong interest in the proper interpretation of the statute, to ensure that liability is limited to persons or entities intentionally and intimately

¹ Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice at least 10 days before the due date of the intention to file this brief.

involved with terrorism and does not open the door to claims against legitimate business based on non-culpable conduct.

As this Court explained in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), “if aiding-and-abetting liability were taken too far, then ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer.” *Id.* at 489; *see also id.* at 488 (overbroad liability “could sweep in innocent bystanders as well as those who gave only tangential assistance”). That is why “courts have long recognized the need to cabin aiding-and-abetting liability to cases of truly culpable conduct.” *Id.* at 489.

The D.C. Circuit’s overbroad ruling threatens just such adverse consequences. *Amicus* submits this brief to explain the demanding liability standard articulated in *Twitter* and why the D.C. Circuit’s decision below is wholly inconsistent with that standard.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus strongly condemns all acts of terrorism. Individuals and organizations that commit these heinous acts, and others who join in them, should be brought to justice and required to compensate their victims. But petitioners are not such parties. Rather, they are global pharmaceutical and medical-device companies that provided supplies to a war-torn and rebuilding country. The D.C. Circuit’s decision sustaining ATA claims against these companies conflicts with this Court’s decision in *Twitter* and threatens legitimate businesses that provide critical services in troubled regions throughout the world—the very result *Twitter* warned against.

Congress enacted the civil provisions of the ATA to provide U.S. victims of terrorism with a cause of action to obtain compensation for their injuries. The ATA initially limited liability to the persons who themselves committed acts of international terrorism. *Rothstein v. UBS AG*, 708 F.3d 82, 97-98 (2d Cir. 2013). Congress amended the law in 2016 by enacting the Justice Against Sponsors of Terrorism Act (JASTA), which imposes liability on those who aid and abet, or conspire with persons who commit, acts of international terrorism that were committed, planned, or authorized by a designated foreign terrorist organization. Pub. L. No. 114-222, 130 Stat. 852 (2016).

Respondents are U.S. service members, contractors, and their families who were injured by attacks perpetrated by Iraqi militia group Jaysh al-Mahdi. They contend that Jaysh al-Mahdi took control of the Iraqi Ministry of Health while it was receiving medical supplies and funds from petitioners, and diverted those resources to support their militia operations. The D.C. Circuit held these allegations to be sufficient to plausibly allege that petitioners aided and abetted the attacks that injured respondents and that petitioners themselves perpetrated the acts of international terrorism that caused respondents' injuries.

This Court already vacated the D.C. Circuit's 2022 decision sustaining direct and secondary liability ATA claims against petitioners and directed the court to reconsider that decision in light of *Twitter*. On remand, however, the D.C. Circuit again erred, holding that respondents had sufficiently stated ATA claims notwithstanding *Twitter*'s holdings and reasoning.

First, the court of appeals revived the aiding-and-abetting claims, holding that respondents had sufficiently alleged that petitioners knowingly provided substantial assistance to Jaysh al-Mahdi. Pet. App. 20a-37a.

Second, the D.C. Circuit held that respondents successfully pleaded direct liability under the ATA. According to the court of appeals, a defendant proximately causes an act of international terrorism if its actions “allow[]” an entity with ties to a designated foreign terrorist organization “to grow,” and the plaintiff’s injuries are consequently “reasonably foreseeable” to the defendant. Pet. App. 79a-87a.

In *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), this Court announced a more stringent standard for the knowing and substantial assistance element of aiding-and-abetting claims brought under JASTA, expressly rejecting the much less demanding “knowing substantial assistance” standard applied in the decision below. *Twitter* also seriously undermines the D.C. Circuit’s holding that a defendant proximately causes the plaintiff’s injuries under the ATA even without a direct relationship between the defendant’s conduct and the plaintiff’s injury.

Leaving the decision below in place would harm legitimate businesses. As the *Twitter* Court explained, it is important “to cabin aiding-and-abetting liability to cases of truly culpable conduct” lest such liability “sweep in innocent bystanders as well as those who gave only tangential assistance.” 598 U.S. at 489. The D.C. Circuit’s overbroad liability standard threatens companies operating in developing regions of the world. Those companies play a key role in promoting public health, good governance, and economic growth.

