

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*

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TABLE OF CONTENTS

	Page
I. The D.C. Circuit's Aiding-and-Abetting Holding Warrants Review.....	3
II. The D.C. Circuit's Direct Liability Holding Warrants Review.....	8
III. The Decision Below Will Damage U.S. Interests and Warrants Review Now	10
CONCLUSION	12

II

TABLE OF AUTHORITIES

	Page
Cases:	
<i>Am. Fam. Mut. Ins. Co. v. Grim</i> , 440 P.2d 621 (Kan. 1968)	7
<i>Ashley v. Deutsche Bank Aktiengesellschaft</i> , 144 F.4th 420 (2d Cir. 2025)	1, 2, 3, 4, 5, 8
<i>Bank of Am. Corp. v. City of Miami</i> , 581 U.S. 189 (2017)	9
<i>Cisco Sys. Inc. v. Doe I</i> , 609 U.S. 141 (2026)	5, 11
<i>Direct Sales Co. v. United States</i> , 319 U.S. 703 (1943)	7, 8
<i>Fields v. Twitter, Inc.</i> , 881 F.3d 739 (9th Cir. 2018)	10
<i>Gonzalez v. Google LLC</i> , 598 U.S. 617 (2023)	11
<i>Jesner v. Arab Bank, PLC</i> , 584 U.S. 241 (2018)	11
<i>Kaplan v. Lebanese Canadian Bank, SAL</i> , 999 F.3d 842 (2d Cir. 2021)	5
<i>Kemper v. Deutsche Bank AG</i> , 911 F.3d 383 (7th Cir. 2018)	9
<i>Ofisi v. BNP Paribas, S.A.</i> , 77 F.4th 667 (D.C. Cir. 2023)	10
<i>Rothstein v. UBS AG</i> , 708 F.3d 82 (2d Cir. 2013)	9, 10
<i>Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025)	8
<i>Turnbow v. Commissioner</i> , 368 U.S. 337 (1961)	11
<i>Twitter, Inc. v. Taamneh</i> , 598 U.S. 471 (2023)	2, 3, 5-8, 10, 11
Statutes and Other Authority:	
18 U.S.C. § 2339A	11
Anti-Terrorism Act	1-6, 9-11
Cert. Pet., <i>U.S. Postal Serv. v. Konan</i> , 607 U.S. 391 (2026) (No. 24-351)	5

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REPLY BRIEF FOR PETITIONERS

Terrorism is a heinous act, and petitioners unequivocally condemn it. But it is precisely because terrorism is so serious that the Anti-Terrorism Act (ATA), this Court, and multiple circuits impose stringent requirements on plaintiffs accusing others of such misconduct. The decision below blows past those safeguards, reimagining the provision of medical supplies and alleged “commissions” to Iraq’s U.S.-supported Health Ministry as directly and culpably funding attacks on U.S. soldiers. Even taking respondents’ allegations as pleaded, this complaint cannot stand.

The Second Circuit would agree. It recently affirmed dismissal of an ATA complaint that failed to link the defendants to specific attacks or allege that defendants engaged in transactions with the goal of bringing about the attacks. *See Ashley v. Deutsche Bank Aktiengesellschaft*,

144 F.4th 420 (2d Cir. 2025). The D.C. Circuit blessed respondents’ complaint despite the same flaws. Respondents downplay this split by highlighting factual differences between the allegations, but respondents’ complaint would fail under the Second Circuit’s legal rule. Indeed, the Second Circuit squarely “rejected” key premises of the D.C. Circuit’s decision, like “the notion that ... aiding-and-abetting liability [can] attach based on” a “fungibility theory.” *Id.* at 444.

Respondents’ defense of the merits of the D.C. Circuit’s aiding-and-abetting holding is equally flawed. “The point of aiding and abetting is to impose liability on those who consciously and culpably participated in the tort at issue.” *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 506 (2023). The D.C. Circuit’s opinion ignores that fundamental limitation. And in so doing, the decision below threatens to unleash sprawling liability that will undermine sensitive foreign policy determinations and “chill” essential work abroad. Charity & Security Br. 22.

