Nos. 24-20 and 24-151

IN THE
Supreme Court of the United States

MIRIAM FULD, *et al.*,
Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,
Respondents.

UNITED STATES,
Petitioner,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX
VOLUME I

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PETITION FOR WRIT OF CERTIORARI FILED IN 24-20: JULY 3, 2024
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* *See* Petition Appendix, *Miriam Fuld, et al.* v. *Palestine Liberation Organization, et al.*, No. 24-20 (July 3, 2024).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.: 1:04-ev-00397-GBD

MARK I. SOKOLOW, individually and as natural guardian of plaintiff Jamie A. Sokolow, RENA M. SOKOLOW, individually and as natural guardian of plaintiff Jamie A. Sokolow, JAMIE A. SOKOLOW, minor, by her next friends and guardians Mark I. Sokolow and Rena M. Sokolow, LAUREN M. SOKOLOW, ELANA R. SOKOLOW, SHAYNA EILEEN GOULD, RONALD ALLAN GOULD, ELISE JANET GOULD, JESSICA RINE, SHMUEL WALDMAN, HENNA NOVACK WALDMAN, MORRIS WALDMAN, EVA WALDMAN, DR. ALAN J. BAUER, individually and as natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel Bauer and Yehuda Bauer, REVITAL BAUER, individually and as natural guardian of plaintiffs Yehonathon Bauer, Binyamin Bauer, Daniel Bauer and Yehuda Bauer, YEHONATHON BAUER, minor, by his next friends and guardians Dr. Alan J. Bauer and Revital Bauer, BINYAMIN BAUER, minor, by his next friends and guardians Dr. Alan J. Bauer and Revital Bauer, DANIEL BAUER, minor, by his next friends and guardians Dr. Alan J. Bauer and Revital Bauer, YEHUDA BAUER, minor, by his next friends and guardians Dr. Alan J. Bauer and Revital Bauer, RABBI LEONARD MANDELKORN, SHAUL MANDELKORN, NURIT MANDELKORN, OZ JOSEPH GUETTA, minor, by his next friend and guardian Varda Guetta VARDA GUETTA, individually and as natural guardian of plaintiff Oz Joseph

Guetta, ROBERT L. COULTER, SR., individually and as personal representative of the Estate of Janis Ruth Coulter, DIANNE COULTER ROBERT L. COULTER, JR., DR. LARRY CARTER, individually and as personal representative of the Estate of Diane ("Dina") Carter, SHAUN COFFEL, DR. RICHARD BLUTSTEIN, individually and as personal representative of the Estate of Benjamin Blutstein, DR. KATHERINE BAKER, individually and as personal representative of the Estate of Benjamin Blutstein, REBEKAH BLUTSTEIN, NORMAN GRITZ, individually and as personal representative of the Estate of David Gritz, NEVENKA GRITZ, individually and as personal representative of the Estate of David Gritz, KAREN GOLDBERG, individually, as personal representative of the Estate of Stuart Scott Goldberg and as natural guardian of plaintiffs Chana Bracha Goldberg, Esther Zahava Goldberg, Yitzhak Shalom Goldberg, Shoshana Malka Goldberg, Eliezer Simcha Goldberg, Yaakov Moshe Goldberg and Tzvi Yehoshua Goldberg, CHANA BRACHA GOLDBERG, minor, by her next friend and guardian Karen Goldberg, ESTHER ZAHAVA GOLDBERG, minor, by her next friend and guardian Karen Goldberg, YITZHAK SHALOM GOLDBERG, minor, by his next friend and guardian Karen Goldberg, SHOSHANA MALKA GOLDBERG, minor, by her next friend and guardian Karen Goldberg, ELIEZER SIMCHA GOLDBERG, minor, by his next friend and guardian Karen Goldberg, YAAKOV MOSHE GOLDBERG minor, by his - next friend and guardian Karen Goldberg, and TZVI YEHOSHUA GOLDBERG minor, by his next friend and guardian Karen Goldberg

Plaintiffs,

vs.

THE PALESTINE LIBERATION ORGANIZATION, THE PALESTINIAN AUTHORITY (a/k/a "The Palestinian Interim Self-Government Authority" and/or "The Palestinian Council" and/or "The Palestinian National Authority"), and JOHN DOES 1-99

Defendants.

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This is a civil action pursuant to the Antiterrorism Act, 18 U.S.C. §2331 *et. seq.,* and supplemental causes of action, brought by United States citizens, and by the guardians, family members and the personal representatives of the estates of United States citizens, who were killed and injured in a series of terrorist attacks carried out by defendants between January 8, 2001 and January 29, 2004, in or near Jerusalem, Israel.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter and over defendants pursuant to 18 U.S.C. §§2333 and 2334 and the rules of supplemental jurisdiction.

3. The Southern District of New York is the proper venue for this action pursuant to 18 U.S.C. §2334(a) since defendants Palestinian Authority and Palestine Liberation Organization maintain an office and agent in this district and are resident in this district.

THE PARTIES

4. Plaintiff MARK I. SOKOLOW was severely harmed by a terrorist bombing planned and carried out by defendants on January 27, 2002, in Jerusalem, Israel (hereinafter: "the January 27, 2002 bombing"), and is, and at all times relevant hereto was, an American citizen. Plaintiff MARK I. SOKOLOW brings this action individually and on behalf of his minor daughter, plaintiff JAMIE A. SOKOLOW.

5. Plaintiff RENA M. SOKOLOW was severely harmed by the January 27, 2002 bombing, and is, and at all times relevant hereto was, an American citizen. Plaintiff RENA M. SOKOLOW brings this action individually and on behalf of her minor daughter, plaintiff JAMIE A. SOKOLOW.

6. Plaintiff JAMIE A. SOKOLOW was severely harmed by the January 27, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the minor daughter of plaintiffs MARK I. SOKOLOW and RENA M. SOKOLOW and the sister of plaintiffs LAUREN M. SOKOLOW and ELANA R. SOKOLOW.

7. Plaintiff LAUREN M. SOKOLOW was severely harmed by the January 27, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the daughter of plaintiffs MARK I. SOKOLOW and RENA M. SOKOLOW and the sister of plaintiffs ELANA R. SOKOLOW and JAMIE A. SOKOLOW.

8. Plaintiff ELANA R. SOKOLOW was severely harmed by the January 27, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the daughter of plaintiffs MARK I.

SOKOLOW and RENA M. SOKOLOW and the sister of plaintiffs LAUREN M. SOKOLOW and JAMIE A. SOKOLOW.

9. Plaintiff SHAYNA EILEEN GOULD (hereinafter: "SHAYNA GOULD") was severely harmed by a terrorist shooting attack planned and carried out by defendants on January 22, 2002, in Jerusalem, Israel (hereinafter: "the January 22, 2002 shooting attack"), and is, and at all times relevant hereto was, an American citizen.

10. Plaintiff RONALD ALLAN GOULD (hereinafter: "RONALD GOULD") was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the father of plaintiff SHAYNA GOULD.

11. Plaintiff ELISE JANET GOULD (hereinafter: "ELISE GOULD") was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the mother of plaintiff SHAYNA GOULD.

12. Plaintiff JESSICA RINE was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the sister of plaintiff SHAYNA GOULD.

13. Plaintiff SHMUEL WALDMAN was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen.

14. Plaintiff HENNA NOVACK WALDMAN (hereinafter: "HENNA WALDMAN") was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the wife of plaintiff SHMUEL WALDMAN.

15. Plaintiff MORRIS WALDMAN was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the father of plaintiff SHMUEL WALDMAN.

16. Plaintiff EVA WALDMAN was severely harmed by the January 22, 2002 shooting attack and is, and at all times relevant hereto was, an American citizen and the mother of plaintiff SHMUEL WALDMAN.

17. Plaintiff DR. ALAN J. BAUER was severely harmed by a terrorist bombing planned and carried out by defendants on March 21, 2002, in Jerusalem, Israel ("the March 21, 2002 bombing"), and is, and at all times relevant hereto was, an American citizen. Plaintiff DR. ALAN J. BAUER brings this action individually and on behalf of his minor children, plaintiffs YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER and YEHUDA BAUER.

18. Plaintiff REVITAL BAUER was severely harmed by the March 21, 2002 bombing, and is, and at all times relevant hereto was, the wife of plaintiff DR. ALAN J. BAUER. Plaintiff REVITAL BAUER brings this action individually and on behalf of her minor children, plaintiffs YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER and YEHUDA BAUER.

19. Plaintiff YEHONATHON BAUER was severely harmed by the March 21, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiffs DR. ALAN J. BAUER and REVITAL BAUER,

20. Plaintiff BINYAMIN BAUER was severely harmed by the March 21, 2002 bombing, and is, and

at all times relevant hereto was, an American citizen and the minor son of plaintiffs DR. ALAN J. BAUER and REVITAL BAUER.

21. Plaintiff DANIEL BAUER was severely harmed by the March 21, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiffs DR. ALAN J. BAUER and REVITAL BAUER.

22. Plaintiff YEHUDA BAUER was severely harmed by the March 21, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiffs DR. ALAN J. BAUER and REVITAL BAUER.

23. Plaintiff RABBI LEONARD MANDELKORN was severely harmed by a terrorist bombing planned and carried out by defendants on June 19, 2002, in Jerusalem, Israel ("the June 19, 2002 bombing"), and is, and at all times relevant hereto was, an American citizen and the father of plaintiff SHAUL MANDELKORN.

24. Plaintiff SHAUL MANDELKORN was severely harmed by the June 19, 2002 bombing, and is, and at all times relevant hereto was, the son of plaintiffs RABBI LEONARD MANDELKORN and NURIT MANDELKORN.

25. Plaintiff NURIT MANDELKORN was severely harmed by the June 19, 2002 bombing, and is, and at all times relevant hereto was, the mother of plaintiff SHAUL MANDELKORN.

26. Plaintiff OZ JOSEPH GUETTA (hereinafter: "JOSEPH GUETTA") was severely harmed by a terrorist shooting attack planned and carried out by defendants on January 8, 2001, near Jerusalem,

Israel ("the January 8, 2001 shooting attack"), and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiff VARDA GUETTA.

27. Plaintiff VARDA GUETTA was severely harmed by the January 8, 2001 shooting attack, and is, and at all times relevant hereto was, the mother of plaintiff JOSEPH GUETTA. Plaintiff VARDA GUETTA brings this action individually and on behalf of her minor son JOSEPH GUETTA.

28. Plaintiff ROBERT L. COULTER, SR. was severely harmed by a terrorist bombing planned and carried out by defendants on July 31, 2002, in Jerusalem, Israel ("the July 31, 2002 bombing"), and is, and at all times relevant hereto was, an American citizen. Plaintiff ROBERT L. COULTER, SR. is the father of American citizen Janis Ruth Coulter, who was murdered in the July 31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of Janis Ruth Coulter.

29. Plaintiff DIANNE COULTER MILLER was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the sister of decedent Janis Ruth Coulter.

30. Plaintiff ROBERT L. COULTER, JR. was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the brother of decedent Janis Ruth Coulter.

31. Plaintiff DR. LARRY CARTER was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen. Plaintiff DR. LARRY CARTER is the father of American citizen Diane ("Dina") Carter, who was

murdered in the July 31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of Diane ("Dina") Carter.

32. Plaintiff SHAUN COFFEL was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the sister of decedent Janis Diane ("Dina") Carter.

33. Plaintiff DR. RICHARD BLUTSTEIN was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen. Plaintiff DR. RICHARD BLUTSTEIN is the father of American citizen Benjamin Blutstein, who was murdered in the July 31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of Benjamin Blutstein.

34. Plaintiff DR. KATHERINE BAKER was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen. Plaintiff DR. KATHERINE BAKER is the mother of American citizen Benjamin Blutstein, who was murdered in the July 31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of Benjamin Blutstein.

35. Plaintiff REBEKAH BLUTSTEIN was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen and the sister of decedent Benjamin Blutstein.

36. Plaintiff NORMAN GRITZ was severely harmed by the July 31, 2002 bombing, and is, and at all times relevant hereto was, an American citizen. Plaintiff NORMAN GRITZ is the father of American citizen David Gritz, who was murdered in the July

31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of David Gritz.

37. Plaintiff NEVENKA GRITZ was severely harmed by the July 31, 2002 bombing. Plaintiff NEVENKA GRITZ is the mother of American citizen David Gritz, who was murdered in the July 31, 2002 bombing, and brings this action individually and as the personal representative of the Estate of David Gritz.

38. Plaintiff KAREN GOLDBERG was severely harmed by a terrorist bombing planned and carried out by defendants on January 29, 2004, in Jerusalem, Israel ("the January 29, 2004 bombing"), and is, and at all times relevant hereto was, an American citizen. Plaintiff KAREN GOLDBERG is the wife of Stuart Scott Goldberg, who was murdered in the January 29, 2004 bombing, and brings this action individually, as the personal representative of the Estate of Stuart Scott Goldberg and as natural guardian of her minor children plaintiffs Charm Bracha Goldberg, Esther Zahava Goldberg, Yitzhak Shalom Goldberg, Shoshana Malka Goldberg, Eliezer Simcha Goldberg, Yaakov Moshe Goldberg and Tzvi Yehoshua Goldberg.

39. Plaintiff CHANA BRACHA GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor daughter of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

40. Plaintiff ESTHER ZAHAVA GOLDBERG was severely harmed by the January 29, 2004 bombing,

and is, and at all times relevant hereto was, an American citizen and the minor daughter of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

41. Plaintiff YITZHAK SHALOM GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

42. Plaintiff SHOSHANA MALKA GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor daughter of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

43. Plaintiff ELIEZER SIMCHA GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

44. Plaintiff YAAKOV MOSHE GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiff KAREN GOLDBERG and decedent Stuart Scott Goldberg.

45. Plaintiff TZVI YEHOSHUA GOLDBERG was severely harmed by the January 29, 2004 bombing, and is, and at all times relevant hereto was, an American citizen and the minor son of plaintiff

KAREN GOLDBERG and decedent Stuart Scott Goldberg.

46. Defendant THE PALESTINE LIBERATION ORGANIZATION (hereinafter "PLO") is and at all times relevant hereto was, a legal person as defined in 18 U.S.C. §2331(3).

47. Defendant THE PALESTINIAN AUTHORITY, also known as The Palestinian Interim Self-Government Authority and/or The Palestinian National Authority and/or The Palestinian Council (hereinafter "PA") is and at all times relevant hereto was, a legal person as defined in 18 U.S.C. §2331(3).

48. Defendants JOHN DOES 1-99 are natural and/or juridical persons who/which are organs and/or agencies and/or instrumentalities and/or alter egos and/or agents and/or employees and/or co-conspirators of the other defendants. Defendants JOHN DOES 1-99 conspired, agreed and acted in concert with the other defendants to plan and carry out the terrorist attacks described herein, and planned and carried out the terrorist attacks described herein in concert and agreement with the other defendants, and/or pursuant to the directives, instructions, authorization, solicitation and/or inducement of the other defendants and/or with substantial aid, assistance and/or material support and resources provided for that purpose by the other defendants.

STATEMENT OF FACTS

49. Since its establishment in the 1960s and until the present day, defendant PLO has funded, planned and carried out thousands of terrorist bombings and shootings, resulting in the deaths of hundreds of innocent civilians and the wounding of thousands

more. Dozens of United States citizens have been murdered, and scores more wounded, by terrorist attacks carried out by defendant PLO. Congress has explicitly found that "the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad." 22 U.S.C. §5201. At all times relevant hereto, the PLO has carried out and utilized these terrorist attacks as an established and systematic policy and practice, as a means of advancing and achieving its political goals.

50. Since its establishment in 1994 and until the present day, defendant PA has planned and carried out hundreds of terrorist bombings and shootings, resulting in the deaths of hundreds of civilians and the wounding of thousands more. Several United States citizens have been murdered, and many more wounded, by terrorist attacks carried out by defendant PA. At all times relevant hereto, the PA has carried out and utilized these terrorist attacks as an established and systematic policy and practice, as a means of advancing and achieving its political goals.

51. At all times relevant hereto, defendants PLO and PA planned and carried out terrorist attacks against civilians through their officials, agents and employees. These officials, agents and employees were and are organized into various specially-trained units and cells, which plan and execute terrorist attacks on behalf of and for the PLO and PA. These terrorist units and cells are agents, instrumentalities, agencies, organs and/or alter egos of defendants PLO and PA, and are wholly funded and controlled by defendants PLO and PA (collectively hereinafter: "terrorist units"). The terrorist units of the PLO and

PA which at all times relevant hereto planned and carried out terrorist attacks on behalf of and for the PLO and PA, include, without limitation, those known as "Fatah," "Tanzim," "Fatah-Tanzim," "Al Aqsa Brigades," and "Martyrs of Al Aqsa."

52. At all times relevant hereto, defendants PLO and PA, their terrorist units including without limitation "Fatah," "Tanzim," "Fatah-Tanzim," "Al Aqsa Brigades," and "Martrys of Al Aqsa," and their officials, agents and employees including the other defendants herein, agreed and conspired with one another to carry out acts of international terrorism (within the meaning of 18 U.S.C. §2331), and knowingly aided, abetted, funded and provided a wide range of weapons and other substantial material support and resources to one another for the execution of acts of international terrorism, all with the specific intention of funding, causing and facilitating the commission of acts of international terrorism.

53. On an unknown date prior to January 8, 2001, defendants PLO and PA authorized, ordered, instructed, solicited and directed their terrorist units, including without limitation "Fatah," "Tanzim," "Fatah-Tanzim," "Al Aqsa Brigades," and "Martrys of Al Aqsa," and their officials, agents and employees including the other defendants herein, to organize, plan and execute a series of terrorist attacks against civilians in Israel and the West Bank. Defendants did so with actual knowledge that their previous terrorist attacks had killed and injured numerous U.S. citizens, and that additional U.S. citizens and other innocent civilians would be

killed and injured as a result of further such acts of terrorism.

The Shooting Attack on January 8, 2001

54. Muhanad Abu Halawa, deceased (hereinafter "Abu Halawa") at all times relevant hereto was an employee and agent of the PLO and the PA.

55. At an unknown date or dates prior to January 8, 2001, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA and within the scope of their agency and employment, Abu Halawa and several of JOHN DOES 1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a machine-gun attack on a civilian vehicle traveling on the roads near Jerusalem, Israel.

56. Accordingly, on January 8, 2001, Abu Halawa and three of the JOHN DOE defendants traveled by car to the area of Givon Junction near Jerusalem, in order to carry out the machine-gun attack.

57. At approximately 7:00 PM on January 8, 2001, Abu Halawa and the three JOHN DOE defendants with him opened machine-gun fire on a passenger car in which plaintiffs JOSEPH GUETTA and VARDA GUETTA were traveling near Givon Junction, with the intention of murdering or injuring plaintiffs JOSEPH GUETTA and VARDA GUETTA.

58. Plaintiff JOSEPH GUETTA, then 12 years old, was struck by several machine-gun bullets fired by Abu Halawa and the JOHN DOE defendants, as a direct and proximate result of which he suffered severe physical, emotional, mental and economic harm and injuries.

59. Plaintiff VARDA GUETTA, who was driving the car, suffered severe emotional, mental and economic harm and injuries as a direct and proximate result of the machine-gun attack.

60. The shooting attack on January 8, 2001 was planned and carried out by Abu Halawa and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA conspired, agreed and acted in concert with Abu Halawa and the JOHN DOE defendants to carry out the January 8, 2001 terrorist shooting, aided and abetted Abu Halawa and the JOHN DOE defendants to carry out that shooting, and authorized, ratified and participated in that shooting.

The Shooting Attack on January 22, 2002

61. Ahmed Taleb Mustapha Barghouti, a/k/a "Al-Faransi," (hereinafter "Ahmed Barghouti") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

62. Nasser Mahmoud Ahmed Aweis (hereinafter "Nasser Aweis") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

63. Majid Al-Masri, a/k/a "Abu Mojahed" (hereinafter "Al-Masri") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

64. Mahmoud Al-Titi (hereinafter "Al-Titi") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

65. Mohammed Abdel Rahman Salam Masalah, a/k/a "Abu Satkhah," (hereinafter "Masalah") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

66. Faras Sadak Mohammed Ghanem, a/k/a "Hitawi," (hereinafter "Ghanem") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

67. Mohammed Sarni Ibrahim Abdullah (hereinafter "Abdullah") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

68. Said Ramadan, deceased (hereinafter "Ramadan") at all times relevant hereto, was an employee and agent of the PLO and the PA.

69. At an unknown date or dates prior to January 22, 2002, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan and several of JOHN DOES 1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a machine-gun attack on innocent passersby in downtown Jerusalem, Israel.

70. Accordingly, on January 22, 2002, at approximately 4:15 PM, Ramadan arrived at Jaffa Street near the corner of Rav Kook Street in downtown Jerusalem, in order to murder and injure innocent passersby by means of a M-16 machine-gun with which he was provided for this specific purpose by the defendants.

71. At approximately 4:20 PM on January 22, 2002, Ramadan shouted "Allahu Akbar" ("God is great"), and opened fire with the M-16 machine-gun on scores of innocent passerby on Jaffa Street and Rav Kook Street, with the intention of murdering or injuring as many as possible.

72. Two elderly women were killed in the January 22, 2002 shooting attack, and over 45 innocent passersby were shot or suffered other physical injures in the attack.

73. Among those shot and wounded in the January 22, 2002 shooting attack were plaintiffs SHAYNA GOULD and SHMUEL WALDMAN.

74. Plaintiffs SHAYNA GOULD and SHMUEL WALDMAN suffered severe physical, emotional, mental and economic harm and injuries as a direct and proximate result of the January 22, 2002 shooting attack.

75. Plaintiffs RONALD GOULD, ELISE GOULD, JESSICA RINE, HENNA WALDMAN, MORRIS WALDMAN and EVA WALDMAN suffered severe emotional, mental and economic hann and injuries as a direct and proximate result of the January 22, 2002 shooting attack.

76. The shooting attack on January 22, 2002 was planned and carried out by Ahmed Barghouti,

Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation an directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA agreed, conspired and acted in concert with Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan and the JOHN DOE defendants to carry out the January 22, 2002 terrorist shooting, aided and abetted Ahmed Barghouti, Nasser Aweis, Al-Masri, AlTiti, Masalah, Ghanem, Abdullah, Ramadan and the JOHN DOE defendants to carry out that shooting, and authorized, ratified and participated in that shooting.

The Bombing Attack on January 27, 2002

77. Munzar Mahmoud Khalil Noor (hereinafter "Noor") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

78. Wafa Idris, deceased (hereinafter "Idris") at all times relevant hereto was an employee and agent of the PLO and the PA.

79. At an unknown date or dates prior to January 27, 2002, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Noor, Idris and several of JOHN DOES

1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a bombing attack on innocent passersby in downtown Jerusalem, Israel.

80. Accordingly, on January 27, 2002, at midday, Idris arrived at Jaffa Street in downtown Jerusalem, in order to murder and injure innocent passersby by means of a powerful explosive device with which she was provided for this specific purpose by the defendants. Idris detonated the explosive device shortly before 12:30 P.M., causing a massive explosion.

81. An 81 year-old man was killed in the explosion, and over 150 persons were wounded.

82. Plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW and LAUREN M. SOKOLOW, who were present on Jaffa Street at the time of the explosion and in close proximity to Idris, suffered severe burns, shrapnel wounds, fractures and other serious injuries as a result of the explosion.

83. Plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW and LAUREN M. SOKOLOW suffered severe physical, emotional, mental and economic harm and injuries as a direct and proximate result of the January 27, 2002 bombing attack.

84. Plaintiff ELANA R. SOKOLOW suffered severe emotional, mental and economic harm and injuries as a direct and proximate result of the January 27, 2002 bombing attack.

85. The bombing attack on January 27, 2002 was planned and carried out by defendants Noor, Idris and the JOHN DOE defendants acting as agents and

employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA agreed, conspired and acted in concert with Noor, Idris and the JOHN DOE defendants to carry out the January 27, 2002 terrorist bombing, aided and abetted Noor, Idris and the JOHN DOE defendants to carry out that bombing, and authorized, ratified and participated in that bombing.

The Bombing Attack on March 21, 2002

86. Abdel Karim Ratab Yunis Aweis (hereinafter "Abdel Aweis") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

87. Nasser Jamal Mousa Shawish (hereinafter "Shawish") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

88. Toufik Tirawi (hereinafter "Tirawi") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

89. Hussein Al-Shaykh (hereinafter "Al-Shaykh") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

90. Sana'a Muhammed Shehadeh (hereinafter "Shehadeh") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

91. Kaira Said Ali Sadi (hereinafter "Sadi") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

92. Mohammed Hashaika, deceased (hereinafter "Hashaika"), at all times relevant hereto was an employee and agent of the PLO and the PA.

93. At an unknown date or dates prior to March 21, 2002, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika and several of JOHN DOES 1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a bombing attack on innocent passersby in downtown Jerusalem, Israel.

94. Accordingly, on March 21, 2002, at approximately 4:15 PM, Hashaika arrived at King George Street in downtown Jerusalem, in order to murder and injure innocent passersby by means of a powerful explosive device with which he was provided for this specific purpose by the defendants. Hashaika detonated the explosive at approximately 4:20 PM, causing a massive explosion.

95. Three innocent passersby were killed in the explosion, and over 80 more were wounded.

96. Plaintiffs DR. ALAN J. BAUER and YEHONATHON BAUER, who were present on King George Street at the time of the explosion and in close proximity to Hashaika, suffered severe bums, shrapnel wounds, fractures and other serious injuries as a result of the explosion.

97. Plaintiffs DR. ALAN J. BAUER and YEHONATHON BAUER suffered severe physical, emotional, mental and economic harm and injuries as a direct and proximate result of the March 21, 2002 bombing attack.

98. Plaintiffs REVITAL BAUER, BINYAMIN BAUER, DANIEL BAUER and YEHUDA BAUER suffered severe emotional, mental and economic harm and injuries as a direct and proximate result of the March 21, 2002 bombing attack.

99. The bombing attack on March 21, 2002 was planned and carried out by defendants Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA conspired, agreed and acted in concert with Abdel Aweis, Shawish, Tirawi, Shehadeh, Sadi, Hashaika and the JOHN DOE defendants to carry out the March 21, 2002 terrorist bombing, aided and abetted Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika and the JOHN DOE defendants to carry out that bombing, and authorized, ratified and participated in that bombing.

The Bombing Attack on June 19, 2002

100. Mazan Faritach, deceased (hereinafter "Faritach"), at all times relevant hereto, was an employee and agent of the PLO and the PA.

101. At an unknown date or dates prior to June 19, 2002, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Faritach and several of JOHN DOES 1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a bombing attack on innocent passersby in Jerusalem, Israel.

102. Accordingly, on June 19, 2002, at approximately 7:00 PM, two of the JOHN DOE defendants arrived at a crowded bus stop at the French Hill intersection in northern Jerusalem, in order to murder and injure innocent passersby by means of a powerful explosive device with which they were provided for this specific purpose by the other defendants. One of the JOHN DOE defendants detonated the explosive at approximately 7:00 PM, causing a massive explosion. The other JOHN DOE defendant fled the scene of the bombing by car.

103. Seven innocent persons were killed in the explosion, and over 50 more were wounded.

104. Plaintiff SHAUL MANDELKORN, then a minor, was present at the site of the bombing and in close proximity to the bomber, and suffered severe burns, shrapnel wounds and other serious injuries as a result of the explosion.

105. Plaintiff SHAUL MANDELKORN suffered severe physical, emotional, mental and economic

harm and injuries as a direct and proximate result of the June 19, 2002 bombing attack.

106. Plaintiffs RABBI LEONARD MANDELKORN and NURIT MANDELKORN suffered severe emotional, mental and economic harm and injuries as a direct and proximate result of the June 19, 2002 bombing attack.

107. The bombing attack on June 19, 2002 was planned and carried out by Faritach and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA conspired, agreed and acted in concert with Faritach and the JOHN DOE defendants to carry out the June 19, 2002 terrorist bombing, aided and abetted Faritach and the JOHN DOE defendants to carry out that bombing, and authorized, ratified and participated in that bombing.

The Bombing Attack. on July 31 2002

108. Marwan Bin Khatib Barghouti (hereinafter "Marwan Barghouti") is, and at all times relevant hereto was, an employee and agent of the PLO and the PA.

109. At an unknown date or dates prior to July 31, 2002, acting pursuant to the authorization, instructions,

solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Marwan Barghouti, Ahmed Barghouti, several of JOHN DOES 1-99, the HAMAS terrorist organization and several members of the HAMAS terrorist organization (collectively hereinafter: "the Hebrew University bombing cell") all jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a bombing attack on the campus of the Hebrew University in Jerusalem, Israel.

110. Accordingly, on or just prior to July 31, 2002, members of the Hebrew University bombing cell planted a powerful explosive device on the campus of the Hebrew University in Jerusalem. On the afternoon of July 31, 2002, a member of the Hebrew University bombing cell detonated the explosive device in the Frank Sinatra cafeteria on the Hebrew University campus, causing a massive explosion.

111. Nine innocent persons were murdered in the explosion, including five American citizens. Over eighty-five others, including numerous American citizens, were wounded.

112. Among the American citizens murdered in the Hebrew University bombing were Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein and David Gritz.

113. As a direct and proximate result of a result of the July 31, 2002, bombing attack, American citizens Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein and David Gritz suffered great conscious pain, shock and physical and mental anguish prior to their deaths.

114. As a direct and proximate result of a result of the July 31, 2002, bombing attack and the murder of Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein and David Gritz, plaintiffs ROBERT L. COULTER, SR., DIANNE COULTER MILLER, ROBERT L. COULTER, JR., DR. LARRY CARTER, SHAUN COFFEL, DR. RICHARD BLUTSTEIN, DR. KATHERINE BAKER, REBEKAH BLUTSTEIN, NORMAN GRITZ and NEVENKA GRITZ suffered severe emotional, mental and economic harm and injuries.

115. The Hebrew University bombing attack on July 31, 2002, was planned and carried out by Marwan Barghouti, Ahmed Barghouti and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, and pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, and in furtherance of the goals and policies of defendants PLO and PA.

116. The Hebrew University bombing attack on July 31, 2002, was planned and carried out by Marwan Barghouti, Ahmed Barghouti, the JOHN DOE defendants and the other members of the Hebrew University bombing cell, using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out that attack and terrorist attacks of this type.

117. Defendants PLO and PA conspired, agreed and acted in concert with Marwan Barghouti, Ahmed Barghouti, the JOHN DOE defendants and

the other members of the Hebrew University bombing cell to carry out the Hebrew University bombing attack on July 31, 2002, aided and abetted Marwan Barghouti, Ahmed Barghouti, the JOHN DOE defendants and the other members of the Hebrew University bombing cell to carry out that bombing, and authorized, ratified and participated in that bombing.

The Bombing Attack on January 29, 2004

118. All YusufJa'ara (hereinafter "Ja'ara") at all times relevant hereto was an employee and agent of the PLO and the PA.

119. At an unknown date or dates prior to January 29, 2004, acting pursuant to the authorization, instructions, solicitation and directives of the PLO and the PA, and within the scope of their agency and employment, Ja'ara and several of JOHN DOES 1-99 jointly planned, agreed, conspired and made preparations to murder and injure innocent persons by means of a bombing attack on a public passenger bus in Jerusalem, Israel.

120. Accordingly, on January 29, 2004, Ja'ara boarded the Number 10 Egged bus in Jerusalem, in order to murder and injure innocent passengers on the bus by means of a powerful explosive device with which he was provided for this specific purpose by the defendants. Ja'ara detonated the explosive, causing a massive explosion.

121. Eleven innocent persons were killed in the explosion, and approximately 50 more were wounded.

122. Among those murdered in the bombing on January 29, 2004, was Stuart Scott Goldberg.

123. As a direct and proximate result of a result of the January 29, 2004 bombing attack, decedent Stuart Scott Goldberg suffered great conscious pain, shock and physical and mental anguish prior to his death.

124. As a direct and proximate result of the January 29, 2004 bombing attack and the murder of Stuart Scott Goldberg, plaintiffs KAREN GOLDBERG, CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG and TZVI YEHOSHUA GOLDBERG suffered severe emotional, mental and economic harm and injuries.

125. The bombing attack on January 29, 2004, was planned and carried out by Ja'ara and the JOHN DOE defendants acting as agents and employees of the PLO and PA and within the scope of their agency and employment, pursuant to the prior authorization, instructions, solicitation and directives of defendants PLO and PA, in furtherance of the goals and policies of defendants PLO and PA, and using funds, weapons, means of transportation and communication and other material support and resources supplied by defendants PLO and PA for the express purpose of carrying out this attack and terrorist attacks of this type. Defendants PLO and PA conspired, agreed and acted in concert with Ja'ara and the JOHN DOE defendants to carry out the January 29, 2004 terrorist bombing, aided and abetted Ja'ara and the JOHN DOE defendants to carry out that bombing, and authorized, ratified and participated in that bombing.

FIRST COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS INTERNATIONAL TERRORISM PURSUANT TO 18 U.S.C. § 42333

126. The preceding paragraphs are incorporated by reference as though fully set forth herein.

127. Defendants' acts constitute a violation of the criminal laws of the United States and of the several States, or would constitute criminal violations if committed within the jurisdiction of the United States and of the several States. The actions of defendants violate, or if committed within U.S. jurisdiction would violate literally scores of federal and state criminal statutes prohibiting, inter alia and without limitation: homicide, battery, assault and the construction and use of explosive devices; as well as the criminal prohibitions against aiding and abetting, attempting, serving as an accessory to, solicitation of and conspiracy to commit these and other such felonies.

128. The acts of defendants described herein were performed pursuant to and as implementation of an established policy of utilizing terrorist attacks in order to achieve their goals. Specifically, the acts of defendants described herein were intended to terrorize, intimidate and coerce the civilian population in Israel into acquiescing to defendants' political goals and demands, and to influence the policy of the United States and Israeli governments in favor of accepting defendants' political goals and demands. Moreover, defendants, themselves and through their respective officials, representatives, spokesmen, communications media and other agents: (a) repeatedly

admitted to committing acts of terrorism and violence against the civilian population in Israel and the West Bank and expressly stated that these acts were intended both to intimidate and coerce that civilian population into acquiescing to defendants' political goals and demands and to influence the policy of the United States and Israeli governments in favor of defendants' political goals and demands, and (b) expressly threatened the further occurrence of such terrorist acts if their political goals and demands were not achieved. The acts of defendants described herein therefore appear to be and were in fact intended to intimidate and coerce a civilian population, and to influence the policy of a government by intimidation or coercion, within the meaning of 18 U.S.C. §2331.

129. Defendants' acts were dangerous to human life, by their nature and as evidenced by their consequences.

130. Defendants' acts occurred outside the territorial jurisdiction of the United States.

131. The acts of defendants are therefore "acts of international terrorism" as defined under 18 U.S.C. §§2331 and 2333. The behavior of defendants also constitutes aiding and abetting acts of international terrorism, and conspiracy to commit acts of international terrorism.

132. As a direct and proximate result of the acts of international terrorism committed by defendants, and which defendants aided and abetted and/or conspired to commit, plaintiffs were caused severe injury, including: death, pain and suffering; pecuniary loss and loss of income; loss of guidance,

companionship and society; loss of consortium; severe emotional distress and mental anguish; and loss of solatium.

133. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

134. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

SECOND COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF PLAINTIFFS ROBERT L. COULTER, SR., DIANNE COULTER MILLER, ROBERT L. COULTER, JR., DR. LARRY CARTER, SHAUN COFFEL, DR. RICHARD BLUTSTEIN, DR. KATHERINE BAKER, REBEKAH BLUTSTEIN, NORMAN GRITZ, NEVENKA GRITZ, KAREN GOLDBERG, CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG, TZVI YEHOSHUA GOLDBERG AND THE ESTATES OF JANIS RUTH COULTER, DIANE ("DINA") CARTER, BENJAMIN BLUTSTEIN, DAVID GRITZ AND STUART SCOTT GOLDBERG WRONGFUL DEATH

135. The preceding paragraphs are incorporated by reference as though fully set forth herein.

136. Defendants, personally and/or through their agents and/or employees and/or co-conspirators, willfully and deliberately authorized, organized,

planned, aided, abetted, induced, conspired to commit, provided material support for and executed the terrorist attacks described above.

137. Defendants' behavior constituted a breach of legal duties to desist from committing, or aiding, abetting, authorizing, encouraging or conspiring to commit acts of international terrorism and extra-judicial killing, and to refrain from intentionally, wantonly, and/or negligently authorizing or causing the infliction of death, physical injuries and harm to persons such as the plaintiffs herein.

138. Defendants' actions were willful, malicious, intentional, wrongful, unlawful, negligent and/or reckless and were the proximate cause of the terrorist bombing and the deaths of decedents Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein, David Gritz and Stuart Scott Goldberg.

139. At the time of their deaths, decedents Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein, David Gritz and Stuart Scott Goldberg enjoyed good health, were industrious and in possession of all their faculties.

140. The murder of Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein, David Gritz and Stuart Scott Goldberg caused decedents, their estates and plaintiffs ROBERT L. COULTER, SR., DIANNE COULTER MILLER, ROBERT L. COULTER, JR., DR. LARRY CARTER, SHAUN COFFEL, DR. RICHARD BLUTSTEIN, DR. KATHERINE BAKER, REBEKAH BLUTSTEIN, NORMAN GRITZ, NEVENKA GRITZ, KAREN GOLDBERG, CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM

GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG and TZVI YEHOSHUA GOLDBERG severe injury, including: pain and suffering; pecuniary loss and loss of income; loss of guidance, companionship and society; loss of consortium; severe emotional distress and mental anguish; and loss of solatium.

141. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

142. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public warranting an award of punitive damages.

THIRD COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF PLAINTIFFS THE ESTATES OF JANIS RUTH COULTER, DIANE ("DINA") CARTER, BENJAMIN BLUTSTEIN, DAVID GRITZ AND STUART SCOTT GOLDBERG PAIN AND SUFFERING

143. The preceding paragraphs are incorporated by reference as though fully set forth herein.

144. As a result of the terrorist bombings caused by defendants' actions described herein, decedents Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein, David Gritz and Stuart Scott Goldberg, prior to their deaths, sustained great, severe, and permanent injuries to their bodies, heads, and limbs, became sick, sore, lame and disabled. From the time of the bombings until their deaths, decedents Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin

Blutstein, David Gritz and Stuart Scott Goldberg suffered great conscious pain, shock and physical and mental anguish.

145. Defendants are therefore jointly and severally liable to the estates of decedents Janis Ruth Coulter, Diane ("Dina") Carter, Benjamin Blutstein, David Gritz and Stuart Scott Goldberg for the full amount of decedents' damages, in such sums as may hereinafter be determined.

146. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

FOURTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF PLAINTIFFS MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN AND JOSEPH GUETTA BATTERY

147. The preceding paragraphs are incorporated by reference as though fully set forth herein.

148. The terrorist attacks described herein caused plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN and JOSEPH GUETTA severe physical and psychological injuries, extreme pain and suffering, and severe financial loss, including deprivation of present and future income.

149. The terrorist attacks described herein constituted batteries on the persons of plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN and JOSEPH GUETTA.

150. As a result of the severe injuries inflicted on them by the terrorist attacks described herein, plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN and JOSEPH GUETTA required hospitalization, surgeries and other medical treatment.

151. Plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN and JOSEPH GUETTA continue to suffer from permanent injuries caused by the terrorist attacks described herein.

152. Defendants' actions were willful, malicious, intentional, reckless, unlawful and were the proximate cause of the terrorist attacks described herein and the batteries on the persons of plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN and JOSEPH GUETTA and the injuries plaintiffs suffered thereby.

153. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

154. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public warranting an award of punitive damages.

FIFTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF PLAINTIFFS MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN, VARDA GUETTA AND JOSEPH GUETTA
ASSAULT

155. The preceding paragraphs are incorporated by reference as though fully set forth herein.

156. The terrorist attacks described herein and the ensuing carnage caused plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN, VARDA GUETTA and JOSEPH GUETTA fear and apprehension of harm and death and/or actual physical harm, and constituted assaults on the persons of these plaintiffs.

157. The terrorist attacks described herein and assaults on their persons, which were direct and proximate results of defendants' actions, caused plaintiffs MARK I. SOKOLOW, RENA M.

SOKOLOW, JAMIE A. SOKOLOW, LAUREN M. SOKOLOW, SHAYNA GOULD, SHMUEL WALDMAN, DR. ALAN J. BAUER, YEHONATHON BAUER, SHAUL MANDELKORN, VARDA GUETTA and JOSEPH GUETTA extreme mental anguish and/or actual physical injury and pain and suffering.

158. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

159. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public warranting an award of punitive damages.

SIXTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS LOSS OF CONSORTIUM AND SOLATIUM

160. The preceding paragraphs are incorporated by reference as though fully set forth herein.

161. As a result and by reason of the injuries caused to them by the actions of defendants described herein, plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW and LAUREN M. SOKOLOW were deprived of the services, society, company and consortium of one another and of plaintiff ELANA R. SOKOLOW, and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

162. As a result and by reason of the injuries caused to plaintiffs MARK I. SOKOLOW, RENA M. SOKOLOW, JAMIE A. SOKOLOW and LAUREN M.

SOKOLOW by the actions of defendants described herein, plaintiff ELANA R. SOKOLOW was deprived of the services, society, company and consortium of her parents and siblings, and has suffered and will continue to suffer severe mental anguish, grief, and injury to her feelings.