By assisting in development, these companies play an essential role in the fight against terrorism. But, faced with the threat of sprawling and expensive litigation, companies will withdraw from those parts of the world.

The Court should grant the petition to prevent these adverse consequences and reverse the overbroad liability standards endorsed by the D.C. Circuit.

ARGUMENT

The Court Should Grant The Petition And Reverse The Judgment Below

A. The D.C. Circuit’s Ruling Conflicts With *Twitter*’s Stringent Pleading Standard For The Knowing And Substantial Assistance Element.

Twitter held, unanimously, that JASTA requires a plaintiff asserting an aiding-and-abetting claim to plausibly allege that the defendant “consciously, voluntarily, and culpably participate[d] in” the terrorist attack at issue in the case “so as to help ‘make it succeed,’” rejecting the Ninth Circuit’s significantly more lenient liability standard. 598 U.S. at 493, 505 (citation omitted).

The plaintiffs in *Twitter* alleged that Twitter, Facebook, and Google aided and abetted a 2017 attack at an Istanbul nightclub perpetrated by ISIS. 598 U.S. at 478. The Court held that the plaintiffs’ allegations that the companies provided communication services directly to ISIS users (allowing ISIS to recruit, fund-raise, and spread terrorist propaganda) and that the companies served that terrorist content to other users fell short of what

is required to survive a motion to dismiss. *Id.* at 506-07.

In reaching that conclusion, *Twitter* explained what a plaintiff must plausibly allege in order to satisfy JASTA’s “knowingly providing substantial assistance” element. This Court’s analysis makes clear that the D.C. Circuit applied an impermissibly lenient standard, failing to adhere to *Twitter* in multiple ways.

Allowing the lower court’s decision to stand will create confusion about what is required to sustain an ATA aiding-and-abetting claim and could lead courts to uphold complaints that should be dismissed under *Twitter*. For that reason, this Court should grant review to correct the D.C. Circuit’s patently erroneous standard, which conflicts with this Court’s precedent.

First, the *Twitter* Court made clear that JASTA aiding-and-abetting requires more than assistance to a terrorist organization. Rather, a defendant “must have aided and abetted (by knowingly providing substantial assistance) another person in the commission of the actionable wrong—here, an act of international terrorism.” 598 U.S. at 495. “The focus must remain on assistance to the tort for which plaintiffs seek to impose liability.” *Id.* at 506. In other words, the defendant must have assisted the particular act of intentional terrorism that injured the plaintiff. *See id.* at 494 (“aiding and abetting is inherently a rule of secondary liability for specific wrongful acts”).

The court below recognized that this “nexus” to a particular terroristic act is a central requirement under the *Twitter* standard. But it then failed to

properly apply that critical element as defined by this Court.

The D.C. Circuit stated that the complaint told a “localized story” that “ties [petitioners’] alleged knowing provision of substantial aid to a defined subset of Jaysh al-Mahdi’s tortious attacks”—and for that reason satisfied *Twitter*’s nexus requirement. Pet. App. 24a. What that court labeled a “defined subset” consisted of any and all attacks that occurred: (1) during the nine-year period that petitioners made payments to the Ministry of Health (2004-2013), and (2) in roughly the same geographic area (Iraq). *Id.* at 24a-25a.

The D.C. Circuit expressly rejected the argument that respondents were obligated to “trace a direct line between the bribes * * * and the specific attacks that injured plaintiffs.” *Id.* at 22a.

Indeed, the court below acknowledged that there was no direct nexus alleged between petitioners’ assistance and the specific attacks that injured respondents. The court stated that “the complaint does not spell out how Jaysh al-Mahdi converted defendants’ assistance into weapons or equipment to carry out each specific attack.” Pet. App. 23a-24a. The D.C. Circuit further acknowledged that respondents’ theory would render petitioners liable for broad categories of attacks perpetrated by Jaysh al-Mahdi rather than specific acts of international terrorism.

