

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**

**MOTION FOR LEAVE TO FILE AND
BRIEF OF *AMICUS CURIAE*
CHARITY & SECURITY NETWORK
IN SUPPORT OF PETITIONERS**

TIMOTHY P. HARKNESS
Counsel of Record
KIMBERLY H. ZELNICK
ADAM ROSENFELD
MARIA SLOBODCHIKOVA
ELISCHKE DE VILLIERS
FRESHFIELDS US LLP
3 World Trade Center
51st Floor
175 Greenwich Street
New York, NY 10007
(212) 277-4000
timothy.harkness@freshfields.com

*Counsel for Amicus Curiae
Charity & Security Network*

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**MOTION FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

Pursuant to Rule 21(2)(b), Charity & Security Network (“CSN”) respectfully moves the Court for leave to file the accompanying Brief of *Amicus Curiae* in support of the petition for a writ for certiorari in this case (the “Motion” and the “Brief” respectively). Leave from the Court is required because notice of intent to file the Brief was provided to Respondents’ counsel of record on September 18 instead of on September 15 as required under Rule 37.2. Leave should be granted because CSN’s Brief presents vital issues that arise out of the D.C. Circuit’s ruling below that are not otherwise addressed in the petition; the Brief will assist the Court in assessing the petition; and Respondents are not prejudiced by the filing of the Brief. Indeed, Respondents’ counsel takes no position on—and therefore does not oppose—granting leave to file.

In further support of this Motion, CSN states as follows:

1. CSN is a resource center for nonprofit organizations that advocates to reduce barriers for operating charitable programs both in the United States and abroad. It is composed of a broad cross-section of nonprofit organizations, including charities working on humanitarian aid, development, peacebuilding, human rights, and civil liberties globally. CSN’s interest in this case relates to the potentially devastating ripple effect that the D.C. Circuit’s decision could have on humanitarian and charitable work globally.

2. Pursuant to Rule 37.2, CSN's submission of this Motion and Brief is timely. The petition was docketed on August 26, 2026 and CSN submitted this Motion and Brief on September 25, 2026, 30 days after entry of the docket.

3. Due to an oversight, CSN's counsel did not provide Respondents' counsel with timely notice of its intent to file at least ten days before the filing deadline as required by Rule 37.2. Notice to counsel of record for Respondents was provided on September 18—seven days prior to the filing deadline rather than ten. CSN provided timely notice to Petitioners' counsel.

4. This Court should nonetheless accept this Brief for the following reasons: (a) CSN's perspective as an advocate and resource for global nonprofit organizations is uniquely relevant to assessing the petition, (b) counsel for Respondents do not oppose granting leave to file, and (c) granting leave to file would not prejudice Respondents. Indeed, there is no reason to believe that the three-day delay in notice of CSN's intent to file would have altered Respondents' approach to the petition, as would be required to show prejudice. The purpose of Rule 37.2's ten-day notice requirement is to allow respondents to determine whether to seek an extension of time for a response in light of the intended filing of an *amicus brief*. In this case, Respondents filed a request for an extension of time for their response on September 17, 2026, asking that the time to respond be extended to October 7, 2026, which request was granted. Furthermore, Respondents are aware of CSN's position as to the matters raised in the petition: CSN has filed two amicus briefs raising similar issues with the D.C. Circuit in this matter. *See* Brief for *Amici Curiae* Charity & Sec. Network and Interaction: the Am.

Council for Voluntary Int'l Action, Inc. in Support of Defendants-Appellees, *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204 (D.C. Cir. 2022) (No. 20-7077) (Document No. 1895881); Corrected Brief of *Amicus Curiae* Charity & Sec. Network in Support of Defendants-Appellees, *Atchley v. AstraZeneca UK Ltd.*, 165 F.4th 592 (D.C. Cir. 2026) (No. 20-7077) (Document No. 2073396).

For these reasons, CSN respectfully requests that the Court grant this Motion for Leave to File and accept the attached Brief for filing.

Respectfully submitted,

TIMOTHY P. HARKNESS

Counsel of Record

KIMBERLY H. ZELNICK

ADAM ROSENFELD

MARIA SLOBODCHIKOVA

ELISCHKE DE VILLIERS

FRESHFIELDS US LLP

3 World Trade Center

51st Floor

175 Greenwich Street

New York, NY 10007

(212) 277-4000

timothy.harkness@freshfields.com

Counsel for Amicus Curiae

Charity & Security Network

September 25, 2026

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INTEREST OF THE *AMICUS CURIAE*¹

Charity & Security Network (“CSN”) advocates to reduce barriers for operating charitable programs, both abroad and locally. Those barriers can prevent charities and donors from engaging in critical, lifesaving work in disaster and conflict areas. CSN was founded in 2008 as a resource center for nonprofit organizations to promote and protect their ability to carry out effective programs that promote peace and human rights, aid civilians in areas of disaster and armed conflict, and build democratic governance. It is composed of a broad cross-section of nonprofit organizations including charities working on humanitarian aid, development, peacebuilding, human rights, and civil liberties.

SUMMARY OF ARGUMENT

Plaintiffs in this case seek to hold Defendants liable for manufacturing and selling medical supplies and goods to Iraq’s Ministry of Health under the Anti-Terrorism Act (“ATA”). In doing so, Plaintiffs have asked the D.C. Circuit to dramatically expand the scope of the ATA’s secondary liability provisions. The D.C. Circuit agreed with Plaintiffs’ sweeping legal theories, holding that a defendant may be liable under the ATA if it engages in general financial transactions with a non-designated government entity that may have affiliations with a Foreign Terrorist Organization (“FTO”) and if it engages in “unusual transactions” regardless of the intent behind those transactions.

