No. 23-208

In the
Supreme Court of the United States

KEREN KAYEMETH LEISRAEL, et al.,

Petitioners,

v.

EDUCATION FOR A JUST PEACE IN THE MIDDLE EAST,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should review the D.C. Circuit's dismissal of Petitioners' Complaint under Federal Rule of Civil Procedure 12(b)(6), where the Complaint's conclusory allegations did not plausibly state a claim for Antiterrorism Act-liability under the well-established *Twombly/Iqbal* pleading standard and where, therefore, this case presents no question of law that warrants review.

2. Whether this Court should grant certiorari to limit application of its unanimous decision in *Twitter, Inc. v. Taamneh* to defendants that are "massive multi-purpose international corporate entities" (Pet. 15) where under *Taamneh's* clear reasoning, any such modification would have no effect on the outcome of this case, given the Complaint's failure to state a claim under any applicable standard, and where such narrowing would undermine *Taamneh's* reasoning.

CORPORATE DISCLOSURE STATEMENT

Respondent Education for a Just Peace in the Middle East, by and through undersigned counsel, and pursuant to U.S. Sup. Ct. R. 29(6), hereby certifies it does not have a parent company, and that no publicly-held company has a 10% or greater ownership interest in it.

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INTRODUCTION

Petitioners seek to impose direct and aiding-and-abetting liability on Education for a Just Peace in the Middle East, d/b/a the U.S. Campaign for Palestinian Rights (USCPR)—a U.S. based non-profit 501(c)(3) corporation engaged in public education and outreach regarding Palestinian rights. Petitioners' expansive theory of liability is based on unsupported and conclusory allegations attempting to link USCPR's public advocacy and fiscal sponsorship of a group advocating for boycotts of Israel to the support of Hamas and acts of terrorism, where the facts pleaded fail to do so.

The factual allegations contained in Petitioners' Complaint, as opposed to the Complaint's conclusory allegations or the unsupported assertions in their Petition, are that USCPR criticized Israel's use of lethal force against demonstrators in the Great Return March (a series of protests at the Gaza-Israel border in 2018-2019), and that USCPR served for a time as U.S. fiscal sponsor for the Boycott National Committee, which is the "broadest coalition in Palestinian civil society that leads the global BDS [boycott, divestment and sanctions] movement for Palestinian rights." R. 45 (Compl. ¶ 124).[1] Petitioners base their claims of liability on the allegation that one of the Boycott National Committee's many members is a separate coalition that is made up of all of the Palestinian political parties, one of which is Hamas. R. 32, 34

[1] The Record refers to the Joint Appendix from the D.C. Circuit Court of Appeals. The Appendix refers to the Appendix submitted with the Petition for Writ of Certiorari.

(Compl. ¶¶ 66, 77, 78). The Complaint speculates that USCPR's unspecified amount of financial support that it transferred from U.S. donors to the Boycott National Committee was a direct, proximate cause of incendiary balloons and kites being launched by Hamas into Israel during the Great Return March, causing Petitioners pain and suffering.

The lower courts in this case engaged in a thorough examination of the allegations in the Complaint and unanimously determined that Petitioners' conclusory allegations failed to plausibly support the necessary elements of Antiterrorism Act (ATA) liability. 18 U.S.C. § 2331 *et seq*. As the D.C. Circuit aptly summarized the Complaint: "appellants' conclusory allegations amount to nothing more than guilt by association." App. 11. Having failed to sufficiently state a claim, Petitioners seek to negate threshold pleading requirements and argue they are entitled to conduct discovery against USCPR to seek facts they could not otherwise allege to support their theory of USCPR's liability. Petitioners now also suggest that it is the D.C. Circuit's anti-Israel bias that lurks behind the dismissal of their legal claims. This suggestion is meritless. Neither the Federal Rules of Civil Procedure nor this Court's jurisprudence contain pleading exceptions for cases such as this one, which fail to sufficiently state a claim.

The principal issue raised for review—whether the D.C. Circuit erred in affirming the District Court's dismissal of the Complaint for failure to state a claim—does not merit this Court's

attention. *See* U.S. Sup. Ct. R. 10. There is no conflict between the decisions of the United States Courts of Appeal. U.S. Sup. Ct. R. 10(a). There has been no departure "so far . . . from the accepted and usual course of judicial proceedings," *id.*, nor is there an "important question of federal law that has not been, but should be, settled by this Court." *Id.* at 10(c). Petitioners essentially argue that the D.C. Circuit misapplied the law to their allegations, but a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Sup. Ct. R. 10.