The D.C. Circuit’s holding fundamentally conflicts with *Twitter*. This Court stated that “it is not enough * * * that a defendant have given substantial assistance to a transcendent ‘enterprise’ separate from and floating above all the actionable wrongs that constitute it.” 598 U.S. at 495. Rather, “the text requires

that defendants have aided and abetted the act of international terrorism that injured the plaintiffs.” *Id.* at 497.

The *Twitter* plaintiffs, like respondents, alleged that the defendants’ platforms allowed ISIS to recruit, propagandize, and fundraise—assistance that coincided with the time period of ISIS attacks. This Court nonetheless held those allegations insufficient, as they were untethered from the specific nightclub attack in Istanbul that injured the plaintiffs.

Respondents’ allegations fall short for the very same reason.

Second, while *Twitter* left open the possibility that a defendant could be found liable for serial attacks by a terrorist principal, it made clear that this rare case would require deep and intentional alignment with terrorist activities. This Court explained that such an exceptional theory of liability requires a heightened showing of “pervasive, systemic, and culpable assistance,” such as where defendants “intentionally associated themselves with [a terrorist organization’s] operations or affirmatively gave aid that would assist each of [the] terrorist acts” and “formed a near-common enterprise” with the terrorist group. *Id.* at 502; *see also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 294 (2025) (describing the “pervasive, systemic, and culpable assistance” standard as “a high bar”).

The D.C. Circuit held that respondents were not required to satisfy the pervasive-and-systemic standard because their allegations are “limited to defendants’ provision of aid to a temporally and geographically discrete set of Jaysh al-Mahdi’s terrorist

acts.” Pet. App. 24a-25a. In other words, because respondents seek to hold petitioners liable for only nine years’ worth of terrorist attacks across an entire country—rather than every attack Jaysh al-Mahdi ever committed anywhere in the world—the D.C. Circuit concluded that this was a sufficiently “defined subset” to avoid the near-common enterprise requirement.

That approach conflicts with this Court’s analysis in *Twitter*.

Just last term, this Court reaffirmed that “aiding and abetting is most commonly ‘a rule of secondary liability for *specific* wrongful acts,’” and that liability for “a broad category of misconduct” is possible only when the defendant’s “participation” is “correspondingly ‘pervasive, systemic, and culpable.’” *Smith & Wesson*, 605 U.S. at 292 (quoting *Twitter*, 598 U.S. at 502); *id.* at 294 (“systemic nature” of plaintiff’s allegations “must be backed by plausible allegations of ‘pervasive, systemic, and culpable assistance’” (quoting *Twitter*, 598 U.S. at 502)). The D.C. Circuit’s “defined subset” of nine years of attacks across an entire country is, at a minimum, a broad category of misconduct.

To justify such sweeping liability, therefore, respondents had to plausibly allege that petitioners intentionally “formed a near-common enterprise” with Jaysh al-Mahdi, tantamount to a “conspiracy.” *Twitter*, 598 U.S. at 496, 502.

Respondents have not come close to satisfying that standard. They do not allege, for example, that petitioners shared Jaysh al-Mahdi’s terroristic goals, coordinated with the group on its terrorist operations, or had any relationship with Jaysh al-Mahdi beyond arm’s-length commercial transactions with the Ministry of Health.

Because respondents allege neither the required nexus to specific terrorist acts nor that petitioners formed a common enterprise with the terrorist group, the aiding-and-abetting claim should have been dismissed.

Third, in its separate consideration of the “knowing” requirement, the D.C. Circuit applied a standard that conflicts with the one this Court announced in *Twitter*.

This Court held that JASTA’s requirement of “knowing” provision of substantial assistance is separate from, and more demanding than, the “general awareness” element of a JASTA aiding-and-abetting claim; it is “designed to capture the defendant’s state of mind with respect to their actions and the tortious conduct[,] * * * not the same general awareness that defines *Halberstam*’s [general awareness] element.” *Twitter*, 598 U.S. at 504 (citing *Halberstam v. Welch*, 705 F.2d 472, 488 (D.C. Cir. 1983)). The Supreme Court criticized the Ninth Circuit for “analyz[ing] the ‘knowing’ subelement as a carbon copy of the antecedent element of whether the defendants were ‘generally aware’ of their role in ISIS’ overall scheme.” *Id.* at 503.