163. As a result and by reason of the injuries caused to her by the actions of defendants described herein, plaintiff SHAYNA GOULD was deprived of the services, society, company and consortium of her parents plaintiffs RONALD GOULD and ELISE GOULD and her sister plaintiff JESSICA RINE, and has suffered and will continue to suffer severe mental anguish, grief, and injury to her feelings.

164. As a result and by reason of the injuries caused to plaintiff SHAYNA GOULD by the actions of defendants described herein, plaintiffs RONALD GOULD, ELISE GOULD and JESSICA RINE were deprived of the services, society, company and consortium of their daughter and sister, and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

165. As a result and by reason of the injuries caused to him by the actions of defendants described herein, plaintiff SHMUEL WALDMAN was deprived of the services, society, company and consortium of his wife plaintiff HENNA WALDMAN and his parents plaintiffs MORRIS WALDMAN and EVA WALDMAN, and has suffered and will continue to suffer severe mental anguish, grief, and injury to his feelings.

166. As a result and by reason of the injuries caused to plaintiff SHMUEL WALDMAN by the

actions of defendants described herein, plaintiffs HENNA WALDMAN, MORRIS WALDMAN and EVA WALDMAN were deprived of the services, society, company and consortium of their husband and son, and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

167. As a result and by reason of the injuries caused to them by the actions of defendants described herein, plaintiffs DR. ALAN J. BAUER and YEHONATHON BAUER were deprived of the services, society, company and consortium of one another and of plaintiffs REVITAL BAUER, BINYAMIN BAUER, DANIEL BAUER and YEHUDA BAUER, and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

168. As a result and by reason of the injuries caused to plaintiffs DR. ALAN J. BAUER and YEHONATHON BAUER by the actions of defendants described herein, plaintiffs REVITAL BAUER, BINYAMIN BAUER, DANIEL BAUER and YEHUDA BAUER were deprived of the services, society, company and consortium of plaintiffs DR. ALAN J. BAUER and YEHONATHON BAUER and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

169. As a result and by reason of the injuries caused to him by the actions of defendants described herein, plaintiff SHAUL MANDELKORN was deprived of the services, society, company and consortium of his parents plaintiffs RABBI LEONARD MANDELKORN and NURIT MANDELKORN, and has suffered and will continue

to suffer severe mental anguish, grief, and injury to his feelings.

170. As a result and by reason of the injuries caused to plaintiff SHAUL MANDELKORN by the actions of defendants described herein, plaintiffs RABBI LEONARD MANDELKORN and NURIT MANDELKORN were deprived of the services, society, company and consortium of their son, and have suffered and will continue to suffer severe mental anguish, grief, and injury to their feelings.

171. As a result and by reason of the injuries caused to him by the actions of defendants described herein, plaintiff JOSEPH GUETTA was deprived of the services, society, company and consortium of his mother plaintiff VARDA GUETTA, and has suffered and will continue to suffer severe mental anguish, grief, and injury to his feelings.

172. As a result and by reason of the injuries caused to plaintiff JOSEPH GUETTA by the actions of defendants described herein, plaintiff VARDA GUETTA was deprived of the services, society, company and consortium of her son, and has suffered and will continue to suffer severe mental anguish, grief, and injury to her feelings.

173. As a result and by reason of the death of Janis Ruth Coulter, which was caused by the actions of defendants described herein, plaintiff ROBERT L. COULTER, SR., has been deprived of the services, society, consortium and solatium of his deceased daughter, and has suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to his feelings.

174. As a result and by reason of the death of Janis Ruth Coulter, which was caused by the actions of defendants described herein, plaintiffs DIANNE COULTER MILLER and ROBERT L. COULTER, JR. have been deprived of the services, society, consortium and solatium of their deceased sister, and have suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to their feelings.

175. As a result and by reason of the death of Diane ("Dina") Carter, which was caused by the actions of defendants described herein, plaintiff DR. LARRY CARTER, has been deprived of the services, society, consortium and solatium of his deceased daughter, and has suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to his feelings.

176. As a result and by reason of the death of Diane ("Dina") Carter, which was caused by the actions of defendants described herein, plaintiff SHAUN COFFEL has been deprived of the services, society, consortium and solatium of her deceased sister, and has suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to her feelings.

177. As a result and by reason of the death of Benjamin Blutstein, which was caused by the actions of defendants described herein, plaintiffs DR. RICHARD BLUTSTEIN and DR. KATHERINE BAKER have been deprived of the services, society, consortium and solatium of their deceased son, and have suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to their feelings.

178. As a result and by reason of the death of Benjamin Blutstein, which was caused by the actions of defendants described herein, plaintiff REBEKAH BLUTSTEIN has been deprived of the services, society, consortium and solatium of her deceased brother, and has suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to her feelings.

179. As a result and by reason of the death of David Gritz, which was caused by the actions of defendants described herein, plaintiffs NORMAN GRITZ and NEVENKA GRITZ have been deprived of the services, society, consortium and solatium of their deceased son, and have suffered and will continue to suffer severe mental anguish, bereavement and grief; and injury to their feelings.

180. As a result and by reason of the death of Stuart Scott Goldberg, which was caused by the actions of defendants described herein, plaintiff KAREN GOLDBERG has been deprived of the services, society, consortium and solatium of her deceased husband, and has suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to her feelings.

181. As a result and by reason of the death of Stuart Scott Goldberg, which was caused by the actions of defendants described herein, plaintiffs CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG and TZVI YEHOSHUA GOLDBERG have been deprived of the services, society, consortium and solatium of their deceased father,

and have suffered and will continue to suffer severe mental anguish, bereavement and grief, and injury to their feelings.

182. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

183. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

SEVENTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS NEGLIGENCE

184. The preceding paragraphs are incorporated by reference as though fully set forth herein.

185. Defendants, personally and/or through their agents and/or employees and/or coconspirators, willfully and deliberately and/or wantonly and/or negligently authorized, organized, planned, provided material support for and executed the terrorist attacks that harmed the plaintiffs.

186. Defendants had legal duties under local and other applicable law to desist from engaging in, or authorizing and encouraging, acts of violence, and to refrain from deliberately and/or wantonly, and/or negligently authorizing or causing the infliction of injuries to persons such as the plaintiffs herein.

187. Defendants' behavior constituted a breach of these legal duties.

188. Defendants foresaw, or should have reasonably foreseen, that their breach of these legal duties would create unreasonable risk of injuries such as those suffered by the plaintiffs to persons such as the plaintiffs.

189. As a result of defendants' wrongful and/or unlawful and/or negligent acts, plaintiffs were caused severe injury, including: death; pain and suffering; pecuniary loss and loss of income; loss of guidance, society and companionship; loss of consortium; severe emotional distress and mental anguish; and loss of solatium.

190. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

191. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

EIGHTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

192. The preceding paragraphs are incorporated by reference as though fully set forth herein.

193. Defendants' conduct was willful, outrageous, and was dangerous to human life, and constituted a violation of applicable criminal law and all international standards of civilized human conduct and common decency.

194. Defendants' conduct was intended to and did in fact terrorize the plaintiffs and cause them egregious emotional distress.

195. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

196. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

NINTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

197. The preceding paragraphs are incorporated by reference as though fully set forth herein.

198. Defendants' conduct was willful, outrageous and/or grossly negligent, and was dangerous to human life, and constituted a violation of applicable criminal law and all international standards of civilized human conduct and common decency.

199. Defendants' conduct caused the plaintiffs egregious emotional distress.

200. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

201. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

TENTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS CIVIL CONSPIRACY

202. The preceding paragraphs are incorporated by reference as though fully set forth herein.

203. Defendants knowingly and willingly conspired, agreed and acted in concert with each other, with their agents and employees and with the Hebrew University bombing cell, in a common plan and design to facilitate and cause acts of terrorism including the terrorist attacks in which plaintiffs were harmed.

204. As a result of the terrorist attacks caused, resulting from and facilitated by defendants' conspiracy, plaintiffs suffered the damages enumerated herein.

205. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

206. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

ELEVENTH COUNT

AGAINST ALL DEFENDANTS ON BEHALF OF ALL PLAINTIFFS AIDING AND ABETTING

207. The preceding paragraphs are incorporated by reference as though fully set forth herein.

208. Defendants provided one another, and their organs, agencies, instrumentalities, officials, agents and employees, and their other co-conspirators including the Hebrew University bombing cell, with

material support and resources and other substantial aid and assistance, in order to aid, abet, facilitate and cause the commission of acts of terrorism including the terrorist attacks in which plaintiffs were harmed.

209. As a result of the terrorist attacks caused, resulting from and facilitated by defendants' provision of material support and resources and other acts of aiding and abetting, plaintiffs suffered the damages enumerated herein.

210. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

211. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

TWELFTH COUNT

AGAINST DEFENDANTS PLO AND PA ON BEHALF OF ALL PLAINTIFFS VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

212. The preceding paragraphs are incorporated by reference as though fully set forth herein.

213. At all relevant times, Marwan Barghouti, Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan, Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika, Noor, Idris, Faritach, Abu Halawa, Ja'ara and JOHN DOES 1-99 were agents and/or officers and/or employees and/or organs and/or agencies and/or instrumentalities of defendants PLO and PA, and engaged in the actions described herein within

the scope of their agency, office and employment and in furtherance of the interests of defendants PLO and PA.

214. Defendants PLO and PA authorized, ratified and/or condoned the actions described herein of Marwan Barghouti, Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan, Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika, Noor, Idris, Faritach, Abu Halawa, Ja'ara and JOHN DOES 1-99.

215. Therefore, defendants PLO and PA are vicariously liable for the acts of Marwan Barghouti, Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan, Abdel Aweis, Shawish, Tirawi, Al-Shaykh, Shehadeh, Sadi, Hashaika, Noor, Idris, Faritach, Abu Halawa, Ja'ara and JOHN DOES 1-99.

216. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

217. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

THIRTEENTH COUNT

AGAINST DEFENDANTS PLO AND PA ON BEHALF OF ALL PLAINTIFFS INDUCEMENT

218. The preceding paragraphs are incorporated by reference as though fully set forth herein.

219. Defendants PLO and PA offered and provided their own and each other's officials, agents and employees, including the other defendants

herein, with substantial material and pecuniary inducements and incentives to plan, organize and execute acts of international terrorism, including the terrorist attacks in which plaintiffs were harmed. Defendants PLO and PA did so knowing that the acts for which they provided inducements and incentives were illegal and/or tortious, and that they would have been directly liable had they performed those acts themselves.

220. As a result of the terrorist attacks caused, resulting from and facilitated by the substantial material and pecuniary inducements and incentives offered and provided by defendants PLO and PA, plaintiffs suffered the damages enumerated herein.

221. Defendants are therefore jointly and severally liable for the full amount of plaintiffs' damages, in such sums as may hereinafter be determined.

222. Defendants' conduct was outrageous in the extreme, wanton, willful and malicious, and constitutes a threat to the public at large warranting an award of punitive damages.

WHEREFORE, plaintiffs demand judgment against the defendants jointly and severally, as to each of the above counts and causes of action, as follows:

A. Compensatory damages against all defendants, jointly and severally, in the amount of $1,000,000,000.00 (ONE BILLION DOLLARS);

B. Treble damages, costs and attorneys fees as provided in 18 U.S.C. §2333;

C. Punitive damages;

D. Reasonable costs and expenses;

E. Reasonable attorneys' fees; and,

F. Such further relief as the Court finds just and equitable.

Plaintiffs demand trial by jury.

Dated: May 17, 2005

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Lee Squitieri, hereby certify that on this 17th day of May, 2005, I caused true and correct copies of the First Amended Complaint to be served upon counsel for defendants listed below via First Class Mail, postage, prepaid, as follows:

Lawrence W. Schilling
Ramsey Clark
36 East 12th Street
New York, New York 10003

Lee Squitieri
LEE SQUITIERI

[865] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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04 CV 397 (GBD)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

New York, N.Y.
January 21, 2015
9:40 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

ARNOLD & PORTER LLP

Attorneys for Plaintiffs

BY: KENT A. YALOWITZ
PHILIP W. HORTON
TAL MACHNES
SARA PILDIS
CARMELA T. ROMEO
RACHEL WEISER

MILLER & CHEVALIER, CHARTERED

Attorneys for Defendants

BY: MARK J. ROCHON
LAURA G. FERGUSON
BRIAN A. HILL
MICHAEL SATIN

Also present: RACHELLE AVITAL, Hebrew interpreter
RINA NE'EMAN, Hebrew interpreter

A. The documents do not discuss the bombing at the university. But you asked me earlier, sir, about people that appear in these documents and who are connected to terror, and that's what I answered you.

Q. No, sir. I asked you about people connected to the Hebrew University incident, didn't I?

MR. YALOWITZ: Object to the form.

THE COURT: Overruled. He can answer.

A. Yes. And I answered about Marwan Barghouti, who was also mentioned in Mosaab Yousef's testimony and is also mentioned in the indictment of Ahmed Barghouti.

Q. So you remember the indictment of Ahmed Barghouti?

A. Yes. It was presented here.

Q. And he too was not convicted in the Hebrew University bombing, correct?

A. Correct.

MR. ROCHON: I think I am done with Lieutenant Colonel Eviatar. May I check with my colleagues, your Honor?

THE COURT: Yes.

MR. ROCHON: I actually did forget one or two things.

Q. The martyrs society, you mentioned that briefly the other day?

A. Yes, I recall.

Q. The actual name of it is the Institute for the Care of Martyrs Families and the Injured?

[993] A. The actual name is the Foundation for the Welfare of the Families of the Martyrs and the Injured.

Q. Eligibility for such payments comes to anyone injured as a result of the occupation, right?

A. Who is injured in the context of his struggle against the occupation.

MR. ROCHON: I think that's all I have.

A. That's the Palestinian definition.

MR. ROCHON: Thank you.

THE COURT: Do you want to take a break?

MR. YALOWITZ: As you wish. I am happy to proceed right now or take a few moments.

THE COURT: Do you think it will be longer than five or ten minutes?

MR. YALOWITZ: Redirect may be half an hour.

THE COURT: Then let's take a break.

Ladies and gentlemen, let's take a break. Don't discuss the case, keep an open mind, and I will see you in ten minutes.

(Jury exits courtroom)
(Recess)

[1394] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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04 CV 397 (GBD)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

New York, N.Y.
January 26, 2015
9:40 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge
and a Jury

Trial

APPEARANCES

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TAL MACHNES
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Also present: RACHELLE AVITAL, Hebrew interpreter
RINA NE'EMAN, Hebrew interpreter

government's policy in the Palestinian territories, correct?

MR. YALOWITZ: Objection.

THE COURT: Overruled. You can answer.

A. I was never an employee of COGAT, so I'm not familiar with the detailed definition, but as you said. It's a part of the army in Israel and the army is obedient to the government so –

Q. They are responsible for administration of Israeli policy in Gaza and the West Bank, right?

A. Generally speaking, yes.

Q. You also know a man named Roni Shaked, right?

A. Not personally.

Q. You know hoe is?

A. I know who he is, but I never met him personally.

Q. Roni Shaked also used to work for the ISA, right?

A. That's what I heard, but he is – I do believe that he retired even before I was enlisted to the service.

Q. You were here when Lieutenant Colonel Eviatar testified that the first draft of his report was written by Roni Shaked, right?

A. I was here, yes.

Q. To sum up Lieutenant Colonel Eviatar, Colonel Spitzen, Meridor, Roni Shaked and yourself have all worked for the Israeli government, correct?

A. In some point or another in our career, yes.

Q. Now, you testified about payments that were made to [1482] families of martyrs, correct?

A. Yes.

Q. We should be clear about who is considered a martyr. Any Palestinian who is killed in connection with the conflict with Israel is considered a martyr by the Palistinians, correct?

A. Yes.

Q. It doesn't matter how that person dies, right?

A. Yes, but it should be in the scope of confrontation with Israel, yes.

Q. So a Palestinian who is shot by a soldier in the West Bank is considered a martyr, right?

A. By the Palistinians, yes.

Q. And a Palestinian that is killed by an Israeli settler in the West Bank is also considered a martyr, right?

MR. YALOWITZ: Objection.

THE COURT: Overruled.

You can answer.

A. Yes. Well, no one dictates to them how to define their people so they consider them as martyrs.

Q. Any Palestinian who was accidentally killed during the Israeli invasion called operation defensive shield, they would also be considered a martyr, right?

MR. YALOWITZ: Your Honor, could I have a side bar please?

THE COURT: No. Do you have an objection?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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04 Civ. 397 (GBD) (RLE)

MARK I. SOKOLOW, *et al.*

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States submits this Statement of Interest, pursuant to 28 U.S.C. § 517,[1] to apprise the Court of its interests as they relate to the Rule 62 Motion to Stay Execution of the Judgment and to Waive the Bond Requirement (ECF No. 897) filed by defendants Palestinian Authority and Palestine Liberation Organization.

In deciding whether to stay execution of a judgment without a supersedeas bond or to reduce the bond amount, courts may consider a number of factors,

[1] 28 U.S.C. § 517 provides that: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

including the public interest. *See In re Nassau Cnty. Strip Search Cases*, 783 F.3d 414, 417-18 (2d Cir. 2015) (providing a list of "nonexclusive factors that a district court may consider" in assessing a Rule 62 motion); *Morgan Guar. Trust Co. v. Republic of Palau*, 702 F. Supp. 60, 65-66 (S.D.N.Y. 1988) (considering the public interest in ruling on a Rule 62 motion). This Statement of Interest, including the attached declaration from Deputy Secretary of State Antony J. Blinken addresses critical national security and foreign policy interests of the United States that should be considered as the Court determines whether to impose a bond requirement in this case and, if so, in what amount. The United States strongly supports the rights of victims of terrorism to vindicate their interests in federal court and to receive just compensation for their injuries. *See* 18 U.S.C. § 2333 (providing U.S. national victims of international terrorism with a cause of action, with treble damages and attorney fees, against terrorists and those who actively support terrorism that harms Americans abroad); Attached Declaration of Deputy Secretary of State Antony J. Blinken ¶¶ 3-6, 12 (Aug. 10, 2015); *see also, e.g., Brabson v. The Friendship House of West. New York, Inc.*, 2000 WL 1335745, at *2 (W.D.N.Y. Sept. 6, 2000); *Harris v. Butler*, 961 F. Supp. 61, 63 (S.D.N.Y. 1997). At the same time, the declaration notes that the United States has significant concerns about the harms that could arise if the Court were to impose a bond that severely compromised the Palestinian Authority's ("PA") ability to operate as a governmental authority. *See* Attached Declaration of Deputy Secretary of State Antony J. Blinken ¶¶ 7-11; *see, e.g.*, *Morgan Guar.*, 702 F. Supp. at 66; *Teachers Ins. & Annuity Ass'n v. Ormesa Geothermal*, 1991 WL 254573, at *4 (S.D.N.Y. Nov. 21, 1991).

The United States respectfully urges the Court to take into account these factors as it considers the evidence regarding the PA's financial situation. The Court and the parties made clear at the July 28, 2015 hearing that they are aware of the issues regarding the PA's financial stability, and the need to have some mechanism for plaintiffs to secure payment if the Court's judgment is affirmed.

The United States does not herein express a view on the ultimate merits of defendants' Rule 62 motion (or any other issue in the case). The United States files this Statement of Interest solely to inform the Court of its interests as the Court considers where the public interest lies in ruling on defendants' Rule 62 motion.

Respectfully submitted this 10th day of August, 2015.

/s/ Kathleen R. Hartnett
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
KATHLEEN R. HARTNETT
Deputy Assistant Attorney General
United States Department of Justice
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Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Kathleen R. Hartnett
KATHLEEN R. HARTNETT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1: 04 Civ. 397 (GBD) (RLE)

MARK I. SOKOLOW, *el al.*

Plaintiffs

v.

PALESTINE LIBERATION ORGANIZATION, *et al.,*

Defendants.

DECLARATION OF ANTONY J. BLINKEN

I, Antony J. Blinken, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Secretary of State. I make this declaration based on my personal knowledge and on information I have received in my official capacity. I have served as Deputy Secretary of State since January 9, 2015. In my capacity as Deputy Secretary of State, I serve as principal adviser to the Secretary of State and assist the Secretary in the formulation and conduct of U.S. foreign policy and in giving general supervision and direction to all elements of the Department.

2. This declaration addresses critical national security and foreign policy interests of the United States that should be considered as the Court determines whether to impose a bond requirement in this case and, if so, in what amount. It does not address the judgment on the merits that was entered in favor

of the plaintiffs or any issues that may be raised by the parties on appeal. As detailed below, the United States strongly supports the rights of victims of terrorism to vindicate their interests in federal court and to receive just compensation for their injuries. At the same time, the United States has significant concerns about the harms that could arise if the Court were to impose a bond that severely compromised the Palestinian Authority's ("PA") ability to operate as a governmental authority.

U.S. Commitment to Victims of Terrorism

3. The United States strongly supports U.S. victims' efforts to seek and receive just compensation from the terrorists and sponsors of terrorism responsible for attacks that kill and injure Americans abroad. In enacting the Antiterrorism Act ("ATA"), 18 U.S.C. § 2333, Congress provided U.S. citizen victims of international terrorism with a cause of action against terrorists and those who actively support terrorism that harms Americans outside of the United States.

4. The ATA promotes the public interest in providing just compensation to terrorism victims, and limiting recovery without due cause would undermine a central purpose of the law. While no amount of money can truly compensate terrorism victims for what they have suffered, obtaining financial recompense for terrorism victims in civil litigation is part of the process of achieving justice.

5. The ability of victims to recover under the ATA also advance's U.S. national security interests. The law reflects our nation's compelling interest in combatting and deterring terrorism at every level, including by eliminating sources of terrorist funding and holding sponsors of terrorism accountable for their actions.

Imposing civil liability on those who commit or sponsor acts of terrorism is an important means of deterring and defeating terrorist activity. Further, compensation of victims at the expense of those who have committed or supported terrorist acts contributes to U.S. efforts to disrupt the financing of terrorism and to impede the flow of funds or other support to terrorist activity.

6. The United States is also committed to using a variety of law enforcement tools to bring those who have engaged in acts of terror to justice. The cooperation of victims of terror is crucial to U.S. efforts to prosecute perpetrators of terror, particularly in cases of international terrorism. Their cooperation with the United States in these matters often comes at substantial personal cost, financial and otherwise. These burdens may be ameliorated to some extent through mechanisms like the ATA, easing the burden of cooperation and thereby enhancing the law enforcement interests of the United States.

U.S. Foreign Policy and National Security Interests in Continued PA Governance

7. On the limited issue of setting a bond amount in this case, the United States respectfully urges the Court to carefully consider the impact of its decision on the continued viability of the PA in light of the evidence about its financial situation. In furtherance of U.S. foreign policy interests, the United States has provided billions of dollars in assistance to strengthen Palestinian institutions, promote security in the West Bank, expand Palestinian economic growth and help create the conditions for peace. An event that deprives the PA of a significant portion of its revenues would likely severely compromise the PA's ability to operate as a governmental authority. As I explain below, the collapse of the PA would undermine several decades of

U.S. foreign policy and add a new destabilizing factor to the region, compromising national security. Senior U.S. officials have made clear to other governments that if the PA were to collapse, we would be faced with a crisis that would not only impact the security of Israelis and Palestinians, but would potentially have ripple effects elsewhere in the region.

8. Impact on Efforts to Achieve Peace: A PA insolvency and collapse would harm current and future U.S.-led efforts to achieve a two-state solution to the Israeli-Palestinian conflict. If the PA were to collapse, the Palestinian leadership would find itself without an institutional vehicle with which to govern, maintain order, and provide basic services for the Palestinian people in the West Bank. The current Palestinian leadership would likely find its legitimacy and authority undermined. The vacuum in governance and security could be filled by violent Palestinian groups that seek Israel's destruction and reject the goal of a two-state solution. The instability and violence that would result from the loss of the PA's governing authority would likely fuel anger and frustration, and could lead to widespread violence in the West Bank. In such a political environment, it would be extremely difficult for any Palestinian leader to marshal domestic political support to enter into and sustain peace negotiations.

9. Impact on Stability and Security in the Region: The PA and Israel currently have mechanisms and channels for security coordination, helping to maintain security for Palestinians and Israelis living in the West Bank, and identifying and thwarting potential terrorist attacks in Israel. The collapse of the PA would break this channel of coordination. Economic insecurity and instability in the West Bank also risks

seeping into neighboring Jordan, a country with a significant Palestinian refugee population and its own acute economic and social problems, compounded by the Syrian refugee crisis and the international effort to counter the Islamic State. The combination of a security vacuum, economic downturn, unemployment, and social frustration could create a dangerous atmosphere that could make the West Bank fertile ground for terrorist and extremist recruitment. At a time when the United States is leading international efforts to counter extremism and degrade and defeat the Islamic State, the collapse of the PA could potentially create a new vulnerability for terrorists to exploit. A worsening of the security situation in the West Bank could also have negative implications for the security situation of neighboring Israel, Jordan, and Egypt—key U.S. allies in the Middle East.

10. Humanitarian Crisis: The PA is in the midst of a deteriorating economic and political environment, generating a slow-onset humanitarian crisis in the West Bank that threatens to unravel the economic, security, and humanitarian gains of the past ten years. In Gaza, where the situation is far more dire, a worsening economic situation could be exploited by Hamas to create an atmosphere for violent conflict. Further, the collapse or near-collapse of the PA would plunge the Palestinian economy into a deep recession including a sudden dramatic increase in the already high unemployment rate, and failure of critical social services.

11. In sum, the continued viability of the PA is essential to key U.S. security and diplomatic interests, including advancing peace between Israel and the Palestinians, supporting the security of U.S. allies such as Israel, Jordan, and Egypt, combatting extremism

and terrorism, and promoting good governance. In furtherance of U.S. foreign policy interests, the United States has provided billions of dollars in assistance to strengthen Palestinian institutions, promote security in the West Bank, expand Palestinian economic growth and help create the conditions for peace.

12. In making this declaration, I would like to stress that the Department of State shares in the grief and outrage over all terrorist attacks, including the grievous injuries and losses suffered by the American victims of the attacks at the heart of this case. Indeed, as discussed above, I believe it is in our national security interest to support fair compensation for American victims of terrorism from those responsible for their losses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: August 10, 2015

/s/ Antony Blinken
Antony J. Blinken

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 04 Civ. 00397 (GBD) (RLE)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

vs.

THE PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

DECLARATION OF KENT A. YALOWITZ

Kent A. Yalowitz hereby declares as follows:

1. I am a member of the bar of this Court and of the Arnold & Porter law firm. I serve as counsel for Plaintiffs in the above-captioned case. I make this declaration to place documents and information before the Court relevant to the issue of defendants' consent to the exercise of personal jurisdiction in this case under the Promoting Security and Justice for Victims of Terrorism Act, Pub. L. No. 116-94, § 903 (PSJVTA). *See* Parts A and B, *infra*. I also make this declaration to describe information that discovery would likely reveal should such discovery be necessary, *see* Part C, *infra*, and to place certain documents before the Court, *see* Part D, *infra.*

A. Consent Under Subparagraph (1)(A)

2. Below, I summarize public-source information concerning certain incidents in which nationals of the United States were killed or injured by reason of acts

of terrorism. Where appropriate, I refer to summaries of convictions and other information contained in Israeli court documents contained in the Declaration of Nick Kaufman filed herewith. I also refer where appropriate to summaries of information concerning suicide terrorists contained in the Declaration of Arieh Spitzen filed herewith.

3. The table attached to the accompanying memorandum of law summarizes the dates and locations of relevant terror attacks, the names of U.S. nationals killed or injured in those attacks, and the names of individuals imprisoned for or killed while perpetrating those attacks. Below I detail public-source information germane to each attack listed in the table.

Date	Location of Attack	U.S. Victims' Names
06/05/1968	Los Angeles	Robert F. Kennedy

4. Robert F. Kennedy was murdered on June 5, 1968 at the Ambassador Hotel in Los Angeles, California, at an event during his campaign for the nomination to be the Democratic Party's candidate for the office of President of the United States. *See People v. Sirhan*, 7 Cal. 3d 710, 716–719 (1972) (en banc). Sirhan Bishara Sirhan was convicted of the murder. The trial record included statements by Sirhan, a Palestinian, that "I did it for my country." *Id.* at 719, 721. Sirhan testified about "his views regarding the Arab-Israel conflict and his hatred of the Zionists," *id.* at 721. On appeal, the California Supreme Court emphasized Sirhan's apparent motivations:

> Dr. Pollack further testified that "'I believe the assassination of Senator Robert Kennedy was triggered by political reasons with which [defendant] was highly emotionally charged; I

> believe that Sirhan focused on Senator Robert Kennedy as an individual who should die, not only because of the Kennedy promise to give Israel the jet bombers that would cause death to thousands of Arabs, in Sirhan's opinion, but also because Sirhan wanted the world to see . . . how strongly our United States policy was in the pro-Israelanti-Arab movement in . . . spite of our Government's professed interest for the underdog, and world justice'" and "'Sirhan . . . saw himself as a defender of the Arab cause and, as an individual who through [] this act would bring world attention to the Arab plight and also . . . materialize his fantasy of success.'"

Id. at 724–25. The California Supreme Court rejected Sirhan's challenge to the fairness of his trial but modified the judgment to provide a punishment of life imprisonment. *Id.* at 755. Sirhan remains incarcerated at this time. *See Sirhan Bishara Sirhan*, CDCR INMATE LOCATOR, https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=B21014 (last visited Oct. 23, 2020). A copy of the incarceration report is attached as Exhibit 1.

Date	Location of Attack	U.S. Victims' Names
09/05/1972	Munich	David Berger

5. David Berger was "an American/Israeli citizen who was one of the 11 Israeli athletes murdered at the 1972 Olympic Games in Munich, Germany," according to a U.S. National Park Service website describing the David Berger National Memorial. *See* https://www.nps.gov/dabe/learn/historyculture/david-berger-sculpture.htm. The Memorial subpage describes the terror attack and states:

> The Palestinian terrorists were led by Luttif Afif, his deputy Yusuf Nazzal, and other Black September members Adnan Al-Gashey and his cousin Jamal AlGashey, Afif Ahmed Hamid, Khalid Jawad, Ahmed Chic Thaa, and Mohammed Safady.

See https://www.nps.gov/dabe/tragedy-in-munich.htm. Copies of the Memorial's subpages are attached as Exhibit 2.

6. Defendants' documents confirm that Mohammed Masalha and Yusuf Nazzal died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45. Other information (such as Wikipedia) indicates that the following terrorists also died perpetrating the attack:

- Luttif Afif
- Afif Ahmed Hamid
- Khalid Jawad
- Ahmed Chic Thaa

Confirmation from defendants publicly available documents is not readily available. Discovery would reveal whether their families have received payment by reason of their deaths.

Date	Location of Attack	U.S. Victims' Names
03/02/1973	Khartoum	Cleo Noel George C. Moore

7. U.S. Ambassador to Sudan Cleo A. Noel, Jr. and Deputy Chief of Mission George C. Moore "were murdered by Black September Palestinian guerillas at the Saudi Arabian Embassy in Khartoum on March 2, [1973]." *Noel and Moore Honored with Department's Highest Award*, Dep't of State Newsletter at 44 (Aug./Sept. 1973). A copy Newsletter is attached as

Exhibit 3. The State Department concluded that this "operation was planned and carried out with the full knowledge and personal approval of Yasir Arafat, Chairman of the Palestine Liberation Organization (PLO)." Intelligence Memorandum, "The Seizure of the Saudi Arabian Embassy in Khartoum," (June 1973), *reprinted in* U.S. Dep't of State, Foreign Relations of the United States, 1969–76, Volume E-6, Documents on Africa, 1973-1976, https://history.state.gov/historicaldocuments/frus1969-76ve06/d217. A copy of the Memorandum is attached as Exhibit 4.

8. According to contemporaneous State Department reports, the eight Palestinian terrorists were tried, convicted, and sentenced to life in prison; however, Sudan's President "commuted to seven years the life sentences of the eight Palestine terrorists . . . and released them 'to the PLO' for execution of the sentences." Briefing Memorandum From the Assistant Secretary of State for African Affairs to the Under Secretary of State, "U.S. Reaction to Sudanese Decision re Eight Palestinian Terrorists" (July 1, 1974), *reprinted in* U.S. Dep't of State, Foreign Relations of the United States, 1969–76, Volume E-6, Documents on Africa, 1973-1976, https://history.state.gov/historicaldocuments/frus1969-76ve06/d217. A copy of the document is attached as Exhibit 5.

9. My colleagues and I have searched for the names of the eight convicted terrorists, but they are not readily available from public sources. As these individuals acted with the knowledge of the PLO's most senior official and were released into the PLO's custody, discovery would reveal their identities and whether they or their designees have received payment by reason of their imprisonment.

Date	Location of Attack	U.S. Victims' Names
03/11/1978	Tel Aviv	Gail Rubin

10. Gail Rubin was murdered on March 11, 1978, in the "Coastal Road massacre," in which "a group of terrorists from the Fatah Movement, led by Dalal Said Mohammad al-Mughrabi murdered Rubin, "an American tourist" and 37 others. *See Incitement to Murder by the Palestinian Authority*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Mar. 27, 2016), https://mfa.gov.il/MFA/PressRoom/2016/Pages/Incitement-to-murder-by-the-Palestinian-Authority-27-Mar-2016.aspx. A copy of the story is attached as Exhibit 6.

11. Dalal Said Mohammad al-Mughrabi is listed as a "martyr" by defendants' WAFA information service. *See* Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
05/14/1979	Tiberias	Haim Mark

12. According to public reports, Haim Mark and his wife, Haya, of New Haven, Connecticut were injured in a PLO bombing attack in Tiberias. *See* David Bedein, *Profile of a US Citizen Killed in Israel by Terrorists*, JEWISH VOICE, https://thejewishvoice.com/2013/08/profile-of-a-us-citizen-killed-in-israel-by-terrorists/ (last visited Oct. 22, 2020). A copy of the article is attached as Exhibit 7.

13. Westlaw provides a service called PeopleMap that gathers public records related to individuals, such as partial social security numbers, voter registrations and other vital statistics. According to PeopleMap, Haim Mark had a social security number, was registered to vote, and lived in Connecticut. A redacted copy of the PeopleMap report is attached as Exhibit 8.

14. Ziad Abu Ein was convicted for perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location	U.S. Nationals Killed or Injured
05/02/1980	Hebron	Eli Haze'ev (aka James E. Mahon, Jr.)

15. Eli Haze'ev, an American born in New York, was "one of six Jewish victims of the worst Arab attack on Jews since Israel occupied the West Bank of the Jordan River in 1967." William Claiborne, *Virginia Man's Violent World Ends in West Bank*, WASH. POST. (May 7, 1980). A copy of the article is attached as Exhibit 9. The U.S. National Archives contains his social security application, listing New York as his place of birth. A copy of the U.S. National Archives page is attached as Exhibit 10.

16. The following individuals were convicted for their roles in perpetrating the attack:

- Yasser Hasin Mohammed al-Zaydat
- Adnan Jabbar Mahmoud Jabbar
- Tayseer Mahmoud Taha Tayseer
- Mohammed Abdel Rahman Salah Shubaki

See Declaration of N. Kaufman ¶ 8.

Date	Location	U.S. Nationals Killed or Injured
10/08/1985	Achille Lauro Ship	Leon Klinghoffer

17. On October 7, 1985, four Palestinian hijackers seized the Italian cruise liner Achille Lauro in the Eastern Mediterranean Sea. During the course of the hijacking, they separated Leon Klinghoffer, a U.S. citizen confined to a wheelchair, from the other

passengers. *See Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 47 (2d Cir. 1991). As confirmed in the conviction of the hijackers, one of the hijackers shot Klinghoffer in the head and chest using a Kalashnikov assault rifle and high-speed armor piercing bullets. The hijackers then forced Achille Lauro's crew members to throw Klinghoffer's body into the sea and clean the blood-stained deck. The hijackers and their co-conspirators were captured and tried for their crimes by the Italian authorities.

18. The following individuals were convicted and imprisoned as a result of the attack:

- Maged Moussef al-Molqi
- Ibrahim Fatayer Abdelatif
- Ahmed Marrouf al-Assadi
- Issa Mohammed Abbas
- Yusuf Ahmad Yusuf Sa'ad

A translated copy of the Judgment of the High Court of Appeal of Genoa affirming the convictions is attached as Exhibit 11.

Date	Location	U.S. Nationals Killed or Injured
10/09/1994	Jerusalem	Scott Dobberstein

19. Two members of Hamas "armed with assault rifles and hand grenades opened fire on a street crowded with outdoor cafes, killing two people and wounding 13 before being cut down." Gwen Ackerman, *Hamas Says It Was Behind Deadly Attack in Jerusalem*, ASSOC. PRESS (Oct. 10, 1994), https://apnews.com/article/d7a83c92b411eb10389a866a249efc99. "One of the wounded was a U.S. diplomat, identified by

the U.S. Embassy in Tel Aviv as Scott Dobberstein." *Id.* A copy of the article is attached as Exhibit 12.

20. Dobberstein is currently the Director of the U.S. Agency for International Development in the U.S. Embassy in Mali. *See Key Officers*, U.S. EMBASSY.GOV, https://ml.usembassy.gov/embassy/bamako/key-officers/ (last visited Oct. 13, 2020). Copies of the homepage for the U.S. Embassy in Mali, and the subpage on the Embassy's key officers are attached as Exhibit 13.

21. Hassan Mahmoud 'Isa Abbas died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
10/10/1994	Lod (abduction); Bir Naballah (execution)	Nachshon Wachsman Esther Wachsman Menashe Yechezkel Wachsman Yitzchak (Tzachi) Wachsman Uriel Wachsman Raphael Wachsman Eliahou Wachsman Chaim (Hayim) Zvi Wachsman

22. "On October 9, 1994, as Nachshon [Wachsman] waited on the side of the road for a ride to visit a friend, four members of Hamas . . . abducted [Wachsman] from a public street near Lod, Israel." *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 603 F. Supp. 2d 148, 152–53 (D.D. C. 2009). After a standoff with Israeli security forces, three of the perpetrators were killed, after which the forces "found [Wachsman] dead in a back room with his hands and legs bound." *Id.* at

153. Wachsman, his siblings, and his mother (identified above) were all U.S. citizens. *See id.* at 154–55.

23. According to evidence before the Court in *Wachsman*, the following perpetrators were killed as security forces attempted to rescue Wachsman:

- Salah a-Din Hassan Salem Jadallah;
- Hassan Natshe; and
- Abd El Karim Yassin Bader.

Id. at 152–53.

24. Jihad Ya'amur was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location	U.S. Nationals Killed or Injured
12/25/1994	Jerusalem	Sara Greenberg

25. Sara Greenberg, "a 20-year old American student at the University of Michigan, was among the injured" when a suicide bomber detonated a "satchel of explosive near a bus full of Israeli airmen." Barton Gellman, *Suicide Bomber injured 13 in Jerusalem,* WASH POST. (Dec. 26, 1994), https://www.washingtonpost.com/archive/politics/1994/12/26/suicide-bomber-injures-13-in-jerusalem/0be195f1-b89f-4bd6-b0db-30d50077bcb0/. A copy of the article is attached as Exhibit 14.

26. Sara Greenberg's linked-in page indicates that she attended the University of Michigan from 1992 to 1994 and currently resides in Colorado. A copy of her LinkedIn page is Exhibit 15. According to Westlaw's PeopleMap (an online service providing information about public records), Greenberg was born in 1974, received a social security number in Pennsylvania in

1975 or 1976, and is registered to vote. A redacted copy of the PeopleMap report is attached as Exhibit 16.

27. Ayman Kamel Radi died perpetrating the attack. *See* Declaration of A. Spitzen at ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
01/22/1995	Netanya	Gila Afriat-Kurtzer

28. U.S. citizen Gila Afriat-Kurtzer was injured in a suicide bombing at the Beit Lid junction near Netanya. *See* Complaint at 15, 80, *Afriat-Kurtzer v. Arab Bank*, No. 05-cv-0388 (NG) (VVP) (Feb. 25, 2005), ECF No. 3; *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257, 264 (E.D.N.Y. 2007).

29. According to Westlaw's PeopleMap (the online service providing information about public records), Gila Afriat-Kurtzer was born in 1974 and received a social security number in Maryland in 1985 or 1986 in Maryland. A redacted copy of the PeopleMap report is attached as Exhibit 17.

30. Two suicide terrorists died perpetrating the attack:

- Anwar Mohammed Atiyyah Sukar
- Salah Abd al-Hamid Shaker Mohammad

See Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
04/09/1995	Kfar Darom	Seth (Shlomo) Klein Ben-Haim Alisa Flatow

31. "At or about 12:05 p.m. local time, near Kfar Darom in the Gaza Strip, a suicide bomber drove a van

loaded with explosives in the number 36 Egged bus, causing an explosion that destroyed the bus." *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 60 (D.D.C. 2006) (quoting and taking judicial notice of *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 9 ¶ 6 (D.D.C. 1998)). The bombing killed U.S. citizen Alisa Flatow and injured U.S. citizen Seth Klein Ben-Haim. *See Haim*, 425 F. Supp. 2d at 60–61; *Flatow*, 999 F. Supp. at 7.

Khaled Mohammad Mahmoud al-Khatib died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
08/21/1995	Jerusalem	Joanne Davenny

32. A suicide bombing killed U.S. citizen Joanne Davenny on August 21, 1995, according to Department of Justice testimony reporting on an FBI investigation into her death. *Foreign Operations, Export Financing, and Related Programs Appropriations for Fiscal Year 2000*, S. Comm. on Appropriations, 106th Cong. 58 (1999) (statement of Mark M. Richard, U.S. Assistant Attorney General). A copy of the testimony presented during the hearing is attached as Exhibit 18.