¹ No party or counsel for a party authored any part of this brief and no person other than amicus funded its preparation and submission. *See* Sup. Ct. R. 37.6. Notice of intent to file this brief was provided to Petitioners’ counsel more than ten days prior to the filing deadline, and notice was provided to Respondents’ counsel on September 18, 2026. *See* Sup. Ct. R. 37.2.

See *Atchley v. AstraZeneca UK Ltd.*, 165 F.4th 592, 610–11 (D.C. Cir. 2026) (“*Atchley II*”).

The D.C. Circuit decision transforms what should be a narrow, fact-bound theory of liability, see *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 488–89 (2023), into a broadly applicable theory that would expose charitable and humanitarian organizations operating in high-risk states to ATA liability.

I. Non-Governmental Organizations (“NGOs”) are a centerpiece of American foreign policy, providing crucial services in conflict-affected states. By helping improve infrastructure, education, and healthcare, NGOs alleviate poverty and political instability—key drivers of terrorism. NGOs also facilitate alternatives to violence and foster conflict resolution. They do this through engagement in peacebuilding processes; understanding and addressing violence and conflict’s root causes; dialogue facilitation; being locally and contextually aware of conflict dynamics; enabling awareness on how to best engage in conflict prevention; and strengthening existing community and local expertise on violence prevention.

In doing their vital work, NGOs carefully adhere to U.S. counterterrorism laws, including the ATA. Overbroad interpretations of these laws create a chilling effect on NGO operations, often causing NGOs to halt humanitarian and peacebuilding efforts out of concern over terrorism-related litigation.

II. The D.C. Circuit’s interpretation of aiding-and-abetting liability under the ATA poses serious risks to NGOs and their work.

A. The D.C. Circuit held that providing general financial assistance to a non-designated organization with potential ties to a designated FTO satisfies the

aiding-and-abetting nexus requirement simply because “[m]oney is fungible.” *Atchley II*, 165 F.4th at 605–07. This holding conflicts with *Taamneh*’s requirement of a discernable nexus between a defendant’s assistance and the specific attack at issue. *Taamneh*, 598 U.S. at 506. If left uncorrected, the D.C. Circuit’s rule would effectively collapse the nexus requirement and expose NGOs to ATA liability for ordinary practices, such as pooled or general-purpose funding, in-kind goods, and operating support provided to local partners whose ties to FTOs may be unknown—dramatically increasing litigation risk for humanitarian organizations operating in conflict-affected states.

B. Under *Taamneh*, conducting “routine services” “in an unusual way” may support a finding of culpability under the ATA in narrow circumstances: where the assistance itself was so direct and substantial that it shows the defendant wanted the attack that harmed plaintiffs to succeed, and that the terrorist group depended on that assistance for its attacks. The D.C. Circuit, however, interpreted *Taamneh* to mean that plaintiffs do not need to show intent if they allege that a defendant’s provision of services was “unusual.” *Atchley II*, 165 F.4th at 608. Effectively, under the D.C. Circuit’s rule, an unusual method by itself is proof of culpability. This expansive ruling will severely impact NGOs’ operations because NGOs must often operate in “unusual” ways to adapt to the unusual circumstances posed by rapidly changing and unstable conflict environments. The D.C. Circuit’s rule would expose that ordinary conduct to significant new litigation risk.

C. The D.C. Circuit’s decision will have serious consequences for NGOs and the vulnerable populations they serve. Because the decision creates a legal

standard that diverges from other circuits and exposes ordinary humanitarian practices, NGOs will face costly and inconsistent compliance burdens on top of their existing extensive due diligence, and a heightened risk of litigation simply for doing their normal work. This kind of legal uncertainty has previously caused NGOs to halt lifesaving aid altogether, and the decision below risks repeating that chilling effect on a larger scale, undermining both humanitarian relief and the ATA's own purpose of reducing terrorism.

The humanitarian and charitable sector will feel the consequences of this expanded aiding-and-abetting liability: by recasting responsive, good-faith practices like pooled and in-kind assistance, and adaptive logistics as evidence of culpable participation in terrorism, the decision will have a chilling effect on the delivery of aid in precisely the regions where it is most needed. *Atchley II* necessitates this Court's intervention to correct what has already become a harmful precedent: the D.C. Circuit's expanded interpretation of aiding-and-abetting liability will chill vital humanitarian operations and leave the humanitarian sector to operate blindly under irreconcilable rules that only this Court can resolve.

ARGUMENT

I. NGOS PROVIDE VAST AND IMPORTANT SUPPORT IN CRISIS- AND CONFLICT-AFFECTED STATES.

A. NGOs Perform Critical Services and Deliver Necessary Aid to the World's Neediest Areas.

The greatest need for humanitarian and development aid is often in crisis-affected, war-torn, or poverty-stricken states that lack the capacity or

political will to provide basic services to their people. See Press Release, World Bank Group, *Eliminating Extreme Poverty Requires Urgent Focus on Fragile and Conflict-Affected Countries* (Feb. 27, 2020), <https://www.worldbank.org/en/news/press-release/2020/02/27/eliminating-extreme-poverty-requires-urgent-focus-on-fragile-and-conflict-affected-countries> [https://perma.cc/X74F-5833]; Michelle Dowst, INTRAC, *Working with Civil Society in Fragile States* 1 (May 2009), <https://www.intrac.org/resources/briefing-paper-23-working-civil-society-fragile-states/> (click on “Briefing-Paper-23-Working-With-Civil-Society-in-Fragile-States.pdf”). NGOs help communities in these states by providing much-needed goods and services. Some governments rely on NGO aid for almost everything. See Emilie Jelinek, *NGO Relations with the Government and Communities in Afghanistan* (May 5, 2009), <https://odihpn.org/en/publication/ngo-relations-with-the-government-and-communities-in-afghanistan/> [https://perma.cc/JYE9-A25P].