The D.C. Circuit’s direct liability holding likewise cries out for review. Every circuit to consider the question has held that direct liability under the ATA attaches only to actions that directly cause plaintiffs’ injuries. The panel nonetheless authorized liability based on transactions with a U.S.-supported foreign government ministry purportedly “co-opted” by terrorists.

These holdings will deter companies and nonprofits from answering calls for aid and reconstruction in conflict areas like Venezuela, lest they too be accused of aiding and abetting or committing terrorism. This Court should intervene to avoid the “perverse and significant harm” the decision below threatens for international business and development. Chamber Br. 22.

I. The D.C. Circuit’s Aiding-and-Abetting Holding Warrants Review

A. The decision below creates a stark split between the Second Circuit and the D.C. Circuit, the two major venues for ATA litigation. Pet.18-21. Consistent with this Court’s holding in *Taamneh*, the Second Circuit requires plaintiffs to allege “intent to further [the terrorist organization’s] terrorist activities,” and a clear nexus to “a particular terrorist attack.” *Ashley*, 144 F.4th at 444, 448. In the D.C. Circuit, by contrast, “specific intent” to further terrorism is unnecessary. Pet.App.27a. And plaintiffs do not need to allege that “particular” aid by defendants supported specific “attack[s] that injured plaintiffs.” Pet.App.22a. Allegations that defendants “do business” with a terrorist-linked organization are enough. Pet.App.21a. That conflict is untenable.

Respondents (at 26-27) say the transactions in this case and *Ashley* were “different in kind,” because the payments here were allegedly “not routine,” and “inherently corrupt and dangerous.” But respondents’ allegations of economically motivated, Ministry-standard “commissions” can hardly be considered more unusual than the “money laundering” of funds “likely to end up in the [terrorists’] pile of resources” at issue in *Ashley*. *Id.* at 445.* Indeed, respondents concede that the Second Circuit rejected the allegations in *Ashley* even though “money laundering, like bribery, is affirmative, unusual, and illegal.” BIO 25.

* That is true no matter how many times respondents call the commissions “bribes.” *E.g.*, BIO 1, 4, 5, 6, 7, 11, 14, 18, 22, 25, 26, 32. Inflammatory rhetoric is no substitute for plausible allegations of conscious, culpable participation in terrorism, much less specific terrorist acts.

Regardless, petitioners never claimed that *Ashley* involved identical alleged conduct. What matters is the *legal* rule the Second Circuit applied when evaluating the allegations. That rule is far more rigorous than the one applied below.

As to nexus, for example, *Ashley* categorically “rejected the notion that ... aiding-and-abetting liability [can] attach based on” a “fungibility theory.” 144 F.4th at 444 (citation omitted). Importing a “money is fungible” theory into the ATA would “evade” the statute’s bedrock requirements. *Id.* The D.C. Circuit, however, expressly premised its nexus analysis on its conclusion that “[m]oney is fungible.” Pet.App.23a. Respondents remarkably double down on this fungibility theory in their opposition, protesting that a “‘direct traceability’ requirement would make relief ineffectual.” BIO 21. The Second Circuit disagrees. It correctly recognizes that without a “discernable nexus” between a defendant’s money and specific attacks, a plaintiff’s allegations show only a “possib[ility]” that the defendant “facilitate[d]” an attack. *Ashley*, 144 F.4th at 444.

Respondents (at 25, 27) claim the “problem” in *Ashley* was that the plaintiffs “barely offer[ed] any information” about the defendants’ transactions, and so the Second Circuit had to “speculate” about the connection between the transactions and terrorist activities. But respondents’ complaint has the same problem. The D.C. Circuit conceded the complaint “does not spell out” the link between defendants’ alleged assistance and “specific attack[s]” that injured plaintiffs. Pet.App.25a. The court found the allegations sufficient anyway. But in the Second Circuit, the same allegations would fail because “liability only attaches for aiding and abetting a *particular* terrorist attack.” *Ashley*, 144 F.4th at 448 (emphasis added).