Review of the relevant facts that were pleaded in the Complaint demonstrates that the lower courts properly concluded that the Complaint failed to meet the requirements of Rule 12(b)(6). On the direct liability claim, the D.C. Circuit correctly found that Petitioners' Complaint failed to connect USCPR to Hamas, that it failed to lend "factual support to their claim that USCPR provided money to Hamas," App. 11, and that it failed to show that USCPR proximately caused Petitioners' injuries. *Id.*

The D.C. Circuit also correctly found that Petitioners' "attempt to establish aiding-and-abetting liability fails at every turn." App. 14. The D.C. Circuit found that Petitioners "fail to allege that the funds that USCPR provided to the Boycott National Committee were used to finance any terrorist attacks, much less that USCPR was aware that it was happening." App. 16. Unable to state a claim based on the factual allegations of the Complaint, the Petition makes assertions that go far

beyond any plausible inferences from those alleged facts, while Petitioners' Supplemental Brief improperly seeks to introduce extraneous facts and to replace well-established judicial standards with political issues. Still, at bottom, there are *no facts* alleged that *any* money which USCPR transferred to the Boycott National Committee went directly or indirectly to any other entity, including Hamas. App. 10-11. There was no error in the lower courts' routine disposition of Petitioners' insufficient factual allegations that could merit this Court's review.

Petitioners' assertion that the D.C. Circuit is prejudiced against victims of terrorism in Israel is spurious. A charge of discrimination requires serious evidence. Petitioners' claim that the D.C. Circuit's description of the Boycott National Committee indicates prejudice against Israelis is unfounded given that the description is taken directly from the factual allegations of the Complaint. App. 10, 15 (citing R. 33-34, 45 (Compl. ¶¶ 70, 73, 74, 76, 124)). The lower courts applied the same well-established principles to this case as apply to all others—including other ATA cases. Petitioners' claim that denying them discovery so that they can seek facts to make a cognizable claim for relief is little more than *ipse dixit*; their demand for a case-based exception to the operation of the Federal Rules of Civil Procedure and this Court's interpretation of them is unwarranted.

Finally, Petitioners ask this Court to review and narrow the Court's recent, unanimous opinion in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), to permit a special pleading standard for an entity such

as USCPR because, unlike Twitter, it is a "relatively small American charity." Pet. 15. Even setting aside the dubious merits of this proposal, any such ruling would not cure the independent defects in their Complaint that resulted in its dismissal and thus cannot be an appropriate basis for this Court's review.

STATEMENT OF THE CASE

Respondent USCPR is a non-profit 501(c)(3) organization that engages in public education and outreach to promote Palestinian rights and peace in the Middle East. R. 21-22 (Compl. ¶ 22). The relevant factual allegations about USCPR in Petitioners' Complaint relate to two actions that USCPR took: (1) USCPR served as the Boycott National Committee's fiscal sponsor in the United States as of November 2017, R. 45-46 (Compl. ¶¶ 123-126); and (2) USCPR referenced the Great Return March in an email and on social media, criticizing Israel's use of lethal force against the demonstrators, and urged supporters to contact their Congressional representatives. R. 47-48 (Compl. ¶ 132).

The Complaint describes the Boycott National Committee as the "broadest coalition in Palestinian civil society that leads the global BDS [boycott, divestment and sanctions] movement for Palestinian rights." R. 45 (Compl. ¶ 124). It alleges that "the Boycott National Committee was established 'as the Palestinian coordinating body for the BDS campaign worldwide…' with the role of strengthening and spreading 'boycott as a central form of civil

resistance,'" R. 33-34 (Compl. ¶ 76), after 170 groups representing Palestinians from multiple sectors "endorsed the Boycott[,] Divestment and Sanctions Call." R. 33 (Compl. ¶ 73).[2]

The Petition proceeds as if a Complaint were not already on record and instead largely manufactures conclusory bases for liability which are not supported by the Complaint's factual allegations. Petitioners assert to this Court that: (i) the USCPR "funneled [funds] to Hamas to assist in the launchings of incendiary devices," Pet. 4; (ii) the USCPR transmitted funds "to assist in financing the 'Great Return March,'" *id.* at 4; (iii) the USCPR "funnel[s] financial assistance and material support circuitously" for a "novel terrorist strategy," *id.* at 5; and (iv) the USCPR "transmits the tax-deductible funds to the 'Palestinian National and Islamic Forces.'" *Id.* at 6. *Not one* of these accusations is supported by allegations in Petitioners' Complaint.