Indeed, “the more attenuated the nexus [between the defendants’ conduct and that terrorist act], the more courts should demand that plaintiffs show culpable participation through intentional aid that substantially furthered the tort.” *Id.* at 506. JASTA plaintiffs therefore must, at a minimum, allege a “very good reason to think that defendants were consciously trying to help or otherwise ‘participate in’ the [terrorist] attack,” such as “encouraging, soliciting, or advising the commission of the [terrorist] attack that

would normally support an aiding-and-abetting claim.” *Id.* at 500.

The D.C. Circuit failed to apply this standard. The court first focused on whether petitioners allegedly *knew* their assistance would be used to commit further acts of terrorism, Pet. App. 28a-31a, rather than whether petitioners were plausibly alleged to have *intended* to further those acts.

But knowledge alone does not establish aiding-and-abetting liability. As this Court held in *Twitter*, the defendant must have “‘participate[d] in’ a wrongful act so as to help ‘make it succeed.’” 598 U.S. at 493 (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)). An aider and abettor must “participate” in the primary wrong “as in something that he wishes to bring about” and “seek by his action to make it succeed.” *Smith & Wesson*, 605 U.S. at 291 (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (Hand, J.)). The D.C. Circuit thus applied the same erroneous analysis as the Ninth Circuit in *Twitter*—conflating the general-awareness and knowing-and-substantial-assistance prongs.

Next, and more remarkably, the D.C. Circuit expressly rejected the scienter requirement that this Court adopted in *Twitter* and confirmed in *Smith & Wesson*.

The D.C. Circuit rejected cases requiring a showing that the defendant “participated in the wrongful activity as in something that he wished to bring about” and “sought by his action to make it succeed,” Pet. App. 27a-28a (quoting *Peoni*, 100 F.2d at 402) (citation modified), on the ground that “borrowing from definitions of aiding and abetting in the criminal field,

where criminal intent is stressed * * * is entirely inappropriate” in a civil context, *id.* at 28a (quoting *Passaic Daily News v. Blair*, 308 A.2d 649, 656 (N.J. 1973)) (citation modified).

That reasoning directly conflicts with this Court’s precedents. In *Twitter*, this Court held that the “conceptual core that has animated aiding-and-abetting liability for centuries” is a defendant’s “conscious[] and culpabl[e] participat[ion] in a wrongful act so as to help make it succeed.” 598 U.S. at 493 (internal quotation marks omitted). The Court emphasized that “[a]t bottom, both JASTA and *Halberstam*’s elements and factors rest on” this same “conceptual core.” *Ibid.* And in *Smith & Wesson*, this Court squarely adopted the *Peoni* standard for assessing civil aiding-and-abetting claims under federal law, quoting it as the “canonical formulation” of what it means to aid and abet. 605 U.S. at 291. The very “criminal intent” standard that the D.C. Circuit rejected as “entirely inappropriate” is thus the governing standard under this Court’s precedents.

The D.C. Circuit also erred in its application of *Twitter*’s observation that a “provider of routine services” may be liable if it provides those services “in an unusual way.” 598 U.S. at 502. The court of appeals determined that petitioners’ conduct was “unusual” because they allegedly engaged in corrupt, off-the-books transactions that violated the Foreign Corrupt Practices Act. Pet. App. 31a-33a. But this conflates two distinct inquiries: whether defendants engaged in generally blameworthy conduct, and whether that conduct demonstrates an intent to further the relevant tortious acts at issue.

In *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), this Court held that a pharmacy could be liable

for aiding a doctor's illegal distribution of narcotics. But the evidence that mattered was not simply that the pharmacy engaged in unusual or improper practices. Rather, the pharmacy "actively stimulated" the doctor's purchases through special discounts and "high-pressure sales methods," and did so "against the backdrop of law enforcement warnings" that the doctor was using the pharmacy as a supply source. *Smith & Wesson*, 605 U.S. at 292-93. This evidence showed that the pharmacy "not only knew of and acquiesced" in the doctor's scheme, but "joined both mind and hand with him to make its accomplishment possible." *Id.* at 293 (citation modified).