Respondents (at 28) also try to downplay the split by citing the Second Circuit’s pre-*Taamneh* decision in *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021), which respondents claim disavows a “rigid nexus rule.” In fact, *Kaplan* simply held that plaintiffs stated a claim where a Lebanese bank allegedly gave “special treatment” to Hezbollah-linked groups and helped them “circumvent[] sanctions imposed in order to hinder terrorist activity.” *Id.* at 850, 866. *Kaplan* does not support imposing liability on everyone who, *without* culpable intent, transacts with alleged terrorist-linked entities.

Finally, respondents suggest review is unnecessary because *Ashley* is “just one decision.” BIO 24. But *Ashley* is a detailed, precedential decision from one of the two circuits most likely to consider ATA claims. *See* Pet.18-19. Going forward, claims in the Second Circuit will be governed by a standard that differs dramatically from the standard in the D.C. Circuit, creating an enormous incentive for would-be plaintiffs to forum shop, especially given the ATA’s loose venue requirements. *See* Pet.18. In any event, as the United States has noted, “[t]his Court has recently and repeatedly granted certiorari in cases arising from 1-1 or 2-1 circuit conflicts.” Cert. Pet. 19, *U.S. Postal Serv. v. Konan*, 607 U.S. 391 (2026) (No. 24-351) (citing three cases). That course is particularly warranted when, as here, resolution of the circuit conflict will determine whether to permit massive, sprawling litigation implicating foreign policy and national security interests. *Cf.* *Cisco Sys. Inc. v. Doe I*, 609 U.S. 141 (2026).

B. Even aside from the conflict with the Second Circuit, the decision below warrants review because it is both profoundly wrong and irreconcilable with this Court’s guidance in *Taamneh*.

Nexus. *Taamneh* requires that the defendant “aided and abetted *the act* of international terrorism that injured the plaintiffs.” 598 U.S. at 497 (emphasis added). “[S]ubstantial assistance ... to [an attacker’s] activities in general” does not suffice. *Id.* at 503. The D.C. Circuit nevertheless resuscitated plaintiffs’ claims despite acknowledging that plaintiffs do not explain whether or how any of defendants’ payments facilitated “specific attacks.” Pet.App.37a. That was incorrect. Even a defendant who provides “financial assistance” to a terrorist enterprise, Pet.App.23a, has not necessarily assisted “the actionable wrong,” *Taamneh*, 598 U.S. at 494-95. Petitioners cannot be held liable simply because *some* of the Ministry’s money received from *some* unknown source *might be* linked to *some* unspecified terrorist attack.

Respondents (at 21) protest that they should not have to “trace dollars to bombs.” But respondents are the ones trying to hold petitioners liable for 300-plus bombings. They were therefore required to allege either (1) a “definable nexus” to specific attacks or (2) assistance so “pervasive, systemic, and culpable” as to aid and abet “each and every ... terrorist act committed anywhere in the world” by the attackers. *Taamneh*, 598 U.S. at 495-96, 501-03. Respondents did neither, making it impossible to say that “defendants actually aided and abetted each tort.” *Id.* at 506.

Respondents claim that further specificity was unnecessary because they “tied petitioners’ assistance to a ‘defined subset’ of attacks.” BIO 28 (quoting Pet.App.24a-25a). In fact, the D.C. Circuit found that the complaint plausibly alleged responsibility for *all* of Jaysh al-Mahdi’s attacks across the entirety of Iraq over a six-year period. If that is a “defined subset” of attacks, then the ATA’s nexus requirement has lost all meaning.

Respondents also contend that *Taamneh* allows liability even where a defendant does not know “all particulars of the primary actor’s plan.” BIO 22 (quoting *Taamneh*, 598 U.S. at 495-96). But *Taamneh* still requires assistance for a particular terrorist act—at least absent allegations of systematic involvement of the kind that all agree are absent here. 598 U.S. at 496, 502-03. The common law sources cited by *Taamneh* show that joint tortfeasors must still have “act[ed] in concert in the execution of a common purpose.” *Am. Fam. Mut. Ins. Co. v. Grim*, 440 P.2d 621, 625 (Kan. 1968), *cited in Taamneh*, 598 U.S. at 495-96. Nobody contends that petitioners acted to further a common enterprise of jihadist violence with Jaysh al-Mahdi.