33. Sufyan Salem Abd Rabbo al-Jabarin died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
02/25/1996	Jerusalem	Matthew Eisenfeld Ira Weinstein Leah Stein Mousa Sara Duker

34. U.S. citizens Matthew Eisenfeld, Sara Duker, and Ira Weinstein were killed when a suicide terrorist "detonated explosives which, at the direction of Hamas, he had carried on the bus concealed in a travel bag, resulting in the complete destruction of the bus and hurling debris in excess of 100 meters." *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1, 4 (D.D.C. 2000); *see Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13, 15 (D.D.C. 2002). American Leah Stein Mousa was also injured in the attack. *See Mousa v. Islamic Republic of Iran*, 238 F. Supp. 2d 1, 3–5 (D.D.C. 2001).

35. Magdi Mohammad Abu Wardah died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

36. The following individuals were convicted or pled guilty for their roles in perpetrating the attack:

- Ayman Mohammed Nazmi Abd al-Jalil al-Razim
- Mohammed Atiya Mahmoud Abu Warda
- Akram Ibrahim Mahmoud Qawasme
- Hassan Abdel Rahman Hassan Salameh

See Declaration of N. Kaufman ¶ 7–8.

Date	Location	U.S. Nationals Killed or Injured
03/04/1996	Tel Aviv	Lawrence Belkin

37. Gail Belkin, the wife of U.S. citizen Lawrence Belkin, was killed when "a suicide bomber affiliated with the Shaqaqi faction of the Palestine Islamic Jihad ("PIJ") detonated a 40 pound bomb that he was carrying just outside the doors of [a] shopping mall . . . [killing] Gail Belkin and her mother, plus eleven others, mostly women and children" and injuring 125

others. *Belkin v. Islamic Republic of Iran*, 667 F. Supp. 2d 8, 12–13 (D.D.C. 2009).

38. Ramez Abed el-Kader Mohammad Abid died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location	U.S. Nationals Killed or Injured
06/09/1996	Beit Shemesh	Yaron Ungar

39. U.S. citizen Yaron Ungar, his wife, and his 9-month-old son were traveling home from a wedding near Beit Shemesh when terrorists connected to Hamas "opened fire on the Ungars' car with two Kalashnikov machine guns," killing Yaron Ungar and his wife. *Estates of Ungar ex rel. Strachman v. Palestinian Authority*, 153 F. Supp. 2d 76, 82–83 (D.R.I. 2001).

40. The following individuals were convicted for their roles in perpetrating the attack:

- Raid Fakhri Abu Hamadiyah
- Jamal Fatah Tzabich Al Hor
- Rahman Ismai Abdel Rahman Ghaniemat

See Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
07/30/1997	Jerusalem (Mahane Yehuda Market)	Leah Stern Joseph Stern Yocheved Kushner Shimson Stern Shaul Stern

41. With regard to the July 30, 1997, attack, the U.S. District Court for the District of Columbia made the following findings of fact:

On Friday, July 30, 1997, two suicide bombers belonging to the Hamas terrorist organization and acting on behalf of Hamas entered the Mahane Yehuda outdoor produce market in downtown Jerusalem, which was crowded with Sabbath-eve shoppers. Each of the bombers carried a briefcase packed with a powerful explosive charge. At a pre-arranged signal, the bombers triggered their explosives. The blasts ripped through the crowded market, killing 15 shoppers, including decedent Leah Stern, and wounding another 168 (hereinafter "the bombing attack"). In a press release, Hamas claimed responsibility for the bombing attack.

. . . As a result of the explosion, [U.S. citizen] Leah Stern suffered horrendous injuries. The explosion caused Leah Stern severe burns, and much of the skin on her face was ripped off by the blast. Leah Stern suffered multiple and diffuse lacerations over the facial area, thorax, abdomen and limbs. Several pieces of shrapnel, specifically nails, lodged in her chin, right breast, right arm, both knees and left thigh. Leah Stern also suffered a gaping abdominal wound which exposed her intestines. Her left leg was covered with burns and lacerations from the explosion, and bones in the lower leg were broken. Leah Stern's right leg was partially severed at the knee, and shrapnel lodged in the remaining portion of her leg.

. . . Leah Stern expired from her wounds on the scene on July 30, 1997.

Stern v. Islamic Republic of Iran, 271 F. Supp. 2d 286, 289 (D.D.C. 2003) (citations omitted). Joseph Stern, Yocheved Kushner, Shimson Stern, and Shaul Stern are Leah Stern's children, are U.S. citizens, and were also injured by the attack. *See id.*

42. Taufik Ali Mohammed Yassin and Muawiya Mohammad Ahmed Jarara died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

43. Moaz Sa'id Ahmed Sa'id Bilal was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
09/04/1997	Jerusalem (Ben Yehuda Street)	Abraham Mendelson Gregg Salzman Stuart Elliot Hersh Avi Elishis Daniel Miller Yael Botvin Diana Campuzano Jenny Rubin Noam Rozenman Deborah Rubin Renay Frym Elena Rozenman Tzvi Rozenman

44. On September 4, 1997, "three Hamas suicide bombers with cases of powerful explosive bombs arrived at the crowded Ben Yehuda Street pedestrian mall in downtown Jerusalem. The bombers packed the bombs with nails, screws, pieces of glass, and chemical poisons to cause maximum pain, suffering, and death." *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 261 (D.D.C. 2003) (citations omitted). U.S. citizen Yael Botvin was killed in the attack. *See*

Foreign Operations, Export Financing, and Related Programs Appropriations for Fiscal Year 2000, S. Comm. on Appropriations, 106th Cong. 58 (1999) (statement of Mark M. Richard, U.S. Assistant Attorney General). *See supra*, Exhibit 18. The following U.S. citizens were also injured by the attack:

- Diana Campuzano
- Avi Elishis
- Gregg Salzman
- Jenny Rubin
- Daniel Miller
- Abraham Mendelson
- Stuart Hersh
- Noam Rozenman
- Deborah Rubin
- Renay Frym
- Elena Rozenman
- Tzvi Rozenman

See Campuzano, 281 F. Supp. 2d at 261.

45. The following individuals died perpetrating the attack:

- Bashar Mohammad As'ad Sawalha
- Yousef Jameel Ahmad Shuli
- Khalil Ibrahim Tawfiq Sharif

See Declaration of A. Spitzen ¶ 45.

46. Moaz Sa'id Ahmed Sa'id Bilal was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.[1]

Date	Location	U.S. Victims' Names
12/31/2000	Jerusalem	Binyamin Kahane

47. U.S. citizen Benyamin Kahane and his wife were killed "when Palestinian snipers opened fire [on them] while they were driving home from Jerusalem on the Ramallah bypass road." *See Binyamin Zeev Kahane*, ISRAEL MINISTRY OF FOREIGN AFFAIRS, https://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Binyamin%20Zeev%20Kahane.aspx.; *Acosta v. The Islamic Republic of Iran*, 574 F. Supp. 2d 15, 19 (D.D.C. 2008) (confirming Kahane's citizenship). A copy of the story is attached as Exhibit 19.

48. Mustafa Mahmoud Mohamed Masalmani pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
03/28/2001	Neve Yamin	Netanel Herskovitz Martin Herskovitz Yaakov Herskovitz Pearl Herskovitz

49. Americans Netanel, Martin, Yaakov, and Pearl Herskovitz were injured when a suicide bomber "blew himself up outside a gas station near Kfar Sava," outside Tel Aviv, killing two people and injuring four others. Third Amended Complaint at 68, *Strauss v. Crédit Lyonnais*, S.A., No. 06-cv-0702-DLI-RML (E.D.N.Y. Jan. 28, 2008), ECF No. 127; Order on Motion for Summary Judgment, *Strauss v. Crédit*

[1] Bilal was also convicted for his role in perpetrating the attack that severely injured Leah Stern on July 30, 1997.

Lyonnais, S.A., No. 06-cv-0702-DLI-RML (E.D.N.Y. Feb. 28, 2013), ECF No. 340 (discussing the Third Amended Complaint).

50. Fadi Attallah Yusuf Amer died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

51. Tareq Muhammad Abd al-Latif Abu Mariam was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
06/01/2001	Tel Aviv (Dolphinarium)	Unnamed Victim

52. On June 1, 2001, a Hamas operative and suicide terrorist detonated himself near a group of people at the entrance to the "Water World" club in the Tel Aviv Dolphinarium, killing 22 and injuring 83 others. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

53. A U.S. national was injured in this attack, according to the U.S. Department of Justice's Office of Justice for Victims of Overseas Terrorism ("OVT"). The OVT investigates such overseas terror attacks and provides services to U.S. citizens or family members of U.S. citizens who suffer direct physical, emotional, or financial harm as a result. 42 U.S.C. §§ 10607e(2), 10603C; 28 C.F.R. § 94.12(u)(1). The OVT does not release the names of such victims, but it publishes the date and location of confirmed attacks harming U.S. citizens or their family members on its website, and the Dolphinarium attack is on the OVT's list. *See DOJ/OVT Interactive World Map - Near East*,

JUSTICE.GOV, https://www.justice.gov/nsd-ovt/dojovt-interactive-world-map/near-east (last visited Oct. 11, 2020). A copy of the DOJ/OVT list is attached as Exhibit 21.

54. Said Hussein Hasan Hutari died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

55. Raed Al-Hutari was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
08/09/2001	Jerusalem (Sbarro Restaurant)	Steven Greenbaum Alan Hayman Shirlee Hayman Malka Chana Roth Frimet Roth Elisheva Roth Pesia Roth Rivka Roth Rappaport Zvi Roth Shaya Roth Pinchas Roth Judith Lilian Greenbaum

56. "On August 9, 2001, an unremarkable day in Jerusalem was rendered tragically memorable when [a suicide terrorist] detonated a ten-pound bomb at a Sbarro restaurant. The resulting explosion killed 15 people . . . ." *Roth v. Islamic Republic of Iran*, 78 F. Supp. 3d 379, 387–88 (D.D.C. 2015).

57. The following U.S. citizens were either killed or injured by the attack:

- Malka Chana Roth
- Frimet Roth
- Elisheva Roth
- Pesia Roth
- Rivka Roth Rappaport
- Zvi Roth
- Shaya Roth
- Pinchas Roth
- Judith Lilian Greenbaum
- Steven Greenbaum
- Alan Hayman
- Shirlee Hayman

See id. at 389–90; *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 96, 108 (D.D.C. 2006).

58. Izz al-Din Shuheil Ahmad al-Masri died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

59. The following terrorists pled guilty for their roles in perpetrating the attack:

- Ahlam al-Tamini
- Bilal Yaqub Ahmed Barghouti
- Muhammad Waal Muhammad Daghlas

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
11/04/2001	Jerusalem (French Hill)	Ilana Schertzman Cohen Leslie Schertzman Donald Schertzman Daniel Schertzman Ariella Schertzman Fisher Abraham Schertzman Yehuda Schertzman Chana Aidel Miller Myriam Miller Tova Miller

60. "On the afternoon of November 4, 2001, a Palestinian gunman opened fire on an Israeli bus traveling through the French Hill neighborhood of Jerusalem." *Schertzman Cohen v. Islamic Republic of Iran*, No. CV 17-1214 (JEB), 2019 WL 3037868, at *1 (D.D.C. July 11, 2019). The following U.S. citizens were injured by the attack:

- Ilana Schertzman Cohen
- Leslie Schertzman
- Donald Schertzman
- Daniel Schertzman
- Ariella Schertzman Fisher
- Abraham Schertzman
- Yehuda Schertzman
- Chana Aidel Miller
- Myriam Miller

- Tova Miller

See id. at *10.

61. Twenty additional individuals filed actions under 18 U.S.C. § 2333 as U.S. nationals injured by this attack. *See Abecassis v. Wyatt,* 704 F. Supp. 2d 623, 635 n.4 (S.D. Tex. 2010); Complaint at ¶ 293, *Abecassis v. Wyatt,* 704 F. Supp. 2d 623, 635 n.4 (S.D. Tex.), No. 4:09-cv03884 (S.D. Tex. Jan. 2, 2009), ECF No. 3; *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 575 (E.D.N.Y. 2005); Complaint at ¶¶ 118–28, *Coulter v. Arab Bank, PLC*, 384 F. Supp. 2d 571 (E.D.N.Y. Jan. 21, 2005), ECF No. 1.

62. Hatem Yaqin Ayesh Shweiki died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
12/01/2001	Jerusalem (Ben Yehuda Street)	Jason Kirschenbaum Isabelle Kirschenbaum Martin Kirschenbaum Joshua Kirschenbaum David Kirschenbaum Danielle Teitlebaum

63. On December 1, 2001, a suicide bombing on Ben Yehuda Street in Jerusalem resulted in the deaths of 10 people and injury to 120 others. *See Kirschenbaum v. Islamic Republic of Iran*, 572 F. Supp. 2d 200, 205–06 (D.D.C. 2008).

64. The following U.S. citizens were injured by the attack:

- Jason Kirschenbaum
- Isabelle Kirschenbaum
- Martin Kirschenbaum
- Joshua Kirschenbaum
- David Kirschenbaum
- Danielle Teitlebaum

See id. at 204–05.

65. Fifteen additional individuals filed an action under 18 U.S.C. § 2333 as U.S. nationals injured by this attack. *See Strauss v. Crédit Lyonnais, S.A.*, 925 F. Supp. 2d 414, 418 (E.D.N.Y. 2013); Complaint at ¶¶ 360–438, *Strauss v. Crédit Lyonnais, S.A.,* 925 F. Supp. 2d 414 (E.D.N.Y. 2013), No. 1:06-cv-00702-DLI-RML (E.D.N.Y. Feb. 16, 2006), ECF No. 1.

66. Two suicide terrorists died perpetrating the attack: Nabil Mahmoud Al-Halabiah; and Osama Mohammed Bahr. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
12/12/2001	Near Emmanuel	Benyamin Andrew Pilant Rebecca Pilant Samuel Philips Haistings Pilant Robert Eliot Haistings Pilant Elizabeth Anna Haistings Pilant

67. On December 12, 2001, a suicide terrorist detonated a roadside bomb next to the Number 189 bus, causing it to swerve off of the road. He then

opened fire with an automatic assault rifle, killing and injuring many individuals.

68. Among those injured by the attack were U.S. citizens:

- Benyamin Andrew Pilant
- Rebecca Pilant
- Samuel Philips Haistings Pilant
- Robert Eliot Haistings Pilant
- Elizabeth Anna Haistings Pilant

Based on their injuries, the above-named victims brought a federal action under 18 U.S.C. § 1605A and other statutes against the Islamic Republic of Iran and other parties. *See* Complaint ¶¶ 23–24, *Pilant v. Islamic Republic of Iran*, No. 11-cv-1077-RMC (D.D.C. Feb. 21, 2012), ECF No. 3. The complaint, signed by attorneys Gavriel Mairone of MM-Law LLC and Michael J. Miller of The Miller Firm LLC, states that the above-named victims were U.S. citizens. *See id*.

69. Asem Yousef Mohamed Hamed (aka Assem Yousef Rihan) died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
01/17/2002	Hadera	Aharon Ellis Prince Shaleak Mellonee Ellis Jordan Ellis Francine Ellis Lynne Ellis Yihonadav Ellis Tsaphirah Ellis Aron Carter Reuven Carter

		Shanon Carter Shayrah Carter Amitai Carter Yoshavyah Carter Leslye Knox

70. Judge Marrero of this Court made the following findings of fact about the January 17, 2002 attack:

> On January 17, 2002, at approximately 10:45 p.m., an agent of the PLO and PA arrived at the banquet hall with an M–16 assault rifle, three clips of bullets, and a hand grenade. The agent shot a security guard at the entrance to the hall, and then entered the hall and opened fire on the crowd. There were approximately 180 people present. Six people were killed and approximately thirty were injured.

Knox v. Palestine Liberation Org., 442 F. Supp. 2d 62, 66 (S.D.N.Y. 2006).

71. The following U.S. citizens were either killed or injured by the attack:

- Aharon Ellis
- Prince Shaleak
- Mellonee Ellis
- Jordan Ellis
- Francine Ellis
- Lynne Ellis
- Yihonadav Ellis
- Tsaphirah Ellis
- Aron Carter
- Reuven Carter

- Shanon Carter
- Shayrah Carter
- Amitai Carter
- Yoshavyah Carter
- Leslye Knox

See id. at 81.

72. Abdul Salaam Sadek Mer'y Hassoun died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

73. Ahmed Ali Mahmoud Abu-Khader and Nasser Mahmoud Ahmed Aweis were convicted or pled guilty for their roles in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
01/22/2002	Jerusalem (Jaffa Road)	Shayna Gould Ronald Gould Elise Gould Jessica Gould Rine Shmuel Waldman Henna Waldman Morris Waldman

74. The following U.S. citizens received a judgment in this case under 18 U.S.C. § 2333 stemming from injuries inflicted by the attack

- Shayna Gould
- Ronald Gould
- Elise Gould
- Jessica Gould Rine
- Shmuel Waldman

- Henna Waldman
- Morris Waldman

See Sokolow v. Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *1 (S.D.N.Y. Oct. 1, 2015).

75. Said Ibrahim Said Ramadan died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

76. The following individuals were convicted or pled guilty for their roles in perpetrating the attack:

- Mohamed Sami Ibrahim Abdullah
- Ahmed Taleb Mustafa Al-Barghouti
- Majed Isma'il Mohamed Al-Masri
- Nasser Mahmoud Ahmed Aweis[2]
- Fares Sadeq Mohamed Ghanem
- Ibrahim Adnan Najib Abdel Hai
- Mohamed Abdel Rahman Salem Mousleh
- Bashar Barghouti

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
01/27/2002	Jerusalem (Jaffa Road)	Mark Sokolow Elana Sokolow Jamie Sokolow Lauren Sokolow Rena Sokolow

[2] Aweis was also convicted for his role in perpetrating the attack that took the life of Aharon Ellis on January 17, 2002.

77. The following U.S. citizens received a judgment in this case under 18 U.S.C. § 2333 stemming from injuries inflicted by the attack:

- Mark Sokolow
- Elana Sokolow
- Jamie Sokolow
- Lauren Sokolow
- Rena Sokolow

See Sokolow v. Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *1 (S.D.N.Y. Oct. 1, 2015).

78. Wafa Ali Khalil Idris died perpetrating this attack. *See* Declaration of A. Spitzen ¶ 45.

79. Munzar Mahmoud Khalil Noor was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
02/16/2002	Karnei Shomron	Steven Braun Chana Friedman Keren Shatsky Leor Thaler Rachel Thaler Hillel Trattner

80. "On February 16, 2002, a [suicide terrorist] attacked a pizzeria in Karnei Shomron, a town in the West Bank. The bombing killed United States citizens Keren Shatsky and Rachel Thaler and wounded United States citizens Steven Braun, Chana Friedman, Leor Thaler, and Hillel Trattner . . . ." *Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1022 (D.C. Cir. 2020).

81. Sadek Abdel Hafez died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
02/18/2002	Kibbutz Kissufim	Moshe Saperstein

82. On February 18, 2002, a member of the Al Aqsa Martyrs Brigades shot Moshe Saperstein and killed three others. *Saperstein v. Palestinian Auth.*, No. 04-20225-CIV, 2008 WL 4467535, at *4 (S.D. Fla. Sept. 29, 2008). Saperstein received a final judgment against the PLO and PA for damages under 18 U.S.C. § 2333 stemming from this attack. *See* Final Judgment in Favor of Plaintiff Moshe Saperstein, *Saperstein v. Palestinian Auth.*, No. 04-cv-20225 SEITZ/TURNOFF (S.D. Fla. Mar. 8, 2007), ECF No. 129; Third Amended Complaint, *Saperstein v. Palestinian Auth*., No. 04-cv-20225-SEITZ/TURNOFF (S.D. Fla. Aug. 14, 2006), ECF No. 68.

83. Mohammad Mahmoud Mohammad Al-Kasir died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

84. Jihad Naim Mutzran and Nizar Khadar Mohammed Dahliz were convicted or pled guilty for their roles in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
03/09/2002	Jerusalem	Asael Anicca Joseph Cohen

85. On March 9, 2002, a suicide terrorist detonated a bomb in Café Moment in Jerusalem, killing 11 and injuring 58. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No.

50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

86. Among those injured by the attack were U.S. citizens Asael Anicca and Joseph Cohen. Based on their injuries, the above-named victims brought a federal action under 18 U.S.C. § 2333 and other statutes against Chevron Corporation and other defendants. *See* Second Amended Complaint, *Brill v. Chevron Corp.*, No. 15-cv-4916-JD (N.D. Cal. May 8, 2017), ECF No. 72. The complaint, signed by attorney Raymond Paul Boucher of Boucher LLP, states that both Anicca and Cohen were U.S. citizens. *See id.* at 61, 83.

87. Fouad Ismail Al-Hourani died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
03/21/2002	Jerusalem	Alan J. Bauer Yehonathon Bauer Binyamin Bauer Yehuda Bauer Daniel Bauer

88. The following U.S. citizens received a judgment in this case under 18 U.S.C. § 2333 stemming from injuries inflicted by the attack:

- Alan J. Bauer
- Yehonathon Bauer
- Binyamin Bauer
- Yehuda Bauer
- Daniel Yichye Bauer

See Sokolow v. Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *1 (S.D.N.Y. Oct. 1, 2015).

89. Mohammed Mashoor Mohammed Hashaika died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

90. The following terrorists were convicted or pled guilty for their roles in perpetrating the attack.

- Kahira Sa'id Al-Sa'di
- Abdel Karim Ratab Yunis Aweis
- Nasser Jamal Mussa Shawish (aka Adham)
- Sana'a Mohamed Shehadeh

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
03/24/2002	Near Umm Safah	Esther Klieman

91. "On March 24, 2002, terrorists with machine guns attacked a public bus near Neve Tzuf, an Israeli settlement in the West Bank. Esther Klieman, an American schoolteacher, was shot and killed. In the aftermath, Al Aqsa Martyrs Brigade, an organization designated as a Foreign Terrorist Organization by the U.S. Department of State, claimed responsibility for the attack." *Estate of Klieman v. Palestinian Auth.*, 82 F. Supp. 3d 237, 240 (D.D.C. 2015), *aff'd sub nom. Estate of Klieman ex rel. Kesner v. Palestinian Auth.*, 923 F.3d 1115 (D.C. Cir. 2019), *cert. granted, judgment vacated*, 140 S. Ct. 2713 (2020), *and opinion reinstated in part*, No. 15-7034, 2020 WL 5361653 (D.C. Cir. Aug. 18, 2020).

92. The following terrorists pled guilty for their roles in perpetrating the attack:

- Tamar Rassem Salim Rimawi
- Hussam Abdul-Kader Ahmad Halabi
- Amed Hamad Rushdie Hadib

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
03/27/2002	Netanya (Park Hotel)	Moshe Naimi Hannah Rogen

93. On March 27, 2002, a Hamas suicide terrorist detonated a bomb at the Park Hotel in Netanya, killing 29 people and injuring 144. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

94. Among those injured by the attack were U.S. citizens Moshe Naimi and Hannah Rogen. Based on their injuries, the above-named victims brought federal actions under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint at 19–20, *Litle v. Arab Bank*, PLC, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307; Complaint, *Coulter v. Arab Bank, PLC*, No. 05-cv-0365 (E.D.N.Y. Jan. 21, 2005), ECF No. 1. The complaints, signed by attorneys Mark S. Werbner of Sayles Werbner P.C. and Gary M. Osen of Osen & Associate, LLC, state that the above-named victims were U.S. citizens. *See* Second Amended Complaint at 20, 107; Complaint at 67, 109.

95. Abdel-Basit Mohammed Qasem Odeh died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

96. Abbas al-Sayed was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
03/31/2002	Efrat	Deborah Fenichel Ilanit Fenichel Moshe Fenichel Netanel Fenichel

97. Netanel Fenichel was driving with his parents in Efrat when a suicide terrorist detonated an explosive device as the car was driving past him. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

98. As a result of the attack, the following U.S. citizens were injured:

- Netanel Fenichel
- Deborah Fenichel
- Ilanit Fenichel
- Moshe Fenichel

Based on their injuries, the above-named victims brought a federal action under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint at 15–16, *Litle v. Arab Bank*, PLC, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307. The complaint, signed by attorney Mark S. Werbner of Sayles Werbner P.C., states that the above-named victims were U.S. citizens. *See id.* at 15–16, 107.

99. Jamil Khalaf Mustafa Hamed died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
05/07/2002	Rishon LeZion	Esther Bablar Jacqueline Chambers Levana Cohen Harooch

100. On May 7, 2002 a suicide terrorist detonated a bomb in the Sheffield Club, a billiards club in Rishon LeZion, killing 16, and injuring 51. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

101. U.S. citizen Esther Bablar was wounded in the attack, and U.S. citizens Jacqueline Chambers and Levana Cohen Harooch were also injured by the attack. *See* Declaration of J. Chambers, attached as Exhibit 22.

102. Mohammad Jamil Muamar, was killed while perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

103. Muhammad Imran was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
05/19/2002	Netanya	Gloria Kushner

104. U.S. citizen Gloria Kushner was injured in an open-air market in Netanya when a suicide terrorist blew himself up between the stalls, killing 3 and injuring 60. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No.

08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

105. Based on her injuries, Kushner brought a federal action under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* First Amended Complaint, *Linde v. Arab Bank, PLC*, No. 04-cv-2799 (NG) (ASC) (E.D.N.Y. Aug. 10, 2004), ECF No. 4. The complaint, signed by attorney David H. Wollmuth of Wollmuth Maher & Deutsch LLP, states that Kushner was a U.S. citizen. *See id.* at 28, 67.

106. Osama Adel Mohammad Beshkar died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

107. Allam Ahmad Asad Kaabi and Du'a Ziyad Jamil Jayusi pled guilty for their roles in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
06/18/2002	Gilo	Faye Chana Benjaminson Gila Aluf Sheila Gottlieb Moshe Gottlieb Seymour Gottlieb

108. On June 18, 2002, a suicide terrorist connected to Hamas boarded the Egged Bus No. 32 near Gilo and detonated an explosive device, killing 19 and injuring 50. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

109. As a result of the attack, the following U.S. citizens were killed or injured:

- Moshe Gottlieb
- Sheila Gottlieb
- Seymour Gottlieb
- Faye Chana Benjaminson
- Gila Aluf

Based on their injuries, the above-named victims brought federal actions under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint, *Litle v. Arab Bank*, PLC, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307; Complaint, *Coulter v. Arab Bank*, PLC, No. 05-cv-0365 (E.D.N.Y. Jan. 21, 2005), ECF No. 1. The complaints, signed by attorneys Mark S. Werbner of Sayles Werbner P.C. and Gary M. Osen of Osen & Associate, LLC, state that the above-named victims were U.S. citizens. *See* Second Amended Complaint at 17, 107; Complaint at 69, 109.

110. Mohammed Hazza Al-Ghoul died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

111. Fahmi Id Ramdan Mashahara was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
06/19/2002	Jerusalem (French Hill)	Leonard Mandelkorn

112. U.S. citizen Leonard Mandelkorn received a judgment in this case under 18 U.S.C. § 2333 stemming from injuries caused by the attack. *See Sokolow v.*

Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *2 (S.D.N.Y. Oct. 1, 2015).

113. Sa'id Wadah Hamid Awada, was killed while perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45. The evidence at trial showed that Awada was seventeen years old at the time of his death.

Date	Location of Attack	U.S. Victims' Names
07/30/2002	Jerusalem	Meshulam Ben Meir

114. On July 30, 2002, U.S. citizen Meshulam Ben Meir was attacked by a Palestinian suicide terrorist who detonated a bomb about five meters away from him. As a result of this attack, Meir suffered serious physical and emotional injuries. *See Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33, 41 (E.D.N.Y. 2019); Complaint at 5, *Pam v. Arab Bank*, No. 18-cv-4670-RPK-PK (E.D.N.Y. Aug. 17, 2018), ECF No. 1.

115. Hazem Atta Sarasra died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
07/31/2002	Jerusalem (Hebrew University)	Marla Anne Bennett Benjamin Blutstein Dina Carter Janis Ruth Coulter David Gritz Norman Gritz Diane Coulter Miller Robert Coulter, Jr. Robert Coulter, Sr. Larry Carter Shaun Coffel Richard Blutstein Katherine Baker Rebekah Blutstein

116. The following U.S. citizens received a judgment in this case under 18 U.S.C. § 2333 caused by injuries inflicted by the attack:

- Katherine Baker
- Benjamin Blutstein (estate of)
- Richard Blutstein
- Diane Carter (estate of)
- Larry Carter
- Shaun Coffel
- Robert L. Coulter, Jr.
- Diane Coulter Miller
- Robert L. Coulter, Sr.
- Janis Ruth Coulter (estate of)
- Norman Gritz (estate of)
- David Gritz (estate of)

See Sokolow v. Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *2–3 (S.D.N.Y. Oct. 1, 2015).

117. The following individuals were convicted or pled guilty for their roles in perpetrating the attack:

- Abdullah Ghaleb Abdullah Barghouti
- Ibrahim Jamil Abd al-Ghani Hamed
- Ahmed Taleb Moustafa Barghouti

See Declaration of N. Kaufman ¶ 7–8.

118. The evidence at trial proved that the following individuals were convicted for their roles in perpetrating the attack and paid by Defendants by reason of their imprisonment:

- Mohammed Arman (Plaintiffs' Trial Exs. 39, 72, 1035, 1120)
- Wael al-Qassim (Plaintiffs' Trial Exs. 41, 71, 152, 1120)
- Walid Anjas (Plaintiffs' Trial Exs. 42, 138, 165, 1037, 1120)
- Mohamed Awda (Plaintiffs' Trial Exs. 86, 151, 1120)

Date	Location of Attack	U.S. Victims' Names
08/31/2002	Har Bracha	Jacob Rand Dalit Rand

119. On August 31, 2002, U.S. citizens Jacob and Dalit Rand were walking from synagogue in the Bracha Settlement near Nablus when a suicide terrorist opened fire at them, seriously injuring both. Based on their injuries, these victims brought a federal action under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint, *Litle v. Arab Bank, PLC*, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307. The complaint, signed by attorney Mark S. Werbner of Sayles Werbner P.C., states that the above-named victims were U.S. citizens. *See id.* at 60, 107.

120. Yusef Ibrahim Hasan Atalla died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
09/19/2002	Tel Aviv	Avraham Sisso

121. "On September 19, 2002, shortly before 12:55 p.m., [a suicide terrorist] boarded a number 4 bus near 94 Allenby Street in Tel Aviv. Just as the bus began to move, [the suicide terrorist] activated an explosive device that he was wearing," killing six and injuring

84 others. *Sisso v. Islamic Republic of Iran*, No. CIV.A. 05 0394 (JDB), 2007 WL 2007582, at *2 (D.D.C. July 5, 2007) (internal citation omitted). One of those killed was Rozana Sisso, the mother of U.S. citizen Avraham Sisso. *See id*. at *1–2.

122. Iyad Naeem Radad died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

123. Mahmud Hamad Mahmud Sharitah pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
10/27/2002	Ariel	Yitzhak Zahavy Julie Zahavy Tzvee Zahavy Bernice Zahavy

124. On October 27, 2002, a suicide terrorist entered a gas station near Ariel and detonated an explosive belt. As a result of the attack, the following U.S. citizens were injured:

- Yitzhak Zahavy
- Julie Zahavy
- Tzvee Zahavy
- Bernice Zahavy

Declaration of Y. Zahavy, attached as Exhibit 23.

125. Muhammed Kzid Faysal Bastami died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
11/28/2002	Beit Shean	Bat Zion Levi

126. On November 28, 2002, two Al Aqsa Martyrs Brigade terrorists entered a polling station in Beit

Shean, killing six and wounding more than 20, including Jacky Levi, the wife of U.S. citizen Bat Zion Levi. Based on his injuries, Bat Zion Levi brought a federal action under 18 U.S.C. § 2333 and other statutes against Chevron Corporation and other defendants. *See* Second Amended Complaint, *Almog v. Arab Bank*, No. 04-cv-5564-BMC-PK (E.D.N.Y. Apr. 20, 2015), ECF No. 1250. The complaint, signed by attorney John M. Eubanks of Motley Ric LLC, states that Levi was a U.S. citizen. *See id.* at 17, 20.

127. Omar Muhammad Awadh Abu al-Rab and Yousef Muhammad Ragheb Abu al-Rab died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
01/29/2003	Route 60, Israel	Jacob Steinmetz Deborah Steinmetz

128. U.S. citizens Jacob Steinmetz and Deborah Steinmetz were injured in a terrorist attack on January 29, 2003, when two masked men shot at their car as they were driving on Route 60 in Israel. *See Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp .2d 609, 614 (E.D.N.Y. 2006); Declaration of N. Kaufman ¶ 10 (discussing court documents that note Jacob Steinmetz as a victim in this attack).

129. The following terrorists were convicted or pled guilty for their roles in perpetrating the attack:

- Hisham Abd al-Qader Ibrahim Hijazi
- Jaser Isma'il Musa al-Barguthi
- Muayad Hamad

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
03/05/2003	Haifa	Abigail Litle Philip Litle Heidi Litle Elishua Litle Hannah Litle Josiah Litle Noah Litle

130. The following U.S. citizens received a judgment in the United States District Court for the Eastern District of New York under 18 U.S.C. § 2333 for injuries caused by the attack:

- Abigail Litle
- Philip Litle
- Heidi Litle
- Elishua Litle
- Hannah Litle
- Josiah Litle
- Noah Litle

See Stipulation to Enter Final Judgment, *Linde v. Arab Bank*, No. 06-cv-1623 (BMC) (PK) (E.D.N.Y. May 24, 2016), ECF No. 1098.

131. Mahmoud Omran Al-Qawasmeh died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

132. The following individuals pled guilty for their roles in perpetrating the attack:

- Fadi al-Ja'aba
- Munir Rajbi
- Mu'az Waal Taleb-Abu Sharakh

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
03/07/2003	Kiryat Arba	Eli Natan Debra Ruth Horovitz Moshe Horovitz Leah Horovitz Shulamite Horovitz Batsheva Horovitz Nechama Horovitz Tvi Horovitz Ari Horovitz David Horovitz Tovi Horovitz Uri Horovitz Bernice Wolf Stanley Wolf Brian Wolf

133. U.S. citizens Eli Natan and Debra Ruth Horovitz were murdered in their apartment in Kiryat Arba when terrorists disguised as students infiltrated Kiryat Arba and killed both of them. The following U.S. citizens were also injured by the attack:

- Eli Natan
- Debra ("Dina") Ruth Horovitz
- Moshe Horovitz
- Leah Horovitz
- Shulamite Horovitz
- Batsheva Horovitz
- Nechama Horovitz
- Tvi Horovitz
- Ari Horovitz

- David Horovitz
- Tovi Horovitz
- Uri Horovitz
- Bernice Wolf
- Stanley Wolf
- Brian Wolf

Based on their injuries, the above-named victims brought a federal action under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint, *Litle v. Arab Bank, PLC*, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307. The complaint, signed by attorney Mark S. Werbner of Sayles Werbner P.C., states that the above-named victims were U.S. citizens. *See id.* at 23–27, 107; Declaration of N. Kaufman ¶ 10 (discussing court documents noting Eli and Dina Horovitz as victims in this attack).

134. Muhsin Muhammad Omar al-Qawasmeh and Fadi Ziyad Muhammad Fakhoury died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

135. Abdallah Ahmad Abd Abu Seif pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
04/30/2003	Tel Aviv	Daniel Rozenstein Jack Baxter Julia Rozenstein Schon Fran Strauss Baxter Billy Baxter Catharine Baxter Barbara Psaroudis

		Alexander Rozenstein Esther Rozenstein

136. On April 30, 2003, a suicide terrorist detonated an explosive device at the entrance of Mike's Place, a pub in Tel Aviv. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

137. The following U.S. citizens were injured by the attack:

- Daniel Rozenstein
- Jack Baxter
- Julia Rozenstein Schon
- Fran Strauss Baxter
- Billy Baxter
- Catharine Baxter
- Barbara Psaroudis
- Alexander Rozenstein
- Esther Rozenstein

Based on their injuries, the above-named victims brought federal actions under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC and Cairo Amman Bank. *See* Second Amended Complaint, *Litle v. Arab Bank, PLC*, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307; Amended Complaint, *Averbach v. Cairo Amman Bank*, No. 19-cv-00004 (S.D.N.Y. Apr. 8, 2020), ECF No. 63. The complaints, signed by attorneys Mark S. Werbner of

Sayles Werbner P.C. and Ari Ungar of Osen LLC, state that the above-named victims were U.S. citizens. *See* Second Amended Complaint at 12–14, 107; Amended Complaint 35–37, 169.

138. Asef Mohammad Hanif and Omar Sharif Khan died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
05/18/2003	Jerusalem	Steven Averbach Tamir Averbach Devir Averbach Sean Averbach Adam Averbach David Averbach Maida Averbach Michael Averbach Eileen Sapadin

139. On May 18, 2003, a suicide terrorist detonated an explosive device on a bus on French Hill in Jerusalem. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

140. The following U.S. citizens were either killed or injured by the attack:

- Steven Averbach
- Tamir Averbach
- Devir Averbach
- Sean Averbach
- Adam Averbach

- David Averbach
- Maida Averbach
- Michael Averbach
- Eileen Sapadin

Based on their injuries, the above-named victims brought a federal action under 18 U.S.C. § 2333 and other statutes against Cairo Amman Bank. *See* Amended Complaint, *Averbach v. Cairo Amman Bank*, No. 19-cv-00004 (S.D.N.Y. Apr. 8, 2020), ECF No. 63. The complaint, signed by attorney Ari Ungar of Osen LLC, states that the above-named victims were U.S. citizens. *See id.* at 3–10, 169.

141. Basem Jamal Darwish al-Takuri died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

142. Samer Atrash pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
06/11/2003	Jerusalem	Alan Beer Harry Leonard Beer Estelle Carroll Phyllis Maisel Anna Beer Phyllis Pam Natan Pam Raziel Pam Neemah Pam Fisher

143. "On June 11, 2003, a Hamas suicide bomber blew up Egged bus number 14A. One of the deadliest attacks of the year, the explosion killed 17 people, including [U.S. citizen] Alan Beer, and wounded more than 99." *Beer v. Islamic Republic of Iran*, 574 F. Supp.

2d 1, 6 (D.D.C. 2008) (citations omitted). The following U.S. citizens were also injured by the attack:

- Harry Leonard Beer
- Anna Beer
- Phyllis Maisel
- Estelle Carroll
- Natan Pam
- Raziel Pam
- Neemah Pam Fisher

See id. at 14; *Miller*, 372 F. Supp. 3d at 41; Complaint at 3–5, *Pam v. Arab Bank*, No. 18-cv-4670 RPK-PK (E.D.N.Y. Aug. 17, 2018), ECF No. 1.

144. Abdel-Muti Mohammad Saleh Shabaneh died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

145. Omar Salah Sharif pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
06/17/2003	Route 6, Israel	Shira Leibovitch

146. "On June 17, 2003, the Leibovitch family was traveling along the Trans–Israel Highway, just west of the town of Kalkilya, Israel. Members of the Palestine Islamic Jihad [] terrorist organization opened fire with Kalashnikov machine guns and pistols on the family's Mazda mini-van," severely injuring U.S. citizen Shira Leibovitch. *Leibovitch v. Syrian Arab Republic*, No. 08 C 1939, 2011 WL 444762, at *1 (N.D. Ill. Feb. 1, 2011), *rev'd on other grounds sub nom. Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561 (7th Cir. 2012).

147. The following individuals were convicted for their roles in perpetrating the attack:

- Mohammed Mustafa Mohammed Abu Dura
- Ibrahim Yusuf Ibrahim Atiya
- Tarek Ahmed Abdel-Karim Hasayin
- Samach Samir Mohammed Shubaki

See Declaration of N. Kaufman ¶ 8.

Attack Number	Date	Location of Attack	U.S. Victims' Names
	06/20/2003	Israel	Eugene Goldstein Lorraine Goldstein Barbara Goldstein-Ingardia Michael Goldstein Chana Freedman

148. The following U.S. citizens received a judgment in the United States District Court for the Eastern District of New York under 18 U.S.C. § 2333 for injuries caused by the attack:

- Eugene Goldstein
- Lorraine Goldstein
- Barbara Goldstein-Ingardia
- Michael Goldstein
- Chana Freedman

See Stipulation to Enter Final Judgment, *Linde v. Arab Bank*, No. 06-cv-1623 (BMC) (PK) (E.D.N.Y. May 24, 2016), ECF No. 1098.

149. The following persons were convicted or pled guilty for their roles in perpetrating the attack:

- Ahmad Mustafa Saleh Hamad
- Khaled Adb al-Mua'z Zein al-Din Omar
- Ahmad Khaled Dawud Hamed
- Hisham Abd al-Qader Ibrahim Hijazi

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
08/19/2003	Jerusalem	Shalom Goldstein Ora Cohen Meirav Cohen Daniel Cohen Orly Cohen Shira Cohen Elchanan Cohen

150. With regard to the August 19, 2003, attack, the U.S. District Court for the District of Columbia made the following findings of fact:

> On August 19, 2003, Ora Cohen and her then-husband Shalom journeyed to the Western Wall, a holy site in Old Jerusalem, for an afternoon of prayer. Their five children—daughter Meirav Cohen (7 years old at the time); son Daniel Cohen (6 years old); daughter Orly Cohen (4 years old); daughter Shira Cohen (1 year old); and newborn son, Elchanan Cohen (1 month old)—accompanied them on this family outing. That evening, the Cohen family boarded the Number 2 Egged Bus to return home. Because the bus was crowded, the family was forced to split up in order to find seating, with Shalom and Shira standing in the middle of the bus apart from the rest of the family, who were seated near the front. A few stops short of their final

> destination, Ora observed a gentleman force his way onto the bus and remembers the "whole world [going] black."
>
> [A] Hamas operative [] had boarded the bus in the Shmuel Ha–Navi neighborhood with a bomb strapped to his body. He detonated it almost immediately upon boarding, killing 23 people and injuring 130 more, including every Cohen family member aboard.