NGOs also implement peacebuilding programs, which are lengthy, multifaceted processes that can include assistance with security, disarmament, political and electoral support, food stability, education, and public administration. See U.N. Peacebuilding Support Off., *UN Peacebuilding: An Orientation* 5–6, 29 (Sep. 2010), https://www.un.org/peacebuilding/sites/default/files/documents/peacebuilding_orientation.pdf. By alleviating poverty and political instability, which are some of the key drivers of terrorism, NGOs do more than relieve immediate suffering: they engage in peacebuilding and “reduce the risk of lapsing or relapsing into conflict.” *Id.* at 5. Because NGOs work on the ground in crisis- and conflict-affected states, they are often uniquely positioned to understand local problems and regional politics. This

enables them to serve as neutral intermediaries between national and local interests, to influence dialogue between parties with competing interests, and to help local leaders hone key skills and promote civic discourse. See Jonathan Goodhand, *Aiding Peace? The Role of NGOs in Armed Conflict* 115 (2006); Charity & Sec. Network, *Peacebuilding Fact Sheet 2* (Oct. 2010) (*Fact Sheet*), <https://charityandsecurity.org/sites/default/files/peacebuilding%20Fact%20Sheet%20WITH%20LOGO.pdf>; Jelinek, *supra*.

In fact, the U.S. government has explained that humanitarian assistance in conflict-affected states “enable[s] the United States to better interrupt cycles of violence and fragility abroad, protect its long-term interests, and achieve better outcomes for the American taxpayer.” Off. of U.S. Foreign Assistance Res., U.S. Dep’t of State, *The Strategic Prevention Project: Assessing the Role of Foreign Assistance in Preventing Violent Conflict in Fragile States* 29 (2019) (*Strategic Prevention*), <https://2021-2025.state.gov/wp-content/uploads/2019/07/Strategic-Prevention-Project.pdf>. Programming in economic growth, education, and social services advances the ATA’s preventative purpose by helping address the conditions in which extremism takes root.

Delivering this aid, however, is rarely simple. NGOs must often navigate obstacles imposed by damaged infrastructure, bureaucratic barriers, and armed conflict to reach the populations that need them most. See Int’l Fed’n of Red Cross and Red Crescent Soc’ys, *World Disasters Report: Leaving No One Behind* 60–66 (2018), <https://www.ifrc.org/sites/default/files/2021-09/B-WDR-2018-EN-LR.pdf> (insecurity and infrastructure gaps result “often [in] an absence of humanitarian response in the most in-need areas”); U.S. Dep’t of

State, *Non-Governmental Organizations (NGOs) in the United States* (Jan. 20, 2025) (*NGOs in the United States*), <https://www.state.gov/bureau-of-democracy-human-rights-and-labor/releases/2025/01/non-governmental-organizations-ngos-in-the-united-states> [<https://perma.cc/FVG3-JFCC>] (“[NGOs] develop and address new approaches to social and economic problems that governments cannot address alone.”). In healthcare specifically, NGOs commonly supply medicine, equipment, and technical support to fill gaps left by collapsed or overwhelmed public systems—work that, by its nature, requires engaging with whatever local structures, personnel, and intermediaries are actually functioning on the ground, however imperfect or opaque their composition may be. To meet these challenges, NGOs must often devise creative solutions that, with the benefit of hindsight, could later be recast as “unusual.” Cash payments made after a bank has been destroyed, in-kind provision of surplus medical supplies, or off-cycle disbursements to keep a hospital running are not signs of wrongdoing—they are the standard cost of delivering aid where ordinary channels have collapsed. *See infra* Section II.B.

B. Support for NGOs’ Work Is a Core Tenet of U.S. Foreign Policy.

The U.S. government has historically recognized the vital role of NGOs. In fact, strong government support for NGOs’ work abroad is a core tenet of U.S. foreign policy. *See Combatting Authoritarianism: U.S. Tools and Responses: Hearing Before the S. Comm. on Foreign Rels.*, 117th Cong. 2 (2022) (statement of Sen. Robert Menendez, Chairman, S. Comm. on Foreign Rels.) (the U.S. government “must support and protect human rights defenders, democracy activists, and civil society organizations” working on the “frontlines”);

Marian L. Lawson & Susan B. Epstein, Cong. Rsch. Serv., R44858, *Democracy Promotion: An Objective of U.S. Foreign Assistance* (Jan. 4, 2019) (“Promoting democratic institutions, processes, and values has long been a U.S. foreign policy objective.”). The U.S. government is the largest financial source of humanitarian and developmental aid worldwide, providing over \$3.3 billion in global aid in 2025. U.N. Off. for the Coordination of Humanitarian Affs., *Financial Tracking Service: Total Reported Funding 2025*, https://fts.unocha.org/global-funding/donors/2025?order=total_funding&sort=desc [<https://perma.cc/6ZVZ-83ES>] (last visited Sep. 21, 2026).