The D.C. Circuit, by contrast, found "unusual" conduct based on allegations that petitioners paid bribes to win contracts, not that they took any steps to further terrorist attacks. Pet. App. 32a-36a. At most, respondents allege that petitioners engaged in commercial corruption to secure lucrative contracts with the Iraqi Ministry of Health. But a bribe paid to win a contract is designed to secure a business advantage, not to further terrorism. The D.C. Circuit's ruling is therefore far removed from *Twitter*'s standard for "conscious, voluntary, and culpable participation in another's wrongdoing." 598 U.S. at 493.

Fourth, the D.C. Circuit's assessment of *Halberstam*'s factors for determining whether the alleged assistance was substantial followed the very approach that this Court rejected in *Twitter*. This Court recognized *Halberstam*'s "articulat[ion of] six factors to help determine whether a defendant's assistance was 'substantial.'" *Id.* at 486. But it rejected the Ninth Circuit's assessment of those factors identified in *Halberstam* as "a sequence of disparate, unrelated considerations without a common conceptual core."

Id. at 504. The Court explained that “[t]he point of those factors is to help courts capture the essence of aiding and abetting: participation in another’s wrongdoing that is both significant and culpable enough to justify attributing the principal wrongdoing to the aider and abettor.” *Ibid.*

The D.C. Circuit followed the same erroneous approach as the Ninth Circuit, without focus on the “conceptual core” animating the *Halberstam* framework. The D.C. Circuit also found that the factors favored aiding-and-abetting liability by applying plaintiff-friendly interpretations that this Court squarely rejected in *Twitter*.

For example, the D.C. Circuit declined to apply all six *Halberstam* factors, instead “highlight[ing] the subset of factors most germane” to this case. Pet. App. 35a. The court focused on (1) the relationship between petitioners and Jaysh al-Mahdi, (2) the amount and kind of assistance, and (3) the duration of assistance. *Id.* at 35a-36a. It ignored entirely whether petitioners were “present at the time” of the terrorist attacks, “the nature of the act assisted,” and petitioners’ “state of mind.” *Halberstam*, 705 F.2d at 488. But *Twitter* made clear that the *Halberstam* factors are not a menu from which courts may select only those that favor liability; they are conceptually related considerations designed to ensure that liability attaches only to those who “significant[ly] and culpabl[y]” participated in another’s wrongdoing. 598 U.S. at 504.

The factors the D.C. Circuit ignored are particularly significant here. Consider “the nature of the act assisted.” *Halberstam*, 705 F.2d at 488. The “acts” petitioners allegedly assisted were terrorist attacks that injured respondents. But petitioners are alleged to have provided medical supplies and pharmaceutical

products to a government ministry—lawful goods sold to a lawful (and U.S. government supported) institution. That is a far cry from *Halberstam*, where the aider and abettor’s bookkeeping directly facilitated the very burglaries that led to the murder. *Id.* at 487-88. A proper application of this factor, considered holistically amongst the others, would have highlighted the fundamental disconnect between petitioners’ commercial activity and the injury-causing terrorist attacks.

Likewise, the D.C. Circuit did not address whether petitioners were “present at the time” of the terrorist attacks. *Halberstam*, 705 F.2d at 488. They were not. The attacks occurred throughout Iraq over a nine-year period; petitioners were not present at any of them. This factor exists precisely to distinguish those who actively participate in a tort from those whose connection to the wrongdoing is more attenuated.

The D.C. Circuit’s failure to address petitioners’ “state of mind” is particularly problematic, given the lack of any concrete connection between the goods provided and the attacks at issue. In *Halberstam*, the aider and abettor was “a willing partner in [the principal violator’s] criminal activities,” 705 F.2d at 474, who intended “to help [him] succeed by performing a function crucial to any thief,” *Twitter*, 598 U.S. at 487. The aider and abettor was, in *Halberstam*’s words, “one in spirit” with the principal’s enterprise. 705 F.2d at 484. There is no comparable allegation here. Respondents do not allege that petitioners wished to bring about terrorist attacks, sought to make those attacks succeed, or were in any sense “one in spirit” with Jaysh al-Mahdi’s terrorist operations.