Cohen v. Islamic Republic of Iran, 238 F. Supp. 3d 71, 75–76 (D.D.C. 2017) (citations omitted).

151. Ora Cohen and all of her children are U.S. citizens. *See id.* at 77. U.S. citizen Shalom Goldstein was also injured in the attack. *See* Declaration of Shalom Goldstein, *Goldstein v. Islamic Republic of Iran*, No. 16-cv-2507 (Dec. 3, 2018), ECF No. 15-1.

152. Raed Abdel-Hamid al-Razaq Misk died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

153. The following persons pled guilty for their roles in perpetrating the attack:

- Nasim Rashad Abd el-Wadud Za'tari
- Abdallah Yihya Sharbati
- Jalal Jamal Ya'amur

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
09/09/2003	Jerusalem	David Applebaum Naava Applebaum Debra Applebaum

154. On September 9, 2003, U.S. citizens David Applebaum and his daughter Naava Applebaum were killed when a suicide terrorist detonated an explosive

device next to the Café Hillel in Jerusalem. *See* Declaration of D. Applebaum, attached as Exhibit 24. Debra Applebaum, a U.S. citizen, was also injured by the attack. *Id.*

155. Suicide terrorist Ramiz Fahmi Izz al-Din Abu Salim died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
10/04/2003	Haifa	Chaya Ben-Zaken Zilberstein Clara Ben-Zaken

156. On October 4, 2003, U.S. citizen Chaya Ben-Zaken Zilberstein, who was pregnant at the time, was in the Maxim Restaurant in Haifa when a suicide terrorist detonated an explosive device, severely injuring her and killing 21 others. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1; Declaration of C. Ben-Zaken, attached as Exhibit 25. A copy of the relevant sections of the translated report is attached as Exhibit 20. U.S. citizen Clara Ben-Zaken was also injured by the attack. *See* Declaration of C. Ben-Zaken, *supra*.

157. Suicide terrorist Hanadi Taysir Abd al-malik Jaradat died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
01/29/2004	Jerusalem	Karen Shifra Goldberg Chana Bracha Goldberg Esther Zahava Goldberg

		Yitzhak Shalom Goldberg Shoshana Malka Goldberg Eliezer Simcha Goldberg Yaakov Moshe Goldberg Tzvi Yehoshua Goldberg

158. The following U.S. citizens received a judgment in this case under 18 U.S.C. § 2333 for injuries caused by the attack:

- Karen Shifra Goldberg
- Chana Bracha Goldberg
- Esther Zahava Goldberg
- Yitzhak Shalom Goldberg
- Shoshana Malka Goldberg
- Eliezer Simcha Goldberg
- Yaakov Moshe Goldberg
- Tzvi Yehoshua Goldberg

See Sokolow v. Palestine Liberation Org., No. 04-cv-0397 (GBD), 2015 WL 10852003, at *3 (S.D.N.Y. Oct. 1, 2015).

159. Ali Ja'ara died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

160. The following individuals were convicted or pled guilty for their roles in perpetrating the attack:

- Ahmed Salah
- Ali Mohamed Abu-Haliel

- Abdul Rahman Maqdad
- Hilmi Hamash
- Mohamed Ma'ali
- Ahmed Sa'ad

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
02/22/2004	Jerusalem	Rebecca Nevies

161. On February 22, 2004, U.S. citizen Rebecca Nevies was riding the No. 14 bus in Jerusalem when a suicide terrorist detonated an explosive device, killing 8 and injuring 60 others, including Nevies. *See Suicide Terrorists in the Current Conflict*, ISRAELI SECURITY AGENCY; Declaration of Itzhak Ilan 1–3, *Shatsky v. Syrian Arab Republic*, No. 08-cv-0496 (RJL) (D.D.C. Sept. 14, 2020), ECF No. 50-1. A copy of the relevant sections of the translated report is attached as Exhibit 20.

162. Based on her injuries, Nevies brought a federal action under 18 U.S.C. § 2333 and other statutes against Arab Bank, PLC. *See* Second Amended Complaint, *Litle v. Arab Bank, PLC*, No. 04-cv-5449 (NG) (VVP) (E.D.N.Y. Apr. 10, 2007), ECF No. 307. The complaint, signed by attorney Mark S. Werbner of Sayles Werbner P.C., states that Nevies was a U.S. citizen. *See id.* at 20, 107.

163. Mohammad Issa Khalil Zghool died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

164. Izz al-din Halid Hussain al-Hamamra was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
09/22/2004	Jerusalem	Michael Spitz

165. On September 22, 2004, a suicide terrorist detonated an explosive device near the French Hill section of Jerusalem, killing two and wounding 17 others, including U.S. citizen Michael Spitz. *See Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33, 41 (E.D.N.Y. 2019); Complaint at 11, *Pam v. Arab Bank*, No. 18-cv-4670-RPK-PK (Aug. 17, 2018), ECF No. 1.

166. Zaynab Ali Isa Abu Salem died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
04/17/2006	Tel Aviv	Daniel Wultz Yekutiel Wultz Sheryl Wultz Amanda Wultz

167. "[D]uring lunchtime on April 17, 2006, a suicide bomber arrived at the Rosh Ha'ir restaurant in Tel Aviv carrying a powerful explosive device which had been provided to him by the [Palestinian Islamic Jihad]. The explosion killed eleven people and wounded dozens of others. Among the wounded w[as] sixteen-year-old [U.S. citizen] Daniel Wultz." *Wultz v. Islamic Republic of Iran*, 864 F. Supp. 2d 24, 30 (D.D.C. 2012) (internal citations omitted). The following U.S. citizens were also injured by the attack:

- Yekutiel Wultz
- Sheryl Wultz
- Amanda Wultz

See id. at 43. Daniel died of his injuries. *See id.* at 27.

168. Samer Samih Mohammad Hammad died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

169. The following persons were convicted or pled guilty for their roles in perpetrating the attack:

- Muhammad Amoudi
- Fawaz Rajbi
- Fawzi Badriya

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
03/06/2008	Jerusalem	Avraham David Moses Rivkah Martha Moses Naftali Andrew Moses David Moriah Elisha Dan Moses N.M. C.M. O.D.M. A.M. Aviad Moriah Naftali Shitrit Gila Rachel Shitrit Meiri Shitrit Oshrat Shitrit Noya Shitrit Yedidya Shitrit A. Shitrit E. Shitrit H. Shitrit

170. On March 6, 2008, "a 26-year-old Izz al-Din al-Qassam Brigades operative[], entered the Merkaz HaRav Yeshiva in Jerusalem. . . . armed with a Kalashnikov assault rifle with nine compatible magazines, two guns (a Beretta pistol and an FN pistol) with four compatible magazines, and a commando knife." *Force v. Islamic Republic of Iran*, No.

CV 16-1468 (RDM), 2020 WL 2838527, at *17 (D.D.C. May 31, 2020) (internal citations omitted). He then opened fire on students in front of the building before entering the building and killing more. *See id.*

171. The following U.S. citizens were either killed or injured by the attack:

- Avraham David Moses
- Rivkah Martha Moses
- Naftali Andrew Moses
- David Moriah
- Elisha Dan Moses
- N.M.
- C.M.
- O.D.M.
- A. Moriah
- Aviad Moriah
- Naftali Shitrit
- Gila Rachel Shitrit
- Meiri Shitrit
- Oshrat Shitrit
- Noya Shitrit
- Yedidya Shitrit
- A. Shitrit
- E. Shitrit
- H. Shitrit

See id. at *17–18.

172. Alaa Hisham Abu Dheim died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victim' Names
12/18/2010	Beit Shemesh	Kristine Luken

173. On December 18, 2010 two Palestinian terrorists abducted U.S. citizen Kristine Luken and another woman, before repeatedly stabbing them, killing Luken and severely injuring the other. *See* Affidavit in Support of an Arrest Warrant and a Criminal Complaint at 2–4, *United States v. Fatafta*, No. 17-mj-229 (D.D.C. Apr. 13, 2017).

174. Ayad Fatafta was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
06/12/2014	Halhul	Naftali Fraenkel

175. On Thursday, June 12, 2014, sixteen-year-old U.S. citizen Naftali Fraenkel and two classmates were kidnapped by perpetrators affiliated with Hamas. *See Fraenkel v. Islamic Republic of Iran*, 892 F.3d 348, 351 (D.C. Cir. 2018). Their bodies were located after an 18-day search. *See id.* at 352.

176. The following persons were convicted or pled guilty for their roles in perpetrating the attack:

- Hussam al-Qawasmeh
- Ghassan Talal Salman Qawasme
- Ahmed Abrahim Mohamad Qawasme
- Maher Mustpha Mohamad al-Qawasme
- Hasan Ali Qawasme
- Hisham Isa Ibd al-Rahman Qawasme

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
10/22/2014	Jerusalem	Chaya Zissel Braun Shmuel Braun Chana Braun Esther Braun Murray Braun

177. "On the afternoon of October 22, 2014, [a suicide terrorist] . . . drove a car to a light rail station in Jerusalem and intentionally drove onto the light rail tracks and rammed his vehicle into the crowd of pedestrians. *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 72 (D.D.C. 2017) (internal quotation omitted). The following U.S. citizens were either killed or injured by the attack:

- Chaya Zissel Braun
- Shmuel Braun
- Chana Braun
- Esther Braun
- Murray Braun

See id. at 72–73.

178. Abdel Rahman Idris al-Shaludi died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
11/18/2014	Jerusalem	Aryeh Kupinsky Moshe Twersky Kalman Ze'ev Levine

179. On November 18, 2014, two terrorists entered the Kehillat Bnei Torah buildings in the Har Nof neighborhood in Jerusalem with a gun and butcher knives and began attacking worshippers, stabbing

them before opening fire. *See Terror Attack in Jerusalem Synagogue*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Nov. 18, 2014). A copy of the story is attached as Exhibit 26. The following U.S. citizens were killed in the attack:

- Aryeh Kupinsky
- Moshe Twersky
- Kalman Ze'ev Levine

Based on their injuries, the above-named victims brought a federal action under 28 U.S.C. § 1605A and other statutes against the Syrian Arab Republic. *See* Amended Complaint, *Heching v. Syrian Arab Republic*, No. 17-cv-1192-TSC (D.D.C. Jul. 25, 2017), ECF No. 6. The complaint, signed by attorney Asher Perlin of his eponymous firm, states that the above-named victims were U.S. citizens. *See id.* at 7–9, 37.

180. Uday Abu Jamal and Ghassan Muhammad Abu Jamal died perpetrating the attack. *See* Declaration of A. Spitzen ¶45.

Date	Location of Attack	U.S. Victims' Names
10/01/2015	Israel Highway Route 60	Eitam Henkin

181. On October 1, 2015, U.S. citizen Eitam Henkin was driving past the town of Beit Furik with his wife and family when members of Hamas overtook the car and shot Henkin and his wife in front of their children. *See* Declaration of Judah Herzel Henkin at 1, *Henkin v. Islamic Republic of Iran* (D.D.C. Aug. 27, 2020), ECF No. 21-4; Declaration of N. Kaufman ¶ 10.

182. The following individuals were convicted or pled guilty for their roles in the attack:

- Yahia Muhamad Naif Abdullah Hajj Hamed

- Samir Zahir Ibrahim Kusa
- Karam Lutfi Fatahi Razek Al Masri
- Amjad Adel Muhamad Aliwi

See Declaration of N. Kaufman ¶ 7–8.

Date	Location of Attack	U.S. Victims' Names
10/13/2015	Jerusalem	Richard Lakin Micah Lakin Avni Manya Lakin

183. "On the morning of October 13, 2015, two Hamas operatives . . . boarded Egged bus number 78 in the Armon Hanatziv neighborhood of Jerusalem. [One terrorist] was armed with a gun, and [the other] carried a knife. They hid their weapons under their clothing and waited for the bus to pick up other passengers. When the bus became full, [one terrorist] proceeded to the back, where he shot passengers at close range. [The other] used his knife to stab passengers near the front of the bus." *Force v. Islamic Republic of Iran*, No. CV 16-1468 (RDM), 2020 WL 2838527, at *11 (D.D.C. May 31, 2020) (internal citations omitted).

184. The following U.S. citizens were either killed or injured by the attack:

- Richard Lakin
- Micah Lakin Avni
- Manya Lakin

See id.

185. Bahaa Muhammad Khalil Alyan died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

186. Balal Abu-Ga'aanem was convicted for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
11/19/2015	Gush Etzion	Ezra Schwartz Michael Benzakein Jason Geller

187. On November 19, 2015, U.S. citizens Ezra Schwartz, Michael Benzakein, and Jason Geller were riding in a van to deliver care packages to Israeli soldiers and beautify a park in honor of three Israeli boys who had been kidnapped and murdered in 2014. When the van was stopped at a busy intersection in Gush Etzion, a terrorist affiliated with Hamas opened fire into the traffic with an automatic submachine gun, killing Schwartz and injuring Benzakein and Geller. *See DOJ/OVT Interactive World Map - Near East*, Justice.gov, https://www.justice.gov/nsd-ovt/dojovt-interactive-world-map/near-east (last visited Oct. 11, 2020); Declaration of Ruth Schwartz at 1, *Schwartz v. Islamic Republic of Iran*, No. 18-cv-1349 (D.D.C. Oct. 17, 2019), ECF No. 28-1; Declaration of Michael Benzakein at 1, 4–5, *Schwartz v. Islamic Republic of Iran*, No. 18-cv-1349 (D.D.C. Oct. 17, 2019), ECF No. 28-6; Declaration of Jason Geller at 1, 4–5, *Schwartz v. Islamic Republic of Iran*, No. 18-cv-1349 (D.D.C. Oct. 17, 2019), ECF No. 28-12. A copy of the DOJ/OVT list is attached *supra* as Exhibit 21.

188. Mohammed Abdel Basset al-Haroub pled guilty for his role in perpetrating the attack. *See* Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
03/08/2016	Tel Aviv	Taylor Force Stuart Force Robbi Force Kristen Anne Force

189. "[O]n March 8, 2016, [a suicide terrorist] existed a mosque and began stabbing passerby in the Port of Jaffa, just south of Tel Aviv." *Force v. Islamic Republic of Iran*, No. CV 16-1468, 2020 WL 2838527, at *8 (D.D.C. May 31, 2020). U.S. citizen Taylor Force died in the attack, and his parents, Stuart and Robbi, and his sister, Kristen, were injured by the attack. *Id.*

190. Bashar Muhammad Abd al-Qader Masalha died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

191. The following individuals pled guilty for their roles in the attack:

- Muhammad Awieda
- Bilal Sawan

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
06/30/2016	Kiryat Arba	Hallal Yaffa Ariel

192. On June 30, 2016, a terrorist broke into a home in Kiryat Arba near Hebron and killed thirteen-year-old Hallal Yaffa Ariel with a knife as she slept. The U.S. Department of Justice's OVT confirmed that a U.S. citizen was a victim of the attack. *See DOJ/OVT Interactive World Map - Near East*, Justice.gov, https://www.justice.gov/nsd-ovt/dojovt-interactive-world-map/near-east (last visited Oct. 11, 2020). A copy of the DOJ/OVT list is attached *supra* as Exhibit 21.

193. Mohammad Naser Mahmoud Tarayreh died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
07/01/2016	South Hebron Hills	Chava Mark Pedaya Mark Tehilla Mark

194. On July 1, 2016, Rabbi Michael Mark and his wife, U.S. citizen Chava Mark were driving with their children in the South Hebron Hills when a terrorist affiliated with Hamas drove up next to them and opened fire with an automatic rifle, killing Michael Mark and severely injuring Chava Mark and their two children. Based on their injuries, the Mark family brought a federal action under 28 U.S.C. § 1605A and other statutes against the Islamic Republic of Iran. *See* Complaint, *Mark v. Islamic Republic of Iran*, No. 20-cv-00651-TNM (D.D.C. March 5, 2020), ECF No. 1. The complaint, signed by attorneys Paul G. Gaston and Asher Perlin, details the attacks and states that Michael and Chava and their two children were U.S. citizens. *See id.* at 7–14, 22–23.

195. The following persons were convicted for their roles in perpetrating the attack:

- Mohammed Abdel Mohammed al-Amarya
- Suhib Jabara Ahmed Alfakiyah
- Alaa Raed Salah Zajayer

See Declaration of N. Kaufman ¶ 8.

Date	Location of Attack	U.S. Victims' Names
01/08/2017	Jerusalem	Unknown

196. A U.S. national was killed or injured in this attack, according to the U.S. Department of Justice's

OVT. *See DOJ/OVT Interactive World Map - Near East*, Justice.gov, https://www.justice.gov/nsd-ovt/doj ovt-interactive-world-map/near-east (last visited Oct. 11, 2020). A copy of the DOJ/OVT list is attached *supra* as Exhibit 21.

197. Fadi Ahmad Hamdan Al-Qunbar died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

Date	Location of Attack	U.S. Victims' Names
12/13/2018	Ofra	Nathaniel Felber Judi Felber Joseph Felber Daniel Felber Adina Felber

198. On the morning of December 13, 2018, Asem al-Barghouthi opened fire on a group of civilians and soldiers standing at a hitchhiking stop, killing two and leaving Nathaniel Felber with a permanent, severe brain injury. *See* Declaration of A. Spitzen ¶¶ 43–45, *Felber v. Islamic Republic of Iran*, No. 19 Civ. 1027 (D.D.C.) (D.E. No. 28); Proposed Findings of Fact ¶¶ 88, 108, 120, 132, 167 & Affidavits in support thereof in *Felber v. Islamic Republic of Iran*, No. 19 Civ. 1027 (D.D.C.), ECF No. 30.

199. The following individuals pled guilty for their roles in perpetrating the attack:

- Asem Umar Saleh al-Barghouti
- Anees Ahmd Yosef Mashal

See Declaration of N. Kaufman ¶ 7.

Date	Location of Attack	U.S. Victims' Names
08/16/2019	Elazar	Unknown

200. A U.S. national was killed or injured in this attack, according to the U.S. Department of Justice's

OVT. *See DOJ/OVT Interactive World Map - Near East*, Justice.gov, https://www.justice.gov/nsd-ovt/dojovt-interactive-world-map/near-east (last visited Oct. 11, 2020). A copy of the DOJ/OVT list is attached *supra* as Exhibit 21.

201. Ala'Khader al-Hreimi died perpetrating the attack. *See* Declaration of A. Spitzen ¶ 45.

202. Pursuant to the Palestine Liberation Organization Commitments Compliance Act of 1989 (§ 804, Title VIII, P.L. 101-246) and the Foreign Relations Authorization Act, Fiscal Year 2003 (§§ 603–04, 699, P.L. 107-228), the State Department has issued a Report to Congress regarding compliance during the period from April 5 to October 4, 2020, by the Palestine Liberation Organization and the Palestinian Authority with respect to their commitments under those statutes. A true and complete copy of the Report's text as provided to me is attached as Exhibit 27. Relevant portions of the report were quoted in a recent press article. *See* Adam Kredo, *Palestinian Government Continues Payments to Terrorists Despite Cash Crunch*, WASH. FREE BEACON (Oct. 30, 2020), https://freebeacon.com/national-security/palestinian-government-continues-payments-terrorists-despite-cash-crunch/. A copy of the Free Beacon article is attached as Exhibit 28. Because the Report's full text was provided by a confidential source, I have redacted the sender's name and other information protected by the work-product privilege.

B. Consent Under Subparagraph (1)(B)

Relation Between the PLO and the PA

203. The PA's Ministry of Foreign Affairs acts as the PLO's agent. According to Defendants, the PA's "ultimate authority is the PLO," and the PA "was made

accountable to the PLO Executive Committee." Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for an Advisory Opinion), Written Statement Submitted by Palestine at ¶¶ 118–119 (Jan. 30, 2004), https://www.icj-cij.org/public/files/case-related/131/1555.pdf. A copy of relevant portions of the statement is attached as Exhibit 29.

204. The PA's Ministry of Foreign Affairs website states that the PA "cannot assume roles or functions not delegated to it by the PLO." A translated except of the website is attached as Exhibit 30.[3]

205. The PLO has delegated to the PA a role in the PLO's conduct of activities at the UN Mission in New York. In 2005, the PA adopted "The Diplomatic Corps Law No. 13-2005." According to this law, the PA's Ministry of Foreign Affairs is charged with "[o]verseeing all missions politically, administratively and financially," (§ 3); and all staff with the rank of "Ambassador" are appointed by the PA's President, (§§ 7, 9). A translated copy of the Diplomatic Corps Law No. 13-2005 is attached as Exhibit 31.

206. In accordance with this law, PLO and PA Chairman Abbas appointed Riyad Mansour to head the Palestinian UN Mission, on September 10, 2005, with the civil service rank of "ambassador" within the PA's Foreign Ministry, serving as the PLO's Permanent Observer to the United Nations. A translated copy of the announcement is attached as Exhibit 32. Dr. Mansour continues to head the Mission today, and other PA officials also staff the office, according to

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[3] Plaintiffs previously filed Exhibits 28–31, 33, and 58 in support of their motion to recall the Second Circuit's mandate. *See* No. 15-3135, ECF No. 305 (2d. Cir. March 25, 2019).

Defendants' PalestineUN.org Mission Team subpage. Copies of the relevant website pages are attached as Exhibit 33.

Consular Services

207. For many years, Defendants have provided "consular services," such as the authentication of birth and death certificates, and other forms, through agents located in the United States, including Ahmad Alahmad, Samir Farhat, and Awni Abu Hdba. For example, in 2019, Defendants' agent Awni Abu Hdba participated in the authentication of a document while located in New Jersey. These activities were described in detail in the Declaration of David Russell originally filed in the Second Circuit in *Sokolow v. Palestine Liberation Org.*, No. 15-3135 (ECF No.305-5) at pp. A278–82 (attached as Exhibit 34).

Press Conferences and Informational Materials

208. On February 11, 2020, Mahmoud Abbas, Chairman of the PLO and President of the PA, held a press conference with a retired Israeli politician in New York City, during which Chairman Abbas criticized the U.S. anticipated Israel–Palestine Peace Plan. Chairman Abbas said: "A few days ago, the so called deal of the century was introduced by America and totally went against international law and does not make way for a two-state solution. This cannot be a basis for any future negotiations as it will not make way for a joint peace." The press conference was recorded and is available on Defendants Twitter page. *See infra* Exhibits 35–36.

209. After January 4, 2020, Defendants continued to maintain and update a website and Twitter and Facebook accounts in the name of the State of

Palestine, though which they publish communications in English.

210. Defendants' posts on Facebook and Twitter are physically in the United States. Twitter's servers are located in Sacramento, California *Easyweb Innovations, LLC v. Twitter, Inc.*, No. 11 Civ. 4550 (JFB) (SIL), 2016 WL 1253674, at *3 (E.D.N.Y. Mar. 30, 2016), *aff'd*, 689 F. App'x 969 (Fed. Cir. 2017). Six of Facebook's nine data centers are physically in the United States. *See Patel v. Facebook, Inc.*, 932 F.3d 1264, 1268 (9th Cir. 2019).

211. Defendant's palestineun.org website is physically in the United States. It is maintained by Domains By Proxy, LLC, an entity physically located in Arizona, according to the Internet Corporation for Assigned Names and Numbers (ICANN) and the Arizona Corporation Commission. According to ICANN's "WHOIS" tool, the server hosting the palestineun.org website is physically located in California. Copies of reports from the Arizona Corporation Commission and ICANN are attached as Exhibit 37.

212. Defendants employ a person who works at Defendants' office, premises, or other facility located in a townhouse on at 115 East 65th Street in New York City, and who lists her job as "Director of Public Relations." A copy of Nadia Ghannam's LinkedIn page is attached as Exhibit 38; *see also supra* Exhibit 33.

213. After January 4, 2020, Defendants have used their website to publish communications in English. Such communications included the following examples:

a. January 10, 2020: Defendants published a letter on their website asserting that Israel is carrying out a "frenzied, illegal colonization campaign."

b. February 14, 2020: Defendants published a letter on their website asserting that Israel was engaging in "relentless crimes, provocation, incitement and inflammatory rhetoric."

c. February 20, 2020: Defendants published a letter on their website asserting that Israel was engaged in "continuing illegal settlement activities, land grab and annexation schemes."

d. February 26, 2020: Defendants published a letter on their website asserting that Israel "persists in rabid pursuit of its illegal colonization schemes."

e. March 13, 2020: Defendants published a letter on their website asserting that Israel "escalates the pace of its illegal annexation and colonization schemes and its aggressions and inflammatory rhetoric against the Palestinian people."

f. April 2, 2020: Defendants published a letter on their website asserting that Israel "has not for a minute ceased its illegal policies and practices."

g. April 15, 2020: Defendants published a letter on their website asserting that "Israel continues to cynically exploit the international community's focus on the life and death circumstances imposed by the COVID-19 pandemic, to entrench its illegal occupation, advance annexation, and escalate its repression of Palestinians."

h. April 29, 2020: Defendants published a letter on their website asserting that Israel's accusations of antisemitism are used to "taint legitimate criticism" by those who "dare to denounce Israel's violations of the Palestinian people's rights and its colonization of their land."

i. May 13, 2020: Defendants published a letter on their website asserting that "not a day has passed where Israel has not cynically exploited the COVID-19 crisis, globally and locally, to forge ahead with its annexationist plans and in full coordination with the current US administration."

j. June 4, 2020: Defendants published a letter on their website asserting that Israel "continues its depraved dehumanization of the Palestinian people and colonization of Palestinian land."

k. July 24, 2020: Defendants published a letter on their website asserting that Israel "forges ahead with its expansionist policies in the West Bank, cementing its illegal occupation and escalating its aggression against the Palestinian people, their land and their rights."

l. August 6, 2020: Defendants published a letter on their website asserting that there were "continuing and escalating illegal policies and practices of Israel, the occupying Power, and its extremist military and settler forces."

m. August 17, 2020: Defendants published a letter on their website asserting that "Israel carries on with its illegal colonization and annexation measures in our land and with its repression of the Palestinian people through measures of collective punishment, dispossession, displacement and other violations of their rights."

Copies of the above-cited posts are attached as Exhibits 39–51.

214. After January 4, 2020, Defendants also published on their website English translations of numerous speeches given by Palestinian representa-

tives at the United Nations. These publications included the following examples:

a. February 11, 2020: Defendants assert that the proposed U.S. peace plan "contains diktats, consecrates occupation and annexation by military force, and would lead to an Apartheid system, an anachronistic reality being implemented today in Palestine. It rewards occupation instead of holding it accountable for the crimes it has committed for decades against our people and land."

b. April 23, 2020: Defendants assert that Israel should "stop its colonization and de facto annexation of Palestinian land; end its immoral blockade on the Gaza Strip; and release the thousands of Palestinians, including children, that it has imprisoned. . . . Israel carries on with its illegal policies and practices, business as usual."

c. May 27, 2020: Defendants assert, "Israel has demonstrated time and time again its contempt for the rule of international law and for Palestinian rights and lives."

d. June 24, 2020: Defendants assert that Israel is "drunk on power, propelled by infinite impunity, motivated by one single thought that it has been under the influence of for decades: grabbing maximum Palestinian land with minimum Palestinians."

e. July 21, 2020: Defendants assert that the Palestinian people has been "dis- possessed, exiled, occupied, colonized, annexed and deprived of their fundamental human rights."

Copies of the above-cited posts are attached as Exhibits 52–56.

215. Since January 4, 2020, Defendants have updated their Twitter account more than 200 times and their Facebook account more than 125 times. Defendants' Twitter and Facebook updates have included the following communications in English:

a. February 4, 2020: Defendants published the "official #Palestinian position from the Trump administration's so-called plan" concerning the U.S. peace plan.

b. February 11, 2020: Defendants stated, "They (#Israelis) are strengthening the #apartheid regime . . . this plan is a plan to put an end to the Question of #Palestine . . . " (ellipses in original).

c. March 17, 2020: Defendants stated, "US lawmakers call on their administration to oppose demolition of Palestinian homes."

d. March 30, 2020: Defendants stated, "With resilience and strength, we will defeat [COVID-19] despite the continued Israeli violations against the land and people of Palestine."

e. April 10, 2020: Defendants stated, "Infographic: Summary of Israeli violations since the State of #Palestine declared a state of emergency over the outbreak of #COVID19."

f. April 12, 2020: Defendants stated, "While the world works on saving lives, US and Israel working on killing prospects of peace through annexation."

g. April 17, 2020: Defendants stated, "Palestinian prisoners are hostages to Israel's gratuitous cruelty and must be released."

h. April 20, 2020: Defendants stated, "Palestinian leadership will confront Israel's united agenda of permanent aggression and annexation."

i. April 23, 2020: Defendants stated, "We reiterate: the #US plan will not bring peace. This plan—and #Israels decision to proceed w/ #annexation—will destroy the two-State solution & entrench Israel's military control over the #Palestinian ppl and land."

j. April 28, 2020: Defendants stated, "Ever since Trump took office in 2016, Israel has built more illegal settlements on Palestinian land and displaced more families than in previous years."

k. May 15, 2020: Defendants published an article entitled, "Nakba is a continuum of injustice that must end." The article begins: "Seventy-two years ago, the Nakba (Catastrophe) that was forced upon the Palestinian people began with a systematic campaign of ethnic cleansing, expulsion, mass murder, theft, and destruction by Zionist militias that later formed the Israeli army." The article contains no mention of any proceedings in the United Nations.

l. May 18, 2020: Defendants announced that "the Palestinian Govt. will meet to discuss how we will move forward in response to Israel's announcement on the looming #annexation plan scheduled to take place this July."

m. May 19, 2020: Defendants republish a declaration by the Organization of Islamic Cooperation opposing the annexation plan.

n. May 21, 2020: Defendants republish a press release to "mobilize efforts to combat Israel's unlawful annexation plans."

o. May 22, 2020: Defendants republished portions of a letter written by eighteen US. Senators expressing "grave concern regarding unilateral annexation of Palestinian Territory."

p. June 7 to 11, 2020: Defendants published a series of videos entitled "one voice against Israel's annexation."

q. June 11, 2020: Defendants published an "open letter to the Israeli Government concerning Annexation" by legal scholars.

r. June 12, 2020: Defendants published a statement from the President of Sinn Féin (the Irish political party) that "[t]he global community must stand w/the Palestinian people at this time."

s. June 16, 2020: Defendants publish a statement denouncing "the threat annexation: Israel's acquisition of lands belonging to the State of #Palestine by Force."

t. June 25, 2020: Defendants published a letter from European lawmakers "contemning Israel's latest plan to illegally #annex #Palestinian territory in the occupied #WestBank."

u. June 26, 2020: Defendants published a statement from Churches for Middle East Peace arguing that "Annexing any (part) of the West Bank will entrench inequalities and abuses of Palestinian human rights."

v. June 26, 2020: Defendants published a letter stating that Israel is engaged in "institutionalized violence, terror and racism."

w. July 1, 2020: Defendants published a "call for immediate targeted sanctions to stop Israel's #Annexation and Apartheid" and a position paper for "all those interested to know more about the illegality of Israel's annexation and its impact on the lives of the people of #Palestine."

x. July 2, 2020: Defendants published a "call by international women leaders against Israeli annexation."

y. July 3, 2020: Defendants published a statement by retired politicians urging European politicians "to maintain their resolve against #Israel's plans to annex swathes of the #WestBank."

z. July 29, 2020: Defendants published a video captioned: "The reality of occupation and #annexation in #Jerusalem summed up. Ethnic cleansing, land theft, oppression, persecution and other #IsraeliCrimes continue in the absence of #accountability."

aa. August 31, 2020: Defendants retweeted an assertion that "Israel must immediately allow entry of fuel and other essential items into #Gaza.

Copies of the above-cited Twitter and Facebook posts are attached as Exhibits 35–36, 57–58.

Maintaining An Office Or Other Facility

216. Defendants own and maintain an office, premises, or other facility located in a townhouse on at 115 East 65th Street in New York City. Defendants own the building in which the facility is located in the name of the "Permanent Observer Mission of Palestine to the United Nations." A copy of the deed to 115 East 65th Street is attached as Exhibit 59.

217. I believe that agents, officers, and/or employees of the PLO and the PA have used the East 65th Street facility since January 4, 2020, and that they have used the facility in the name of the State of Palestine for non-UN business.

218. The PLO and the PA hold themselves out to be, and carry out conduct in the name of, the State of Palestine, in connection with official business of the United Nations. *See supra* Exhibit 33. For example, Dr. Mansour holds himself out as "Ambassador,

Permanent Observer of the State of Palestine to the United Nations." *See id.*

C. Discovery Will Reveal Additional Relevant Information Proving Consent

219. No discovery from Defendants concerning consent to jurisdiction has taken place in any case since enactment of the PSJVTA.

220. Discovery from Defendants would likely demonstrate that they engaged in conduct that meets the terms of 18 U.S.C. § 2334(e)(1)(A). With regard to individuals who died while or were convicted for perpetrating terror attacks that harmed U.S. nationals, I have limited the foregoing presentation to perpetrators whose deaths or convictions are confirmed by Defendants' own documents, copies of the convictions themselves collected by me and my colleagues, or in a handful of cases, otherwise reliable evidence. In presenting this information, my colleagues and I omitted another 129 individuals who were identified as having been convicted for or killed while perpetrating terror attacks that killed or injured Americans, but as to whom we did not have actual convictions or other confirmatory evidence. Discovery from the Defendants would likely demonstrate that most or all of these 129 additional individuals who (a) were killed while or convicted of perpetrating terror attacks, (b) harmed U.S. citizens, and (c) they or their families were paid by Defendants after April 18, 2020 by reason of the death or imprisonment of the perpetrator. As detailed in the Declaration of Arieh Spitzen, a prisoner who is entitled to payments under Defendants' prisoner payment program must submit a copy of the verdict and sentence, so it is highly likely that Defendants themselves have evidence of the relevant convictions. Spitzen Decl. ¶ 23. Similarly,

Defendants' own "Martyr Files" will show the circumstances of the deaths of individuals killed while perpetrating terror attacks that harmed U.S. citizens. Spitzen Decl. ¶ 44.

221. Discovery from the Defendants would likely also demonstrate that they have engaged in conduct that meets the terms of 18 U.S.C. § 2334(e)(1)(B). For example, discovery would reveal what uses were made of Defendants' facility in New York City. In the *Klinghoffer* case, Judge Stanton of this Court found that Defendants used the facility to prepare press releases, informational materials and to conduct fundraising activities. *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 795 F. Supp. 112, 114 (S.D.N.Y. 1992). I have a reasonable belief that such activities have taken place after January 4, 2020, at the same facility.

222. I also have a reasonable belief that Defendants have engaged in additional activities described by a member of Congress shortly after Defendants' counsel met with his staff. In particular, Defendants' counsel communicated or met with staff of Senator Patrick Leahy on January 7, 9, and 13, 2020, *see* Squire Patton Boggs, FARA Supplemental Statement attachment D-3, Item 3 (July 31, 2020) (relevant pages attached as Exhibit 60), and soon after that, Senator Leahy issued a statement suggesting that Defendants are conducting meetings "with advocates regarding relevant issues" and engaging in "civil society activities." *See* 166 Cong. Rec. S627 (daily ed. Jan. 28, 2020) (attached as Exhibit 61). Defendants have not disclosed which "advocates" they met with, what "relevant issues" they attempted to influence, and what "civil society activities" they engaged in.

Discovery would reveal the scope of these activities and whether they are subject to some exception to the general rule that "*any* activity" in the United States is consent to personal jurisdiction in ATA cases.

223. In addition, based on investigation done under my supervision, I have learned that, after January 4, 2020, one or more agents of the Defendants participated in the authentication and/or consideration of documents for authentication on behalf of the PA and PLO while physically located in the United States, including by transmitting documents for authentication to employees of the PA's Ministry of Foreign Affairs. Discovery would reveal the scope of those activities as well.

D. Additional Document

224. I attach as Exhibit 62 a letter from Secretary of State Michael R. Pompeo to Senator Charles E. Grassley dated June 19, 2019.

225. I declare under penalty of perjury that the foregoing is true and correct. Executed on November 12, 2020

/s/ Kent A. Yalowitz
Kent A. Yalowitz

Exhibit 34

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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15 M3135(L)
15M3151(XAP)

MARK I. SOKOLOW, *et al.*

Plaintiffs-Appellants,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.* ,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
IN 2004 CIV. 0397
HONORABLE GEORGE B . DANIELS

DECLARATION OF DAVID C. RUSSELL

David C. Russell hereby declares as follows:

1. I am associated with the firm of Arnold & Porter Kaye Scholer LLP, counsel for Plaintiffs in *Sokolow v. PLO*. I make this declaration to place certain facts before the Court.

2. I understand from published court decisions and the record in this case that the PLO and PA maintained an office in washington, D.C. for many years.

3. According to Item 11 of Defendants' most recent FARA report, one service that Defendants' Washington, D.C. office provided was "Consular Services, such as Power of Attorney documents, Birth and Death

certificates, and other forms." A copy of this FARA report, filed with the Department of Justice on October 9, 2018, is attached as Ex. A.

4. This report indicates that the Department of State ordered Defendants' Washington, D.C. office to be closed on October 10, 2018. Ex. A, Item 7.

5. In an October 11, 2018 radio interview, Hakam Takash, an employee in Defendants' Washington, D.C. office, described the consular services that the office provided, stating that they included services certifying documents for use in Palestinian legal proceedings. A transcription of that portion of the interview is attached as Ex. B.

6. According to an article published in the Arabic-language newspaper Al-Quds, when the D.C. office closed, the office announced on behalf of the PA's Ministry of Foreign Affairs and Expatriates that "the government of the State of Palestine will unequivocally honor its promises to its citizens living in the United States ... and has stressed that it would find alternate ways of continuing to provide consular services, and guarantee the continued provision of services to citizens." A copy of the Al-Quds article, dated November 10, 2018, is attached as Ex. C.

7. Before the Washington, D.C. office closed, Defendants advertised on their "PLODelegation.org" website that the office provided consular services. A copy of the internet archive of the "consular affairs" section of the website "plodelegation.org" from September 10, 2018 is attached as Ex. D. That section listed a number of notaries as part of its consular-service offerings, among them Ahmad Alahmad, Samir Farhat, and Awni Abu Hdba. *Id.* In February 2019, I placed calls to these individuals.

8. I spoke with Mr. Alahmad on February 25 and asked him whether he was licensed to certify documents for use in Palestine. He said that he was. I then asked him whether he was willing to certify my certificate of admission from the U.S. District Court for the Southern District of New York ("admission certificate") for use in Palestine. In response, he asked me to email him my admission certificate before he could give me an answer, which I did. Later in the day, he called me and left me a voicemail saying that he had referred my request to a person in Washington, D.C., who would contact me about certifying my admission certificate.

9. On February 27, 2019, Mr. Alahmad emailed me telling him to call him. When I called him back, he told me that his contact is Washington, D.C. was now unable to certify my admission certificate and that he would certify it instead. Specifically, he told me that he would mail the admission certificate to either Canada or Mexico for certification.

10. I also spoke with Mr. Farhat on February 25 and asked him whether he was licensed to certify documents for use in Palestine. He said that he was. He then gave me the name of a person who I should contact in Paterson, New Jersey Mr. Abu Hdba.

11. I spoke with Mr. Abu Hdba on February 26 and asked him whether he was licensed to certify documents for use in Palestine. He said that he was. I then asked him whether he was willing to certify my admission certificate for use in Palestine. In response, he asked me to email him my admission certificate, which he wanted to look at before giving me an answer. I then emailed him my admission certificate to the email address that he gave me.

12. Mr. Abu Hdba called me back later in the day and told me that he would provide the necessary certifications for my admission certificate. Specifically, he told me that he would send the admission certificate to Canada for certification.

13. Mr. Abu Hdba then gave me an address in New Jersey to mail my admission certificate to. He also told me to include a $300 money order—the fee for certifying the admission certificate.

14. I mailed Mr. Abu Hdba my admission certificate on February 26, 2019 to the address in New Jersey that he gave me, along with a $300 money order. On February 27, 2019, FedEx delivered the admission certificate to that address. A copy of the proof of delivery is attached as Ex. E.

15. On March 11, 2019 I received my stamped admission certificate from Mr. Abu Hdba. A copy of the stamped admission certificate, along with the envelope that it came in indicating that it was mailed to me from New Jersey, is attached as Ex. F.

16. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 20, 2019

/s/ David C. Russell
David C. Russell

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 04 Civ. 00397 (GBD) (RLE)

MARK I. SOKOLOW, *et al.,*

Plaintiffs,

vs.

THE PALESTINE LIBERATION ORGANIZATION, *et al.,*

Defendants.

DECLARATION OF ARIEH SPITZEN

Arieh Spitzen hereby declares as follows:

1. I respectfully submit this declaration to provide certain information to the Court. This declaration has the following sections:

I. A description of my background.

II. A description of the laws, policies and practices of the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) for making payments to designees of imprisoned terrorists and to families of so-called "shahids" ("martyrs"), including suicide terrorists.