As the D.C. Circuit's careful review revealed, and contrary to the Petition's mischaracterization, *id.* at 15, the Complaint does not allege that the USCPR transmitted any money outside the United States, let alone to Hamas. As the D.C. Circuit correctly observed, "the Complaint contains no allegations about the nature and extent of USCPR's donations to the Boycott National Committee, how the Boycott National Committee spends its funds, or

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[2] None of the 271 paragraphs of the Complaint contain a factual allegation that the Boycott National Committee seeks the "elimination of Israel." R. 34 (Compl. ¶ 76). This conclusory allegation contradicts the Complaint's factual allegations that are quoted in the text above.

how donations to the Boycott National Committee are funneled to the PNIF or Hamas." App. 11.[3] Thus, with respect to direct liability, there were no factual allegations to support the assertion that USCPR donations to the Boycott National Committee "are . . . donations to Hamas," App. 9, and for purposes of aiding and abetting liability, "the Complaint does not even allege that the Boycott National Committee provided funds to Hamas," App. 16, much less that USCPR did so.

Although the Complaint makes conclusory assertions that money provided to the Boycott National Committee "directly and indirectly" benefits Hamas and other unidentified terrorist organizations, *see, e.g.*, R. 22 (Compl. ¶ 24), it contains no factual allegations in its 271-paragraph pleading that any monies collected by the USCPR on behalf of the Boycott National Committee went to Hamas or any terrorist organization. As the D.C. Circuit noted, the "linchpin" of the direct liability claim is a "bold assertion" that the Boycott National Committee is a "direct front" for Hamas. App. 10. It found that the Complaint contained no factual allegations supporting that claim. App. 11 ("The web of connections alleged in the Complaint falls far short of establishing that the Boycott National Committee is an extension of Hamas or has been

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[3] All that the Complaint actually alleges is that, as a fiscal sponsor for the Boycott National Committee, USCPR collects donations and "transmits monies from the United States to the [Boycott National Committee]." R. 22, 45 (Compl. ¶¶ 24, 123). The Complaint further alleges that the USCPR "sponsor[ed] the [Boycott National Committee] representative in North America." R. 67, 69 (Compl. ¶¶ 244, 257).

taken over by Hamas. Thus, appellants fail to lend factual support to their claim that USCPR provided money to Hamas.").

Petitioners' misstatement regarding the USCPR "financing the 'Great Return March'" in 2018, Pet. 4 – during which incendiary balloons and kites were reportedly launched into Israel – is also unsupported by any of the Complaint's allegations. There are no factual allegations that the USCPR had any relationship to the Great Return March beyond social media posts and an email defending the marchers' rights. R. 47-48 (Compl. ¶ 132). Furthermore, as the D.C. Circuit found, "appellants do not allege that the money provided to the Boycott Committee by USCPR funded incendiary attacks." App. 11.

Petitioners also incorrectly claim that the Boycott National Committee includes five members that are designated Foreign Terrorist Organizations ("FTOs"). Pet. 6. What the Complaint actually alleges is that one of the Boycott National Committee's members is the Palestinian National and Islamic Forces ("PNIF"), R. 34 (Compl. ¶¶ 77, 78), and that the PNIF itself is a coalition made up of "all the political national and Islamic factions," R. 34 (Compl. ¶ 78), five of which are designated FTOs, including Hamas. R. 32 (Compl. ¶ 66). There is no allegation that any of the five FTOs is a member of the Boycott National Committee, nor is there an allegation that the PNIF is a terrorist organization. And, as the D.C. Circuit found, "the Complaint does not even adequately allege that Hamas launched the incendiary kites and balloons that terrorized

appellants," App. 11 (citing the Complaint's attribution of "those attacks to the Sons of al-Zawari, 'Palestinian youths,' or 'H[amas] and/or others.'" R. 16-21, 27-29, 37 (Compl. ¶¶ 9–21, 52, 100)), or that it was otherwise responsible for the attacks. App. 12.