The U.S. philanthropic tradition has centered on the work of private nonprofit organizations that have provided vital services to local communities—often in concert with government programs—including educational institutions, hospitals, and social-service agencies. *See NGOs in the United States, supra*; Lawson & Epstein, *supra*. U.S.-based NGOs, from volunteer organizations rooted in shared religious faith to groups that help vulnerable people, provide services in both the United States and abroad, with many NGOs working to alleviate poverty around the world. *See NGOs in the United States, supra*.

C. NGOs Carefully Adhere to U.S. Counterterrorism Law.

NGOs carefully heed laws related to terrorism, even if that means halting important humanitarian efforts. The experience of NGOs in the wake of *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), is illustrative. There, this Court held that the statute criminalizing material support to FTOs, 18 U.S.C. § 2339B, applies to “support for the humanitarian and

political activities” of such organizations. *Holder*, 561 U.S. at 10, 16–18.

In the aftermath, many NGOs abandoned or scaled back legitimate peacebuilding initiatives out of an abundance of caution—even initiatives, like training programs designed to help negotiate an end to armed conflict, that shared no operational or financial connection to any designated FTO’s terrorist activities. For instance, American Friends Service Committee intended to replicate peacebuilding efforts that a local NGO in the Philippines had implemented to stem the violent conflict raging between the military and a faction of the insurgent Communist Party of the Philippines, a designated FTO. See Charity & Sec. Network, *Examples: Impacts of the Material Support Prohibition on Peacebuilding* 2 (June 13, 2011), <https://charityandsecurity.org/sites/default/files/Impacts%20of%20the%20Material%20Support%20Prohibition%20on%20Peacebuilding.pdf>. The Filipino NGO improved economic activity, fostered a greater sense of security in the area, and convinced the parties to support community-development projects, ultimately reducing confrontation and returning rebels “to the fold of the law.” *Id.* Although American Friends had planned to bring the “main actors” from the Philippines peace process to Cambodia to train the warring parties, “the plan never went forward.” *Id.* Given *Holder*, American Friends feared that it would be accused of materially supporting the Communist Party of the Philippines by doing core peacebuilding work: bringing all actors to the table to broker peace. *Id.* at 1–2; see *id.* at 1–4 (providing other examples).

This dynamic is not confined to one era or one organization. In 2025, the U.S. government designated Ansar Allah (the Houthis)—the rebel group controlling

large parts of the Yemeni government—as an FTO. As a result of this designation and due to uncertainty over liability, NGOs significantly reduced aid delivery to Yemen. See Narayani Sritharan, Magnus Lundgren & Akash Nayak, AidData, *When Security Meets Survival: The Impact of the Houthi Terrorist Designation on Aid to Yemen* 1, 4–7 (Oct. 2025), https://docs.aiddata.org/ad4/pdfs/When_Security_Meets_Survival.pdf. For example, several international humanitarian aid organizations suspended malnutrition prevention activities and nutrition support to malnourished children and pregnant and breastfeeding mothers in Houthi-controlled areas in Northern Yemen. Amnesty Int’l, *Yemen: U.S. Abrupt and Irresponsible Aid Cuts Compound Humanitarian Crisis and Put Millions at Risk* (Apr. 10, 2025), <https://www.amnestyusa.org/press-releases/yemen-u-s-abrupt-and-irresponsible-aid-cuts-compound-humanitarian-crisis-and-put-millions-at-risk/> [<https://perma.cc/RKB2-GQGK>]. Halting these efforts had concrete consequences for the country where an estimated 19.5 million people, or over half of the population, are in need of humanitarian assistance. *Id.*

As these examples illustrate, NGOs take pains to follow U.S. counterterrorism laws, lest their once-lawful actions expose them to new liability as the legal landscape shifts. A ruling that even arguably places NGOs at risk of terrorism-related litigation is thus often enough to thwart humanitarian and peacebuilding efforts. The decision below risks triggering the same reaction.

II. THE D.C. CIRCUIT DECISION RISKS CHILLING VITAL HUMANITARIAN AND PEACEBUILDING EFFORTS.

A. The D.C. Circuit's Decision on Nexus Creates Risk of Liability for NGOs Operating in Crisis- and Conflict-Affected States.

The D.C. Circuit held that providing general financial assistance to an organization with alleged ties to an FTO is sufficient to satisfy the aiding-and-abetting nexus requirement because “[m]oney is fungible.” *Atchley II*, 165 F.4th at 605–07. That holding diverges sharply from this Court’s decision in *Taamneh* and brings ordinary funding and in-kind support that humanitarian and peacebuilding NGOs provide in crisis and conflict settings within the ambit of ATA liability.

Taamneh requires a “definable nexus” tying the alleged assistance defendants provided to the *specific attacks* that injured plaintiffs for aiding-and-abetting liability. *See Taamneh*, 598 U.S. at 503. Specifically, in *Taamneh*, this Court rejected a liability theory that lacked a nexus between the defendants’ social media services and the attacks that harmed the plaintiffs because “plaintiffs’ claims would necessarily hold defendants liable as having aided and abetted each and every ISIS terrorist act committed anywhere in the world.” *Id.* at 501.

Plaintiffs’ claims in this case and the D.C. Circuit’s decision suffer from the same defect. The D.C. Circuit held that because defendants “persistently pursued opportunities to do business” with government offices, including through making payments and providing medical supplies and equipment, around the time and

near the vicinity of the attack that harmed plaintiffs, a sufficient nexus for aiding-and-abetting liability existed due to the fungibility of money. *Atchley II*, 165 F.4th at 605–07. In fact, where “a defendant provided financial assistance,” the D.C. Circuit expressly ruled that “less of a nexus” may be required. *Id.* at 606.