III. A discussion of statements of the PLO and PA after April 18, 2020, confirming that they continue to pay designees of imprisoned terrorists and families of "shahids."

IV. A list of the names of certain suicide terrorists along with the date and location of the terrorist attacks in which they were killed, as well as a discussion of the sources used for this summary.

I. Professional Background

2. In 1970, I joined the Israel Defense Forces ("IDF"), serving in an elite unit as the Israeli equivalent of a Navy Seal. In 1972, I transferred to the IDF's Intelligence Unit, where I served until 1974. Then I enrolled at Hebrew University in Jerusalem, specializing in Middle East, Arabic, and Jewish History, and graduating cum laude in 1976. I subsequently returned to the IDF, to its Palestinian Affairs Department ("PAD") in the West Bank.

3. In 1976, I established the Research Section of the Advisor for Arab Issues in the Military Government in the West Bank (subsequently known as the Civil Administration) and served as its Section Head until 1978. With the exception of the years between 1978 and 1981, when I served as a researcher-assistant dealing with issues concerning the integration of the Arab population within Israel's society and establishment, I remained in the PAD for the next 30 years.

4. After returning to the PAD in 1981, I resumed my role as Section Head of the Research Section of the Advisor for Arab Issues in the Military Government in the West Bank until 1993. In that capacity, I dealt with socio-economic and political research regarding the Palestinians, focusing on political and social trends among the population. In that position, I wrote or oversaw the writing of hundreds of research papers, staff papers, articles, anthologies, and fundamental studies in civilian matters that served the decision-

making echelons of various elements of the Israeli government including the Ministry of Defense.

5. From 1993 to 1996, I was assigned to the negotiation team for the Oslo Peace Accords and served as a member of teams that negotiated the transfer of civilian authorities from the Civil Administration to the PA. From 1996 to 1998, I supervised the activity of civilian coordination in the West Bank vis-à-vis the PA's Ministry of Civil Affairs and other civilian offices. From 1998 to 2000, I was Department Head for Palestinian Issues in the West Bank at a rank of Colonel. As a senior consultant in the system, I served during the same period as the Coordinator for Arab Issues for the Operation Coordinator.

6. From 2001 to 2009, I was Department Head for Palestinian Issues in the Administered Territories as the Coordinator of Government Activities in the Territories ("COGAT"). By virtue of this position, I was a professional instructor and the top authority regarding the socio-economic civilian situation in the Palestinian arena in the West Bank and Gaza Strip. I wrote hundreds of surveys and studies about the civilian situation, the various political trends and how they were operationalized, the social trends, the economic atmosphere and its influence, and other diverse civilian issues connected to the civilian Palestinian realm, including terrorist organizations.

7. I have served as an expert witness about Palestinian terrorism in ten federal civil terrorism cases in the United States: *Linde, et al. v. Arab Bank, Plc* (in which I testified for five days in a six-week jury trial in 2014); *Gill v. Arab Bank, Plc; Strauss, et al. v. Credit Lyonnais, S.A.;* and *Weiss, et al.* v. National *Westminster Bank Plc—all* in the United States District Court for the Eastern District of New York;

Fraenkel, et al. v. Islamic Republic of Iran, et al.; Braun, et al. v. Islamic Republic of Iran, et al.; and *Force, et al. v. Islamic Republic of Iran, et al.—all* in the United States District Court for the District of Columbia; and *Weinstock, et al. v. Islamic Republic of Iran, et al.; Weinstock, et al. v. Mousa Mohammed Abu Marzook;* and *Weinstock, et al. v. Hamas—all* in the United States District Court for the Southern District of Florida.

II. The PLO's and PA's Laws, Policies and Practices For Terror Payments

8. The PLO and PA have continuously rewarded terrorists since they were established in 1964, and 1994, respectively. Of relevance here, the families of "shahids,"[1] and the prisoners and ex-prisoners imprisoned for committing terror attacks, receive special honor and payment.

9. While this Declaration focuses on payments and other benefits of monetary value, it is useful to begin by recalling that the PLO and PA glorify "shahids" and prisoners, singling them out for special standing and symbolic tributes. January 7 is officially designated as the annual day for saluting "the Palestinian Shahid." The decision to set aside an annual day for remembering the Palestinian shahids was approved by the PLO

[1] In the Islamic faith, a "shahid," is a martyr who has died for the sake of Allah. The PLO and the PA have adopted this term to refer to a person, even a secular person, who dies in the context of Palestinian "resistance" to Israel, including suicide terrorists. As former PA Minister for Prisoners Affairs testified, "We refer to people who died... serving the Palestinian people, we call them shahids.'" Deposition of Ashraf al-Ajrami p. 81, *Saperstein v. Palestinian Auth.,* No. 04-20225-CIV (S.D. Fla. Mar. 10, 2010).

in 1969. And in 1974, the Palestinian National Council designated April 17 as Palestinian Prisoners Day.

10. The PLO and PA provide terrorist prisoners, terrorists released from prison, and families of shahids (including suicide terrorists) with monthly salaries and other financially valuable benefits including one-time grants, free legal representation, free medical care, and free tuition. These benefits are not social welfare or charity to the needy. The grants and benefits are bestowed on rich and poor alike, without regard for the recipients' financial condition. Addressing the shahid program in 2007, the World Bank stated: "The program is clearly not targeted to the poorest households.... [and] the level of resources devoted to the Fund for Martyrs and the Injured does not seem justified from a welfare or fiscal perspective."[2] Similarly, addressing the prisoner payment program, former Minister of Prisoners Affairs Ashraf al-Ajrami testified that the program is not needs-based, and that the Ministry paid "around 11,000" prisoners, and "we paid all of them without any exception."[3]

11. Prisoners convicted of terrorism and who served or are still serving their terms are considered and are treated by the PA and PLO as national heroes. To take one recent example out of hundreds, the Prisoners and Ex-Prisoners Commission (discussed below) published a statement in April 2018 that: "The sector of prisoners

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[2] World Bank Report No. 38207-WBG, *West Bank and Gaza Public Expenditure Review Vol. 2* at 169-70 (2007) http://documents1.worldbank.org/curated/en/311981468320951707/text/3820-71GZOv2.txt.

[3] Deposition of Ashraf al-Ajrami p. 45, *Saperstein v. Palestinian Auth.,* No. 04-20225-CIV (S.D. Fla. Mar. 10, 2010).

and detainees is considered one of the most important sectors in the Palestinian national movement."[4]

A. Payments to the Families of Suicide Terrorists

12. The Institution for Families of the Martyrs and the Injured (hereafter, "the Institution") makes payments to the families of terrorists killed or injured in the course of carrying out terrorist attacks. The Institution provides payments to families of terrorists killed while perpetrating terror attacks specifically because of the relevant individual's death. If not for the death of the family member while executing a terrorist attack, the family would be ineligible for payments or benefits from the Institute.

13. The practice of the Institution is to make monthly payments to families of all shahids.[5] The Institution also pays for additional benefits to the families — for example, it covers tuition fees.[6] The Institution evaluates the case of each shahid using a "Social Examination" form.[7] Using the Social Examination form, the Institution evaluates information about the deceased and the family, the date, place,

[4] The statement is available at: https://tinyurl.com/y26r68cb.

[5] See Palestinian Authority Ministry of Finance, Budget Book 2018, p. 739, http://www.pmofps/pmof/documents/budget/2018/BUDGET_BOOK_2018.pdf.

[6] *Id.,* pp. 739-740.

[7] Decision No. 392 of 2005, published in Issue No. _65_ of the PA's Official Gazette, June 2006, page 502. See http://muqtafi.birzeit.edu/pg/getleg.asp?id=15303; https://www.lab.pna.ps/-cached_uploads/download/2018/01/28/65-1517150633.pdf.

circumstances of his or her death, and proof of death.[8] As an example, I have attached the file relating to Wafa Idris, a suicide terrorist who was killed perpetrating a terror attack on the Sokolow family. The file contains information about Idris, her family, the date and place of the "event" (January 27, 2002), and a "description of the event" which states, in part: "Wafa Ali Khalil Idris" "blew herself up in a crowd ... that resulted in killing one and injuring more than one hundred in addition to her immediate death." Ex. 3 hereto. The Institution's staff concluded, "She was martyred during a heroic martyrdom operation against the Zionists in the occupied city of Jerusalem. Therefore we recommend that she is considered one of the al-Aqsa Intifada Martyrs according to the regulations." *Id.* The Director of the Institution approved the application, "with an allocation of 600 shekels a month" approximately two weeks after Idris' death. *Id*

14. The Institution will not provide payments in respect of persons engaged in ordinary street crime. Thus, in a 2016 decision, the PA's Supreme Court of Justice decided that the Institution was justified in refusing to pay benefits in the case of a Palestinian man who was shot by Israeli soldiers during the course of a regular (i.e., non-terrorist) crime, because the man was not shot in the course of "resistance activities" or "militant activities."[9]

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[8] The Institution's procedures may be found on its Facebook page, https://www.facebook.com/922497227847386/photos/a.922514464512329/2799822073448216/.

[9] See *Sarsour v. Attorney General,* Case No. 144/2015 (2016), available at http://muqtafi.birzeit.edu/courtjudgments/ShowDoc.aspx?ID=105165.

15. The Institution is an official part of the PLO. The Institution was founded in 1965 by Fatah, and in 1971 the PLO's Palestinian National Council declared it an official institution of the PLO.[10] In 1994, it was transferred to the PA's Ministry of Social Affairs.[11] At that time (as now) the head of the Institution was Ms. Intisar al-Wazir, who became a minister in the PA in 1994.[12] In 2005, following the conclusion of Ms. al-Wazir's service as a PA minister, the Institution was transferred back to PLO in a decree by Mahmoud Abbas, signed in his capacity both as Chairman of the PLO and as President of the PA.[13] The Institution continues to be part of the PLO.[14]

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[10] See https://info.wafa.ps/ar_page.aspx?id=fCJqTua27460929309afCJqTu.

[11] The PA's Ministry of Social Affairs was declared in 1994, when the Palestinian Government was declared. See http://palestinecabinet.gov.ps/GovService/GOSPubNiewDetails?ID=29; The first Palestinian government included Ms. Intusar al-Wazir as the Minister of Social Affairs. See https://wafa.ps/arpage.aspx?id=GqP9DNa851111782521aGqP9DN.

[12] https://wafa.ps/ar_page.aspx?id=GqP9DNa851111782521aGqP9DN.

[13] Decision number 303 from 2006, which was published in Issue No. 66 of The PA's Official Gazette, July 2006, page 35, (announcing "the reconfirmation of our sister Intisar al-Wazir as head of the Palestine Liberation Organization's Institution for Families of the Martyrs and the Injured"), https://www.lab.pna.ps/cached_uploads/download/2018/01/28/66-1517150633.pdf; see also the World Bank Report No. 38207-WBG, *West Bank and Gaza Public Expenditure Review From Crisis to Greater Fiscal Independence* Volume II of II, March 2007, http://documentsl.worldbank.org/curated/en/311981468320951707/text/382071GZ0v2.txt.

[14] A tender on behalf of the Institution, captioned by the symbol of the PLO, was published in the Palestinian newspaper Al-Ayyam in November 2018: https://www.al-ay-yam.ps/pdfs/2018/11/

16. The Institution is also a part of the PA. The PA's website states that the Institution is part of its organizational structure.[15] Moreover, the Institution is funded by the PA's Ministry of Finance. In March 2019, for example, Ms. al-Wazir announced that some salaries would not be paid in full that month, adding: "We sent all the names to the Finance Ministry as usual, but they answered that we must reduce the names, and sent us a disc with names for which the salaries had been stopped this month."[16]

B. Payments to the Designees of Imprisoned and Released Terrorists

17. The Commission for Prisoners and Ex-Prisoners (the "Commission") makes payments to the designees of prisoners imprisoned for perpetrating terror attacks. The Commission pays the prisoners' designees specifically because of the relevant individual's imprisonment for terrorism. If not for the imprisonment, the

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08/p05.pdf. In March 2019, an item appeared on the Al-Watan website that refers to the Institution as a PLO institution: https://www.alwatanvoice.com/ara-bic/news/2019/03/11/1224236.html. On the Institute's official Facebook page, the Institution's logo can be seen and above it the name of the PLO: https://www.facebook.com/FWPal. That the Institution is a part of the PLO may also be inferred from the latest Facebook page that declares itself the Institution's Jerusalem page: https://tinyurl.com/y4anvirk. Its legal status is also described in a pamphlet about the Institution by "AMAN — Transparency Palestine," December 2010, pp. 4-5. https://www.aman-palestine.org/cached_uploads/download/migratedfiles/itemfiles-/b3dd98a029db76be614d1a64dd10604e.pdf.

[15] http://palestinecabinet.gov.ps/GovService/GOSPub/Default.

[16] https://www.alwatanvoice.com/arabic/news/2019/03/03/1222052.html.

designee would be ineligible for payments or benefits from the Commission.

18. The Commission's website describes the functions of the Commission, which provides monthly payments and benefits to prisoners, ex-prisoners, and their families.[17] The Commission's website says that these payments and other benefits are provided in "recognition of the legitimacy of the Palestinian and Arab prisoners' and detainees' national struggle and of their resistance to occupation."[18]

19. The benefits provided by the Commission are also detailed on the official website of the PA Council of Ministers, under the heading "Guide to Government Services."[19] The guide states that the Commission provides payments and other benefits to prisoners if "the prisoner was imprisoned as a result of his participation in the struggle against the Occupation," and details seventeen types of benefits to which prisoners and ex-prisoners and their designees are entitled.[20]

20. As detailed on the PA's website under the heading "Payment of salaries to prisoners and ex-prisoners," the amounts of the monthly salaries are set according to the length of the prisoner' s sentence.[21] The longer the sentence, the higher the salary. The

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[17] http://cda.gov.ps/index.php/ar/alhayia/2017-05-24-11-46-52.

[18] http://cda.gov.ps/index.php/ar/alhayia/2017-05-24-11-46-52.

[19] http://palestinecabinet.gov.ps/GovService/List?Orgld=36. See there also the topics of assistance to prisoners.

[20] *Id.;* see http://www.palestinecabinet.gov.ps/portal/GovService/Details/2871.

[21] http://palestinecabinet.gov.ps/GovService/ViewService?ID=169.

highest salary on the scale — 12,000 shekels (more than $3,500 in today's terms) — goes to a prisoner sentenced to 30 years' imprisonment or more, a punishment imposed on those convicted of committing or attempting murder.[22] The salaries are not needs-based, and in practice they significantly improve the conditions of the recipients as compared with the general population. This is illustrated by economic figures from 2018. According to data from the PA, the basic monthly grant for a prisoner serving 30 years in prison (with no increment for wife and children) is 12,000 shekels (as of 2018, roughly $3,500), a sum approximating the *annual* local GDP per person. In other words, a terrorist serving a 30-year sentence is able to direct to his family or other designees — every month — the equivalent of a full year's worth of economic activity for the average Palestinian.[23] Each monthly prisoner salary is *five* times the average monthly salary in the West Bank ($700) and more than *eight* times the average monthly salary in Gaza ($408).[24]

21. The Commission also pays salaries to the designees of ex-prisoners (who are typically the ex-prisoners themselves). In 2011 the PA's Minister for Prisoners and Ex-Prisoners, Issa Qaraqi, told WAFA, the official PLO and PA press service, that the

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[22] For details, see the table that appears in Government Decision No. 23 from 2010: https://library.-lab.pna.ps/FileManager/BookAttachmnt/21505/2.

[23] See the 2019 report from the Palestinian Central Bureau of Statistics, pp. 5, 13, http://www.pcbs.gov.ps/portals/pcbs/PressRelease/Press_En_30-9-2019-qna-en.pdf.

[24] Report of the Palestinian Central Bureau of Statistics, p. 5, http://www.pcbs.gov.ps/portals/-pcbs/PressRelease/PressEn8-5-2018-LF-en.PDF.

Ministry had paid $1.2 million in salaries to 1,212 former prisoners released in 2007, 2008, and 2009.[25]

22. Other benefits, which are detailed on the PA's website, include loans to ex-prisoners and their families;[26] free legal advice and assistance for terrorist prisoners;[27] free medical insurance;[28] free tuition;[29] and an end-of-imprisonment grant.[30]

23. In order to renew allocations and to obtain other financial benefits, the designee of the prisoner must fill out a form and provide documentation to the Commission. For "sentenced prisoners," the "required documents" includes, "... a Red Cross certificate stating the period of the sentence and the verdict itself, in Hebrew."[31]

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[25] https://www.wafa.ps/arpage.aspx?id=7J499Ma575278535073a7J499M.

[26] http://www.palestinecabinet.gov.ps/portal/GovService/Details/739

[27] http://www.palestinecabinet.gov.ps/portal/GovService/Details/167.

[28] http://www.palestinecabinet.gov.ps/portal/GovService/Details/743

[29] http://www.palestinecabinet.gov.ps/portal/GovService/Details/749; see also http://www.pales-tinecabinet.gov.ps/portal/GovService/Details/750.

[30] http://www.palestinecabinet.gov.ps/portal/GovService/Details/754.

[31] http://www.palestinecabinet.gov.ps/portal/GovService/Details/3098. A copy of this page is attached as Exhibit 2. For an earlier version of the documentation requirements, see Art. 10 of the 2006 regulations, admitted in evidence at the trial of this case as Exhibit 512 (requiring the prisoners' relatives to produce "the charge sheet issued by the Israeli military prosecutor" and "the sentence, if the Israeli courts have sentenced him."

24. The prisoners' entitlements are set forth in numerous laws and regulations of the PLO and the PA, which have developed over a period of years. In 2004, the PLO and PA adopted the Prisoners and Ex-Prisoners Law, No. 19, of 2004.[32] The law entitles "each prisoner, without discrimination, [to] a monthly allowance while he is in prison" (Article 6). In addition to the monthly allowance, the law further requires each prisoner to select a designee to receive a monthly salary:

1. The Authority must give every prisoner a monthly salary specified by the system, to be proportionate with the cost of living.
2. Prisoners' family members shall receive a portion of the prisoners' salary based on the standard of legal expenditure in effect.
3. The prisoner shall appoint an agent to collect his monthly salary or what remains of it.

25. Additionally, in 2008, the PA's Council of Ministers issued a determination that a prisoner's "period of captivity" in Israeli prison would be included as "national service" for the purpose of computing the pensions of employees of the PLO.[33] In 2011, the PA issued a decree providing that prisoners shall be treated as PA employees and formally protecting the prisoners' right to a salary; a table sets out the monthly salaries according to the recipient's period of

[32] The text of this law and of the 2006 Regulations was admitted in evidence at the trial of this case as Plaintiffs' Exhibit 512. It is attached as Exhibit. 1.

[33] http://muqtafi.birzeit.edu/pg/getleg.asp?id=16140.

imprisonment, with longer sentences entitling the prisoner to a higher monthly salary.[34]

26. The PA's Ministry of Finance funds the Commission. By law, the Commission has an independent line-item in the PA's general budget and is subject to the PA's rules of financial and administrative oversight.[35] Details of the budget appear annually in the published Palestinian Authority's Budget Book.[36] In July 2020, Qadri Abu Bakr, the Commission's Chairman, said that the PA's Ministry of Finance had transferred the prisoner payments to the bank accounts of the prisoners and ex-prisoners, adding that the Commission was monitoring the payments along with the Prime Minister's Office and the Palestinian Monetary Authority.[37] The background context in which this statement was made is discussed below in Part IV.

27. As a matter of form, the PLO and the PA have transferred the administration of the prisoner payment program back and forth between themselves numerous times. Before the PA was formed, support for prisoners was handled by the PLO's Institution (described above). In 1998, Yasser Arafat, in his capacity as Chairman of the PLO and President of the PA, issued a decree, based on a previous decree (Decree

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[34] Decision No. 23 for 2010, https://library.lab.pna.ps/FileManager/BookAttachmnt/21505/2.

[35] See https://www.lab.pna.ps/cached_uploads/download/2018/05/22/%D8%A7%D9%84%D8-%B9%D8%AF%D8%AF-142-%D9%85%D8%139-%D8%B4%D8%139%D8%A7%D8%131152-6984983.pdf, pp. 18-19.

[36] For example, see http://www.pmof.ps/pmof/documents/budget/2018/BUDGET_BOOK_2018.-pdf, pp. 174-186.

[37] https://tinyurl.com/yxtboscx.

No. 1 from 1996), establishing a Ministry for Prisoners' Affairs among other ministries of the government.[38] In 2014, the PLO and PA established the Commission and transferred the Ministry's functions to it, pursuant to a decree issued by Mr. Abbas in his capacities as both Chairman of the PLO and President of the PA.[39] And in 2018, the PLO and PA adopted a law,[40] also signed by Mr. Abbas in his capacities as Chairman of the PLO and President of the PA, which transferred the Commission and its functions back to the PA. At present, the Commission's website is located on the PA's official interne domain, "gov.ps."[41]

28. In practice, the prisoner payment program has been and remains simultaneously controlled and operated by both the PLO and the PA. As noted above, the PA's website lists the Commission as a provider of "Government Services."[42] The PLO website also describes the Commission as a part of the PLO[43] The

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[38] http://muqtafi.birzeit.edu/pg/getleg.asp?id=12678.

[39] https://library.palestineeconomy.ps/public/file s/server/20151 412112948-2.pdf, pp. 10-11; see http://www.plo.ps/category/125/1/; see also WAFA's 2014 announcement of the change at https:// info.wafa.ps/arpage.aspx?id=3795.

[40] The complete law as published in the Official Gazette of the Palestinian Authority: https://www.lab.pna.ps/cached_uploads/ download/2018/05/22/%25D8%25A7%25D9%2584%-25D8%25B9 %25D8%25AF%25D8%25AF-142-%25D9%2585%25D8%25B9-% 25D8%25B4-%-25D8%25B9%25D8%25A7%25D8%25B1- 1526984983. pdf, pp. 18-19.

[41] See "Registration Policy" of the Palestinian National Internet Naming Authority, at http://www.pnina.ps/registration-policy/ at article 3.7.2 (explaining that the "gov.ps" domain is reserved for PA institutions).

[42] http://palestinecabinet.gov.ps/GovService/List?OrgId=36.

[43] http://www.plo.ps/category/125/1.

relevant laws and decrees have all been signed by the Chairman of the PLO and the President of the PA, who is the same person, in the exercise of both capacities. The Chairman of Commission itself, Qadri Abu Bakr, is also a member of the PLO's Palestinian National Council,[44] and has remained at the head of the Commission from his appointment in 2015 to today without change as the Commission has shifted from the PLO to the PA.[45] And no significant administrative change has been announced as a consequence of the formal transfer of the Commission from the PLO back to the PA.

III. Statements of the PLO and PA after April 18, 2020 that They Continue to Make Prisoner and Shahid Payments

29. Since April 18, 2020, the PLO and PA have made numerous statements that they are continuing their programs to pay all designees of prisoners and families of shahids. Some context for these statements is useful.

30. In the last few years, several governments have taken steps to persuade the PLO and the PA to halt paying terrorists and their families. In March 2018, the U.S. Congress passed the Taylor Force Act, which denies U.S. financial assistance to the PA for so long as it continues to pay terrorists or their families.[46] In July

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[44] http://cda.gov.ps/index.php/ar/alhayia/2017-05-24-09-17-16.

[45] On July 28, 2015, the website of the Commission for Prisoners and Ex-Prisoners published a profile of General Abu Bakr: http://cda.gov.ps/index.php/ar/alhayia/2017-05-24-09-17-16; see also Order No.74 from 2018. http://muqtafi.birzeit.edu/pg/getleg.asp?id=17061.

[46] The law is available at https://www.law.cornell.edu/uscode/text/22/2378c-1.

2018, Israel's Knesset passed a law that froze funds transferred to the PA in amounts equal to the amounts that the PA pays in connection with terrorism.[47] And in February 2020, the IDF issued an order providing that if salaries for Palestinian prisoners and for the families of shahids pass through a bank in the West Bank, that bank would be in violation of Israel's Anti-Terror Law, and that the bank's management and employees would be accessories to a crime if they continue to administer the prisoners' accounts, and subject to punishment of up to ten years in prison.[48] That order was scheduled to take effect May 9, 2020.

31. In response to the IDF order, a few banks in the West Bank did halt, for a time, the transfer of payments to some of the accounts of the prisoners and their families. The PLO and PA denounced these steps and made statements and took actions to ensure the continuation of the payments, even at the cost of harsh financial sanctions imposed on them for such support. Senior Palestinian officials spoke repeatedly against attempts to deprive the prisoners and the shahids' families of material benefits, stressing their importance to the PLO and PA.

32. On May 8, 2020, the PA's official spokesman, Ibrahim Milham, announced:

> The government confirms that it refuses to bow to Israeli pressure, will remain loyal to the prisoners and the martyrs, and will

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[47] The law is available at https://fs.knesset.gov.il/20/law/20_lsr502711.pdf, pages 732-734.

[48] See Clause 10 of Amendment 67 to Military Order 1827 (Feb. 2020), available at https://ti-nyurl.com/y6cf3yt6; *see also* https://www.terrorism-infoorgil/app/uploads/2020/06/H_140_20-.pdf, page 3.

> preserve their rights, regardless of how much pressure is applied.[49]

33. On May 19, 2020, Mahmoud Abbas, the Chairman of the PLO and of the PA said in a speech to the Palestinian leadership in Ramallah that:

> We vow to our honorable martyrs and heroic prisoners (just now, the Israelis have asked the banks not to pay the prisoners, but we shall keep paying them, no matter how much the [Israelis] scream) ....[50]

34. On June 1, 2020, WAFA reported that Qadri Abu Bakr, Chairman of the Prisoners and Ex-Prisoners Commission, stated that "the banks would continue paying the salaries of prisoners and of martyrs' families until a dedicated banking institution is set up for them."[51] WAFA reported that the proposed bank "would be considered a national achievement, since stopping the payment of those allowances would belittle the martyrs' history and sacrifices, and act against their struggle."[52] WAFA has since reported that the PA appointed Bayan Qasem as CEO of the

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[49] Exhibit 4, https://www.alalamtv.net/news/-الأسرى-والشهداء السلطة-ترفض-ضغوط-الإحتلال-لوقف-رواتب-

[50] Translation and transcript of excerpt attached as Exhibit 5. The speech may be seen at https://ti-nyurl.com/yxcppq4c. It was reported also at https://tinyurl.com/y3cxp6us and at https://pal watch. org/page/17934.

[51] Exhibit 6, WAFA June 1 2020, https://www.wafa.ps/arpage.aspx?id=9sGXtKa877022306193-a9sGXtK.

[52] *Id.*

new bank,[53] and that the bank is called Bank Al-Istiqlal (the Independence Bank).[54]

35. On June 8, 2020, Mohammad Shtayyeh, the PA's Prime Minister, gave an interview on PA TV in which he said, "we continued to pay the prisoners and the shahids in full" and "[w]e will remain committed to this until Judgment Day, until we are victorious, until the bloodbath stops, and until the prisons are closed. This is one issue to which we remain committed." With regard to the February 2020 order, Shtayyeh stated:

> The Israelis said: "You have to close 40,000 bank accounts that belong to prisoners." Some banks were afraid and all that, but we said to these banks: "That is a political decision. It is forbidden for Israel to expand its military rule to the Palestinian lands. Stay steadfast on this issue!" The Israelis backtracked. Just as they backtracked on this, on that, and on other things when [we] were steadfast and we persevered, I believe that on July 1 we will be in a different position.[55]

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[53] WAFA, Economic Portal of Palestine, July 20, 2020; see al-Iqtisadi, July 21, 2020, https://www.terrorism-info.org.il/en/the-palestinian-authority-continues-preparations-for-found-ing-a-bank-which-will-enable-it-to-transfer-funds-to-terrorist-prisoners-and-the-families-of-sha-heeds/.

[54] See the survey from the Meir Amit Intelligence and Terrorism Information Center: https://www.terrorism-info.org.il/en/the-palestinian-authority-continues-preparations-for-founding-a-bank-which-will-enable-it-to-transfer-funds-to-terrorist-prisoners-and-the-families-of-shaheeds/.

[55] Exhibit 7, MEMRI, Palestinian Prime Minister Mohammad Shtayyeh: We Are Reconsidering Our 1993 Recognition of Israel; We Will Continue to Pay Salaries to Families of Prisoners and

36. On July 5, 2020, WAFA carried a press release from Chairman Abu Bakr announcing that four banks had failed to transfer salaries to approximately 150 relatives of prisoners. According to WAFA: "Abu Bakr demanded that all banks commit to paying the prisoners' allowances and refrain from closing any of the account, or cancelling any of the ATM cards, consideration that failing to pay the prisoners' allowances would violate the directives of the [Palestine] Monetary Authority and the government, and that it would violate the agreement that had previously been concluded."[56]

37. On July 9, 2020, Abu Bakr gave an interview in which he said: "Regarding the salaries, everything was fine. On Wednesday [July 8], obviously, after having discussions with some of the banks that were disbursement stations, almost all of the prisoners... we didn't receive almost any phone call from any prisoner."[57]

38. On July 27, 2020, WAFA announced that the PA's General Intelligence Service had provided more than 30 special grants to families of prisoners and shahids from a single town — Jenin. WAFA reported that the payments were made "to implement what Mahmoud Abbas had repeatedly stated — that if we

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"Martyrs," https://www.memri.org/reports/palestinian-prime-minister-mohammad-shtayyeh-we-are-reconsidering-our-1993-recognition.

[56] Exhibit 8, WAFA, July 5, 2020 https://www.wafa.ps/Pages/Details/5652.

[57] Exhibit 9, Interview of Qadri Abu Bakr, 34:45 - 37:16, available at https://www.face-book.com/samertayem2020/videos/321807815502094.

were left with just one penny, it would be given to the families of martyrs and prisoners."[58]

39. On September 7, 2020, Abu Bakr gave a televised interview in which he said:

> Question: ... you've said you'd submit your resignation, and then came the responses and the discussion, and conversations on the topic [of payments to prisoners]...
>
> Qadri Abu Bakr: I mean, look, we're under tremendous pressure..
>
> Question: Yes. From whom?
>
> Qadri Abu Bakr: From the people, of course. The prisoners' families. From incarcerated prisoners. From ex-prisoners. We have an enormous amount of requests that we're unable of handle... And as you've said, everyone is suffering from this situation, but the prisoners are especially suffering. As for myself, I personally feel that not enough is being done, in general, and in regard to us as well. We're the ones not doing enough.
>
> Question: Ok. This failure, I mean, prisoner affairs should be a priority for everyone, including the payment of financial allowances to them. Mr. Qadri, do you believe that there is negligence, that the prisoners' issue is being neglected, and that it isn't one of the priorities concerning financial allocations?
>
> Abu Bakr: No. I don't think so. That's because when the Israelis blocked the clearinghouse,

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[58] Exhibit 10, WAFA, July 27, 2020, https://www.wafa.ps/Pages/Details/6764.

> a full salary was paid to them. One hundred percent was paid to the prisoners, and fifty percent was paid to the employees.[59]

40. On September 28, 2020, the official Palestinian news agency WAFA quoted Palestinian Prime Minister Shtayyeh as saying that despite financial hardships, the PA continues to pay each month various kinds of salaries, including salaries to the families of prisoners and shahids:

> The Prime Minister explained that 350,000 salaries are paid every month, which go to military and civilian personnel, the needy families who amount to 120,000, including 81,000 families in the Gaza Strip, 140,000 employees in the West Bank and Gaza, in addition to 75,000 retired military and civilian personnel in the West Bank and Gaza, *as well as the families of prisoners and martyrs at home and in the Diaspora.*[60]

41. Notably, taking Prime Minister Shtayyeh's September 2020 figures at face value, it appears that approximately 15,000 families of prisoners and shahids are "paid every month."[61]

IV. Summary of Suicide Terrorists

42. I have reviewed documents concerning certain suicide terrorists and I summarize information about

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[59] Exhibit 11, see https://www.youtube.com/watch?v=UBJcFvBRsfc&feature=emblogo.

[60] Exhibit 12 (emphasis added), WAFA, September 28, 2020, https://english.wafa.ps/Pages/Details/120374.

[61] *Id.* (350,000 total salaries "each month," less 120,000 "needy," less 140,000 employees, less 75,000 retired employees, leaves 15,000 salaries).

those individuals in the table below. The documents are all from public sources.

43. Most of the information in the table comes from the WAFA, the Palestine News & Information Agency, which is the official news agency of the PLO and the PA.[62] WAFA's website is active in Arabic, English, and French; WAFA and active Facebook and Twitter pages, with more than 270,000 followers. The President of the Palestinian Authority appoints the Chairman of WAFA's Board of Directors,[63] and its status as an official institution of the PLO and the PA is defined in Decree No. 6 of 2011.[64] That Decree provides that WAFA is "the official Palestinian agency for news and information" and "subordinated to the President, inasmuch as it is one of the institutions of the Palestine Liberation Organization." The Decree further states that WAFA will participate in the "implementation of the general policies of the Palestine Liberation Organization" (Article 4).

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[62] Information regarding WAFA may be found at the WAFA website (https://info.wafa.ps/a), the WAFA site on Facebook (https://www.facebook.com/wafagency), the WAFA account on Twitter (https://twitter.com/wafaps?lang=en), and in the WAFA entry in Guy Bechor's Lexicon of the PLO: People, Organizations, and Events, Third Edition, Israel Ministry of Defense Publishing House, 1999, page 192. (Hebrew).

[63] See, for example, the appointment of the present Chairman, Ahmad Assaf, on January 8, 2016: Resolution number 4 for 2016 in the Official Gazette of the Palestinian Authority; see also: https://info.wafa.ps/userfiles/server/pdf/Palestanianfactsnumber 117.pdf, page 31.

[64] https://www.lab.pna.ps/cached_uploads/download/2018/01/28/91-1517150637.pdf, pages 23-28.

44. Unless otherwise indicated in the table, the information comes from WAFA. The table also includes information drawn from:

A. A report from the Israeli Security Agency ("ISA") entitled "Suicide Terrorists in the Current Conflict, September 2000 - September 2007;"

B. "Martyr Files" produced by the Defendants and admitted in evidence at trial in this case;

C. *The Palestinian Encyclopedia,* prepared by the Palestine Encyclopedia Authority[65] and edited by Dr. Mohammad Shtayyeh, the current Prime Minister of the PA; and

D. A 2010 doctoral thesis entitled "Palestinian Suicide Martyrs (Istishhadiyin): Facts and Figures" by sociologist Dr. Bassam Yousef Ibrahim Banat, who in conducting his research was granted "full cooperation" by the Institute, which gave him "a list of all of the Palestinian Martyrs and the way they implemented the martyrdom operations."[66]

E. A letter dated February 12, 2002 by the Office of the Legal Advisor to the Military Commander of the Israeli Defense Forces approving the return of the body of a suicide terrorist to his family for burial obtained from the official police file

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[65] See http ://www.plo.ps/category/124/1/.

[66] Exhibit 13.

concerning the attack carried out November 4, 2001.

In the table, notes corresponding to the paragraph lettering above indicate the source. For example the letter "A" indicates that the information comes from the ISA Report, the letter "B" indicates that the information comes from Martyr Files exhibited at trial in this case, and so on. Where no footnote appears, the source is WAFA.

45. Each of the following individuals died while perpetrating a terror attack on the date and in the place indicated:

No.	Date of Attack	Location	Individual Who Died Perpetrating Attack
1.	05 September 1972	Munich	Yusuf Nazzal[C]
2.	05 September 1972	Munich	Mohammed Masalha[C]
3.	11 March 1978	Tel Aviv	Dalal Said Mohammad al-Mughrabi
4.	09 October 1994	Jerusalem	Hassan Mahmoud 'Isa Abbas
5.	25 December 1994	Jerusalem	Ayman Kamel Radi[D]
6.	22 January 1995	Netanya (Beit Lid Jct.)	Anwar Mohammed Atiyyah Sukar
7.	22 January 1995	Netanya (Beit Lid Jct.)	Salah Abd al-Hamid Shaker Mohammad
8.	09 April 1995	Kfar Darom	Khaled Mohammad Mahmoud al-Khatib
9.	21 August 1995	Jerusalem	Sufyan Salem Abd Rabbo al-Jabarin

10.	25 February 1996	Jerusalem	Magdi Mohammad Abu Wardah[D]
11.	04 March 1996	Tel Aviv	Ramez Abed al-Kader Mohammad Abid
12.	30 July 1997	Jerusalem (Mahane Yehuda Market)	Taufik Ali Mohammed Yassin
13.	30 July 1997	Jerusalem (Mahane Yehuda Market)	Muawiya Mohammad Ahmed Jarara
14.	04 September 1997	Jerusalem (Ben Yehuda St.)	Bashar Mohammad As'ad Sawalha
15.	04 September 1997	Jerusalem (Ben Yehuda St)	Yousef Jameel Ahmad Shuli
16.	04 September 1997	Jerusalem (Ben Yehuda St.)	Khalil Ibrahim Tawfiq Sharif
17.	28 March 2001	Neve Yamin	Fadi Attallah Yusuf Amer
18.	01 June 2001	Tel Aviv (Dolphinarium)	Said Hussein Hasan Hutari
19.	09 August 2001	Jerusalem	Izz al-Din Shuheil Ahmad al-Masri
20.	04 November 2001	Jerusalem (French Hill)	Hatem Yaqin Ayesh Shweiki[E]
21.	01 December 2001	Jerusalem (Ben Yehuda St.)	Nabil Mahmoud Al-Halabiah[D]
22.	01 December 2001	Jerusalem	Osama Mohammed Bahr[D]

		(Ben Yehuda St.)	
23.	12 December 2001	Emmanuel (near)	Asem Yousef Mohamed Hamed (aka Assem Yousef Rihan)
24.	17 January 2002	Hadera	Abdul Salaam Sadek Mer'y Hassoun
25.	22 January 2002	Jerusalem (Jaffa Road)	Said Ibrahim Said Ramadan[B]
26.	27 January 2002	Jerusalem (Jaffa Road)	Wafa Ali Khalil Idris[B]
27.	16 February 2002	Karnei Shomron	Sadek Abdel Hafez
28.	18 February 2002	Kibbutz Kissufim	Mohammad Mahmoud Mohammad Al-Kasir
29.	09 March 2002	Jerusalem	Fouad Ismail Al-Hourani[D]
30.	21 March 2002	Jerusalem	Mohammed Mashhoor Mohammed Hashaika[B]
31.	27 March 2002	Netanya	Abdel-Basit Mohammed Qasem Odeh
32.	31 March 2002	Efrat	Jamil Khalaf Mustafa Hamed
33.	07 May 2002	Rishon Lezion	Mohammad Jamil Muamar[D]
34.	19 May 2002	Netanya	Osama Adel Mohammad Beshkar
35.	18 June 2002	Gilo	Mohammed Hazza Al-Ghoul
36.	19 June 2002	Jerusalem (French Hill)	Sa'id Wadah Hamid Awada[B]
37.	30 July 2002	Jerusalem	Hazem Atta Sarasra [D]

38.	31 August 2002	Har Bracha	Yusef Ibrahim Hasan Atalla
39.	19 September 2002	Tel Aviv	Iyad Naeem Radad
40.	27 October 2002	Ariel	Muhammed Kzid Faysal Bastami
41.	28 November 2002	Beit Shean	Omar Muhammad Awadh Abu al-Rab
42.	28 November 2002	Beit Shean	Yousef Muhammad Ragheb Abu al-Rab
43.	05 March 2003	Haifa	Mahmoud Omran Al-Qawasmeh[D]
44.	07 March 2003	Kiryat Arba	Muhsin Muhammad Omar al-Qawasmeh
45.	07 March 2003	Kiryat Arba	Fadi Ziyad Muhammad Fakhoury
46.	30 April 2003	Tel Aviv	Asef Mohammad Hanif[A]
47.	30 April 2003	Tel Aviv	Omar Sharif Khan[A]
48.	18 May 2003	Jerusalem	Basem Jamal Darwish al-Takruri
49.	11 June 2003	Jerusalem	Abdel-Muti Mohammad Saleh Shabaneh
50.	19 August 2003	Jerusalem	Raed Abdel-Hamid al-Razaq Misk
51.	09 September 2003	Jerusalem	Ramiz Fahmi Izz al-Din Abu Salim
52.	04 October 2003	Haifa	Hanadi Taysir Abd al-malik Jaradat
53.	29 January 2004	Jerusalem	Ali Ja'ara[B]
54.	22 February 2004	Jerusalem	Mohammad Issa Khalil Zghool

55.	22 September 2004	Jerusalem	Zaynab Ali Isa Abu Salem
56.	17 April 2006	Tel Aviv	Samer Samih Mohammad Hammad
57.	06 March 2008	Jerusalem	Alaa Hisham Abu Dheim
58.	22 October 2014	Jerusalem	Abdel Rahman Idris al-Shaludi
59.	18 November 2014	Jerusalem	Uday Abu Jamal
60.	18 November 2014	Jerusalem	Ghassan Muhammad Abu Jamal
61.	13 October 2015	Jerusalem	Bahaa Muhammad Khalil Alyan
62.	08 March 2016	Tel Aviv (Jaffa)	Bashar Muhammad Abd al-Qader Masalha
63.	30 June 2016	Kiryat Arba	Mohammad Naser Mahmoud Tarayreh
64.	08 January 2017	Jerusalem	Fadi Ahmad HamdanAl-Qunbar
65.	16 August 2019	Elazar	Ala'Khader al-Hreimi

46. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 11, 2020.