The sensational yet unsupported accusations in the Petition and elaborated on in Amici Briefs cannot replace the insufficient factual allegations of the Complaint which fail to connect USCPR and the ultimate attacks for which Petitioners seek redress.

PROCEDURAL HISTORY

The District Court dismissed Petitioners' Complaint for failure to state a claim for relief and denied their motion for reconsideration.[4] App. 6-7. The District of Columbia Circuit Court of Appeals affirmed that dismissal without dissent and denied Petitioners' petition for panel rehearing. App. 2, 34. Petitioners did not seek rehearing en banc. They petitioned for a writ of certiorari, and submitted a supplemental letter improperly asserting irrelevant facts outside the record.[5] This Court requested a response to the Petition.

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[4] A Petitioner listed on this petition – KKL-JNF – is not a proper party before this Court. It is an Israeli "Public Benefit Company," R. 15 (Compl. ¶ 7), which did not and could not have brought ATA claims as it is not a U.S. national. App. 3. It brought state claims which the District Court dismissed for lack of pendent jurisdiction; it did not appeal that decision to the D.C. Circuit. App. 3, 6-7, 31-32.

[5] There is no nexus between the events detailed in Petitioners' Supplemental Brief and the legal or factual issues in this case involving the conduct of USCPR. The sole purpose appears to be another unjustified political attempt to attribute

REASONS FOR DENYING THE PETITION

I. THE COMPLAINT WAS PROPERLY DISMISSED FOR FAILURE TO STATE A CLAIM FOR RELIEF UNDER THE PLEADING REQUIREMENTS OF *TWOMBLY/IQBAL*

To survive a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must allege facts that state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating a complaint, the Court must disregard "labels and conclusions," "conclusory statements," "formulaic recitation of the elements of a cause of action," "legal conclusion[s] couched as . . . factual allegation[s]" and "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)). The Court "need not accept inferences unsupported by facts or legal conclusions cast in the form of factual allegations." *City of Harper Woods Emps.' Ret. Sys. v. Olver*, 589 F.3d 1292, 1298 (D.C. Cir. 2009). To survive a motion to dismiss, a complaint must "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," which requires "more than the mere possibility of misconduct." App. 13 (quoting *Iqbal*, 556 U.S. at 678–79).

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to all Palestinians – and those who advocate for their rights – the conduct of Hamas.

A. The D.C. Circuit Correctly Determined that Petitioners' Factual Allegations Were Insufficient to Support Liability Under the ATA.

The D.C. Circuit appropriately applied *Twombly/Iqbal* when it concluded that Petitioners failed to state a claim either under their theory of direct liability or aiding-and-abetting liability. As to direct liability, the D.C. Circuit found first that "appellants' factual allegations fail to support their assertion that the Boycott National Committee is a front for Hamas, and that USCPR is directly liable for perpetrating international terrorism by donating money to the Boycott National Committee." App. 13. And with respect to the element of causation, the D.C. Circuit concluded, "[t]o the extent that appellants claim that the Boycott National Committee is independently linked to the incendiary attacks, that claim similarly fails: Appellants insufficiently allege that USCPR's financial aid led to the incendiary attacks, thereby proximately causing appellants' injuries." *Id.*[6]

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[6] The Louis D. Brandeis Center Amicus Brief (which mistakenly states that it is filed in support of Respondent, and fails to mention that its president, Alyza D. Lewin, represented Petitioners in this case in the D.C. Circuit, App. 1) rests entirely on misstatements about the factual pleadings in the Complaint. These errors suffuse its analysis of both direct and aiding and abetting liability. And ignoring the role of courts at the motion to dismiss stage and the burden on Petitioners to actually plead sufficient facts, the Brandeis Center Amicus dismisses the D.C. Circuit's analysis as mere "quibbling." Brandeis Center Amicus Br. 9. *See contra Twitter, Inc. v. Taamneh,* 598 U.S. 471, 505-06 (2023), noting the importance of the amount and duration of the assistance to the question of whether the aid was "substantial."