Culpability. *Taamneh* also made clear that aiding-and-abetting liability attaches only to those defendants who “consciously and culpably participate[]” in “the act of terrorism” “as something that they wished to bring about.” *Taamneh*, 598 U.S. at 497 (cleaned up). This is a “demanding standard.” U.S. Br. 15. Yet the D.C. Circuit found respondents’ allegations sufficient even though no nexus links defendants’ provision of critical drugs and medical equipment to Jaysh al-Mahdi’s attacks, and no allegations suggest that defendants engaged in those transactions with the goal of bringing about the attacks.

Respondents (at 14) emphasize their allegations about the supposedly “unusual” nature of petitioners’ transactions with the Ministry. But “*Taamneh* did not approve imposing liability whenever a plaintiff can identify an atypical transaction with an organization that affiliates with terrorists.” U.S. Br. 18-19 (No. 23-9). To the contrary, unusualness is only relevant where it indicates that the defendant “*intends* to further, promote and cooperate in” the illegal activity. *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943) (emphasis added), *cited in*

Taamneh, 598 U.S. at 502. There is no allegation here that petitioners and Jaysh al-Mahdi were “join[ed] both mind and hand” in bringing about terrorist attacks. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 291-92 (2025); accord *Ashley*, 144 F.4th at 442-43 (adopting same view of *Direct Sales* and *Smith & Wesson*).

Respondents’ allegations regarding petitioners’ purported knowledge of the connection between the Ministry and Jaysh al-Mahdi do not fill the gap. *Contra* BIO 13-14. *Taamneh* demands that knowledge and the substantiality of assistance be considered “relative to one another.” 598 U.S. at 503-04. Respondents’ myopic focus on petitioners’ alleged knowledge thus ignores the more fundamental question of whether petitioners, by transacting with the Ministry, “sought by their action to make [each attack] succeed.” *Id.* at 498 (cleaned up). Plainly, they did not.

Respondents (at 15) contend that common-law cases permit civil aiding-and-abetting liability without specific intent. But under *Taamneh*, “lack of intent to support” terrorism is entitled to “great[] weight,” 598 U.S. at 504-05—all the more so for a theory that reaches hundreds of attacks across a country over several years. The D.C. Circuit, however, gave no weight at all to the fact that petitioners had no desire to harm anyone, least of all through their provision of medical supplies. Respondents (at 19) alternatively contend that petitioners “intended to help finance further attacks on Americans.” Although the D.C. Circuit got much wrong, it rightly never endorsed that baseless accusation.

II. The D.C. Circuit’s Direct Liability Holding Warrants Review

The D.C. Circuit further erred, and created additional circuit splits, by reinstating its holding that transactions

with a sovereign government multiple steps removed from terrorist acts can support direct liability. Pet.27-31. Every other circuit to consider the question has rejected direct liability for acts of terrorism based on transactions lacking direct links to attacks, even where the foreign sovereign allegedly “control[s]” the terrorist group or supplies weapons used in the relevant attacks. *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 392 (7th Cir. 2018); *Rothstein v. UBS AG*, 708 F.3d 82, 85 (2d Cir. 2013).

Respondents (at 32-33) highlight factual differences with the Second and Seventh Circuit cases. Those involve Iran; this involves the Iraqi Health Ministry. But Iran’s intervening role did not defeat proximate causation simply because of that country’s sovereign “independence.” *Contra* BIO 33. The key point in *Kemper* and *Rothstein* was that Iran does not “exist solely to perform terrorist acts.” *Kemper*, 911 F.3d at 392; *see Rothstein*, 708 F.3d at 97. Here, too, although respondents equate the Ministry with Jaysh al-Mahdi, *see* BIO 32, their complaint concedes that the Ministry performed legitimate health-care functions and thus did not exist solely to perform terrorist acts. Pet.28-29. Respondents’ claims would thus fail in the Second and Seventh Circuits.