/s/ Arieh Spitzen
Arieh Spitzen

[1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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04 CV 397 (GBD)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

Before:

HON. GEORGE B. DANIELS,

District Judge

Videoconference
Oral Argument

New York, N.Y.
May 19, 2021
10:33 a.m.

APPEARANCES VIA VIDEOCONFERENCE

ARNOLD & PORTER, LLP
Attorneys for Plaintiffs
BY: KENT A. YALOWITZ

SQUIRE PATTON BOGGS, LLP
Attorneys for Defendants
BY: MITCHELL R. BERGER

[2] (The Court and all parties appearing via videoconference)

THE COURT: Good morning, everyone.

MR. BERGER: Good morning, your Honor.

THE COURT: I guess let's start with Mr. Yalowitz. Are you going to argue for your motion?

MR. YALOWITZ: Sure. Thank you, your Honor. I'd be glad to lead off. First of all, I'm very glad to see you again. I'm sorry it's not in person.

I'd like to cover three topics. I'm happy to just talk or answer questions. I just want to be as helpful as I can to the Court, but the topics that I think are at issue based, on the Second Circuit's limited mandate, are: No. 1 is the PSJVTA applicable to this case; and No. 2, if it is, any issues, any legal issues, related to the applicability, including the constitutionality of the statute.

So I would cover, No. 1, the applicability; and No. 2, the due process clause issues that the defendants are arguing; and No. 3, the separation of powers issues that the defendants are arguing, if that's okay with the Court.

THE COURT: Sure. That will be helpful.

MR. YALOWITZ: Okay, great. So as the Court is aware, as we have learned together, there are two prongs to the revised section 18, U.S.C., Section 2334(e). The first prong is what's known as pay-for-slay, and the second prong is the [3] U.S. activities. The plaintiffs came with a showing that there were 178 either convicted or killed individuals, who were convicted for or killed while perpetrating terror attacks that injured or killed U.S. citizens.

The statute says if those such individuals are paid after April of 2020, that will be deemed to be consent. We came with evidence, No. 1, that there was a bureaucratic system of making those payments; No. 2, that the defendants made numerous admissions by officers speaking in the scope of their authority that they were, in fact, continuing to make those payments; and No. 3, U.S. government reports stating that investigations conducted or pursuant to law or under a duty to report, the fruits of those investigations indicated that the payments were continuing to be made.

The defendants had an opportunity to contest the 178 individuals, and they elected not to. And, in essence, we're on what could be deemed a summary judgment standard. We're not at the pleadings stage. It's my burden to show by a preponderance of the evidence that the statute is being met. I came with that evidence, and the defendants had the opportunity to contest it. Electing not to contest it, those facts should be found by the Court.

THE COURT: Well, let me focus a little bit in terms of the way I've read the papers. It seems to me that with regard to the payments, that there doesn't seem to be either a [4] genuine factual dispute as to what's occurring presently, and that doesn't seem to be their primary argument against that portion, saying that the facts don't match the statute.

With regard to the U.S. activities, that's a different argument. They say, well, look, with regard to the payments to individuals, our argument is more so a due process constitutional argument slash a – well, it's technically articulating it as a forced consent. Is there really any such thing as a forced consent? You know, you either consent or you don't. You either want to tell

us that what we do is appropriate for asserting jurisdiction over us, or you tell us it's not.

You don't tell us whether we agree to it because we're not agreeing to it, and we're only going to be dragged into court if you say that you have authority to drag us into court. And we're not going to consent to show up unless you force us to do so.

And now with regard to the second prong, they are genuinely disputing or directly disputing whether or not the requirements of the statute itself, putting aside constitutionality, requirements of the statute have actually been met that, you know, that's an analysis of what UN activities are going on, what other ancillary UN activities are going on, and whether or not there are other activities that could be characterized as not related to UN activity that can [5] be a basis for jurisdiction. That's more of a factual analysis.

But it seems to me that you don't need both. You need one.

MR. YALOWITZ: Right.

THE COURT: And so it seems to me that the more important analysis is whether or not if you have one or the other, whether or not that's consistent with the due process clause of the Fifth Amendment, and whether or not I have precedent to say that even if, under a general analysis, the current general analysis that the Supreme Court has given us and the Second Circuit has given us as to how to analyze due process and particularly due process contact, that should be sufficient for someone to reasonably expect that they'd be hauled into court.

Whether or not saying to someone, well, we know you really didn't agree to this, but we're going to deem

you to have agreed to it for the purpose of jurisdiction. We're not going to say it really is jurisdiction. We're going to say it really is your consent to jurisdiction and whether or not that's consistent with the due process constitutional analysis.

I mean, one example that I might give, and you can address is, well, would it be sufficient for a state or a jurisdiction to say, well, if you were in New York last week and then you have a car accident this week in New Jersey, [6] whether or not we can say that your having been in New York last week, unrelated to this car accident, is either consistent with due process or it is consistent with us being able to say that we gave you fair notice of that, and you came to New York, you were in New Jersey and you had an accident; so you shouldn't have come to New York the week before. So even though it has nothing to do with the accident, we have the authority to say you consented because you were in New York the week before.

So I mean, are we genuinely talking about consent here, or are we really talking about an assertion of jurisdiction over a party's objection, even though they don't have the contact that the Supreme Court and the Second Circuit has now relied upon as being sufficient with due process? Can we simply manufacture consent and articulate in a way that that consistent with due process?

MR. YALOWITZ: Okay. So here's how I like to think about it. I think that the due process clause, or at least the due process clause of the 14th Amendment, does work for three things, and the Fifth Amendment does at least two.

So, first of all, as you say, Judge, fair notice. You have to have fair notice. You can't have like gotcha. You can't

have, you know, we didn't – well, we secretly decided that the law was going to apply to you in some way.

No, it has to be clear, direct. You have to have [7] actual notice or at least fair notice. There's no question that fair notice exists here. There's no argument that they were unaware of the statute. There was no argument that they were not aware of how it was going to work. Fair notice, there's no dispute.

Second –

THE COURT: Before you go to the second point –

MR. YALOWITZ: Yes.

THE COURT: – because it is partially unclear to me what is the relief that you're asking for. Because when you talk about fair notice, you know, are you talking about for the original lawsuit, for reviving the original lawsuit, or for a new lawsuit?

MR. YALOWITZ: So first of all, it's for any lawsuit that is pending, and the new lawsuit is definitely pending. There's no question about that.

THE COURT: Right. Fair notice – yes, I understand that.

MR. YALOWITZ: The old lawsuit, whether it's pending or not depends on what the Second Circuit decides to do. They've held that question in abeyance.

THE COURT: Right.

MR. YALOWITZ: So if they decide to reopen it because it's judicially efficient to reopen it, there's a societal cost to making everybody retry the case, there's a judicial cost, [8] juries, witnesses, third parties, resources. If they say, the judiciary says, in its discretion that we're going to reopen the case, then the case is pending, the old case is pending, consent

applies. But if they don't reopen the case, then you can't – Congress can't force the judiciary to reopen a case. That's up to the Second Circuit and Supreme Court.

THE COURT: Well, why would fair notice apply to the claims that were brought back in 2004?

MR. YALOWITZ: Yes, so the defendants were well aware that these claims existed. They knew that there was a new lawsuit on file. They knew that there was a pending motion to reopen the old case. So in the circumstances of this case, there's no question they had fair notice.

THE COURT: I didn't follow that because fair notice of what? They did not have fair notice of their potential liability under the statute at anytime prior to the statute being enacted.

MR. YALOWITZ: Well, right, but they had fair notice on the day the statute was enacted.

THE COURT: Well -

MR. YALOWITZ: And if they did the conduct that the statute indicate, that they would be subject to personal jurisdiction for these claims either in the new case, without question, or in the old case, if the courts granted the motion to recall the mandate. The day the statute was passed, they [9] knew that, or at least when they got notice of the statute.

THE COURT: From your prospective, is it relevant for me to analyze what it is that they had fair notice of? I mean, when they had fair notice? Put aside the new case because we're not addressing the new case here.

MR. YALOWITZ: Right. They haven't contested it. I mean, for the sake of good order, if the Court wanted

to assess – you know, they received actual notice of the statute at least December 2019.

And if you look at what was there – what did they understand the consequences would be? So whatever it was, December 26th, 2019, they get a copy of the statute in a letter from opposing counsel, and what do they understand the consequences are going to be? They know that there's a pending petition for certiorari appealing the denial of the motion to recall the mandate, and if they engaged in the conduct, then they're going to be subject to the statute.

And, in fact, there's then a litigation in the U.S. Supreme Court about this very issue, and they say to the Supreme Court of the United States, well, you shouldn't grant the petition because we don't know whether we're going to get engaged in this conduct. That's something that's going to develop in the future, and we don't know, nobody knows, and until somebody knows, then you shouldn't grant the petition.

THE COURT: So you're not asking me to ultimately rule [10] on whether or not the prior judgment should be reinstated, or whether or not this case should be tried again?

MR. YALOWITZ: I think you might have an opinion on that, but I don't think that's within the scope of the remand.

THE COURT: Okay.

MR. YALOWITZ: I mean, you could – I don't think that that's within the scope of what they're asking here.

THE COURT: Okay. So practically, what are you asking me to do, and where do you think the case should go from there?

MR. YALOWITZ: Sure. So I think you should – and I want to come back to the due process issue.

THE COURT: Sure.

MR. YALOWITZ: But I think you – I would expect to see an opinion from you that answers sort of three questions: No. 1, does the statute apply as of – you know. Based on findings of facts and conclusions of law, you know, here are the undisputed facts and these facts – you know, these facts meet the statute, these facts don't meet the statute. Whatever your judgment is based on, No. 1, the questions of fact and No. 2, the conclusions of law. That's No. 1.

No. 2, is the due process clause violated by this statute, assuming that it applies. And I think there's, you know, basic agreement that it applies in some fashion.

And No. 3 is the separation of powers violated as a result of the application of the statute to this case.

[11] So that's what – and then, you know, it's like you're not – nobody's asking you to make an order. It's like a memorandum decision or something. I mean, it's a little weird because normally on a remand, you know, the Court is supposed to take some action, but I think really what they're looking for is some findings of fact and conclusions of law.

Okay. So I want to come back to sort of three buckets of the due process clause. Bucket No. 2 we talked about, fair notice. Bucket No. 2 is arbitrary government action. That's as old as the Magna Carta. Due process says you can't be arbitrary if you're the government.

So what does that look like? If Congress passes a law that says, you know, anybody who crosses a river, you

know, the Rubicon in Italy, is subject to jurisdiction of the Western District of Oklahoma, I would say, okay, well, what is that doing? Like, why would they do that? That just seems arbitrary. What's the legitimate government interest, and how is it related to putting people in the Western District of Oklahoma? It makes no sense.

It's the same thing with the hypothetical that you had. You know, you're in New York on Tuesday, and you got in a car accident in New Jersey a week later, how does that help the State of New York? Nobody from New York is injured. It didn't happen in New York. It's an arbitrary – it feels to me arbitrary, and that's where the – you know, all those state [12] registration statutes are going off on these two issues, fair warning and arbitrary.

They say, first of all, like if you look at – I'm sure you have, but when you look back again at the *Brown against Lockheed* case, Judge Carney is saying, look, I'm really worried because you've got some routine bureaucratic thing that nobody – you know, they fill out a form, nobody knows that there's going to be any consequence to it, and all of a sudden, you're subject to general jurisdiction. That's not fair warning, No. 2.

And No. 2, it's hard for me to see a legitimate interest in the State of Connecticut to adjudicate a dispute between people from Georgia, an accident that happened in Georgia, with a corporation headquartered, you know, in some other place and incorporated some other place. Where's the legitimate interest of Connecticut, other than they want to give extra employment to plaintiffs' lawyers? Maybe that's an interest, but they don't say that.

THE COURT: Well, let me change the hypothetical, though. Let's say New York decided that they wanted to write a law that says you have consented to be sued in New York if you engage in an accident in any state and a New Yorker is injured.

MR. YALOWITZ: Yes.

THE COURT: How would that analysis be different?

MR. YALOWITZ: So –

[13] (Indiscernible crosstalk)

THE COURT: – closer analogy to this. And I get into an accident in Wyoming, the person turns out to be a New York resident, and New York says – and they don't say that that gives us jurisdiction. They say that constitutes your consent to jurisdiction.

MR. YALOWITZ: Yes.

THE COURT: How would that be different?

MR. YALOWITZ: So I don't think that statute is constitution, that hypothetical.

THE COURT: How is that different than what we have here? That's what I'm trying to find out.

MR. YALOWITZ: So first of all, I think – I have some questions about whether that's actually consent. I mean, an accident is an unintentional act, but suppose the statute said if you intentionally hurt someone -

THE COURT: Let's say it's robbery. Yes, the statute says if you injure – if you commit a crime in which a New Yorker is injured, we consider that to be consent to be sued in New York, even if you robbed a bank in California and shot the bank teller.

MR. YALOWITZ: Right.

THE COURT: So why would that constitute consent?

MR. YALOWITZ: Yes. So I think that the problem with that statute is the third bucket of the due process clause, [14] which is minimum contacts. And we know, I mean, short of – we know from *Walden against Fiore* that that statute doesn't fly under U.S. Supreme Court law because that was the case with the people from California or Nevada, or from Nevada and they were in Georgia and they got – you know, they got their money confiscated. They were gambling and they got their money confiscated by law enforcement people in Georgia, and they sued in Nevada. And the Supreme Court said, well, just because you hurt somebody from Nevada, that's not good enough.

THE COURT: But the corresponding statute doesn't require any U.S. forum.

MR. YALOWITZ: Right, right. And so the question is – I mean, this is the question in the case. Do you have to have minimum contacts in order to – does a federal statute require minimum contacts or else it's unconstitutional?

We know that the State is bound by federalism in ways that the federal government is not. We know that federalism, that's – like, *Bristol Myers* says that and Worldwide Volkswagen says that, that the State – there are certain things that the State, like a nation could do, but a state in the United States can't do because of federalism.

And we know that there's a lot of statutes on the books that say if you kill an American or if you hurt an American overseas, if you do things that are bad for U.S. citizens overseas, you're subject to U.S. jurisdiction. You [15] know, they rendition people, they extradite

people, and the defense is, well, I didn't know that it was an American or, you know, I wasn't directing my activities at U.S. soil. And the answer is, well, you don't have to have minimum contacts against the United States.

THE COURT: Except the difference here is that that's not what the statute – the difference here -

(Interruption)

I'm sorry, we are getting background noise. Somebody has to mute.

(Pause)

Do we know who that is? Does anybody recognize that phone number that's ending 2801? You have to mute your phone. What was I getting ready to say?

MR. YALOWITZ: I think we're back.

THE COURT: So, I had a specific question. I'm sorry, what where were we?

MR. YALOWITZ: So we were talking about why is the federal government different from the State governments, and the answer is, with consent, you don't need minimum contacts.

THE COURT: Well, see, that's the difference. That's what I was going to ask you about, because this is not a question of whether or not there's sufficient minimum contact to assert jurisdiction over the defendant. It is a question of whether or not it constitutes consent.

[16] MR. YALOWITZ: Right.

THE COURT: Consent doesn't require any kind of contact.

MR. YALOWITZ: Right, right.

THE COURT: And there's no rule that I can write that says, okay, consent with contact is better or different than consent without contact.

MR. YALOWITZ: Right.

THE COURT: So I don't see why – unless you can explain to me why, I don't see why a minimum contact test is the test for consent.

MR. YALOWITZ: I agree with that. I a hundred percent agree with that. I think federalism limits the States in ways it doesn't limit the United States.

THE COURT: So you think that the United States can assert jurisdiction, consistent with constitutional principles can set jurisdiction over defendants who have absolutely no contact with the United States?

MR. YALOWITZ: Correct.

THE COURT: On the basis of saying that certain activity constitutes appropriate jurisdiction, or on the basis of saying if you do certain things, that's implied consent?

MR. YALOWITZ: I'm sorry, I just missed the first part, Judge.

THE COURT: Whether or not engaging in certain [17] activity constitutes jurisdiction –

MR. YALOWITZ: Right.

THE COURT: – as opposed to engaging in certain activity –

MR. YALOWITZ: Is deemed to be consent.

THE COURT: – is deemed to be implied consent.

MR. YALOWITZ: Right. It's law of the case that what they did to these people does not meet minimum contacts.

THE COURT: Okay.

MR. YALOWITZ: I disagree with that, but unless the Supreme Court says otherwise, that's law of the case.

THE COURT: Okay. That's what I was trying to figure out, whether or not you were arguing that. Go ahead.

MR. YALOWITZ: So it is post-enactment conduct. If it's voluntarily and knowing, fair warning, volitional, then the Congress has the power to say, okay, based on our foreign policy powers, our power to control – our plenary power to control the jurisdiction of the judicial branch, we have constitutional power to do that, unless there's some clause of the constitution that says they can't, like, you know, it's an ex post facto or Eighth Amendment violation or something like that.

So the question is, is there something in the due process clause that says if you – that minimum contacts is required for consent, and the answer is no.

[18] THE COURT: No. Okay. But you're not arguing that Congress has the authority to change what constitutionally constitutes jurisdiction as laid out by the Supreme Court?

MR. YALOWITZ: That Congress does not have that power.

THE COURT: Okay. So Congress –

MR. YALOWITZ: Congress may think they have that power, but the courts will not respect it.

THE COURT: From my perspective, that means they don't have it.

So what gives them the power to do, through consent, which is not – well, to do through – and I will phrase it, through implied consent what they could not do directly?

MR. YALOWITZ: That is a necessary and proper – it's a necessary and proper incident of their foreign policy powers, of their power to control plenary jurisdiction, and so as long as it's volitional, fair warning, not arbitrary, it's not unconstitutional.

THE COURT: I'm not sure that that's the analysis. As long as it's all those things, it may be within their power to do so, but that doesn't end the constitutional analysis. The constitutional analysis is still a due process one.

MR. YALOWITZ: Right. And as I say, there's three buckets to the due process.

THE COURT: Right.

MR. YALOWITZ: Bucket No. 1 is do they have fair [19] warning, you know, volitional conduct? Bucket No. 2, is it rationally related to a legitimate government interest? Bucket No. 3, do you have to have minimum contacts?

And my position, which I think is the Supreme Court's position, is you do not have to have minimum contacts in order to deem somebody to consent.

THE COURT: I mean, I don't think that that's an unusual principle. I mean, obviously, if you and I sign a contract, and I consent to being sued in New York, even though my company is in China, I don't have to have any contacts with New York –

MR. YALOWITZ: That's right.

THE COURT: – to enforce that agreement because I consented.

MR. YALOWITZ: Right. As long as the contract wasn't like procured by duress or fraud or, you know, you were misled or something like that, but that's exactly right.

The Supreme Court said that in the *Carnival Cruise* case. They were like, you know, they consented; we don't have to get into a minimum contacts analysis. And it's the same with rule 12(b). If you – rule 12(h), whatever it is, 12(h). If you don't make your personal jurisdiction motion at the outset of the case, you're deemed to have consented.

Even if there's no minimum contact, even if you have a hundred percent correct, you know, you never set foot in the [20] place, you don't make that motion, or if you don't raise the issue on appeal. You know, you can consent to jurisdiction late in the case. So it's – and you don't need minimum contacts. That's just traditional due process law.

THE COURT: But isn't it also – as I try to analyze this, to call this consent, isn't this just asserting jurisdiction over a party that really isn't agreeing to be sued?

MR. YALOWITZ: So like, I think about the *Bauxite* case, which was the case where they didn't participate in jurisdictional discovery, and so the District Court said, okay, well, I'm deeming you to consent to personal jurisdiction because you're refusing to participate in my processing. As a sanction, you're now deemed to consent. They didn't – they didn't say, yeah, well, okay. Actually, we agree. They fought it all the way to the Supreme Court.

So the fact that these defendants are fighting it doesn't – is not relevant to the legal analysis. The legal analysis is did they do a thing that they knew would lead to a jurisdictional consequence, and the best example of that, in my mind, is Congress passed a statute called the ATCA.

ATCA said if you take our money, you are subject to jurisdiction in terror cases, and the Palestinian Authority wrote a letter to the Secretary of State saying, we're not taking your money. And so they know how to not consent. And [21] then, you know, the Court said, okay, well, they didn't take the money; so they didn't consent. That's pretty simple.

They could have avoided all of this by saying, all right, well, we're not going to pay these terrorists. That's not that complicated. Most people don't pay people who are sitting in jail for committing terror attacks. I mean, you know, that's not – it's not like a big, heavy lift to say don't pay people who killed civilians. That's pretty standard issue stuff, you know.

So I mean, one of their arguments is, well, we were coerced, and I think what they're saying is we didn't – I mean, I don't really understand the coercion argument. You know, I think what they're saying is, well, we're like the corporations that want to do business in Connecticut, and you're asking us too high of a price to do business in Connecticut. We're a nationwide company. We can't realistically not do business in Connecticut because we don't want to be subject to general jurisdiction. Like, that's a real issue.

I get that's a real issue because, you know, corporations have interstate commerce protections and contract clause protections, and you know, that's a

normal thing in our society, for nationwide corporations to be able to sell products in all 50 states.

This is not like that. This is a – there's like a [22] longstanding U.S. policy going back since you and I were young people, that we don't want the Palestinians paying terrorists. We don't want the Palestinians committing terror attacks. We don't want the Palestinians to kill U.S. citizens, and we are going to do all we can with what power we have to prevent that.

THE COURT: What the analysis, though, of both the Supreme Court and the Second Circuit is, or at least expects me to go through, is to try to figure out whether or not Congress can pass legislation that controls the conduct, the extra-territorial conduct of individuals and entities that have absolutely no presence in the United States, and demand that they conform their conduct, which is outside of the U.S., to certain standards that we hold, or more appropriate standards than what they to conform to, and whether or not that assertion of jurisdiction is consistent with due process.

You know, to tell France, you know, okay, we decided – now, I understand the arbitrary and rationality related argument, but the basic argument that, oh, we tell France, we no longer want you to sell champagne. Okay? If you sell champagne, we consider that to be consent to be sued in the United States for anything you do in the United States or anything any person wants to sue you for in the world.

Well, I don't think that the Second Circuit or the Supreme Court is implying that the rule extends that far.

MR. YALOWITZ: Right, because that's irrational.

[23] THE COURT: Okay. And your argument is, is that's simply a rationality analysis –

MR. YALOWITZ: Right.

THE COURT: – or arbitrary government action argument?

MR. YALOWITZ: Right.

THE COURT: Well –

MR. YALOWITZ: Right. But if they said – and, you know, I'm flipping through my papers. I'm going to have to look for it, but there are a lot of cases that say the United States has an interest in protecting U.S. citizens when they're abroad.

And that's different than the State of New York has an interest in protecting their citizens when they're in Nevada. No case says that, but there are a lot of cases that say that when a U.S. citizen travels overseas, the protection of U.S. law travels with them.

So, yeah, there's no question that the U.S. has power to project U.S. law extraterritorially. And the defendant's position is, well, but there still has to be minimum contacts with U.S. soil, and so that would cripple the power of Congress. I mean, that's the upshot of what they're saying.

There's a passage in their brief where they kind of say, you know, there's all these things that would be legal if our position is wrong, like imposing jurisdiction because [24] people use U.S. currency or imposing jurisdiction because people license U.S. software.

And it turns out that the United States of America has, in fact, asserted jurisdiction in just those circumstances. They've said, you know, you transact – if you have a corresponding banking account, then

we're allowed – our financial regulators are allowed to look at any account in your bank, even if it doesn't touch the United States.

And they've said, if you retransmit – if you retransmit software or U.S. origin military goods, you're committing a U.S. crime, and we can impose criminal penalties, we can impose civil penalties.

So the position of the defendants would really cripple a lot of U.S. federal statutes, and I don't think that that's – I don't think that's required by the Constitution, and I don't think it's appropriate.

THE COURT: Well, let me just go back to one earlier issue. I understand what analysis that you urge upon me with regard to the payment and the financial support of individuals who have been convicted of or found guilty of terrorist acts.

I'm not sure I identify any real dispute of fact, but with regard to the U.S. activities, it's a little more difficult for me to say that, okay, I want to concentrate on this activity. And it's clearly an undisputed fact that this activity is non-related, activity that is not related to their [25] UN business.

MR. YALOWITZ: Right.

THE COURT: How am I supposed to analyze that?

MR. YALOWITZ: Let me – we'll just a – I mean, this is an area where there's – some things are known, some things are unknown, and some things you have to decide. So –

THE COURT: Wait. But not on a summary judgment motion, not factual.

MR. YALOWITZ: Well, I think the known facts are generally not subject to dispute. I don't think they're

disputing the facts and, you know, I've asked for discovery if you can't resolve it. But let's see if we can – I think there's enough known that we can probably resolve it. Although, I don't want to withdraw my request for discovery for some things if we need to get there.

So there are three sets of facts. Set No. 1 is what we've called like consular activities. So they notarize school records, or they notarize birth certificates, and they put a – you know, we put something in the record. One of our guys sent his Southern District Bar certificate to be, you know, authenticated, and it has all the stamps from Palestine on it. So that's like what we call consular activities. That doesn't have anything to do with UN business.

That's just like, you know, I put a stamp on something in Anaheim, or I gathered something in Anaheim and send it to [26] Canada and get it back. I've engaged in an activity on behalf of the Palestinian Authority and the PLO in Chicago, or in Anaheim or in New Jersey, but it doesn't have anything to do – it's not like making a speech at the UN or urging, you know, world peace. That's just kind of routine stuff that is a service for human beings individually.

THE COURT: In my reading of the statute, maybe I've misread it and you can point it out to me, any language. But my reading of the statute, the statute doesn't concentrate on activity. It concentrates on places and people.

MR. YALOWITZ: So, it did, and then Congress changed it in 2019.

THE COURT: And which language are you addressing at this point, the activities language?

MR. YALOWITZ: I'm just looking over at my other screen. I'll move it so it doesn't look like –

THE COURT: Yes, it may have just –

MR. YALOWITZ: So if you look at 18, U.S.C. 2334(e)(1)(B) –

THE COURT: Which – do you have a page on your brief?

MR. YALOWITZ: Oh, yes.

THE COURT: Please.

MR. YALOWITZ: It is –

THE COURT: I know I read it somewhere.

MR. YALOWITZ: Yes. Page 16, page 16 of my opener.

[27] THE COURT: 16?

MR. YALOWITZ: Yes, which is like 26 of 47, if you're looking at the top header.

THE COURT: All right. Page 16. Defendants' office and activity meet subparagraph 1(B)?

MR. YALOWITZ: Right, right. And then romanette (i) is: Continues to maintain any office, headquarters, premises, or other facilities or establishments in the United States.

Romanette –

THE COURT: As I said before, one deals with a place.

MR. YALOWITZ: Right. And then romanette (iii) conducts any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority.

THE COURT: Okay. I got you. Thank you.

MR. YALOWITZ: So when they have – here's what the record is on these consular activities. They had an office in Washington. One of the things that the office in Washington did was these consular activities. They had a website, in those days, with a list of like agents around the country, who you could contact to get your stuff notarized.

And then when the Trump administration closed the office, they announced, you know, we're going to continue our program, and then they did continue the program. And so that's – and that's, you know – in my view, that's an [28] activity on behalf of the PLO or the PA.

THE COURT: I'm sorry, which is an activity?

MR. YALOWITZ: Like, collecting, notarizing a birth certificate.

THE COURT: You're talking about the consular activities?

MR. YALOWITZ: Right.

THE COURT: You're saying the consular activities, that I can determine that that authority or that activity is unrelated to UN business?

MR. YALOWITZ: Right. Right.

Then, the second category is they give – there's like press, media appearances, press appearances.

THE COURT: Go ahead. That was what I was concerned about because I'm not sure how media appearances, in and of itself, is or isn't related to UN activity. I guess, as they say, it depends on what the media is and, you know, what it's related to.

MR. YALOWITZ: Well, yeah. I mean, let me sort of take you through my reading, recognizing the defense

has a different reading of the statute. And this is just a legal - I don't think there's any dispute that, you know, Riyad Mansour appeared at Seton Hall and gave a seminar. There's no dispute that he gave an interview to NPR and, you know, so there's no factual dispute. But the parties have a divergent reading of [29] the statute.

THE COURT: So how do I determine whether that's a legitimate advance in UN interest or advance in other interest?

MR. YALOWITZ: So the question – how you come out on that question depends on how you construe exception 3(f) in the statute. And 3(f) is on – bear with me, please – 3(f) is on page 19 of my brief, which is any personal or official activities conducted ancillary to activities listed under this paragraph.

THE COURT: Right.

MR. YALOWITZ: And because I think everybody agrees that like – I mean, there's also an exception A, or A and B, for activity undertaken exclusively for the purpose of conducting official business of the United Nations.

THE COURT: Right.

MR. YALOWITZ: But I don't think they're arguing that giving a speech at Seton Hall is an official business of the United Nations. What they're saying is, well, it's related because I'm talking about peace in the Middle East, I'm talking about our position, I'm talking about our aspirations for sovereignty and, you know, all things which are related to our presence at the United Nations.

THE COURT: But what would be your position, in another unrealistic hypothetical in this case. What

would be your position on Fidel Castro coming to the United States to [30] attend a UN event and going to a church and giving a speech? Is it your position would be that, indisputably, that that speech at the church is not UN business?

MR. YALOWITZ: Yeah, it's definitely not official business of the UN. I mean, there's no question.

THE COURT: Well, it may not be official business of the UN. It's official business of the country that is related to –

MR. YALOWITZ: Right.

THE COURT: – a UN activity.

MR. YALOWITZ: It is definitely related. And so the question both in your hypothetical and in the Seton Hall speech because, you know, it's the same, is: What is the meaning of the word "ancillary" as used in paragraph (f)?

THE COURT: The meaning I give to it is "related to."

MR. YALOWITZ: Well, that's the defendants' –

THE COURT: That's not your definition, that it's related to UN activity?

MR. YALOWITZ: That's not my argument.

THE COURT: What is your definition of "ancillary"?

MR. YALOWITZ: My definition of "ancillary" is "necessary."

THE COURT: Well, ancillary is not necessary. Necessary, as they say, is necessarily not ancillary.

MR. YALOWITZ: Okay.

[31] THE COURT: If it's necessary UN activity, it doesn't qualify as ancillary UN activity.

MR. YALOWITZ: Okay.

THE COURT: It qualifies as UN activity.

MR. YALOWITZ: Let me say this about it. You may ultimately disagree with me on this, and I don't need this to win the case. But if you want, I can take you through why I think I'm right on this, and then you can decide.

THE COURT: You're saying it has to be necessary?

MR. YALOWITZ: Right.

THE COURT: I'm not even sure that's even a requirement for – I mean, what's the opposite of ancillary?

MR. YALOWITZ: Unnecessary.

THE COURT: No, no. The opposite – no, what's the opposite of ancillary? Ancillary is not direct. So the opposite of ancillary is a stronger connection to UN activity.

MR. YALOWITZ: Oh, I don't think so. I think this is one of those cases, Judge, where there are two usages of the word.

THE COURT: But we have –

MR. YALOWITZ: You're using –

THE COURT: (A) says that it has to be – and that's your argument – used exclusively for the purpose of UN activity; and (B) says it has to be activity undertaken exclusively for the purpose of conducting official business. [32] (F) makes an exception. (F) obviously, doesn't require that it be exclusively, the purpose be exclusively for the purpose of conducting UN activity. It can be ancillary. It can be related to that

activity, but you say "related to" is not the appropriate definition to give to "ancillary."

MR. YALOWITZ: That is my argument. And as I said, I don't – at the end of the day, you may disagree with me, and that's your job, not mine, is to construe the statute.

But let me take you through why I think I'm right, and then you can decide. So one sense of the meaning of the word ancillary, as you say, is related, loosely related. So, you know, it was on the same trip or it's, you know, something like that.

It serves that purpose, and some other purpose. But there's another definition of ancillary, a narrower definition of ancillary. And that narrower definition of ancillary is well documented, and it's the definition in the Oxford English dictionary. And the definition in the Oxford English dictionary, which I quote in full in my reply brief – and I'm just looking for it here – is on page 12 of my reply brief: Subservient, subordinate, ministering to, pertaining to maid servants, designating activities and services that provide essential support to the function of a central service or industry; also, staff employed in these supporting roles.

So that's a narrower sense of ancillary.

[33] THE COURT: I don't know of any legal definition of ancillary.

MR. YALOWITZ: Yeah, the legal definition of ancillary actually isn't very illuminating because you have like ancillary jurisdiction, and it's just – it doesn't really apply here in a way that –

THE COURT: Well, that's what I don't understand, and I'll have to analyze that for your argument. But I don't understand why you say that the legal definition

of ancillary, which is not as convenient for you as the dictionary definition of it, should be disregarded, and we should take your maid servant's definition of it.

MR. YALOWITZ: Yeah, I don't think either side is arguing for the legal, like ancillary jurisdiction argument, because it's just different. It's like – I think that defendants are arguing for what you were saying, which is that it just means related. It just means kind of linked in some way.

THE COURT: So let me see the extent of your argument. If they invited – if they invited some UN officials to a lunch –

MR. YALOWITZ: Yes.

THE COURT: – and they had a lunch with UN officials, would that fall under your definition of ancillary? It's not necessary.

[34] MR. YALOWITZ: There's a different – I mean, there's a different exception for that, which is –

THE COURT: Let's start first with this exception. Would that fall under your definition of ancillary or outside of your definition of ancillary?

MR. YALOWITZ: So I would say that meeting with other UN officials is necessary for conducting UN business. I don't see how you conduct UN business – you don't have to be on the floor of the General Assembly to be conducting UN business.

THE COURT: Suppose you're not conducting UN business. Suppose your Ambassador – it's your Ambassador's birthday, and you think it's in your best, interest given your UN contact, to invite members of the UN to a reception, and they show up at that reception. Is it your position that that is either for the

purpose of conducting official business, or that's ancillary, or that falls under some other definition?

MR. YALOWITZ: Yeah, I mean, it obviously falls under (D), which is meeting with officials of foreign governments. So it's like the statute allows that. But, you know, I take your question more to be like, okay, well, they're having a birthday party for the staff. Well, you know, what is that? Or they hire domestic help.

And, you know, look, I think that Congress was trying to be narrow here. Congress was trying to – the statute has a rule of construction in it. The rule – so we're not [35] construing this word in a vacuum. I concede that "ancillary" has some ambiguity to it.

THE COURT: Well, it doesn't have ambiguity to it. It is here to expand the definition of what is UN business because the other definitions say that they are allowed to engage in activity that is exclusively for the purpose of UN business, and this is, obviously, giving them not a lesser exception, a greater exception –

MR. YALOWITZ: Okay. So I –

THE COURT: – for activity that is not solely exclusively for conducting official UN business.

MR. YALOWITZ: Exactly. So I would say – the birthday party example, I would say, is ancillary, and I'm going to explain why I think that.

THE COURT: Okay.

MR. YALOWITZ: I think it is ancillary. So having a birthday party is not consenting to jurisdiction, and let me explain why I think that. There is a case, a Supreme Court case that the defendants rely on that is actually incredibly illuminating on this exact subject. It's called *Wisconsin against William Wrigley*

Gum Company. I forget the corporate name, but it's Wrigley gum.

So there's a statute, a federal statute, that says if all you're doing is soliciting business in an estate, then you're not subject to taxation in that state. It's a commerce [36] clause statute.

So the Wrigley gum company sends sales reps into Wisconsin, and they do a bunch of stuff there. You know, they go – they're salespeople. They go there. They restock the gum. They make sure the gum is fresh. They put signage up, you know, all the stuff that people used to do back when brick and mortar was how we bought stuff.

And the Supreme Court says, well, it's not just soliciting business that's protected, it's also ancillary activities. Ancillary activities are protected and don't trigger taxation.

So then the Supreme Court says, okay, well, what does that mean? How do we apply that to, you know, the various activities that these individuals are engaged in? And the key example is they go and they check and see if the chewing gum is fresh, and if it's not fresh, they replace it. And the Supreme Court says, well, that serves two purposes. Obviously, it supports sales. People buy fresh gum, and if people buy stale gum, they aren't going to buy Wrigley gum anymore. They're going to say that gum is stale, I don't want Wrigley gum.

So it, obviously, is supporting sales, but it also has – supporting solicitation, but it also has a second purpose, a second function, which is that it creates a direct sale. And if you create a direct sale, you're not just soliciting, you're actually selling. And the Supreme Court [37] says because that activity does

both, that is not ancillary. That doesn't meet our narrow definition of the word ancillary.

So the Supreme Court in the *Wrigley* case is using that Oxford English definition, not the – you know, the looser definition of ancillary. So the question then is, okay, well, which – you know, which definition is right for that – this statute? That's the question that you have to answer, and do I take the narrower definition or do I take the broader definition?

THE COURT: Well, the argument that I got from your papers, and which I'm not sure that I can agree with the statement, is this statement in the last full paragraph, on page 21, which says, by that definition, where you're talking about the definition of ancillary that they want – that you want to use, by that definition, press conferences and media releases are not ancillary to official UN business because they do not provide "essential support." Indeed, they simply are "not conducted in furtherance of the PLO (UN) observer statute."

Well, my response would be: It depends. Right?

MR. YALOWITZ: Right.

THE COURT: I can't make that kind of a blanket statement that a particular – that no press conference furthers their UN status or business, and that no media releases could qualify as conducting UN business. It depends [38] on what its purpose is, what the activity is, what the issue happens to be at the UN at the time. So –

MR. YALOWITZ: So –

THE COURT: The statement that you want me to make a blanket statement that a press conference

can't be related to UN activity, that's a little difficult for me to make on this record.

MR. YALOWITZ: Well, okay. So let me say two things about that, and in the context of that, I'll take you to the third piece of – which is – and this really captures it.

They send letters to the UN General Secretary like once a month complaining about Israel, and then they retransmit or rebroadcast those letters to – on their Twitter feed; so it's the exact same letter. And my argument is the retransmission is different from sending the letter.

And the same way when you watch a baseball game, you know, they say the retransmission or rebroadcast of this game, without the express written permission of Major League Baseball, is prohibited. Because the retransmission is something different from the original transmission.

So my argument is when they Tweet a letter to 40,000 followers, they're doing that because they want the publicity. They're doing that because they want to get people, you know, agreeing with their positions, people in the general public.

THE COURT: Well, why is that necessarily not [39] ancillary to the letter that they sent. If they send a letter to the Secretary General of the UN urging a certain position, and in conjunction with that, they publicize that letter to the public to get public support for that position that they're taking at the UN, how do I say that one is separated from the other, one is UN business and the other is not?

MR. YALOWITZ: Okay. So let's break it down into two pieces. Piece No. 1 is, is it official business of the

United Nations? Clearly, it's not. In the same way that my retransmission of a baseball game is not official business of Major League Baseball. It's my business. It's related to Major League Baseball, but it's not official business of Major League Baseball. So sending a Tweet is not.

And that was the holding in *Klinghoffer*, and that's what I'm quoting.

THE COURT: Well, it doesn't say it has to be official business of the UN. It has to be their official business related to the UN.

MR. YALOWITZ: So, well, bear with me because I'm thinking about – there's two exceptions. It's either an activity undertaken exclusively for the purpose of conducting official business of the United Nations. Tweeting their letter is not that.

So then the question is, okay, well, isn't it ancillary? I mean, it's related. That's what they're arguing, [40] it's ancillary, it's related. Like, we retransmit our UN letters because we want people to know what we're saying to the UN. And they probably would even go a step further and say, you know, it's part of our business with the UN to let people know what we're saying.

And so my argument – and again, I don't want to get too far down the rabbit hole on this, but I want you to understand my argument. My argument is when they retransmit a letter to the Secretary General, their best case is they're doing it for two reasons; reason No. 1 is they want people to know what they're saying to the UN, and reason No. 2 is they want people to agree with them out in the world.

And that, to me, is just like the replacing the stale gum, the Wrigley gum, doing it for two reasons. One

reason is ancillary, it's to support their UN business, and the second reason is publicity. And publicity is just not – it's related, but it doesn't meet that narrow sense of ancillary. It meets the related. If you say ancillary means related, you know, I understand that argument, but my position is when you have a rule of construction – when you have a rule of construction that says we want to construe the statute liberally to support the purpose of Congress to assist terror victims, and when you have a Legislative history that says we're codifying the *Klinghoffer* case, and when you have this sort of catch-all at the end of a long series of things that, [41] if you take the defendant's position, would swallow the rule, those are reasons – those are statutory – traditional tools of statutory construction that tell you, adopt the narrower sense.

THE COURT: The difficulty I'm having – and I have to analyze it further. The difficulty I'm having is to be able to categorically say that what you just described is not them engaging in UN business. You know, there are a lot of things that you do to engage in UN business. There may be votes that have to be taken. You may have to persuade other members of the UN of your position that's going to be addressed at the UN. You may need public support for that position. You may need to communicate to your constituents, and even those who disagree with you, why you're taking that position at the UN and why that's a legitimate position to take.

But you want to take the narrowest view of UN business to exclude everything that I would do that I say, I did this because I'm advancing our interests, as UN members, with the UN. And you're saying that, well, no, it's got – the letter that you sent to the UN is UN business, but you're distributing that letter to the

public to tell the public that that's what you said to the UN. It's not UN business. That's a real narrow definition of UN business.

MR. YALOWITZ: I would say it's UN business plus, and my reading of ancillary is the "plus" makes it not ancillary.

[42] THE COURT: Okay. All right.