With regard to the claim that USCPR aided and abetted Hamas in the launching of incendiary devices, the D.C. Circuit "discern[ed] no non-conclusory factual allegations" that USCPR "knowingly and substantially assist[ed]" any incendiary launches. App. 16 (quoting *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 220 (D.C. Cir. 2022), *reh'g denied*, No. 20-7077, 2023 WL 1479424 (Feb. 2, 2023), *petition for cert. filed*, No. 23-9 (July 5, 2023)). The D.C. Circuit also observed that Petitioners "fail to allege that the funds that USCPR provided to the Boycott National Committee were used to finance any terrorist attacks, much less that USCPR was aware that it was happening." *Id.* Indeed, as the Court noted, "the Complaint does not even allege that the Boycott National Committee provided funds to Hamas." *Id.*[7]

The pleading requirements in an ATA case are not elective; they serve an elementary purpose

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[7] Amicus Brandeis Center's argument of secondary liability rests on the fact that money is fungible. But money ultimately has to be directed to someone—in whatever form—to support liability. The Complaint alleges that money went from USCPR to the Boycott National Committee, but stops there in the chain of causation: there is *no allegation* that any of that money went from the Boycott National Committee to any other entity. The same deficiency in factual allegations that doomed the direct liability claim dooms the aiding and abetting claim. There is no factual allegation connecting the money from USCPR to Hamas or any other group alleged to have launched incendiary balloons and kites, much less that USCPR aided the launching of those incendiary devices. *See Taamneh*, 598 U.S. at 495 ("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").

in the scheme of our civil procedure. Thus, "[i]t is not . . . proper to assume that the [plaintiff] can prove facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983) (quoted with approval in *Twombly*, 550 U.S. at 563 n.8). Petitioners are entitled to no special pleading dispensation. Their Complaint was properly dismissed for failing to satisfy the pleading requirements of Iqbal and Twombly.[8]

B. Routine Application of Well-Established Pleading Standards, Not Anti-Israel Bias, Guided the D.C. Circuit's Opinion.

Rather than adequately address the obvious factual deficiencies the D.C. Circuit identified in the Complaint, Petitioners claim that its decision

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[8] Amicus Brandeis Center further complains that the D.C. Circuit failed to adopt a rule from the Seventh Circuit that it mistakenly believes this Court can review now. The D.C. Circuit explicitly declined to rule on the split in the Second and Seventh Circuits because Petitioners' factual allegations failed to state a claim under *any* legal standard. The D.C. Circuit found, even assuming that the Seventh Circuit's "*Boim*[] theory of liability is available to appellants, they fail to plausibly allege facts that support their claim. At bottom, the instant Complaint does not adequately plead that USCPR provided money to Hamas." App. 10 (referencing *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685 (7th Cir. 2008) (en banc)). Accordingly, because the Complaint was dismissed on grounds unrelated to the conflict between the Second and Seventh Circuits, this case is not an appropriate vehicle for consideration of that split.

evidenced bias against them by refusing to permit them the license to skip basic pleading requirements and subject USCPR to intrusive discovery.

To begin, the D.C. Circuit properly affirmed dismissal for failure to state a claim after drawing all reasonable inferences in Petitioners' favor, *see* App. 7, 13, concluding that the Complaint did not ultimately "'allege enough fact[s] to raise a reasonable expectation that discovery will reveal evidence' supporting the plaintiff's claims." App. 13 (quoting *Twombly*, 550 U.S. at 556). *Iqbal* makes clear that Federal Rule of Civil Procedure 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." 556 U.S. at 678-79. Petitioners seek discovery that *Iqbal* specifically proscribes. No authority supports Petitioners' claimed entitlement to discovery to supplement allegations that are insufficient to withstand a Rule 12(b)(6) motion.

Petitioners nevertheless urge that certiorari should be granted because the courts below "discriminated against Americans residing in Israel" by holding them to a higher pleading standard and not permitting them the opportunity for discovery on a Rule 12(b)(6) motion. Pet. 8-9. Petitioners' assertion of discrimination is baseless. First, Petitioners erroneously maintain that no ATA case involving victims outside of Israel has been dismissed under Rule 12(b)(6) (without discovery), citing several cases that survived motions to dismiss. *Id*. This is evidence of nothing. Petitioners ignore the many ATA cases arising from other countries that have likewise been dismissed for