The Second Circuit has reached the opposite conclusion, expressly rejecting the fungibility theory the D.C. Circuit adopted. *Ashley v. Deutsche Bank Aktiengesellschaft*, 144 F.4th 420, 444 (2d Cir. 2025). In *Ashley*, the Second Circuit reaffirmed that aiding-and-abetting liability attaches only where there is a “discernable nexus” between a defendant’s actions and the specific attacks that harmed the plaintiffs, or where the defendant’s conduct was so “pervasive, systemic, and culpable” that it “aided every wrongful act” committed by the terrorist organization. *Id.* at 444–45. The court rejected the argument that general aid to entities with connections to a terrorist group could satisfy that standard, holding that “[a] fungibility theory would ‘evade’” the “key requirement” that a defendant be aware of its role in the specific illegal activity from which the attack was foreseeable. *Id.* at 444. As the court explained, “it is not enough to say that the defendant assisted the terrorist organization’s ‘activities in general.’” *Id.*; see also *Honickman v. BLOM Bank SAL*, 6 F.4th 487, 498–99 (2d Cir. 2021) (rejecting a fungibility theory because it “would displace the aiding-and-abetting standard” and evade the foreseeability requirement, and holding that aiding and abetting “requires more than the provision of material support to a designated terrorist organization”). The Second Circuit’s and D.C. Circuit’s competing interpretations have created a circuit split.

Amicus respectfully submits that the Second Circuit's approach is correct and more faithful to this Court's decision in *Taamneh*. The nexus requirement as articulated in *Ashley* separates culpable financing from the ordinary, attenuated flow of fungible resources through intermediaries—precisely the position in which humanitarian organizations often find themselves when providing aid to local partners. See *Ashley*, 144 F.4th at 444–45. The D.C. Circuit's rule, by contrast, risks capturing the often-unavoidable ways humanitarian organizations must operate in complex crisis- and conflict-affected areas—conduct that reflects the reality of delivering aid where the luxury of “routine” operations is unavailable.

The practical effect of the D.C. Circuit's ruling is to collapse the nexus requirement altogether. If any potential connection exists between humanitarian assistance and an attack, virtually any financial dealing with an entity that may be affiliated with a terrorist organization—regardless of whether that organization is a designated FTO—becomes a potential source of liability, because “[m]oney is fungible.” *Atchley II*, 165 F.4th at 605–07. That reasoning sweeps far beyond the transactions at issue in this case.

NGOs often channel resources to local partners—whose access, knowledge, and proximity are essential to navigate the political dynamics or logistical barriers of conflict or humanitarian settings—and must engage with local authorities on matters ranging from security to taxes and customs. See Goodhand, *supra*, at 104–07; U.N. Off. for the Coordination of Humanitarian Affs., *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments* 22–27 (2011), <https://www.unocha.org/publications/report/world/stay-and-deliver->

good-practice-humanitarians-complex-security-environments-enar (click on “download attachment”); U.N. Off. for the Coordination of Humanitarian Affs., Norwegian Refugee Council & Jindal Sch. of Int’l Affs., *Presence & Proximity: To Stay and Deliver, Five Years On* 19 (Mar. 2017), https://www.nrc.no/globalassets/pdf/reports/presence-and-proximity_to-stay-and-deliver---five-years-on_final_2017-web-version.pdf; see also U.S. Dep’t of the Treasury, *The Department of the Treasury’s De-Risking Strategy* 5 (Apr. 2023), https://home.treasury.gov/system/files/136/Treasury_A_MLA_23_508.pdf (illicit finance risks are “not sufficiently mitigated by due diligence policies”). In cases where the de facto governing authority in certain contexts is a designated entity, NGOs are left with no choice but to engage with such entities to deliver aid and assistance to innocent civilians. In fact, the U.S. Treasury Department authorized certain humanitarian organizations to conduct transactions under several sanctions regimes that would otherwise be prohibited, though there remain no mirror exemptions for FTOs under U.S. law. See Addition of General Licenses for the Official Business of the United States Government and Certain International Organizations and Entities and Updates to the 50 Percent Rule Interpretive in OFAC Sanctions Regulations, 87 Fed. Reg. 78470, 78471 (Dec. 21, 2022). NGOs often provide pooled or general-purpose funding, in-kind goods, and operating support to government ministries, local implementing partners, and cooperatives in environments where FTOs operate or hold de facto governing authority. NGOs in these areas conduct extensive due diligence, documentation, and database checks, yet the reality of operating and providing aid to civilians in need in such complex areas means that sometimes aid recipients’

ties to armed groups may be undesignated, ambiguous, or entirely unknown to the NGOs.

Under the D.C. Circuit’s rule, any such grant, cash-based assistance program, or in-kind donation, regardless of amount, proportion, or intended or actual use, becomes a potential source of liability—collapsing the distinction between “truly culpable” support for terrorism and the ordinary, attenuated flow of fungible resources that defines humanitarian and NGO work in complex settings where FTOs may operate or hold governing authority over innocent civilians. *See Taamneh*, 598 U.S. at 489; *Ashley*, 144 F.4th at 448 (rejecting a theory of liability “vast in scope and unlinked to any culpable conduct” as inconsistent with “the statute’s text and the JASTA aiding-and-abetting framework”); *see also* U.S. Gov’t Accountability Off., GAO-24-106192, *Foreign Assistance: USAID Should Strengthen Risk Management in Conflict Zones* 1 (Apr. 30, 2024), <https://www.gao.gov/assets/gao-24-106192.pdf> (recognizing “the risk that [USAID] assistance will be misused or diverted through fraud or other means, potentially benefitting terrorists or other hostile actors” and the “challenges of delivering U.S. assistance in countries experiencing conflict”). Left uncorrected, that result would increase litigation risk for NGOs operating in high-risk areas, exposing them to liability for attacks committed by organizations several steps removed from the local entities with which they actually engaged.