MR. YALOWITZ: And then, but I agree with you that those retransmissions are the defendant's best facts, or least-bad facts. But when you go to like promoting a movie about surfing in Gaza, you know, I'm not sure what official UN business that's about. I mean, maybe they – maybe there is some – I don't – you know, surfing in Gaza, okay. Or when you fire off Tweets saying, you know, today is the day we remember our racist adversaries or horrible people. I'm not sure that that's official UN business. It's just they're firing off, you know, grievance-laced Tweets.

THE COURT: Except on this motion, the "not sure" is less than your burden. Your burden is it is factually indisputable that I can determine that a particular activity that you designated that they engaged in, is not ancillary to their UN activity.

MR. YALOWITZ: Yeah. That was –

THE COURT: You're asking me for that.

MR. YALOWITZ: That was a rhetorical understatement. I'm sure that surfing in Gaza is not official UN business. They're not bringing Kofi Annan over to Gaza to go surfing. That's not going to happen. It was – anyway, I think you have my argument then.

THE COURT: Then let me hear from –

MR. YALOWITZ: That's sort of a –

[43] THE COURT: Yes, I understand.

MR. YALOWITZ: So do you want to talk about the – they have like a couple of kind of fall-back due process issues, like retroactivity and unconstitutional conditions, and we haven't talked about separation of powers.

THE COURT: Let me see how Mr. Berger addresses some of my questions, and then I'll see.

MR. YALOWITZ: Okay. That's fine. Thank you, your Honor.

MR. BERGER: Good morning, your Honor. Mitchell Berger. Mr. Yalowitz spoke for a while, so I have quite a bit to say in response, but let me deal with some of the easy ones first.

His snarky remark about surfing in Gaza. Easy one. It was a Tweet on UN International Sports Day. It's identified in the hashtag. Every mission to the United Nations issued some kind of statement on UN International Sports Day. We're not talking about surfing. We're talking about UN International Sports Day. That's official United Nations business.

No. 2, consular activity. Whatever he submitted, of course, predates the PSJVTA. In a related case before Judge Vyskocil, there was jurisdictional discovery on this issue, and the notary about whom Mr. Yalowitz submitted his affidavit, or his colleague's affidavit, was cross-examined under oath. And [44] he said, without contradiction, I am not an agent of the Palestinian Authority or the PLO. I am a notary in the State of New Jersey. As I do for my clients, I interact with organizations to which they need to submit notarized documents. So there's no factual support for his notion that we're engaged in consular activities.

The old website of the old mission to which he conferred, simply contained a list of notaries. That does not make him agents of the United States, and here's why you would know that. Your Honor is familiar with the Foreign Agents Registration Act. If these notaries were agents of the PLO or the PA, they would have to register under FARA, and they didn't.

But let me start with the broader point on due process, and tell your Honor why, according to the Second Circuit in this case Mr. Yalowitz's due process test simply can't be the test.

In the first appeal in this case, the plaintiffs made a consent-to-jurisdiction argument. They said the PA and the PLO consented to jurisdiction because, according to the statutory terms of the Anti-Terrorism Act, jurisdiction is established if you appoint an agent for service of process and if service is made. Therefore, they argued, by accepting service, we consented to jurisdiction.

The Second Circuit said – first, they addressed [45] plaintiff's argument that defendants consented to personal jurisdiction under the ATA by appointing an agent for service of process. This is at 835 F.3d 337 and 333 – 343. What the Second Circuit said is what your Honor said earlier. The Second Circuit said "the statute does not answer the constitutional question of whether due process is satisfied."

So let's look at that jurisdictional provision of the original ATA. It gave fair notice to defendants that if they appointed an agent for service of process, they could be subject to jurisdiction. That's item one on Mr. Yalowitz's test.

It was reasonably related, the plaintiffs argued, to a legitimate government objective to bring before the

Court those who were alleged to be implicated in terrorism. They submitted amicus briefs from United States Senators saying this is an important part of the ATA, it serves an important governmental purpose.

What the Second Circuit said, it doesn't matter if the statute is fair notice. It doesn't matter that the statute is related to a legitimate government objective.

(Interruption)

THE COURT: Anyone who is not speaking, please mute your phone.

MR. BERGER: So we know, as a result of the Second Circuit's first appeal decision in this case, that fair notice [46] and reasonable relationship to a government objective is not enough to satisfy due process.

What did the Second Circuit say? More is required. Minimum contacts. Mr. Yalowitz says we accept that it's law of the case that minimum contacts aren't satisfied.

So what happens when, to your Honor's point, there is a Legislative attempt to use forced consent? I thought your Honor's phrase helps me frame my argument perfectly. The answer to that, according to the Brown decision in the Second Circuit, is that it has to be free and voluntary consent, particularly when there is no explicit consent. That's at 814 F.3d 626 and 640.

Well, that sounds nice, but how do we put some meat on the bones of what is free and voluntary consent? I think that's where your Honor's questions were driving here. Here is the key point, and Mr. Yalowitz made it for me; so I'm going to take it and use it to explain this point. He said, look at what happened

under the predecessor to the PSJVTA. The thing called ATCA, the Anti-Terrorism Clarification Act.

It said you, the defendants, are deemed to consent to jurisdiction if you accept either of two benefits: One, continued foreign aid; or, two, a waiver to continue running your embassy in Washington. The United States government, in the *Klieman* case, as picked up by the Second Circuit in its decision, said the following – and this is what frames the [47] difference between ATCA and the PSJVTA, and explains why the PSJVTA does not satisfy due process.

What the government said, in defending the constitutionality of ATCA, was that these were benefits that the PA could potentially obtain, or the PLO, from the United States, foreign aid or a waiver. And it said, at pages 12 to 13 of its March 13, 2019, brief: The political branches have long imposed conditions on these benefits.

So what is the test for knowing and voluntary consent – forced consent, as your Honor said – when it's not explicit? The answer is, and it's very clear in the case law, and your Honor has made a similar holding that I'll give to you in a moment, that there has to be an exchange of benefits. There has to be a quid pro quo.

You have to say to me, hey, if you take this benefit from me, then you have submitted to jurisdiction. That's the corporate registration model. Right? You register to do business in the State. You accept the benefit from the State. You are deemed to have accepted a benefit, in return for which you consent to jurisdiction.

Your Honor, I'll give you a 2013 holding that you made in the *Absolute Activist Master Value Fund* case,

where you were addressing due process issues. Your Honor held: Courts look for circumstances, or a course of conduct, from which it is proper to infer an intention to benefit from and, thus, an [48] intention to submit to the laws of the forum.

So that's the test. There has to be a quid pro quo. There has to be an exchange of benefits. ATCA involved a true set of benefits, foreign aid, which the United States government was not obliged to offer, or a waiver of a prohibition. That's what makes the PSJVTA different. It is, as all of your Honor's hypotheticals suggested, not an offer to the PA and the PLO that here's a benefit for you to accept, but if you accept it, it comes with a hook. It comes with jurisdiction.

It is simply waiving a Legislative magic wand and saying, if you continue doing, four months from now, everything that you were already doing, now we're going to deem that that is a consent to jurisdiction. And that is simply contrary to what due process requires.

THE COURT: But consistent with the other cases, that's not exclusively – that's not the only way to characterize it. The choice of –

(Interruption)

I'm sorry, someone is speaking?

(Interruption)

Please mute your phone. The telephone number ending in 663, you need to mute.

What the statute said, particularly with regard to activity, is that if you wish to engage in these activities [49] that are non-UN activities, then you need to consent to jurisdiction. If you wish to give up that benefit, then you don't have to subject yourself to jurisdiction.

Now, I don't want to try to characterize that in the other category of activity that they're talking about, in terms of payments to individuals who have been killed or incarcerated, but I'm not sure that the characterization, whether it's an appropriate constitutional characterization is another question.

But I'm not sure that I can simply say, well, the difference between the cases that you've cited in this analysis in the past is that there's some quid pro quo that they're giving up in exchange for not being subject to jurisdiction, and in this case, there is no such thing.

I'm not sure that – you know, look, the choice is still there, and the choice is there to be made going forward, that if you want the benefit of doing these other things, you're going to have to subject yourself to the jurisdiction. If you don't want the benefit of doing those other things, then you don't engage in those activities, and you won't be subject to jurisdiction.

I'm not sure I see the big distinction between somehow, in one case there's a benefit that's being conferred, and in this case, there is no benefit being conferred.

MR. BERGER: Your Honor, I think you've put your [50] finger on the framework, but here's why we think that this is essential to due process, and why it's missing here.

First of all, the plaintiffs in their reply brief really helped frame this issue. They concede, and you can find this at pages 17 and 26 of their reply brief, that there is no benefit that the PA and the PLO receive under the PSJVTA, no benefit. That's their position, but it's correct, as a matter of law, that there is no benefit.

But let me give you the Supreme Court's most recent statement on what jurisdictional due process requires in the *Ford* case. What the Supreme Court said there is that jurisdictional due process turns fundamentally on – and I'm quoting here – reciprocal obligations, reciprocal obligations, between the defendant and the forum, and that's exactly what an exchange of benefits is. Your Honor can find that at 141, Supreme Court, pages 1025 and 1030. Reciprocal obligations by which a defendant avails itself of the right to do business in the forum and is, therefore, subject to the forum's regulation.

Here's why –

THE COURT: Why is it, in this case, that the question is whether – even if it's framed that way, whether or not the right to do non-UN business is being exchanged for jurisdiction?

MR. BERGER: And, your Honor, I think that's exactly the right question to ask, and here's the reason why plaintiffs [51] are right when they say there is no benefit to the PA and the PLO under the PSJVTA.

The behavior – and this is why we contest the U.S. activity predicate of the statute. All of the behavior in which the PA and the PLO is alleged to have engaged in falls squarely within 30, 40-years old judicial precedent in the Southern District and in the Second Circuit saying that this is not a benefit that the United States confers on the PA and PLO.

That activity is mandated *a priori* by the UN Headquarters Agreement, and that is why in the *United States v. PLO* decision out of the Southern District, the Court held we have to construe the 1987 Anti-Terrorism Act, which prohibits any PLO activity in the United States, we have to carve out from that

any UN-related activity because the United States can't prohibit that, as a signatory to the UN Headquarters Agreement.

THE COURT: The statute doesn't prohibit that.

MR. BERGER: The statute –

THE COURT: The statute does not prohibit UN activity.

MR. BERGER: This statute neither allows nor disallows UN activity. It is – Mr. Yalowitz – if I can make this point, your Honor, it's very important. Mr. Yalowitz used this word in his argument today and he uses it in his brief. He says what the PLO did is simply codified, preexisting, judicially established rules concerning what the PLO can do and [52] what it can't do as an invitee of the United Nations under the UN Headquarters Agreement. That's in their brief at page 20 and their reply brief at pages 26 through 27.

The statute doesn't allow anything. The statute doesn't disallow anything. It does, in Mr. Yalowitz's words, simply codify preexisting law. By codifying preexisting judicial law, it neither adds to nor subtracts from what the defendants can already do.

Now, there may be a factual question, as your Honor raised earlier, about does it fit within the ambit of what was previously authorized by the Southern District in the *U.S. v. PLO* case and the *Mendelsohn v. Meese* case, and by the Second Circuit in the *Klinghoffer* case.

But the answer is, and I'm happy to go through those standards from those cases, but it's quite clear that everything that the PLO UN mission and its personnel have alleged to have done, fall within the ambit of the preexisting protection of the UN Headquarters Agreement. The UN Headquarters Agreement is

untouched by the PSJVTA. It doesn't add to. It doesn't prohibit anything. It doesn't confer any benefit.

Your Honor's template certainly is a fair one, if there were benefit, like the ones under the ATCA, USA, a waiver to operate a mission. Then the U.S. government would certainly take the position that there is an exchange of benefits, but [53] that was the U.S. government's position as to why ATCA was constitutional.

The U.S. government surely would take the position that the PSJVTA neither allows nor disallows additional behavior. What is clear is that anything that is UN related and in furtherance – in furtherance, your Honor, sounds an awful lot like ancillary, doesn't it – in furtherance of UN activity was allowed under the *Klinghoffer* decision.

And, indeed, your Honor held earlier in this case, Second Circuit characterized it in the first appeal, 835 F.3d at 317. Your Honor held earlier in this case, activities involving defendants' New York office were exempt from jurisdictional analysis under an exception for United Nations-related activity, articulated in *Klinghoffer*. That's preexisting law.

Mr. Yalowitz says, along comes the PSJVTA, it doesn't change preexisting law, it simply codifies it. That's not getting –

THE COURT: Mr. Berger, that sounds like a logical argument, but I'm not sure I can accept the position that simply because there was a previous benefit that was conferred, that it can't be an exchange of benefits for certain rights going forward.

The PLO doesn't have any constitutional, independent right to run a mission in the United States. It doesn't. The [54] U.S. could simply say, and can take the

position – I believe they've taken a position in the past, and they could take the position in the future – that they would no longer allow that in the United States, and they will no longer allow them to have a UN mission in the United States.

They're not entitled to a U.S. mission by any unchangeable U.S. or international law. So for Congress to come back and say, look, from now on, our position is this, we're not going to let you come to the United States and have a mission for free. We're going to say to you, in the future, that if you want to maintain a mission in the United States, then you're going to have to agree to subject yourself to jurisdiction.

MR. BERGER: So they can't, your Honor.

THE COURT: There's nothing I know in the previous analysis that would necessarily restrict the U.S. government from taking that position.

MR. BERGER: There is, your Honor, respectfully.

THE COURT: Okay.

MR. BERGER: What restricts the U.S. government from taking that position, because that was the position the U.S. government took when the 1987 Anti-Terrorism Act was passed, and Judge Palmieri, in the *United States v. PLO*, said that may be what Congress said, but Congress is constrained by the U.S. government's antecedent accession to the UN Headquarters [55] Agreement, so it can't. And it can't burden UN participation without abrogating UN Headquarters Agreement, which it hasn't.

Now, amazingly, plaintiffs argue that the PSJVTA did abrogate the UN Headquarters Agreement. That's because they know that the UN Headquarters Agreement is actually the source of defendants' rights,

and so it's essential for them to argue that the PSJVTA abrogates the UN Headquarters Agreement.

But that can't be so for at least three reasons: One is, Mr. Yalowitz talks about submission of letters to the UN. There's no notice whatsoever, no evidence of any notice whatsoever, that the United States government has informed the United Nations that it has abrogated the UN Headquarters Agreement. In fact, it would probably come as a shock to people at the UN.

THE COURT: But this seems to be a red herring for me because you're absolutely right, this has absolutely nothing to do with the UN observer status of the PLO. That has not changed. That has not become an exchange of some other promise –

(Interruption)

Whoever is on number 6770, would you – sir? Sir?

(Interruption)

Mute your phone, please. Mute your phone. Sir? Sir?

(Interruption)

Okay. Maybe we'll take care of it. All right. I'm [56] sorry, Mr. Berger.

MR. BERGER: That's no problem, your Honor. I think where we agree –

THE COURT: That doesn't seem to take me in one direction or the other because that's not what this fight is about. This fight is not about changing its observer status. This statute doesn't say anything about the observer status. It doesn't give any conditions on whether that they're going to maintain their observer status.

It talks about whether or not they're going to be able to do activities unrelated to the observer status and saying that you don't have the right to do that, and you're not going to be able to do that unless you consent to the jurisdiction. So –

MR. BERGER: So, your Honor –

THE COURT: So relying on the observer status part of it doesn't seem to advance this argument one way or the other.

MR. BERGER: Respectfully, your Honor, I think it does, and here's why. The reason why the PLO cannot do things that are unrelated to its UN observer mission, exactly the hypothetical that your Honor is positing, is that the 1987 Anti-Terrorism Act makes it illegal for the PLO to do anything in the United States. Full stop.

The court said, you've got to carve out the UN stuff. So now there's a clear dividing line, UN, non-UN. That's [57] preexisting law. Several things are true. Four different judicial decisions – two out of the Southern District, two out of the Second Circuit – define what is the protected zone of UN activities.

The two Second Circuit decisions are, No. 1, *Klinghoffer*, which says anything in furtherance of the PLO UN mission is protected. The other is in this case, when the Second Circuit, in the first appeal – second appeal, rather, said nothing in *Klinghoffer* suggests that the PLO's engaging in activities unrelated to its observer status transforms it into an office or other facility within the jurisdiction of the United States. But the Court does not have to parse this stuff –

THE COURT: That's not this issue. That is a separate item. This issue is not about defining jurisdiction. It's about defining consent.

MR. BERGER: But, your Honor, consent cannot occur, which is, you can't wave a wand and say to me, you know, Mr. Berger, you have been going to your office every day in order to prepare to litigate this case, but if you continue doing so, 120 days from now, you're deemed to have consented to jurisdiction.

What the due process requires is more than saying I'm giving you advance notice. You have to give me something in return for that, and so, your Honor, I respectfully suggest [58] that the reciprocal obligations test, the Supreme Court's test in *Ford*, you meet it in only one of two ways. You meet it either by having minimum contacts with the jurisdiction, or you meet it by an exchange of benefits. Those are reciprocal obligations. I understand your Honor's point, which is –

THE COURT: You can't exchange benefits that you hadn't previously extended.

MR. BERGER: Yes, you can. That is exactly right. That is my submission. You can't tell me that something you already constrained, as a matter of law, to do, which the courts told you 35 years ago you are constrained to do this, that is not a benefit, to say I will continue obeying the law –

THE COURT: Well, who is constrained to do what?

MR. BERGER: The United States government is constrained by the UN Headquarters Agreement, under its authoritative construction by the Southern District and the Second Circuit to allow what I will call a protected zone of UN protected activities.

THE COURT: And that's not at issue here. That's what I don't understand about your argument. This statute doesn't affect that right whatsoever.

MR. BERGER: But your Honor, that's where I think we're missing each other with respect to –

THE COURT: I know because you keep saying that that's [59] what's at issue here, and the UN status has not been changed. It's not been affected. It is not at issue. It is not in dispute.

MR. BERGER: But that, your Honor, respectfully, is a factual question of where the line is drawn. The premise of your Honor's question –

THE COURT: That's a different issue. You can either argue that the factual basis isn't there for me to make that determination, or you can argue what I just heard you argue, that categorically, they can't make this requirement because somehow they're changing the rights without some exchange of benefits. So that's two different arguments.

MR. BERGER: I have three points in response to that. One is that line was drawn in the 1987 ATA. It's codified at 52 U.S.C. – I mean, 22 U.S.C. 5202.

THE COURT: You tell me what was codified. You can't say it was codified if it affects the judgment of whether or not they can say that if you want to conduct non-UN business, you have to agree to these terms.

MR. BERGER: Right. But, your Honor, my point is, let's start with what the previous state of the law was, which frames the lack of an exchange of benefits. I'll refer your Honor to the *Mendelsohn v. Meese* decision, which was the companion 1988 case to *U.S. v. PLO*, 695 F.Supp. 1456 at 1484.

It frames your Honor's point about the benefit. What [60] it says is the purpose of section 1003 of the 1987 ATA, which is codified at 22 U.S.C. 5202, is "to deny the PLO the benefits of operating in the United States." That's preexisting law. PLO –

THE COURT: No, no, no. Those cases were talking about the benefits of UN observer status.

MR. BERGER: Well, your Honor –

THE COURT: What other benefits are any of those cases addressing?

MR. BERGER: They're addressing whether or not other than UN-related issues.

THE COURT: What issues?

MR. BERGER: For example, this is the reason why a waiver is required for a U.S. mission in Washington. Right? It says, the purpose of this 1987 law is to deny the PLO the benefits of operating in the United States. What the cases then did is they say, that's the starting point, zero in the United States. From that, we carve out UN-related things.

THE COURT: Right.

MR. BERGER: But the purpose is, and it comes with an enforcement mechanism.

THE COURT: I know, but how has that changed? How is what's being done somehow inherently inconsistent with that analysis when that status has not changed?

MR. BERGER: Your Honor, I think we're saying the same [61] thing but drawing different conclusions from it.

THE COURT: Okay.

MR. BERGER: That hasn't changed. The fact that it hasn't changed from 1987 means – let me put this in -

THE COURT: It can't change.

MR. BERGER: What's that?

THE COURT: It means that it can't change.

MR. BERGER: It means that it hasn't been changed, and so I would use a contractual analogy, which is, you can't create contraction, a new consequence, without fresh consideration.

There's nothing new here that the U.S. government is offering to the PA and the PLO. It's not like saying I'll give you aid next year, I'll give you a waiver next year. It's recycled law from 1987, in Mr. Yalowitz's word codified. It can't be a benefit.

THE COURT: I know, but there was no law – there was no guarantee, and there was no right of the PLO to conduct non-UN business in the United States.

MR. BERGER: All right. Your Honor, that's -

THE COURT: It's a right that the government couldn't deny or exchange or put conditions on. They don't have that right today.

MR. BERGER: The government can't, as a matter of the UN Headquarters Agreement, put any burdens on the UN presence.

[62] THE COURT: Right.

MR. BERGER: The government has, for decades, burdened everything else and prohibited it in the United States. So Mr. Yalowitz –

THE COURT: So the argument you just made because you claim that they never put any restrictions on the UN business, and they put restrictions on the

kinds of business they could value and the business that they could do. How is that different than what's happening here?

MR. BERGER: Your Honor, I'm saying that all the PSJVTA does is say, we're not changing the preexisting state of the law. That's Mr. Yalowitz's argument, too.

My point is if you're not changing, despite the fact that Congress could, Congress hasn't. Congress hasn't said anything in the PSJVTA that is any different from preexisting law. That being the case, there is no fresh consideration like there was under ATCA, to say I'm now attaching new consequences, and here –

THE COURT: Well, okay. But I don't want to – I didn't mean to interrupt you, but I don't want to play semantics with you because what you say that they have said, they have not said it in the context and for the meaning that you want to use it.

What Congress has done is Congress has said, look, we don't like the fact that you can injure and kill U.S. citizens [63] abroad and still come to the United States and do whatever business you want to do. That's the current state of the agreement. So from now on – and we've observed this case, it's been thrown out because the court says there's no jurisdiction.

Well, we want to protect the interests of U.S. citizens; so, therefore, we are going to say, from now on, if you want to do these other activities, unrelated to your UN presence because we know we don't have the right case law and precedent and indicate you don't have the right to restrict your UN presence, but if you want to do other activities unrelated to that UN presence, from now on, we put several conditions on you in exchange for your being able to do that in the future.

One, is that you don't pay people who are injured or killed or jailed with regard to what we claim are terrorist acts; and, two, if you want to continue to have the benefits of not being sued in the United States, you are going to have to not do any non-UN business in the United States. Otherwise, if you want to do non-UN business in the United States, you're going to have to agree in the future to subject yourself to jurisdiction. That's your choice.

If you don't want to do it, you don't have the right to do business in the United States, other than UN business. If you want to do business in the United States other than UN [64] business, you're going to have to agree to these terms. You're saying that –

MR. BERGER: Okay, your Honor.

THE COURT: – you don't have the right to do that.

MR. BERGER: Right. You Honor, you and I, I think, are on exactly the same wavelength here, and it boils down to this question. Because from 1987 forward, Congress has already said if you come into this country and you do activities unrelated to the United Nations, you've committed a crime.

So now what your Honor is saying, Congress can say, not only is it a crime, it can say, there are civil consequences in terms of jurisdictional attachment. But your Honor's construct, at least, agrees with me, which is to say there's that quid pro quo. There is the, if you want to do this, then this follows. That's my point, your Honor. That now reduces to a factual question. Are we doing things that fall outside of what your Honor calls "other activities" and here's why the answer is no.

THE COURT: That part of the argument I understand. I just don't understand that I can make a determination simply that Congress, by passing this statute, went beyond its authority because there was no exchange of benefits.

MR. BERGER: But, your Honor, that is our argument, which is, there's only one way to tell whether the standard, as articulated in *Brown*, which plaintiffs concede. What is free [65] and voluntary consent? It can't be a seat-of-the-pants determination. There has to be a bright-line test.

THE COURT: Right.

MR. BERGER: Our argument is that free and voluntary consent requires an identifiable exchange of benefits when legislation demands this. So like Mr. Yalowitz talks about cases like *Bauxite*. *Bauxite* doesn't involve Legislative deemed consent. It involves an act of judicial submission.

Your Honor, if I show up in front of you making this argument, that my client is not subject to jurisdiction, and I offend you and you hold me in contempt, it's not a question of an exchange of benefits. It's I've submitted to the Court's jurisdiction. But you have to take judicial submissions, judicial acts, and move them to the side. It's the same thing like rule 12(h). If I don't preserve my jurisdictional defense, that's a judicial act.

THE COURT: But the problem is -

(Indiscernible crosstalk)

MR. BERGER: – legislation.

THE COURT: The problem I have with both arguments on this issue is that you have yet to convince me that this is a new definition of

jurisdiction. It is not a new definition of jurisdiction. It is whether or not this is an appropriate definition for consent, and that's not what the cases deal with. That's the uniqueness of this case.

[66] This legislation is written in terms of consent. It is not written in terms of obligations. It's not written in terms of how you define jurisdiction. It doesn't even say anything about whether or not the Supreme Court's definition of jurisdiction, as applied by the Second Circuit, has any infirmity whatsoever.

It's if you do these acts, if you want to do these acts, you will have to consent to these terms. And so that's what is sort of hard for me to jump on those cases that you guys are citing on both sides and say, oh, yeah, that resolves this issue. It doesn't resolve this issue.

This issue is about whether or not you – it is if you do the acts that the statute says that you cannot do unless you're going to consent, by doing those acts, have you consented. That's the simple question, isn't it?

MR. BERGER: Right.

THE COURT: Before I get to the due process constitutional issue, that's the simple question.

MR. BERGER: So, your Honor, I think we're saying a lot of the same things because your characterization there was an "if then" clause, if you do this, then jurisdiction follows. So put aside exchange of benefits. Maybe "benefits" is confusing the discussion.

I call it a quid pro quo. If I do this, then this happens to me.

[67] THE COURT: Right.

MR. BERGER: What Mr. Yalowitz said that tests for due process is fair notice, no arbitrary government action and minimum contacts. But when there's not minimum contacts, because what your Honor said is we're not talking about jurisdiction, we're talking about consent. So you have to have fair notice for sure. You have to have no arbitrary government action.

But what the Second Circuit told us in *Brown* is it also needs to be free and voluntary. So what is free and voluntary? And that's what we're talking about. And what my submission is, your Honor, is that free and voluntary is, as your Honor defined it, if I do this, then this happens. At least now there's an "if, then" progression to the argument.

And I agree that if the United States wanted to put some additional burden on non-U.S. activity, beyond existing criminal prohibitions, then maybe that would fit our "if, then" quid pro quo scenario. But it raises the factual question, and this is the whole purpose of why we don't concede the U.S. activities section has been met. How do I tell?

I've already addressed two parts of that. I've already said there's no evidence of consular activities. It's fully rebutted by discovery in another case. Happy to submit that here. We have also, I think, addressed this nonsense about surfing in Gaza, which was UN Sports, clearly UN related.

[68] So how do we tell what is UN related? And let me give your Honor what I think is a very easy test – two easy tests that avoid the need to parse constantly, does this fall and fall within that? No. 1, by official United Nations mandate, Palestine, as an observer member of the United Nations, non-member state, belongs to something called the UN Committee on the

Exercise of the Inalienable Rights of the Palestinian People.

Here's the committee's mandate. The committee's mandate absorbs everything to which Mr. Yalowitz has pointed, speeches, social media and the like. What the committee's mandate say – and I'm going to quote here, I'm not trying to be polemical. We all know that these are hot-button issues currently. Let me quote the UN mandate to the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People. It is to focus on diplomatic efforts and initiatives to support the achievement without delay of an end to Israeli occupation that began in 1967 and of the two-state solution on the basis of 1967 lines, which includes "continuing to mobilize the international community to stay steadfast in its support for the inalienable rights of the Palestinian people."

"Mobilizing the international community," that's the Tweets, that's the speeches, that's the radio appearances, and your Honor was already onto this earlier. We don't even have to worry about what's ancillary. This is a core part of the [69] official duties of the UN mission.

But here's the second test that also makes it easy because, your Honor, we're in agreement that non-UN activities are already criminal under 22, U.S.C. 5202. Well, 22, U.S.C. 5203 says that if Palestine UN mission personnel exceed the protected area – the one that your Honor defined – then the Attorney General may bring an action for enforcement to enjoin that activity.

There has been no evidence of any enforcement activity whatsoever. That was the status quo when the PSJVTA was passed, and very importantly, the Second Circuit – and I give your Honor a case cite for this – presumes that Congress legislates against the backdrop

of existing law, and that includes its enforcement history. You can find that *Pharaohs GC, Incorporated v. Small Business Administration*, 990 F.3d 217.

In other words, Congress is presumed to have enacted legislation, in this case the PSJVTA, knowing that the status quo of what the UN mission and its personnel were doing was within the permitted zone of UN activity because there had been no enforcement action. So Congress could say, I'm going to attach a new consequence to that activity, jurisdiction, not just criminal provision, but there still has to be evidence that that activity exceeded what is allowed. And our submission is, there is no evidence that it exceeds the [70] protected area.

THE COURT: The problem that I have, and I have to think out, is that you're giving me examples that apply to how one defines jurisdiction. And, for me, this is not the determinative issue of how one defines jurisdiction.

The question is whether or not this is consent. And so you can focus me, let me basically tell you where I am at this stage. First of all, this argument about the activities does not seem to me to be the determinative argument on this motion.

Why? It's because even if I accept your argument on this activity, that does not address the issue of the payment of monies to persons designated to the terrorists who have injured U.S. citizens or their families. There doesn't seem to be any real genuine dispute. The conduct that's being addressed is still going on, and that if you strictly go by the language of the statute, that that activity falls within that statute, and there's no question that that activity is still going on.

So the question doesn't seem to be determinative as to whether or not they're violating the letter of the law of the statute. The question is whether or not it is consistent with due process to say that even though you continue to do that, and because you continue to do that, it constitutes consent to jurisdiction, and whether or not that meets the requirements of [71] constitutional due process.

So no matter how I look at it, whether I accept your argument, unless you want to give me an argument that somehow there's a genuine dispute as to whether or not, in fact, a prohibited activity with regard to payment to individuals who have injured U.S. citizens, whether or not there's some real dispute as to whether those payments are still taking place.

So the question really is whether or not that restriction and/or the restriction on activity is still prohibited legislation because it is unconstitutional to do that because it is inconsistent with due process. So unless I'm convinced one way or the other on the due process argument, it seems to me that neither one of the arguments are determinative of this issue.

MR. BERGER: So, your Honor, let me address that because I think the payments, from Palestine's point, is, if I can borrow your Honor's phrase, a red herring. Here is why you can't possibly predicate jurisdiction, by consent or otherwise, on the payments in Palestine.

It's like one of your analyses about what happens in New Jersey, which is, United States government has no authority to regulate what the PA and the PLO do in Palestine. Now, if what the PA and the PLO do in Palestine, by making payments, has a direct effect on the United States, then it would be minimum contacts jurisdiction.

[72] THE COURT: I'm not sure I agree with that statement, that United States has no ability to affect what goes on in other countries. We do it all the time.

MR. BERGER: We do it as –

THE COURT: We tell people all the time, unless you comply with these conditions, we are not going to give you, as you say, a certain benefit. So I don't think I can accept that if the U.S. says it's in their best interest, in order to protect U.S. citizens, to demand this from other countries, even if it's not happening in the United States, I'm not sure I can accept the premise that they don't have an interest or the right or the ability to do so.

MR. BERGER: Well, so your Honor provided the answer. I think to that construct, earlier in a remark you made to Mr. Yalowitz, you said do you agree that Congress can't change a due process analysis, that that's beyond their power. He said, well, they'd like to think they can, but they can't.

The Second Circuit in this case already considered the two things that are at issue in the PSJVTA. They considered payments in Palestine, and they considered advocacy in the United States. And it held that neither of those, as a constitutional matter, could support jurisdiction. You can find that at 835 F.3d 341 to 42.

So now, the question is, having been told by the Second Circuit that payments in Palestine and advocacy in the [73] United States does not create a jurisdictional nexus that satisfies due process, can Congress wave a wand and say, okay, I know it doesn't satisfy minimum contacts, but I'm now going to say if you keep doing this, that which does not satisfy due process, then you are deemed to consent to jurisdiction, and the answer to that is clearly, no, for two reasons.

One is it's a Legislative effort to alter the due process standards. That's the separation of powers point. The other, the due process point, is there has to be something within the power of the United States to give or take away – not give or take away jurisdiction – give or take away a benefit and you can't say that that's the case.

So, for example, if Congress said any bank in the Middle East that processes payments for terrorists, which is clearly injurious to the United States, that that subjects you to jurisdiction in United States courts, well, guess what, that's already the Anti-Terrorism Act and the Second Circuit important held that's not good enough.

THE COURT: Again, you both are doing this. You characterize it in a way that the issue that doesn't exist before me. That is not the issue before me. This is an issue of consent. Okay? This is not an issue of what confers jurisdiction. I agree with you, and Mr. Yalowitz would have to agree, that there's nothing in this legislation that confers jurisdiction, the power of conferring jurisdiction to Congress. [74] Congress has not done that.

As a matter of fact, the reality is the concern that you raise is probably exactly why Congress decided to word it this way, to avoid a constitutional attack on the legislation, that the legislation is changing the definition of jurisdiction, or is loosening the requirements for jurisdiction.

So the question is not whether or not this is a legitimate assertion of jurisdiction. The question is whether or not this – as it would be in any context if it wasn't jurisdiction – whether or not this is a legitimate

assertion of the principle of consent, informed, voluntary, on-notice consent.

So I can't disagree with you, the way you characterize it, you know, with regard to what their powers are or lack of powers to assert jurisdiction. But Congress isn't asserting jurisdiction. They're not changing the definition of jurisdiction. They are saying that regardless of what is required for jurisdiction, if you want to engage in certain activities, you're going to have to consent.

MR. BERGER: So, your Honor –

THE COURT: The question is, where do I go for guidance in terms of what would be a valid consent?

Now, you already said one point, which is a legitimate point, that, look, consent can't be you're forcing me to do [75] this.

Well, you know, as they say, you know, 40 years ago, when I used to drive my car, I didn't have to wear seatbelt. Now, to get in the car to drive my car, I have to consent to put on a seatbelt. All right? So the question is not whether or not seatbelt jurisdiction has been expanded. The question is, look, if I don't want to wear a seatbelt, then I shouldn't get in the car.

So the question here is, all right, is it critical to your argument that I define this as Congress changing the definition of jurisdiction or somehow expanding jurisdiction, or is this a more limited analysis of whether or not this is an appropriate definition of consent, and whether or not the kinds of constitutional analysis that one has to go through to determine the assertion of jurisdiction, whether or not this Court or any court has to go through that same analysis in determining whether or not this is a valid consent.

MR. BERGER: So, your Honor, I think the Second Circuit has given us the guideposts and has framed your question. So your Honor said it's not a question of asserting jurisdiction, but is it a valid exercise of deeming consent. I said that's Legislative concept. It's Legislatively implied consent because we all agree there's no explicit consent.

What the Second Circuit told us in *Brown*, it raises the meta-question. It doesn't answer the granular question. [76] Is that when there is no explicit consent, then implied consent to jurisdiction must be free and voluntary. Well, that's great, but what does free and voluntary mean? That's really your Honor's question, what is free and voluntary? How do I tell?

Your Honor gave me the seatbelt analogy. Right? Put on the seatbelt. Well, guess what, that involves an exchange of benefits, which is, you can't avail yourself of the right to drive on the roads of New York State unless you are wearing a seatbelt. That's the tradeoff. That's the quid pro quo and –

THE COURT: But the analogy you gave me earlier was, well, before that, I could drive without a seatbelt. Now they can't change the law and say I can't drive without a seatbelt.

MR. BERGER: But there's a quid pro quo, which is going forward. What it said was, here's the deal, which is something within our power, as the forum. It is our right, as New York State, to say to you, you can't drive on our roads, that's the quid pro quo.

THE COURT: But I don't understand why you're conducting non-UN business is not that quid pro quo.

MR. BERGER: Your Honor, if –

THE COURT: Right to conduct non-UN business.

MR. BERGER: If it were non-UN business, then my point is that is simply attaching – I'm not disagreeing with your Honor. I'm saying that's attaching an additional consequence [77] to an existing rule that already prohibits non-UN business.

What I'm saying is there are ways to tell whether we're engaging in non-UN business that are clean and simple, one of which is that has been the rule since 1987. Whether the consequence is criminal prosecution or whether the consequence is jurisdiction doesn't matter. There's a consequence.

You can tell that there is no U.S. activity that falls outside the line because there has been no enforcement, but here's – your Honor, we're all struggling for what's the test. Right? We all know it has to be free and voluntary.

THE COURT: But would you say, on that analysis, that Congress doesn't have the power to pass a law that says in the future, if you want to do business in the United States, if you decide to pay ransom to individuals to kill U.S. soldiers, that you have to agree not to do that, or you would have to consent to jurisdiction in the United States? You would say they wouldn't have the power to do that?

MR. BERGER: I would say that they don't have the power to do it in the ransom instance because the quid pro quo has to be something within the power of the government to give.

The government does have the power to say, you can't conduct non-UN activities in the United States without this consequence. It doesn't have the power to say that you can't do these activities overseas because, otherwise, let's look at what the Second Circuit did in the first appeal here.

[78] THE COURT: But the semantics of it is the statute doesn't say. The statute doesn't say – it doesn't tell them what they can do or what they can't do. It doesn't even say you can't kill U.S. citizens.

MR. BERGER: That's right. Your Honor, I –

THE COURT: It says if you kill U.S. citizens, we will consider that, in the future, to be your consent to being sued not only for that activity but any other activity that you might be able to be sued on, based on your consent to be sued because you knew if you killed a U.S. citizen, that we were going to assert jurisdiction. You went ahead and did it anyway. What is –

MR. BERGER: Congress clearly does not have that power under the Constitution. Take the *Daimler* case –

THE COURT: I don't understand why they don't have the power. They don't have the power to do that in conflict with constitutional due process requirements, but I just don't understand your argument that they don't have the power to say, if you want to do business in the United States and you're going to engage in activities to kill U.S. citizens, or you want to engage in activities that kills U.S. citizens, that if you engage in that activity, we will consider that a consent to the jurisdiction of our courts.

MR. BERGER: Right, and here's why Congress can't do that –

[79] THE COURT: We put you on notice that we don't want this activity to take place, and as you say, we don't have the ability to prevent you from doing so, but if you do so, that's going to be your consent to be sued for the consequences of doing that, and sued generally for any other activity that you might

otherwise be sued for under general jurisdiction. Why is that such a complicated concept?

MR. BERGER: It's not complicated. It's just unconstitutional, and here's why –

THE COURT: Why is it unconstitutional, other than it's due process or not?

MR. BERGER: It's a violation of due process because it is not something that the United States government can regulate and provide a benefit. Let me put this in a –

THE COURT: I just don't understand that.

MR. BERGER: Let me use a hypothetical like the one your Honor had that emulates something like the *Daimler* case or the *Bristol Myers* case or the like, which is, if Congress says to Daimler, you make Mercedes Benz's. You sell them overseas. If they have a defect in them, then you're on notice that 120 days from now, if an American citizen dies because you've made a defective product overseas and somebody dies in an overseas accident, then you can be sued in the United States for that. That clearly violates the rule in Daimler that you cannot sue them when there is no U.S. connection, and it doesn't change [80] the due process rule just because you add the words "and you're deemed to have consented to jurisdiction."

THE COURT: That's my question.

MR. BERGER: You can't do that because – and that's exactly what's going on here. Look, we all know intuitively that what Congress has done here is an attempt to say, okay, now I've read two different Second Circuit opinions. I'm going to figure out Legislatively a way to get around both of those things and get this case to where the Constitution says it

can't be. And our position is you can't do that just by adding the words "deemed consent." How do we know?

THE COURT: Just articulate, from your perspective, if I had to rule in your favor, if I had to articulate why this violates due process, that's all I'm – you know, that's where I'm focused. Everything you say, I understand your argument, but they all take me back to the same place. They all take me back to a due process constitutional argument.

It doesn't take me to – I'm not going to be able to resolve this issue based on whether you did or didn't engage in certain activities, or based on whether or not they can or can't take legislation that they say they're going to assert to protect the interests of citizens abroad.

All of that analysis is not going to determine whether Congress can pass a law that says if you engage in that activity, you've consented to jurisdiction.

[81] What I need to do is I need to articulate why is it that you say – and I'm not sure if there's any other real constitutional argument, other than the broader constitutional argument – that it violates due process. I'm having difficulty articulating why it violates due process, and let me simplify it for you by simple analysis. I'm having more difficulty articulating why it's unfair to make that a requirement.

MR. BERGER: And I think fairness –

THE COURT: The notice and having given you the opportunity to make your choice as to whether or not you want to continue to engage in this activity. Because if you are going to continue to engage in this activity, we're no longer going to give you the benefit of the personal jurisdictional protection that you might otherwise have because you're doing this, even though

we have made it clear to you if you do this, it will constitute consent.

MR. BERGER: Okay. So, your Honor, in the latter part of your analysis, you said we will no longer give you the benefit of constitutional due process, and clearly Congress –

THE COURT: I didn't say that. The benefit of constitutional due process.

MR. BERGER: Right. So here's –

THE COURT: I'm going to give you the benefit of engaging in that activity and, at the same time, protecting you [82] from being sued personally in the United States.

MR. BERGER: Right. So, your Honor, I think we're a lot closer than perhaps you think, which is, I have one word – remember like at the end of The Graduate, the movie The Graduate, one word, plastic?

THE COURT: Plastics?

MR. BERGER: Plastics, right. So I've got one word for you, and this is the test, reciprocity. That's the quid pro quo point, the exchange-of-benefits point. The closest analogy we have to this statute, and this why I harp on this point, is its predecessor, ATCA.