failure to state a claim, all without discovery on the Rule 12(b)(6) claim. *See, e.g., Owens v. BNP Paribas S.A.*, 235 F. Supp. 3d 85 (D.D.C. 2017), *aff'd*, 897 F.3d 266 (D.C. Cir. 2018) (bombings of U.S. embassies in Kenya and Tanzania); *Shaffer v. Deutsche Bank AG*, No. 16-CR-497-MJR-SCW, 2017 WL 8786497 (S.D. Ill. Dec. 7, 2017), *aff'd sub nom. Kemper v. Deutsche Bank AG*, 911 F.3d 383 (7th Cir. 2018) (U.S. personnel in Iraq); *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116 (N.D. Cal. 2016), *aff'd*, 881 F.3d 739 (9th Cir. 2018) (U.S. contractors in Jordan); *Doe v. Tapang,* No. 18-cv-07721-NC, 2019 WL 3576995 (N.D. Cal. Aug. 6, 2019), *aff'd*, 834 F. App'x 399 (9th Cir. 2021) (Cameroon).

Further undermining Petitioners' logic, numerous complaints on behalf of American citizens injured in Israel and the Palestinian territory it occupies, including for injuries caused by Hamas, have survived motions to dismiss. *See, e.g., Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1, 57 (D.D.C. 2010); *Averbach v. Cairo Amman Bank*, No. 19-cv-0004-GHW-KHP, 2022 WL 2530797 (S.D.N.Y. Apr. 11, 2022); *Singer v. Bank of Palestine*, No. 19-cv-006 (ENV) (RML), 2021 WL 4205176 (E.D.N.Y. Apr. 30, 2021); *Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33 (E.D.N.Y. 2019); *Linde v. Arab Bank, PLC,* 384 F. Supp. 2d 571 (E.D.N.Y. 2005); *Weiss v. Arab Bank, PLC,* No. 06 CV 1623 (NG)(VVP), 2007 WL 4565060 (E.D.N.Y. Dec. 21, 2007). Dismissal of a complaint for failure to state a claim prior to fact discovery is not evidence of judicial prejudice; it is consistent with this Court's guidance. *Iqbal*, 556 U.S. at 678-80.

Without any factual support, Petitioners also contend that the D.C. Circuit's conclusions regarding the nature of the Boycott National Committee's activities "evidence an anti-Israel bias." Pet. 10. But the language upon which the D.C. Circuit relies simply quotes directly from the factual allegations of the Complaint. *See* App. 10 (quoting R. 33-34, 45 (Compl. ¶¶ 74, 76, 124)).[9] As previously described, the Court thereafter evaluated the Complaint's other allegations regarding the Boycott National Committee and found that there are "no allegations about the nature and extent of USCPR's donations to the Boycott National Committee, how the Boycott National Committee spends its funds, or how donations to the Boycott National Committee are funneled to the PNIF or Hamas." App. 11. This review of the allegations is what a court is tasked to do on a motion to dismiss; a finding that the allegations did not state a claim is simply not evidence of bias.[10]

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[9] Amicus Zachor Legal Institute (Zachor) argues the D.C. Circuit's prejudice is somehow reflected by its supposed "willful refusal to properly weigh the documented allegations of Petitioners." Zachor Amicus Br. 5. Similarly, the Zionist Organization of America (ZOA) attempts to substitute its notion of "common sense" for the Complaint's factual allegations, which it blatantly disregards. ZOA Amicus Br. 4. Ultimately, there are *no* factual allegations in the Complaint to support the conclusory assertion that money from USCPR went to Hamas or that the Boycott National Committee was a front for Hamas, and a court is not free to substitute ZOA's factually unsupported claim of "common sense" for the actual factual allegations of the Complaint.

[10] Seeking to litigate a political dispute in no way relevant to the factual sufficiency of Petitioners' claims, Petitioners contend, without citing any authority: "Federal law and the law of many States treat boycotts of Israel as contrary to US anti-

Petitioners' other unsupported claims of discrimination also stem from their inadequate pleadings. Petitioners allege bias because the D.C. Circuit found that their Complaint failed to plead that Hamas was responsible for the incendiary attacks. Pet. 11 (citing App. 12). But, as noted above, Petitioners themselves failed to clearly identify the perpetrator of the attacks, having inconsistently pled that the attacks were attributable to the Sons of al-Zawari, "Palestinian youths," or "H[amas] and/or others." App. 11 (citing R. 16-21, 27-29, 37