The D.C. Circuit’s contrary approach, under which transacting with sovereign governments “one step removed,” Pet.App.86a, from actual terrorists supports direct liability, contravenes this Court’s “repeated[.]” holding that proximate causation requires “directness,” *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 203 (2017). Respondents (at 25-26, 31) suggest “the ATA’s purposes” demand a looser standard. But this Court has required directness based on the same statutory language, everywhere from the Fair Housing Act to RICO. *Id.* There is

no basis for a “different standard for proximate causation” under the ATA. *Fields v. Twitter, Inc.*, 881 F.3d 739, 746 (9th Cir. 2018).

Respondents (at 30) also point to the D.C. Circuit’s conclusion that the alleged assistance to the Ministry made their injuries “reasonably foreseeable.” But, again, other circuits demand more than allegations that funds will foreseeably “find[] [their] way into terrorist hands.” Pet.App.83a. They correctly require a direct link “between the cash transferred ... and the terrorist attacks ... that injured plaintiffs.” *Rothstein*, 708 F.3d at 97. No such link exists here.

Respondents (at 30) note that *Taamneh* did not involve a direct liability claim. If anything, *Taamneh* made the D.C. Circuit’s direct liability holding even less tenable. *Taamneh* made clear that even *aiding-and-abetting liability* does not attach where the asserted “causal chain is simply too remote.” *Ofisi v. BNP Paribas, S.A.*, 77 F.4th 667, 675 (D.C. Cir. 2023) (quotation omitted). *A fortiori*, there is no basis to impose direct liability based on allegations that defendants provided medicine and medical equipment to the Ministry that Jaysh al-Mahdi later “looted” and “divert[ed].” Pet.App.84a (citation omitted).

III. The Decision Below Will Damage U.S. Interests and Warrants Review Now

The D.C. Circuit’s decision dramatically expands liability under the ATA, creating “significant negative consequences” for businesses and NGOs alike. Chamber Br. 18-24. Although the U.S. government prioritizes “private investment in regions experiencing humanitarian crises,” U.S. Br. 20 n.2 (No. 23-9), under the D.C. Circuit’s interpretation of the ATA, many companies and organizations will stop providing services because the risk of expensive

litigation and reputational harm will be too great. Chamber Br. 20; Charity & Security Br. 21-25; *see also Jesner v. Arab Bank, PLC*, 584 U.S. 241, 269-70 (2018).

Respondents (at 34) quip that companies and non-profits need only to “refrain from knowingly funding terrorists.” But as amici explain, it is “practically impossible” to eliminate all counterparty risk in warzones. Chamber Br. 20. For organizations working in high-conflict areas, “operating in ‘unusual’ ways is not the exception”; “it is a structural feature” of their work. Charity & Security Br. 17. And while knowing material support to attacks by undesignated terrorists is a crime, BIO 34-35, that statute limits what support counts, including a “medicine” exclusion. 18 U.S.C. § 2339A(b)(1). The D.C. Circuit’s decision reaches far more legitimate business.

Respondents (at 34) also suggest that Congress, rather than the courts, should address these consequences. But Congress already weighed in by enacting a statute that limits secondary liability. The Second Circuit enforces those limitations; the D.C. Circuit doesn’t. Certiorari is the only realistic way to ensure “the proper interpretation and uniform application” of the ATA. *Turnbow v. Commissioner*, 368 U.S. 337, 339 (1961).

Finally, the motion-to-dismiss posture of this case does not prevent review. *Contra* BIO 35. This Court’s prior ATA decisions arose at the same procedural stage. *Taamneh*, 598 U.S. at 482; *Gonzalez v. Google LLC*, 598 U.S. 617, 621 (2023); *cf. Cisco*, 609 U.S. at 141. And this case is an ideal vehicle to resolve the questions of law presented because the fact pattern is common among ATA complaints. Pet.19-20. Far more needless “delay,” BIO 35, would ensue from letting this sprawling, 1,250-plaintiff case proceed based on claims that are not legally viable. Judicial economy counsels getting the law right now, not after years of expensive and burdensome discovery.

CONCLUSION

The petition for a writ of certiorari should be granted.

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