The D.C. Circuit’s analysis of the “relation to the tortious actor” factor is also flawed. The court described petitioners’ relationship with Jaysh al-Mahdi as “active, direct, and particularized.” Pet. App. 35a. But that characterization obscures the relationship actually alleged in the complaint. Petitioners’ contractual relationship was with the Iraqi Ministry of Health. Petitioners’ alleged connection to Jaysh al-Mahdi arose only because the Ministry was allegedly overtaken by individuals affiliated with that organization. That is an indirect relationship, mediated through a government agency, not the kind of direct, intimate, personal relationship between the aider and abettor and the principal violator in *Halberstam* that justified broader liability. The D.C. Circuit’s characterization of this attenuated connection as “direct” and “particularized” contorts this factor beyond recognition.

In sum, the D.C. Circuit’s analysis below conflicts with the standard that this Court articulated in *Twitter*. And the lower court’s analysis threatens to create confusion over the legal standard governing these civil aiding-and-abetting claims. The Court should grant the petition and reverse the judgment below.

B. *Twitter* Undermines The D.C. Circuit’s Ruling Regarding Proximate Causation.

A proper application of *Twitter* also requires dismissal of respondents’ accompanying direct liability-claim.

Under the ATA’s primary-liability provision, a defendant may be held liable only if the plaintiff’s injuries are caused “by reason of” an act of international terrorism perpetrated by the defendant. 18 U.S.C. § 2333(a). This Court “has repeatedly and explicitly

held that when Congress uses the phrase ‘by reason of’ in a statute, it intends to require a showing of proximate cause.” *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 391 (7th Cir. 2018) (citing *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 267-268 (1992); *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 532-535 (1983)).

Every court of appeals to address the issue has therefore recognized that Congress’s use of “by reason of” in the ATA imposes a proximate-causation element. *See Kemper*, 911 F.3d at 391; *Crosby v. Twitter, Inc.*, 921 F.3d 617, 623 (6th Cir. 2019); *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 273 (D.C. Cir. 2018); *Fields v. Twitter, Inc.*, 881 F.3d 739, 744-745 (9th Cir. 2018); *Rothstein v. UBS, AG*, 708 F.3d 82, 95-96 (2d Cir. 2013).

“Injuries have countless causes, and not all should give rise to legal liability.” *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011). “To prevent infinite liability, courts and legislatures” will often “appropriately place limits on the chain of causation” through the imposition of proximate causation. *Id.* at 701 (internal quotation marks omitted). “Common-law formulations [of proximate causation] include, *inter alia*, the ‘immediate’ or ‘nearest’ antecedent test; the ‘efficient, producing cause’ test; the ‘substantial factor’ test; and the ‘probable,’ or ‘natural and probable,’ or ‘foreseeable’ consequence test.” *Ibid.* Proximate causation is properly understood to require “some direct relation between the injury asserted and the injurious conduct alleged.” *Holmes*, 503 U.S. at 268.

The D.C. Circuit held that the proximate-cause requirement could be satisfied by “allegations of ‘some reasonable connection between the act or omission of

the defendant and the damage which the plaintiff has suffered.” Pet. App. 80a (citation omitted). Proximate causation, the court stated, serves only “to ‘eliminate[] the bizarre’” and causal links that are “‘mere fortuity.’” *Ibid.* (citations omitted).

That explication of the proximate causation standard conflicts with this Court’s precedents defining proximate cause and, in addition, with *Twitter*’s explanation of what establishes a sufficiently “direct” connection. 598 U.S. at 506. Indeed, this Court in *Twitter* determined that, based on the complaint’s allegations, “the relationship between defendants and the [terrorist] attack is highly attenuated.” *Id.* at 500. But the court of appeals found proximate causation based on the same allegations that underpinned its aiding-and-abetting holding. *See* Pet. App. 81a-84a.