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discrimination policy and not merely 'civil resistance.'" Pet. 12. This statement is irrelevant to any legal issue in this case, not to mention factually inaccurate, given judicially recognized constitutional protections associated with boycott activities. *See generally Koontz v. Watson*, 283 F. Supp. 3d 1007, 1023, 1027 (D. Kan. 2018); *Jordahl v. Brnovich*, 336 F. Supp. 3d 1016, 1049 (D. Ariz. 2018), *vacated on other grounds*, 789 F. App'x 589 (9th Cir. 2020); *Amawi v. Pflugerville Indep. Sch. Dist.*, 373 F. Supp. 3d 717 (W.D. Tex. 2019), *vacated on other grounds sub nom. Amawi v. Paxton*, 956 F.3d 816 (5th Cir. 2020); *A & R Eng'g & Testing, Inc. v. City of Houston*, 582 F. Supp. 3d 415 (S.D. Tex. 2022), *rev'd on other grounds sub nom. A & R Eng'g & Testing, Inc. v. Scott*, 72 F.4th 685 (5th Cir. 2023); *Martin v. Wrigley*, 540 F. Supp. 3d 1220, 1230 (N.D. Ga. 2021), *aff'd sub nom. Martin v. Chancellor for Bd. of Regents of Univ. Sys. of Ga.*, No. 22-12827, 2023 WL 4131443 (11th Cir. June 22, 2023); *but see contra Ark. Times LP v. Waldrip*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 774 (2023). With regard to federal law, in the Trade Facilitation and Trade Enforcement Act of 2015, Congress "notes" that boycotts against Israel by governmental bodies or international organizations are "contrary to principle of nondiscrimination under the GATT 1994," which relates not to "US anti-discrimination policy," but to import/export restrictions imposed by contracting state parties, and is inapposite to the First Amendment-protected right of non-state entities to advocate for and engage in boycotts. Pub. L. No. 114-125, § 909(b)(5), 130 Stat. 122, 237 (2016).

(Compl. ¶¶ 9–21, 52, 100).[11] Petitioners seek to excuse their unspecific allegations about the responsible direct perpetrator by their unsupported conclusion that Hamas controls everything in Gaza. Petitioners also claim that the D.C. Circuit made a "credibility judgment" in finding that Petitioners did not allege that the Boycott National Committee is an extension of Hamas or has been taken over by Hamas. Pet. 10-11. Yet there are no factual allegations that Hamas controls the Boycott National Committee, is an extension of Hamas or otherwise took it over. As discussed above, the D.C. Circuit reviewed the factual allegations in Petitioners' Complaint, and found that the alleged "web of connections . . . falls far short of establishing" that conclusion. App. 11. There is simply no evidence of discrimination in the D.C. Circuit's careful review of Petitioners' allegations.

[11] Petitioners' allegations that parties other than Hamas were responsible for the attacks not only break their attenuated theory of causation, but also disqualify them from relief under the Justice Against Sponsors of Terrorism Act (JASTA), which "restricts secondary liability by requiring that the 'act of international terrorism' be 'committed, planned, or authorized by' a foreign terrorist organization designated as such 'as of the date on which such act of international terrorism was committed, planned, or authorized.'" *Twitter, Inc. v. Taamneh,* 598 U.S. 471, 495 (2023) (quoting 18 U.S.C. § 2333(d)).

II. ANY PROPOSED LIMITATION ON THE COURT'S DECISION IN *TWITTER, INC. V. TAAMNEH* WOULD NOT ALTER THE BASES ON WHICH PETITIONERS' COMPLAINT WAS DISMISSED.

In *Twitter, Inc. v. Taamneh,* 598 U.S. 471 (2023), this Court addressed the scope of secondary liability under the ATA, offering guidance on the application of the aiding and abetting test set out in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which Congress codified as the "proper legal framework" to use in such cases.[12] Justice Against Sponsors of Terrorism Act (JASTA), Pub. L. No. 114-222, § 2(a)(5), 130 Stat. 852, 852 (2016). This Court found that plaintiffs failed to state a claim against social media platforms alleged to be "knowingly allowing ISIS and its supporters to use their platforms and their 'recommendation' algorithms" as "tools for recruiting, fundraising, and spreading . . . propaganda." *Taamneh*, 598 U.S. at 481-82. This Court thoroughly reviewed the common law of aiding and abetting to "ascertain the 'basic thrust' of *Halberstam's* elements" to help guide its application to different cases with disparate sets of facts. *Id.* at 488 (quoting *Halberstam*, 705 F.2d at 478 n.8). It found that aiding and abetting liability rests on a "conceptual core" that a defendant "consciously and culpably participated in a wrongful act so as to help

[12] Amicus Zachor Legal Institute (Zachor) acknowledges that JASTA explicitly incorporated the *Halberstam* aiding and abetting standard, yet wrongly asserts that the *Halberstam* "standard could never be used for terror financing prosecutions . . . ." Zachor Amicus Br. 13. Zachor's grievance is for Congress, not the Court, to address.

make it succeed." *Id.* at 493 (internal quotations omitted).