B. The D.C. Circuit Decision on Culpability Increases Risks for NGOs.

Similar to its expansive reading of nexus, the D.C. Circuit decision also appears to suggest that plaintiffs do not need to prove intent for aiding-and-abetting liability under the ATA if they allege that defendants

provided “‘unusual’ kind[s] of assistance.” *Atchley II*, 165 F.4th at 610–11. This misreads *Taamneh* and broadens the culpability requirement in a way that would expose ordinary humanitarian, peacebuilding, and crisis-assistance operations to ATA liability.

Taamneh observed that providing “routine services . . . in an unusual way” *might* indicate that a defendant “direct[ly], active[ly], and substantial[ly]” participated in terrorist acts. *Taamneh*, 598 U.S. at 502. But that observation does not permit plaintiffs to bypass the burden of pleading “truly culpable conduct” simply by alleging that a defendant performed a routine service in an unusual way, without regard to context. *Id.* at 489, 502. To the contrary, the ‘routine-but-unusual’ observation describes only a narrow set of circumstances—those in which the manner of assistance is itself so “direct, active, and substantial” that it shows the defendant “wishe[d] to bring about” or “sought by [its] action to make [the terrorist act] succeed,” and that the terrorist group “relied on [the] assistance” in committing “‘each and every’ [] terrorist act.” *Id.* at 490, 495, 498, 501–02.

This principle traces directly to the authorities *Taamneh* relied upon. In *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), a drug manufacturer sold a small-town doctor morphine pills “in such quantities, so frequently and over so long a period” that it was fair to infer the manufacturer had consciously participated in the doctor’s illegal distribution scheme. *Id.* at 705. By “supply[ing]” the doctor “his stock in trade for his illicit enterprise,” the manufacturer “join[ed] both mind and hand with him to make its accomplishment possible.” *Id.* at 713. Similarly, in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), a defendant’s laundering of stolen goods was “so intentional and systematic that

she assisted each and every burglary” her co-defendant committed, such that he “relied on [her] assistance” in carrying out every instance of misconduct. *Taamneh*, 598 U.S. at 495.

A transaction that is “unusual” only in the sense that it departs from how business is conducted in a stable, peacetime economy reveals nothing about whether the defendant sought to further the terrorist attacks that harmed plaintiffs. By treating the mere unusualness of a transaction as self-evident proof of “conscious, voluntary, and culpable participation,” *Atchley II*, 165 F.4th at 608, the D.C. Circuit ignores the culpability inquiry that this Court instructed is a “conceptual core” of and “clear guidepost[]” defining aiding-and-abetting liability. *Taamneh*, 598 U.S. at 493, 506.

The D.C. Circuit’s holding also splits with the Second Circuit, which rejected claims similar to Plaintiffs’ here because they lacked an “intent to further [a terrorist organization’s] terrorist activities.” *Ashley*, 144 F.4th at 444. The Second Circuit declined to treat allegations of unusual conduct as sufficient where such conduct did not indicate a defendant’s intent to help the attacks succeed, even when the conduct constituted money laundering illegal for reasons unrelated to terrorism. *Id.* at 445.

The D.C. Circuit’s reasoning will inevitably sweep in even regular operations of humanitarian and peace-building NGOs. Adapting or operating in “unusual” ways is not the exception in the frontline organizational world; it is a structural feature of it. See U.N. Off. for the Coordination of Humanitarian Affs., *To Stay and Deliver*, *supra*, at 22–27; U.N. Off. for the Coordination of Humanitarian Affs., Norwegian Refugee Council & Jindal Sch. of Int’l Affs, *Presence &*

Proximity, supra, at 19 (“The dynamic risks and challenges facing humanitarians require responsive and locally appropriate approaches.”). Aid organizations operate in environments marked by instability, shifting front lines, and collapsed infrastructure, where the methods that work in stable economies are simply unavailable. In these settings, the ability to improvise—to reach populations by whatever route conditions allow—is what separates delivering aid from abandoning it.

For example, facilitation payments, required commissions, and “taxes” imposed by local authorities or armed groups controlling contested territories are a well-documented and often unavoidable cost of delivering aid in conflict zones. *See* U.S. Gov’t Accountability Off., *supra*, at 17 (documenting that risks in providing U.S. assistance abroad stems from reliance on “a number of local partners that may not have the same capacity and controls as large implementing partners” and “the presence of gatekeepers and possible illegal ‘taxes’”). These costs are so pervasive that the U.S. Treasury Department has authorized certain humanitarian, peacebuilding, democracy building, and other NGO transactions under sanctions regulations that would otherwise prohibit such transactions. *See* Addition of General Licenses for the Official Business of the United States Government, 87 Fed. Reg. at 78471 (amending several U.S. sanctions programs to permit certain humanitarian organizations to conduct transactions that would otherwise be prohibited); Mary Beth Sheridan, *U.S. to Ease Anti-Terrorism Rules to Help Somali Famine Victims*, Wash. Post (Aug. 1, 2011), https://www.washingtonpost.com/world/national-security/us-to-ease-anti-terrorism-rules-to-help-somali-famine-victims/2011/08/01/gIQALvnQoI_story.html. Likewise, providing

surplus, free, or discounted goods—such as buffer stock, expiration-driven replacements, or in-kind assistance beyond contracted quantities—is a common feature of humanitarian logistics. Such practices are not evidence of wrongdoing, nor are they an indication of an intent to aid terrorism. *See* Int’l Fed’n of Red Cross and Red Crescent Soc’ys, *supra*, at 63–64.