Critically, the D.C. Circuit itself acknowledged that “the complaint does not spell out how Jaysh al-Mahdi converted defendants’ assistance into weapons or equipment to carry out each specific attack.” Pet. App. 25a. If there is no traceable connection between the alleged assistance and the attacks for purposes of aiding-and-abetting liability, there certainly cannot be the “direct relation between the injury asserted and the injurious conduct alleged” that proximate cause requires. *Holmes*, 503 U.S. at 268.

Granting the petition will allow the Court to clarify the proximate-cause standard in light of this Court’s analysis in *Twitter*.

C. Allowing The D.C. Circuit’s Ruling To Stand Would Harm Legitimate Business.

If permitted to stand, the D.C. Circuit’s decision will result in significant negative consequences for the business community.

First, legitimate multinational businesses could face suit for providing services to legitimate businesses and state sovereigns that are then alleged to in some way provide generalized assistance to a terrorist group. As the Second Circuit observed in the context of banking services, such a theory would mean that “any provider of U.S. currency to a state sponsor of terrorism would be strictly liable for injuries subsequently caused by a terrorist organization associated with that state.” *Rothstein*, 708 F.3d at 96. And ATA defendants would face potential aiding-and-abetting liability for providing goods or services to legitimate enterprises, even when they “had little reason to suspect that [they were] assuming a role in * * * terrorist activities.” *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 224 (2d Cir. 2019).

Second, the loose standards applied by the court of appeals would subject legitimate businesses to costly and invasive discovery based on claims that should have been dismissed. The discovery burdens for defendants facing ATA claims are particularly onerous, because the relevant conduct often “occurs in a foreign country with an undeveloped legal system that does not, or cannot, cooperate with discovery or in a country with a government that is hostile to the litigation and associated discovery.” Alan Sykes, *Corporate Liability for Extraterritorial Torts Under the Alien Tort Statute and Beyond: An Economic Analysis*, 100 GEO. L.J. 2161, 2190-91 (2012).

These discovery burdens “will push cost-conscious defendants to settle even anemic cases.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007); *see also Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005) (“[A] plaintiff with a largely groundless claim [may] simply take up the time of a number of other

people, with the right to do so representing an *in terrorem* increment of the settlement value.” (internal quotation marks omitted)).

The pressure to settle is particularly acute in the ATA context because the mere pendency of claims can inflict significant reputational harm on companies by branding them as “supporters of terrorism” complicit in horrific attacks on American citizens, including military veterans. Indeed, enterprising plaintiffs may seek to publicly associate responsible companies with terrorism simply to amplify the pressure to settle and inflate settlement values.

Third, faced with large potential litigation expenses, along with potential exposure to treble damages and reputational risk, many companies would be forced to “de-risk.” De-risking occurs when businesses stop providing services to certain regions or clients, even those with legitimate and pressing needs, because the threat of liability and expensive, drawn-out litigation is simply too great.

Nor could companies undertake the diligence needed to assure themselves that counterparties lack even arguable connections to entities that could be alleged to have some link to a terrorist group, no matter how remote the chain. To begin with, the cost of conducting deep-dive, multi-level diligence on every counterparty (and their downstream counterparties) in many areas of the world would be prohibitive. In addition, it would be practically impossible to eliminate counterparty risk, given the small-scale and insular nature of markets in developing countries and conflicting views of the legitimacy of businesses, charities, or humanitarian groups that operate in the same regions.

Accordingly, failing to give effect to Congress’s limitations on ATA liability would dramatically increase de-risking activity as businesses seek to eliminate potential exposure to burdensome and reputation-threatening litigation, however meritless.

De-risking is not merely theoretical. It is happening in the banking sector. According to the Financial Action Task Force, de-risking “is having a significant impact in certain regions and sectors” and “may drive financial transactions underground which creates financial exclusion and reduces transparency, thereby increasing money laundering and terrorist financing risks.”² A 2023 Department of Treasury report warned that “[d]e-risking undermines several key U.S. government policy objectives by driving financial activity out of the regulated financial system,” thereby rendering monitoring for illicit activities more difficult.³ As the Comptroller of the Currency has observed:

² Financial Action Task Force, *FATF takes action to tackle de-risking* (Oct. 23, 2015), <https://tinyurl.com/yyot5v83>; see also Staff of House of Representatives Task Force to Investigate Terrorism Financing, 114th Cong., *Stopping Terror Finance: Securing the U.S. Financial Sector* 26-27 (2016), <https://tinyurl.com/y2saxcgy> (noting that many financial institutions have ceased processing remittance transfers to certain countries, which “eventually will drive legitimate transfers into the illegitimate underground economy”); Tracey Durner & Liat Shetret, Global Ctr. on Coop. Security/Oxfam, *Understanding Bank De-Risking and its Effects on Financial Inclusion* 19 (2015), <https://tinyurl.com/y3r99hdn> (withdrawal of legitimate financial institutions may “encourage entities to move into less regulated channels, thus reducing transparency and limiting monitoring capacities”).

³ U.S. Dep’t of Treasury, *The Department of the Treasury’s De-Risking Strategy* 36 (2023), <https://tinyurl.com/4484wh7x>.

Longstanding business relationships may be disrupted. Transactions that would have taken place legally and transparently may be driven underground. Customers whose banking relationships are terminated and who cannot make alternate banking arrangements elsewhere may effectively be cut off from the regulated financial system altogether. And there have been many instances of real human hardship that results when customers find themselves unable to transmit funds to family members in troubled countries.⁴

The problem extends well beyond banking. De-risking also “has the potential to push countries to seek closer relationships with geopolitical competitors and cause significant macroeconomic damage to regions of U.S. foreign policy interest.”⁵ And the World Bank has warned that “[s]ome humanitarian organizations have * * * lost access to financial services as a result of de-risking. The inability to get humanitarian assistance to refugees from political conflicts or natural disasters could result in death from starvation, exposure, and disease.”⁶

De-risking could result in particularly perverse and significant harm in regions and countries in which companies are working closely with the United States government and its allies to promote stability

⁴ Thomas J. Curry, Comptroller of the Currency, *Remarks before the Institute of International Bankers* 5-6 (Mar. 7, 2016), <https://tinyurl.com/y7x4jcxm>.

⁵ *The Department of the Treasury’s De-Risking Strategy* 38.

⁶ World Bank, *De-risking in the Financial Sector* (Oct. 17, 2016), <https://tinyurl.com/2s3ctc2h>.

by delivering much-needed products, services, healthcare, or infrastructure.

This case illustrates the point: The United States “encouraged private investment in [Iraq’s] reconstruction efforts,” U.S. Br. 4, *AstraZeneca UK Ltd. v. Atchley*, No. 23-9 (U.S. May 21, 2024), including through “Iraqi Ministry contracts” for “medical supplies,” C.A.J.A. 683, 685.

More recently, the United States has aggressively encouraged private investment in Venezuela,⁷ Syria,⁸ and Gaza,⁹ despite the presence of designated foreign terrorist organizations like Tren de Aragua, ISIS, and Hamas (among several others).

If the D.C. Circuit’s decision is allowed to stand, U.S. companies would be deterred from responding to government requests for assistance in war or post-war zones like these, given the possibility that the goods or services may fall into the wrong hands, or that the downstream recipients may be accused of supporting terrorism.

Depriving governments and populations of key partners in the fight against terrorism and important tools for promoting public health, humanitarian aid, good governance, and economic growth does nothing to help the victims of terror or further the Anti-Terrorism Act’s goals. It has the opposite effect. This

⁷ *US energy producer to unveil Venezuela investment, energy secretary says*, Reuters (Sept. 16, 2026), <https://tinyurl.com/2nevar52>.

⁸ *Syria’s sovereign fund, US firms discuss investment opportunities*, Arab News (Sept. 16, 2026), <https://arab.news/yudcw>.

⁹ Alexander Ward, et al., *U.S. Pitches ‘Project Sunrise’ Plan to Turn Gaza Into High-Tech Metropolis*, The Wall Street Journal (Dec. 19, 2025), <https://tinyurl.com/mu79p25b>.

Court should prevent those adverse consequences by granting the petition and reversing the D.C. Circuit's overbroad liability standards.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the judgment of the court of appeals.

Respectfully submitted.

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