Petitioners propose that this Court should grant certiorari to revisit and narrow the scope of the *Taamneh* decision within one year of its issuance, asking the Court to limit *Taamneh* to (1) "'staggeringly' large companies," and (2) defendants that "engage in 'passive nonfeasance,'" or a "failure to act."[13] Pet. 14. Petitioners offer no jurisprudential reason for the Court to do so, nor do they suggest that the unanimous decision has produced inconsistency in the lower courts. Petitioners' basic justification for reopening this recent decision is that its application further dooms Petitioners' case.

Under *Taamneh,* and independent of any narrowing of the decision Petitioners proposed, Petitioners' aiding and abetting claim clearly fails with even greater force, because they did not allege that USCPR participated in any wrongful act, much less that it "consciously and culpably" did so. *Taamneh*, 598 U.S. at 493. Petitioners failed to plead "that the funds that USCPR provided to the Boycott National Committee were used to finance any terrorist attacks, much less that USCPR was aware that it was happening." App. 16. Petitioners' Complaint does not factually allege that money raised by USCPR went to any group other than the Boycott National Committee. Petitioners did not plead that the Boycott National Committee, the entity that USCPR transferred funds to, was the

[13] Petitioners also cite "*Gonzalez v. Google LLC*" in their Statement of Questions Presented No. 3, but do not refer to that case elsewhere in the Petition.

primary tortfeasor. *See Taamneh*, 598 U.S. at 491. The Complaint does not allege that when USCPR transferred funds to the Boycott National Committee, it knew the funds would go to the launching of incendiary kites or balloons, much less that the funds actually did. Indeed, the D.C. Circuit found Petitioners' "factual allegations are so clearly deficient" that it was "unnecessary to discuss [the six *Halberstam*] factors." App. 16 n.3. Like *Taamneh*'s complaint which alleged nothing about the amount of money or duration of the relationship between Google and ISIS, Petitioners' complaint does not support the conclusion that USCPR's support to the Boycott National Committee provided "substantial" assistance to the launching of kites and balloons by Hamas. *Taamneh*, 598 U.S. at 505-06. In sum, there is no plausible factual allegation that when USCPR fiscally sponsored the Boycott National Committee, it "culpably" and "knowingly" participated in the launching of incendiary kites and balloons by an FTO that injured Petitioners. *Id.* at 497. Because the "clarification" sought by Petitioners would not cure the defects identified by the D.C. Circuit in this case, there is no reason for this Court to revisit *Taamneh* here.

Finally, "narrowing" *Taamneh* to defendants that are "massive multi-purpose international corporate entities," or who engaged only in passive nonfeasance, would effectively supersede this Court's carefully reasoned analysis. Pet. 15. Recognizing that the facts of *Taamneh* were far removed from the facts of *Halberstam*, this Court sought to ascertain "the basic thrust" of *Halberstam*'s elements to adapt that "framework" to

the facts before the Court. *Taamneh*, 598 U.S. at 488. In doing so, it carefully reviewed the common law of aiding and abetting upon which *Halberstam* rested. It found that "JASTA and *Halberstam*'s elements and factors rest on the same conceptual core that has animated aiding-and-abetting liability for centuries: that the defendant consciously and culpably participated in a wrongful act so as to help make it succeed." *Id.* at 493 (internal quotations omitted). Because the Court's approach in *Taamneh* provides the flexibility to analyze claims against both large multipurpose entities like Twitter and small advocacy organizations like USCPR consistent with "the basic thrust" of the *Halberstam* framework, there is no reason to revise the decision in the manner Petitioners seek. *Id.* at 488.

CONCLUSION

Nothing in this Petition warrants this Court's review of the dismissal of Petitioners' Complaint for failure to state a claim under Rule 12(b)(6). Certiorari should be denied.

Respectfully submitted,

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