In the immediate aftermath of a disaster, such as for example, an earthquake or a tsunami, NGOs often must improvise logistics or payment routes entirely. Conventional banking infrastructure may be destroyed, cutting off the ability to transfer funds into an affected area through “usual” or routine means. Sue E. Eckert, Kay Guinane & Andrea Hall, Charity & Sec. Network, *Financial Access for U.S. Nonprofits* xi, 47–48, 103 (Feb. 2017), [https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20\(2\).pdf](https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf). Interruptions to electricity or internet service can also make electronic payment impossible for extended periods.

Humanitarian crises also often arise suddenly, in response to a single traumatic event, requiring organizations with no prior footprint in a region to begin operating there immediately. The 2023 Syria earthquake illustrates this dynamic: it prompted international organizations and private companies with no prior operations or relationships in the region to provide direct aid to Syria for the first time. *See* Jon Henley, *Ikea Foundation Sends Shelters to Syria and Turkey as Firms Offer Earthquake Aid*, *The Guardian* (Feb. 14, 2023), <https://www.theguardian.com/world/2023/feb/14/turkey-syria-earthquake-aid-firms-ikea-shelters> [<https://perma.cc/VQ3X-3RZR>]; Hum. Rts. Watch, *Questions and Answers: How Sanctions Affect the Humanitarian Response in Syria* (Aug. 17, 2023),

<https://www.hrw.org/news/2023/06/22/questions-and-answers-how-sanctions-affect-humanitarian-response-syria> [<https://perma.cc/R7GH-W2KQ>]. For these organizations, any transaction in the region would necessarily be “unusual,” since they had no pre-existing pattern of dealings against which a transaction could be measured as routine.

This influx of new and unfamiliar actors coincided with a banking system already strained by Syria’s “State Sponsor of Terror” and FTO designations, which led many financial institutions to hold up NGOs’ transactions out of concern over terrorism liability and financial regulations like sanctions. Charity & Sec. Network, *Syria GL 23 Deadline Looming: Earthquake Relief Efforts Lie in the Balance* (Aug. 3, 2023), <https://charityandsecurity.org/news/gl-23-deadline-looming-syria-earthquake-relief-efforts-lie-in-the-balance/> [<https://perma.cc/Z3TR-J556>]; Press Release, U.S. Dep’t of the Treasury, Treasury Issues Syria General License 23 To Aid in Earthquake Disaster Relief Efforts (Feb. 9, 2023), <https://home.treasury.gov/news/press-releases/jy1261> [<https://perma.cc/W92J-QH98>]; Hum. Rts. Watch, *supra*. In these circumstances, organizations may pay local staff in cash. Eckert, Guinane & Hall, *supra*, at 47–48.

The difficulties that the U.S. government experienced in delivering aid to Gaza similarly illustrate the challenges facing NGOs in conflict-affected and fragmented states and the necessity of finding creative solutions to overcome those challenges. A vital aid border crossing closed in Gaza, causing an “absolutely dire” situation, including “acute food insecurity,” especially “for the most vulnerable, particularly mothers and children.” Jim Garamone, U.S. Dep’t of Def., *Aid Will Soon Flow to Palestinians in Gaza via*

DOD Temporary Pier, DOD News (May 16, 2024), <https://www.war.gov/News/News-Stories/Article/Article/3778051/aid-will-soon-flow-to-palestinians-in-gaza-via-dod-temporary-pier/> [https://perma.cc/N3JS-QTQD]. To “ensure that the most vulnerable have access to the systems they need,” the Defense Department built a floating pier to deliver aid. *Id.* Though the Defense Department ultimately halted aid delivery through the pier due to weather and other obstacles, this example shows how NGOs must “generate untraditional or unplanned strategies” to deliver the necessary assistance, underscoring the need in practice and in the law for “wiggle room for improvised solutions.” Frida Kypengren, *Adaptability in NGO-Projects* 16–17 (Dec. 29, 2017) (Master’s thesis, Uppsala University), <https://www.diva-portal.org/smash/get/diva2:1176131/FULLTEXT01.pdf>.

As these examples demonstrate, the humanitarian operating environment is inherently dynamic. It often requires conducting “unusual” transactions to continue NGOs’ daily operations or provide mission-critical services. Yet, this is precisely the type of conduct the D.C. Circuit’s decision treats as self-evidently culpable. Allowing that characterization to stand would meaningfully increase the litigation risk NGOs face in providing commonplace humanitarian services.

C. The Ambiguity Created by the D.C. Circuit Decision Will Chill NGO Operations in Conflict-Affected States.

As explained above, the greatest need for humanitarian and developmental aid is found in high-risk states, where NGOs provide peacebuilding, disaster-response, and essential services—work that the U.S. government has long relied upon and

encouraged as a matter of foreign policy. *See supra* Section I. Delivering that aid requires NGOs to interact with local authorities, including entities whose affiliations may be opaque or contested, and to engage in adaptive, sometimes unconventional transactions. NGOs undertake this work while carefully monitoring and complying with U.S. counterterrorism law. *See supra* Section I.C. That compliance effort depends on a stable, predictable legal standard—the very thing the decision below eliminates.

Under the D.C. Circuit’s interpretation of aiding-and-abetting liability, NGOs operating in that circuit face secondary liability under the ATA that they would not face in other circuits. Rather than complying with a single, nationally consistent standard, NGOs would need to conduct different diligence inquiries and undertake separate, costly legal analyses depending on where a suit might eventually be filed—an especially perverse outcome given that the ATA’s broad venue provision allows plaintiffs to select the forum. *See* 18 U.S.C. § 2334. The result undermines the very compliance infrastructure NGOs have built in reliance on a uniform national standard.

This ambiguity will chill NGO operations because it increases the risk of liability for practices that are common features of humanitarian logistics: the in-kind provision of extra or free goods, cash payments to local authorities for access or fees, unconventional transactions, and engagement with entities whose exact affiliations are opaque or contested. *See supra* Sections II.A–B; U.S. Gov’t Accountability Off., *supra*, at 25–27 (recognizing the risk that sanctioned or terrorist-linked actors will benefit, directly or indirectly, from assistance delivered through local

partners). This is not a marginal risk profile; it is the ordinary operating environment in which Amicus’s members work every day.

The decision below confirms that this risk is not hypothetical. The D.C. Circuit treated precisely this kind of necessary, adaptive humanitarian conduct—engagement with a government ministry potentially affiliated with an undesignated group that is, in turn, allegedly tied to an FTO, together with payments and in-kind provision beyond the letter of a contract—as sufficient to support liability, based on the fungibility of money and the mere unusualness of the transactions, without requiring any showing of nexus or truly culpable conduct. *Atchley II*, 165 F.4th at 605–07. Because NGOs cannot absorb judgments potentially totaling billions of dollars, many organizations faced with this exposure will diminish or terminate services to the communities that need them most.

This is not a new phenomenon. Al-Shabaab, a designated FTO, controlled large parts of Somalia, “[o]ne of the most impoverished countries in the world.” Claire Klobucista, Jonathan Masters & Mohammed Aly Sergie, Council on Foreign Rels., *Al-Shabaab* (Dec. 6, 2022), <https://www.cfr.org/backgrounders/al-shabaab> [<https://perma.cc/2ZMR-DZZQ>]. In 2011, to ensure famine aid reached 2.2 million people, the U.S. government announced it would not prosecute NGOs for materially supporting terrorism if they acted in good faith, despite acknowledging that al-Shabaab would “inevitabl[y]” “siphon[] off” some aid and might extract “‘taxes’ or tolls” on “food shipments.” Sheridan, *supra*; see also Charity & Sec. Network, *State Dept. Announces New Policy to Allow Famine Aid in Somalia, Treasury Releases Limited Guidance* (Aug. 4, 2011), https://charityandsecurity.org/news/state_an

nounces_new_policy_allow_famine_aid_somalia/ [https://perma.cc/S5VK-BFC5]. Yet, due to fear and uncertainty over legal liability, many NGOs halted aid deliveries to al-Shabaab-controlled areas anyway. Robyn Dixon, *U.S. Policy Seen as Factor in Somalia Famine Deaths*, L.A. Times (May 2, 2013), https://www.latimes.com/world/la-xpm-2013-may-02-la-fg-somalia-famine-20130503-story.html [https://perma.cc/X6SP-UEL4]. This chilling effect contributed to nearly 260,000 deaths, half of them children under age five. *Id.*

If an NGO adapted its services to deliver aid in Somalia and al-Shabaab then diverted that aid, that NGO could be subject to claims that it aided and abetted terrorism. Under a faithful reading of *Taamneh*, an NGO's good-faith delivery of aid in these circumstances would not constitute aiding and abetting, since the NGO would not have intended "to help 'make [the terrorist group's acts] succeed.'" *Taamneh*, 598 U.S. at 493. But under the D.C. Circuit's decision, that same NGO could face liability on a lesser showing, based solely on the "unusual" character of providing services in Somalia.

The decision below thus risks reproducing these consequences on a larger scale—an outcome that is not only catastrophic for the populations NGOs serve, but is directly at odds with Congress's intent in enacting the ATA "to reduce global terrorism and thus protect Americans here and abroad." H.R. Rep. No. 115-858, at 3–4 (2018). Decreasing NGO support to crisis- and conflict-affected states does the opposite, undermining the statutory purpose that the D.C. Circuit's decision claims to serve and cutting against the peacebuilding and stabilization benefits that the U.S. government has recognized as a bulwark against the extremism

that thrives in impoverished, unstable regions. *See supra* Sections I.A–B. As this Court has recognized, “[b]ecause of the uncertainty of the governing rules, entities subject to secondary liability as aiders and abettors may find it prudent and necessary . . . to avoid the expense and risk of going to trial.” *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994). Unable to absorb the risk of litigation under an inconsistent and unpredictable standard, many organizations will cease operating in high-risk regions rather than guess wrong—ultimately hamstringing the very entities working to help victims of conflict and address the root causes of terrorism.

CONCLUSION

Amicus respectfully urges the Court to grant the Petition.

Respectfully submitted,

TIMOTHY P. HARKNESS

Counsel of Record

KIMBERLY H. ZELNICK

ADAM ROSENFELD

MARIA SLOBODCHIKOVA

ELISCHKE DE VILLIERS

FRESHFIELDS US LLP

3 World Trade Center

51st Floor

175 Greenwich Street

New York, NY 10007

(212) 277-4000

timothy.harkness@freshfields.com

Counsel for Amicus Curiae

Charity & Security Network

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