ATCA was also a deemed consent statute that was designed to work around the Second Circuit's decision, and the only respect why the government defended its constitutionality was that it recognized that there were benefits, reciprocal benefits, at issue, and the government's position was the political branches can impose condition on those benefits. So that's the test, your Honor.

I understand your point. You're not going to get into the granular, is this actually met or not. So the question is, is there any reciprocal aspect to the PSJVTA? Our argument is, no, there is no reciprocity because everything that the statute says – that if you keep doing this, we will impose jurisdiction – is not something that is a benefit within the power of the United States government to give. Totally unlike [83] ATCA, where government aid or a waiver was a benefit totally under the power –

THE COURT: I don't understand that in the context of non-UN business activity.

MR. BERGER: Right, but so, your Honor, I agree with your Honor. I would –

THE COURT: Congress clearly has the right to restrict that or to give it unfettered, you know, condition, without condition. They have the right to do that.

MR. BERGER: We agree on that, your Honor. If it is something that the United States government can allow or disallow, and the United States –

THE COURT: In this case, they can allow it.

MR. BERGER: – and the United States government can allow or disallow non-UN activity by the PLO in the United States, and we know that because it already does disallow that.

THE COURT: Right, that is a fact.

MR. BERGER: Then the statute is properly analyzed on a reciprocity analysis, and it becomes a fact-specific question in every case about whether the activity that is involved is non-UN activity.

But the test is still the same, which is the only identifiable benefit in the PSJVTA is non-UN related business, which the statute has defined broadly to include – and this is the important part about ancillary. Mr. Yalowitz skipped over [84] this part. It says personal or official activities that are ancillary to the United Nations business. That's very wrong. Personal activities, why would they include the word personal? So it becomes a fact-specific question.

So the issue is not, is there reciprocity. It's the only identifiable reciprocal aspect of the statute. It becomes a fact question, if that's the holding, about whether they've proven facts – and they haven't – that then allow that reciprocity to be met.

But you've asked me, your Honor, what is fundamentally –

THE COURT: There's no fact question in dispute with regard to whether they are meeting the condition of not paying benefits to those who are convicted of –

MR. BERGER: Right.

THE COURT: – committing what they consider to be terrorist acts.

MR. BERGER: But our –

THE COURT: There's no factual dispute there.

MR. BERGER: That is not factually in dispute. It is legally in dispute because what we are arguing is that there is no reciprocity there. It is not subject to the United States regulation; so therefore, there is no reciprocity, no benefit.

So while those facts aren't in dispute legally, we strongly contest whether that's fair. We don't legally contest [85] whether the United States can prevent

non-UN-related activity in the United States. That's the only identifiable benefit.

Your Honor keeps trying to get me to be clearer. I'm trying to be. What is my test? You said it's a forced consent case. How do I know whether forced consent meets due process or not? And I have given you my one-word "plastics" reciprocity test.

Now the question becomes what's reciprocity? Our argument is there's no reciprocity when it comes the payments that are undisputed. There is no – there is only reciprocity when it comes to non-UN-related U.S. business, but the facts don't show that that is satisfied here.

THE COURT: You would agree that there is no reciprocity requirement with regard to consent?

MR. BERGER: No, I think it's essential to consent. I think the only way –

THE COURT: I mean, no. There's absolutely no requirement of reciprocity, or even consideration, for consenting to jurisdiction.

MR. BERGER: Your Honor, if it's explicit consent, then, yes, the due process clause still requires that you make sure. So, for example, if I explicitly consent -

THE COURT: Where is that?

MR. BERGER: If I explicitly consent, your Honor, by virtue of a forum selection payment, the Court still examines [86] whether that was a free and voluntary, non-coerced consent.

THE COURT: No, a free and voluntary, non-coerced is not reciprocity. Okay? There's no requirement of reciprocity for consent. There's a requirement that, as

you said, if you want to argue that it's free and voluntary, that's one thing.

But I don't have to say, oh, what did you get for your consent? And if I can't point to something that I gave you in exchange for your consent, then your consent to jurisdiction is invalid. That's not a requirement for consent, as you just articulated. You left out reciprocity and you said, appropriately, that that has to do more with a voluntary and knowing agreement.

MR. BERGER: So, your Honor, the question becomes what is free and voluntary?

THE COURT: Right.

MR. BERGER: The reason why I say reciprocity is required is that's the test for free and voluntary. It is not only advanced notice.

THE COURT: Reciprocity has never been the test for free and voluntary consent.

MR. BERGER: Your Honor, I respectfully suggest it has always been the test.

THE COURT: It may be the test for a contractual agreement, but I don't have to show you reciprocity in order to demonstrate that you consented to something.

[87] If we signed a contract and I said, okay, we're going to do X, Y and Z, and then we signed the contract and I said, well, you know what, I know we said that we were both going to sign this contract, but you have my consent to just take the contract and keep it with you and never sign it and never send it back. You're telling me that my analysis involves whether or not there was some reciprocity to enforce –

MR. BERGER: Contract always –

(Indiscernible crosstalk)

THE COURT: – consent?

MR. BERGER: Your Honor, a contract is always a bargained-for exchange. It always involves reciprocities, always eternal contract. You're ask me –

THE COURT: Consent is given with or without a contract. All right? So I want to know why I'm supposed to be able to say – I understand your reciprocity argument with regard to an exchange of promises. I don't see why I have to sit here and try to analyze whether there was some exchange or benefit in order to determine whether one party consented to something.

MR. BERGER: Your Honor –

THE COURT: That's never been the analysis. That's not the analysis with regard to consent.

MR. BERGER: But your Honor -

THE COURT: The analysis with regard to consent, as [88] you said, is it was knowing and voluntary.

MR. BERGER: Your Honor –

THE COURT: I could consent to do things that I get nothing in exchange for, but I may be bound by that consent.

MR. BERGER: Your Honor, well, here's what I think we agree on, which is that free and voluntary standards have to be met as a matter of due process when there's not explicit consent. So we don't have explicit concept.

THE COURT: Okay. Well, that part of it I understand, and I can understand that analysis.

MR. BERGER: Right. That's what *Brown* says; so that's Second Circuit law, it must be free and voluntary.

THE COURT: Right.

MR. BERGER: All we're talking about now is how do you sit there and say it's free and voluntary or it's not? It's not a Potter Stewart thing, where you say, well, "I know it when I see it" because that's not really legal rule. So the question that we have been wrestling with is, what is the test for free and voluntary, since we all agree it has to be free and voluntary. And so –

THE COURT: The test for free and voluntary is that I am on notice. I'm aware of the consequences. They can't force me to engage in that conduct that they want to affect, and if I want to engage in the conduct that they want to affect, that I – well, even from your reciprocity argument, in exchange for [89] the right to do that, I will consent to jurisdiction.

In exchange for the right to give benefit to individuals, I am going to agree to subject myself to jurisdiction in exchange for the right to conduct business in the United States that's non-UN business. I'm going to knowingly and voluntary agree to consent to jurisdiction.

If I don't want to consent – non-consent doesn't mean if I don't consent, I still get what I want. That's not the definition of consent. Consent is, I know what's being asked of me, I am conceding that point, I'm agreeing to that point, and I know what the consequences are to enforcing such an agreement.

And so if they tell me that you have to consent, it will be consent to jurisdiction if you do the following acts, then my voluntary decision is whether or not I'm going to do that act.

MR. BERGER: Right. So let me be as clear about this as possible because I understand where your Honor is

coming from, and I just need to be clear that that test for consent would violate the mandate in the first appeal in this case, which talked about what the standards are for consent to jurisdiction.

It has to be more, according to the Second Circuit, than advanced notice and a reasonable relationship to a government goal. That's why the Second Circuit rejected the [90] plaintiffs' consent argument in the first appeal because that was the argument they made there.

They said the Anti-Terrorism Act puts the defendants on notice that if they engage in these acts, they appoint an agent for service of process, and they are served with process, that's sufficient for jurisdiction. They said that was couched as a consent, quote, unquote, argument by the plaintiffs in the first appeal when they said due process requires something more.

We agree, it requires something more. What I said that something more is is reciprocity. Your Honor doesn't agree with me, but I want to be clear about my argument because I think holding that only advance notice and reasonable relationship to a government goal would violate the mandate in the first appeal.

THE COURT: I understand that. I just don't – I mean, I'll look at it again with that eye, but I don't have any recollection that any court has defined it as reciprocity.

MR. BERGER: Well, your Honor, and that's why the only other thing – and this is the point I was making earlier that I would commend to your Honor. The closest analogy we have to the PSJVTA is its immediate predecessor, the ATCA, and the only basis on which it's constitutionality, its due process constitutionality, was defended by the U.S. government

was on an exchange-of-benefits theory. So that's what I would say is, [91] you know, the closest –

THE COURT: Your argument is this isn't a consent; that this is, in fact, an assertion of jurisdiction under the guise of consent.

MR. BERGER: That's a fair summary, your Honor, and I'm saying the reason you can tell the difference between consent and an assertion of jurisdiction is whether it involves reciprocity.

THE COURT: I want to try to wind up. Is there anything else you wanted to add? Let me see if Mr. Yalowitz wanted to add anything.

Mr. Yalowitz, you're on mute. I'm sorry, Mr. Yalowitz.

MR. YALOWITZ: Sorry about that.

THE COURT: That's all right.

MR. YALOWITZ: I probably need about five minutes, your Honor.

THE COURT: Okay. So I mean, do you agree with this reciprocity argument?

MR. YALOWITZ: I agree with you, that it's never been the law that consent requires reciprocity or consideration. Consent is just consent. I consent. You can consent because you feel like it. You can consent because you, out of the goodness of your heart, want to consent. You can consent because you're getting something. I've never heard of any case [92] that says you can't consent unless you're given some benefit.

And by the way, while Mr. Berger was talking, I searched his 60-page brief, and I didn't see anything about reciprocity or quid pro quo or anything like that the 60-page brief to you. He –

MR. BERGER: I'm happy to identify those pages if Mr. Yalowitz has trouble finding them, if he's going to make a waiver argument.

THE COURT: All right. Mr. Berger, I let you – Mr. Yalowitz respond.

MR. YALOWITZ: Okay. Well, he didn't say – the word "reciprocity" and the word "quid pro quo" this is a new argument he's making, and it's a meritless argument because there's just nothing – there's nothing in the law that says you have to have a benefit. The *Bauxite* case didn't give a benefit. They just said we're not giving discovery, and so they said, okay, well, then you're deemed to consent. So that's the first thing I want to say.

The second thing I want to say is, you know, I welcome scrutiny of the paragraph in the Second Circuit opinion, where they talked about consent. What they said was due process is not satisfied in this case because the court doesn't have general jurisdiction or a specific jurisdiction, and the service-of-process statute doesn't change that. That's what they said.

[93] They said that the statute, the service-of-process statute does not answer the constitutional question of whether due process is satisfied. So we're not in the service-of-process statute. We're in the post-statutory context. That's the other thing.

Now, the other thing I want to talk about, the last thing I want to talk about with regard to due process is the DOJ briefed in the *Klieman* case, which I really commend to the Court. It's a very helpful brief, and it's not being characterized fairly by the defendants.

I just want to read from page 14 of that brief, again without belaboring it: Defendants insist that they are not at home in the United States, but the "at home" test for general jurisdiction is relevant only in the absence of consent. A forum's ability to exercise jurisdiction by consent is separate and apart from the forum's ability to exercise general or specific jurisdiction over an out-of-state defendant, who has not consented to suit there. So that's what the Department of Justice said.

And then later on, in response to the defendant's unconstitutional conditions test, they talked about benefits, and because the unconstitutional conditions test is you can't condition a benefit on the relinquishment of a constitutional right unless you have a reasonable basis to do that. And, of course, if you do have a reasonable basis to do that, you can.

[94] And like that's the breath test, right? If you get a driver's license, you consent to a breath test if you're pulled over by a cop. So I really commend the Department of Justice. Don't believe what the defendants are saying about the Department of Justice brief, read it. And it's very, very good.

And the other thing I just, while I'm thinking about it, Judge, for good order, you know, there is a statute, 28, U.S.C., 2403, that talks about the Court notifying the Attorney General if there's a constitutional question. And the Second Circuit has suggested that, you know, that's a mandatory requirement. You know, we did file our – file and serve our rule 5.1 statement, but I think the Court could give them that notice as well, just for good order.

THE COURT: I have it in front of me, as a matter of fact.

MR. YALOWITZ: Yes, okay.

THE COURT: It was a November 12 notice of constitutional question.

MR. YALOWITZ: Right. Right. I gave them -

THE COURT: I haven't heard from them. I don't know if the parties have heard from the Justice Department.

MR. YALOWITZ: Only that they have confirmed that they received the notice.

THE COURT: Okay.

[95] MR. YALOWITZ: So it's not sitting in a mail room somewhere.

THE COURT: Okay.

MR. YALOWITZ: But again, I think what they said about the ATCA is the correct constitutional analysis. You know, it's useful. It's very useful, but just for good order, I think the Court could issue that, the same one that Judge Furman did in the *Ford* case.

Okay. I also want to talk about this. This idea that the defendants say the United States does not have the authority to regulate conduct outside of the territorial borders of the United States and, therefore, like, that's just like crazy talk.

And I really would commend to the Court the case of *Gamble against United States*, *Gamble against United States*, which is a 2019 case from the Supreme Court, which talks about how the United States has an interest in the protection of human life of U.S. citizens when they're outside of the United States. And a murder of a United States citizen outside of the territory of the United States is not just an affront to the person murdered or the family of the person

murdered, it's an affront to the sovereignty of the United States of America.

And so, you know, that comes into the interest analysis. Right? Is there a legitimate – does the United States have a legitimate interest that this statute is [96] rationally related to. That's the second thing I want to talk about.

The final thing that I want to talk about is this issue of codifying – the PSJVTA codified the *Klinghoffer* case. And those are my words, and I stand by them, and it goes to the issue of the non-UN activities. And so I want to read to you what Judge Stanton said in the *Klinghoffer* case. If I can find it here. I want to read to you what Judge Stanton said in the *Klinghoffer* case. He said – this is his 1992 decision; so this is on remand from the Second Circuit. He said – and this is really what I'm going on in my argument – "There remain other PLO activities within New York sufficiently separate from its UN activities that they may be considered" – may be considered – "in determining whether it was doing business in New York within the meaning of CPLR 301. Mr. Terzi and others in the PLO's New York office gave speeches and interviews every month or so to live audiences and media appearances in New York. The PLO's New York office purchased informational pamphlets from various organizations and generated their own informational materials and distributed them to those seeking information about the PLO."

So that's what I'm going on, that that's media appearances, informational materials, Judge Stanton said those are not protected activities under the UN umbrella.

And then I want to talk about – the last thing I want [97] to leave you with on this, and we spent a lot of time on the U.S. – is the DC Circuit in the *Klieman* case, which now fast forward to 2019, the DC Circuit is talking about *Klinghoffer*. And they say Klinghoffer reasons that only those activities not conducted in furtherance of the PLO's observer status may properly be considered as a basis for jurisdiction, and offers some examples.

And again, he talks about the proselytizing, speaking in public every month or two to media. And then he said that – the DC Circuit says: Plaintiffs rely here on rather similar promotional activities. And then they – the final thing they say is that they decided that the fact that those activities were going on didn't trigger jurisdiction because the ATCA was only triggered by a waiver, not a violation.

He says, and this is the DC Circuit: Plaintiffs would equate government failure to prosecute allegedly excessive propaganda activities with provision of a waiver or suspension, but the statute – that's the ATCA – permits no such equation. ATCA section 4 is triggered by a waiver, not a violation.

So, you know, the whole argument that, like, informational materials and media appearances is just part of their UN business, that's not what *Klinghoffer* held. That's not what the DC Circuit said in *Klieman*.

And so if we agree that it was codifying that – and by the way, the best evidence I have that it was codifying [98] prior was the statement of the sponsor right before the vote, Senator Langford, who said: We're codifying prior law. So I think that's pretty strong evidence.

So that's the piece of my argument that of the two senses of ancillary, you would go to with a narrower one.

So if your Honor has questions about things that Mr. Berger said, he said a lot of things I disagree with, but I know you don't want to assume by my silence that I agree.

THE COURT: Sure.

Mr. Berger, do you have anything else you wanted to add?

MR. BERGER: Just a couple of points, your Honor. I think one thing Mr. Yalowitz and I agree on is the *Klieman* brief from the Justice Department is highly instructive. It's available in Westlaw at 2019 Westlaw 1200589.

When your Honor takes a look at pages 12 to 13 in the brief, you will see that Mr. Yalowitz is incorrect, that the reciprocity point is dealt with under unconstitutional conditions. It's dealt with as a matter of Fifth Amendment due process.

The last point I want to make about *Klinghoffer*, this is an important one, is Judge Stanton's findings Mr. Yalowitz talked about were relevant under the now-discarded doing-business standard. They are not relevant under current due process standards. So they provide no evidence here of [99] whether or not the PA or PLO is subject to jurisdiction.

I was wondering, your Honor, if you would find it helpful to have closing briefs, given how much we have thrown at you in the argument. I apologize for the length of ours, but we didn't get a chance, until today, to respond to his reply brief. So if your Honor would find those useful, we could submit simultaneous

closing briefs that recap points of what we have covered today, and if your Honor doesn't want that, we certainly don't want to bury you in more paper.

THE COURT: Mr. Yalowitz?

MR. YALOWITZ: I don't think we need more briefs.

THE COURT: I don't think we do either. If something that you want is of urgency and you want to submit it by letter, a short letter, really less than five pages, but even much less than that, then you should exchange those letters. And then you should give the other side that letter before you file it, and then I'll address it.

But I think the briefs are very complete, and this argument was very helpful. I want to get the transcript. And, obviously, it's not like this is a case I know nothing about.

MR. BERGER: That's the other thing that Mr. Yalowitz and I would agree on is that your Honor knows lots and lots about this case, and we appreciate your time today.

THE COURT: All right. Thank you, gentlemen.

I'll get back to you as quickly as I can.

(Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 04 Civ. 397 (GBD)

MARK I. SOKOLOW, ET AL.,

Plaintiffs,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION AND ADDITIONAL FINDINGS OF FACT

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Plaintiffs respectfully submit this memorandum in support of their motion for reconsideration and for additional findings of fact.

INTRODUCTION

This Court should make factual findings regarding the PSJVTA's "U.S. activities" prong, and should consider specifically that prong's constitutionality. The Second Circuit remanded for this Court to determine "the applicability *of the PSJVTA* to this case," not merely the applicability of one of the PSJVTA's two jurisdiction-triggering prongs. Mandate at 3 (emphasis added). The U.S. activities prong fits squarely within a long line of Supreme Court jurisprudence holding that where a sovereign may exclude an entity from its territory, it may condition the admission of the entity into its territory on the entity's consent to the reasonable exercise of personal jurisdiction. Such consent is constitutional both because of its long historical pedigree and because of the benefits conferred on the visiting entity by the sovereign. Defendants' U.S. activities meet the requirements of the PSJVTA's U.S.-activities prong, and the determination by the political branches that those activities trigger jurisdiction is constitutional even if the Court's decision concerning the pay-for-slay prong were to be upheld.

BACKGROUND

The U.S. Government has repeatedly exercised its power to exclude these Defendants from the United States. Currently, the U.S. Government is permitting these Defendants to conduct certain activities in the United States on the condition that any such activities (with specified exceptions) shall be deemed to be consent to the exercise of personal jurisdiction

in cases brought under the Anti-Terrorism Act of 1992.

A. In 1987, the U.S. Government Lawfully Excluded the PLO from U.S. Territory to Further U.S. Interests in Curbing International Terrorism

In 1974, the United Nations invited the PLO to attend U.N. sessions as a permanent observer.[1] In 1978, the PLO opened an office in Washington, D.C.[2] The PLO engaged in numerous activities in the United States using these facilities, including fundraising and public relations.[3]

In 1987, the U.S. Government took steps to terminate these activities. The Secretary of State determined that "it [was] reasonably necessary to protect the interests of the United States to require that the Palestine Information Office [in Washington, D.C.] cease . . . representing the PLO because of U.S. concern over terrorism committed and supported by individuals and organizations affiliated with the PLO and as an expression of our overall policy condemning terrorism."[4] In *Palestine Information Office v. Schulz,* the D.C. Circuit held that the Secretary of State's determination that closing the PLO's office in Washington, D.C., to further "the national interest in

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[1] *United States v. Palestine Liberation Org.,* 695 F. Supp. 1456, 1459 (S.D.N.Y. 1988).

[2] *Palestine Information Office v. Shultz,* 853 F.2d 932, 935 (D.C. Cir. 1988).

[3] *See Klinghoffer v. SNC Achille Lauro,* 937 F.2d 44, 51 (2d Cir. 1991).

[4] 52 Fed. Reg. 37035, 57035 (1987).

curbing international terrorism" was "clearly within the constitutional power of the government."[5]

In addition, Congress enacted the Anti-Terrorism Act of 1987, in which it found that the PLO had been implicated in the murders of dozens of American citizens abroad, including a U.S. Ambassador, and determined that "the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States . . . and should not benefit from operating in the United States."[6] In § 1003 of that statute, which remains in force today, Congress made it unlawful to expend funds from the PLO or any successor or agent and to maintain an office or other facility within the jurisdiction of the United States at the behest and direction of the PLO or any successor or agent.[7]

The Government then sought injunctive relief under § 1003 to close the PLO's mission to the United Nations. In *United States v. Palestine Liberation Organization,* the court held that the PLO was subject to personal jurisdiction in the United States and enjoyed no "diplomatic immunity due to its presence as an invitee of the United Nations."[8] The PLO argued that it had a right under existing treaties to be present in the United States to engage in activities related to the United Nations, but the court held that "Congress *has the power* to enact statutes abrogating prior treaties, including those

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[5] *Palestine Info. Off,* 853 F.2d at 934, 940.

[6] Pub. L. 100-204, Title X, § 1002 (codified at 22 U.S.C. § 5201).

[7] *Id.* § 1003 (codified at 22 U.S.C. § 5202).

[8] *Palestine Liberation Org.,* 695 F. Supp. at 1461.

concerning the United Nations."[9] Nevertheless, Congress had "failed to provide unequivocal interpretive guidance in the text of [§ 1003], leaving open the possibility that [§ 1003] could be viewed as a law of general application and enforced as such, without encroaching on the position of the Mission at the United Nations."[10] The court therefore construed § 1003 not to impair activities "by the PLO Observer Mission in its discharge of its functions at the United Nations."[11] The court also held: "[i]f the PLO is benefiting from operating in the United States, as the [statute] implies, the enforcement of its provisions outside the context of the United Nations *can effectively curtail that benefit.*"[12]

B. In 1988, the PLO Halted Its Non-U.N. Activities in the United States

Following the decisions described above, the PLO closed its Washington, D.C. office and halted its non-U.N. activities in New York. These facts were determined in the *Klinghoffer* case, within the context of adjudicating the PLO's challenge to personal jurisdiction. The Second Circuit held that due regard for the United States' treaty obligations to the United Nations required the courts to "distinguish those activities the PLO conducts as an observer at the U.N. from those activities it conducts for other purposes" in determining whether to exercise personal jurisdiction over the PLO; and it held that activities such as public speeches are "not conducted in further-

[9] *Id.* at 1465 (emphasis in original).

[10] *Id.* at 1469

[11] *Id.* at 1468.

[12] *Id.* at 1470 (emphasis added).

ance of the PLO's observer status."[13] The court explained that as a result of § 1003, "were the PLO not a permanent observer at the U.N., it would not be entitled to enter New York at all."[14]

On remand, the district court found that PLO representatives had given "speeches and interviews," and had generated and distributed "informational materials," and those activities are "separate from its U.N. activities."[15] The court also found that these activities had stopped in 1988 after passage of § 1003: "No evidence has been presented of such activities at the time of service of the 1988 ... complaints," and "those plaintiffs are not entitled to the benefit of a presumption of continuity of such activities after passage of the Anti-Terrorism Act of 1987."[16]

C. From 1994 to 2018, the U.S. Government Permitted the PLO to Return to the United States on the Condition that It Oppose Terrorism

In 1993, Congress enacted the Middle East Peace Facilitation Act, which authorized the President to suspend the 1987 statute upon certification that the PLO was abiding by its anti-terror commitments.[17] The President made the certification in 1994, permitting the PLO to return to the United States.[18]

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[13] *Klinghoffer,* 937 F.2d at 51.

[14] *Id.* (citing *United States v. Palestine Liberation Org.,* 695 F. Supp. at 1471).

[15] *Klinghoffer v. SNC Achille Lauro,* 795 F. Supp. 112, 114 (S.D.N.Y. 1992).

[16] *Id.* at 115.

[17] Pub. L. 103-125, 107 Stat. 1309.

[18] 59 Fed. Reg. 4777 (1994).

Once the PLO began to benefit from operating in the United States (in the words of the 1987 statute), Defendants resumed their public relations activities.[19]

In 2017, the President did not renew the statutory waiver pursuant to § 1003 because. of Defendants' failure to meet the statutory criteria; however, the President exercised his constitutional *(i.e. ,* non-statutory) plenary foreign affairs powers to permit the PLO to continue to engage in certain activities, including "outreach to Palestinian-Americans, Palestinians in the United States, or interested Americans on matters relevant to the Palestinian community" to "enlist 'public sympathy' for their cause"—activities that the State Department described as "public diplomacy."[20] Following that determination, Defendants continued to maintain an office in Washington; continued to expend funds; and continued to issue press releases and to generate and distribute information in support of their cause.[21]

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[19] *See Sokolow v. PLO,* No. 04 Civ. 397 (GBD), 2011 WL 1345086, at *5 (S.D.N.Y. Mar. 30, 2011), *rev'd sub nom. Waldman v. PLO,* 835 F.3d 317 (2d Cir. 2016), *vacated,* 140 S. Ct. 2714 (2020); *Knox v. PLO,* 229 F.R.D. 65 (S.D.N.Y. 2005), *aff'g* No. 03 Civ. 4466 (VM) (THK), 2005 WL 712005, at *4 (S.D.N.Y. March 21, 2005); *Ungar v. Palestinian Auth.,* 325 F. Supp. 2d 15, 53 (D.R.I. 2004), *aff'd*, 402 F.3d 274 (1st Cir. 2005); *Ungar v. Palestinian Auth.,* 153 F. Supp. 2d 76, 88 (D.R.I. 2001).

[20] U.S. Dep't of Justice, Off. of Legal Counsel, *Statutory Restrictions on the PLO's Washington Office* at 22 (Sept. 11, 2018).

[21] Copies of Foreign Agents Registration Act ("FARA") reports filed by the General Delegation of the PLO may be found on the Department of Justice Website at https://efileSara.gov/pls/apex/f?p=185:200:2678417446722::NO:RP,200:P200_REG_NUMBER:5244. Copies of FARA reports filed by the PA's foreign

In September 2018, the State Department instructed Defendants to cease all public operations in their Washington office.[22]

D. Defendants Have Continued Their Non-U.N. Activities in the United States After 2018

In 2018, Congress passed the Anti-Terrorism Clarification Act (ATCA), which provided that an entity "benefiting from a waiver or suspension of § 1003" would be subject to personal jurisdiction in federal court in the United States in certain circumstances.[23]

After the ATCA's passage, Defendants continued to expend funds and engage in non-U.N. activities within the United States, including making press appearances and social media posts from their New York office with their "Palestine U.N." accounts on the U.S.-based social media platforms Facebook and Twitter.[24] In *Klieman v. Palestinian Authority,* the D.C. Circuit agreed that these activities were "rather similar" to the ones at issue in *Klinghoffer,* but found the ATCA inapplicable because it "is triggered by a *waiver* of § 1003—not its *violation.*"[25]

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agent, Squire Patton Boggs, may be found on the Department of Justice Website at https://efileSara.gov/pls/apex/f?p=185:200:2678417446722::NO:RP,200 :P200_REG_NUMBER:2165.

[22] 83 Fed. Reg. 46990 (2018).

[23] Pub. L. 115-253, 132 Stat. 3183 (2018) (formerly codified at 18 U.S.C. § 2334(e)(l)).

[24] App. to Supp. Mem. to Recall Mandate at A-29 to A-207, *Waldman v. Palestine Liberation Org.,* No. 15-3135 (2d Cir.), ECF No. 305.

[25] 923 F.3d 1115, 1131 (D.C. Cir. 2019) (emphasis in original), *vacated,* 140 S. Ct. 2713 (2020).

E. Defendants Continued Their Non-U.N. Activities After January 4, 2020

In 2019, Congress enacted, and the President signed, the PSJVTA. The statute's U.S. activities prong, in its current form, deems "any activity while physically present in the United States on behalf of the PLO or PA to be consent to personal jurisdiction if such activity occurs after January 4, 2020, unless that activity is "exclusively for the purpose of conducting official business of the United Nations" or "ancillary" to that activity. 18 U.S.C. § 2334(e)(1)(B)(iii), (3)(B), (3)(F).

FACTS

After the PSJVTA's effective date of January 4, 2020, Defendants engaged in activities in the United States, as follows:

A. Defendants' Public Relations Activities

After January 4, 2020, Defendants' officers gave press interviews in English in the United States to media outlets including MSNBC,[26] NPR,[27] and Voice of America.[28] Officers who gave press conferences or interviews were: (a) Mahmoud Abbas, Chairman of the PLO and President of the PA;[29] (b) Riyad Mansour, Permanent Observer to the United Nations;[30] and (c)

[26] Mansour Dep. 110-11 (Ex. 3 hereto).

[27] Abdelhady-Nasser Dep. 189-91 (Ex. 1 hereto); Yalowitz Second Supp. Decl. (May 7, 2021) Ex. B [ECF 1027-2].

[28] Yalowitz Second Supp. Decl. (May 7, 2021) Ex. E [ECF 1027-5].

[29] *See* Yalowitz Decl. (Nov. 12, 2020) ¶ 208 [ECF 1018].

[30] Mansour Dep. 86, 110-13 (Ex. 3 hereto); Yalowitz Second Supp. Decl. (May 7, 2021) Ex. B [ECF 1027-2].

Feda Abdelhady-Nasser, Deputy Permanent Observer to the United Nations.[31]

After January 4, 2020, Defendants maintained publicly available social media accounts on Twitter and Facebook. Defendants updated these social media accounts with hundreds of posts, almost all of which were in English.[32] The updates were made by Defendants' employee while physically in the United States.[33] During this period, Defendants employed social media techniques to "ensure that ... the postings reach[ed] the broadest possible audience."[34] This included re-tweeting posts by celebrities and U.S. politicians.[35] One purpose of Defendants' social media posts was to "raise public awareness" and "bring attention" to issues of interest to defendants.[36]

After January 4, 2020, Defendants' officers in the United States held numerous in-person or virtual meetings with individuals or organizations who had

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[31] Abdelhady-Nasser Dep. 114, 189-91 (Ex. 1 hereto) & Ex. 4 (Ex. 4 hereto).

[32] Ghannam Dep. 144-201 (Ex. 2 hereto); *see* Yalowitz Decl. (Nov. 12, 2020) ¶ 215 & Exs. 35-36, 57-58 [ECF 1018-35, 1018-36, 1018-57, 1018-58]; Yalowitz Second Supp. Decl. (May 7, 2021) Exs. C, D [ECF 1027-3 & 1027-4].

[33] Ghannam Dep. 144-45, 154-55 (Ex. 2 hereto); *see* Yalowitz Decl. (Nov. 12, 2020) ¶ 215 & Exs. 35-36, 57-58 [ECF 1018-35, 1018-36, 1018-57, 1018-58]; Second Supp. Yalowitz Decl. (May 7, 2021) Exs. C, F [ECF 1027-3 & 1027-6].

[34] Ghannam Dep. 147 (Ex. 2 hereto).

[35] Ghannam Dep. 187, 199 (Ex. 2 hereto); *see* Second Supp. Yalowitz Decl. (May 7, 2021) Ex. D [ECF 1027-4].

[36] Ghannam Dep. 166, 168, 169-70, 175, 178, 181, 182, 183-84, 189, 190, 195, 201 (Ex. 2 hereto).

no formal connection to the United Nations.[37] Many such meetings involved speaking to students or community groups.[38] Dr. Mansour and Ms. Abdelhady-Nasser participated in such meetings in their official capacities on behalf of Defendants.[39]

For example, while in New York, Dr. Mansour attended (via Zoom) a meeting of the Beit Sahour USA Convention in Michigan in November 2020.[40] Dr. Mansour participated in this event on behalf of the Defendants.[41] In his comments, he commended "movements and organizations and solidarity committees" at "American universities," who are "supporting justice for the Palestinian people and lobbying the government, lobbying Congress," adding: "we urge them to become even more active, especially in light of the arrival of a new administration in Washington."[42]

Dr. Mansour also made an in-person appearance at the Beit Hanina Cultural Center in Brooklyn, and

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[37] Mansour Dep. Ex. 4 (seven "civil society" meetings) (Ex. 8 hereto); Abdelhady-Nasser Dep. Exs. 5 (23 "civil society" meetings), 6 (19 "civil society" meetings) (Exs. 5, 6 hereto); *see* Abdelhady-Nasser Dep. 59 (defining "civil society" as "NGOs, academia, journalists, cultural institutions and others"), 72 (no formal connection) (Ex. 1 hereto).

[38] *E.g.,* Abdelhady-Nasser Dep. 60-61, 72, 84, 86, 94, 109-10, 114, 117 (Ex. 1 hereto); Mansour Dep. 70, 90, 92-93 (Ex. 3 hereto); *see* Yalowitz Supp. Decl. (Feb. 9, 2021) Exs. C, D [ECF 10233 & 1023-4].

[39] Abdelhady-Nasser Dep. 86 (Ex. 1 hereto); Mansour Dep. 52, 92, 93, 96-97, 107, 112 (Ex. 3 hereto).

[40] Mansour Dep. 93-94 & Mansour Dep. Ex. 8 (Exs. 3, 9 hereto).

[41] Mansour Dep. 93-94, 96-97 (Ex. 3 hereto).

[42] Mansour Dep. Ex. 8 (Ex. 9 hereto).

(while in New York) participated by video in conferences organized by the Arab-American Anti-Discrimination Committee, Seton Hall University, Israa University, and Bridgewater State University.[43] One purpose of Defendants' public appearances was to "advocate for the Palestinian cause."[44]

B. Defendants' U.S. Facility

At all times since January 4, 2020, Defendants have owned a townhouse at 115 East 65th Street.[45] The townhouse has offices for Dr. Mansour and other staff of the mission.[46]

During the relevant period, Dr. Mansour made press appearances and public appearances (such as university lectures) and spoke with non-U.N. groups from his office in the East 65th Street townhouse.[47]

Defendants updated their Twitter and Facebook accounts from the Townhouse at least 60 times.[48]

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[43] Mansour Dep. 44-52, 67-68, 90-91, 97, 106 (Ex. 3 hereto); Mansour Dep. Ex. 4 (Ex. 8 hereto).

[44] Mansour Dep. 92, 97, 99, 107, 112 (Ex. 3 hereto); Abdelhady-Nasser Dep. 87 (Ex. 1 hereto) (agreeing that one purpose of such meetings "was to put forward the Palestinian view" and explaining: "Everything that I do, in my capacity as the Ambassador Deputy Permanent Observer of the State of Palestine, I represent the perspective, the view, the cause of the Palestinian people.").

[45] *See* Mansour Dep. 120 (Ex. 3 hereto); *see* Yalowitz Decl. (Nov. 12, 2020) Ex. 59 [ECF 101859].

[46] Mansour Dep. 14, 177-82 (Ex. 3 hereto).

[47] Mansour Dep. 65, 67, 70, 75, 77, 86, 91, 94, 98, 107, 111, 113 (Ex. 3 hereto).

[48] Ghannam Dep. 152-53 (Ex. 2 hereto).

C. Defendants' Notarization Activities

After January 4, 2020, Defendants' agents in the United States provided services in the United States by notarizing documents and coordinating their legalization for use in territories administered by Defendants.

For many years, Defendants' Washington, D.C. office provided what Defendants called "consular services"—that is, they legalized documents for use in territories administered by the PA,[49] by processing "paperwork that's produced in the U.S. that needs to be used in Palestine," such as "birth certificates."[50] Put another way, "attesting to documents for use in Palestine was a service that was provided by the PLO's Washington, D.C. office."[51]

Defendants' pre-2018 website, "PLODelegation.org," listed eight notaries in the United States who provided some part of this service, including Fuad Ateyeh (San Francisco) and Awni Abu Hbda (Patterson, New Jersey).[52] These individuals notarized documents "in connection with the Palestinian Authority" and submitted them to Defendants' Washington, D.C. office, which "legalized" or "certi-

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[49] Gen'l Delegation of the PLO, FARA Supp. Statement, p. 4 (May 7, 2018), https://efile.fara.gov/docs/5244-Supplemental-Statement-20180507-29.pdf.

[50] Russell Decl. at 5, 22-25, Yalowitz Supp. Decl. (Feb. 9, 2021) Ex. B [ECF 1023-2].

[51] Ateyeh Dep. 36, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 10 [ECF 1035-10].

[52] Russell Decl. at 6, 36-49, Yalowitz Supp. Decl. (Feb. 9, 2021) Ex. B [ECF 1023-2].

fied" them.[53] Execution of a document before a notary is the first step in "[t]raditional [l]egalization" of a document for use abroad.[54]

Documents from that period reflected Defendants' state of mind that persons involved in the certification process were acting for the benefit of Defendants. One of Defendants' employees described his certification activities as "rendered to" the PLO.[55] Similarly, Defendants' preprinted "Contract for Notary Services"[56] stated that "[a]uthorized" notaries were "to provide notary services for use by the [PLO Delegation to the U.S.]."[57]

In 2018, after the State Department ordered Defendants to close their Washington, D.C. office, their official spokesman, Saeb Erekat, announced that Defendants "would find alternate ways of continuing to provide consular services, and guarantee the continued provision of services to [their] citizens."[58]

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[53] Abu Hbda Dep. 110-12, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 9 [ECF 1035-9].

[54] Lucinda A. Low, *et al., Intl Lawyer 's Deskbook* 298 (2d ed. 2002).

[55] Hakam Takash, FARA Registration Statement, p. 1 (May 21, 2012), https://efile.fara.gov/docs/5244-Short-Form-20120521-12.pdf.

[56] *See* Abu Hbda Dep. 128, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 9 [ECF 1035-9].

[57] Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 3 at 1 [ECF 1035-3].

[58] Russell Decl. at 6, 29, Yalowitz Supp. Decl. (Feb. 9, 2021) Ex. B [ECF 1023-2].

After January 4, 2020, Defendants' agents in the United States continued to provide components of consular services by notarizing documents and coordinating their legalization for use in territories administered by Defendants. Defendants continued to maintain a list of "available" notaries.[59] Notaries on the list received documents in the United States; notarized them; sent them to Palestinian officials in Mexico and Canada for certification; and then sent the certified documents to PA officials for use in territories administered by the PA.[60] According to one notary on the list, more than 75% of the documents he notarized were "for use in Palestine."[61] The notaries' activities occurred in the United States.[62]

LEGAL STANDARD

The purpose of a limited remand pursuant to *United States v. Jacobson,* 15 F.3d 19 (2d Cir. 1994), is to allow the district court to address novel legal arguments "in the first instance" and "conduct any further fact-finding that may be required." *Florez v. Cent. Intel. Agency,* 829. F.3d 178, 189 (2d Cir. 2016) (quotation sources omitted). Where a mandate "directs a district court to conduct specific proceedings and

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[59] Ateyeh Dep. 42, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 10 [ECF 1035-10].

[60] Ateyeh Dep. 45-56, Abu Hbda Dep. 57-62, 69-70, 78-79, 97-98, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Exs. 9-10 [ECF 1035-9 & 1035-10].

[61] Ateyeh Dep. 44, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 10 [ECF 1035-10].

[62] Abu Hbda Dep. 102, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 9 [ECF 1035-9].

decide certain questions, generally the district court must conduct those proceedings and decide those questions." *Puricelli v. Argentina,* 797 F.3d 213, 218 (2d Cir. 2015). The district court should carry out the mandate "scrupulously and fully." *In re Coudert Bros. LLP,* 809 F.3d 94, 98 (2d Cir. 2015) (cleaned up).

Rule 52(b) allows a court to "amend its findings—or make additional findings—and [to] amend the judgment accordingly." Where a party considers the district court's findings incomplete, Rule 52(b) provides an appropriate framework for requesting additional findings to "reduce the risk that district courts are unnecessarily required on remand" to make additional findings.[63]

A Rule 59(e) motion is appropriate if the moving party "can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court."[64]

ARGUMENT

The Second Circuit remanded for this Court to determine "the applicability of the PSJVTA," including both of its jurisdiction-triggering prongs. Mandate at 3. In its Memorandum and Order, this Court focused only on Defendants' pay-for-slay payments. To fulfil the remand, this Court should address the U.S.-activities prong as well.

The U.S.-activities prong merits separate consideration from the pay-for-slay prong because it fits

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[63] *See Natural Organics v. Nutraceutical Corp.,* 426 F.3d 576, 579 n.1 (2d Cir. 2005).

[64] *Cho v. Blackberry Ltd.,* 991 F.3d 155, 170 (2d Cir. 2021) (cleaned up).

squarely within the long-established rule that a sovereign may allow an entity to enter into its territory only upon consent to suit as specified by law. The United States unquestionably has the power to exclude the PLO and PA from its territory altogether, and has specified that consent to suit is a condition of activities in the United States on behalf of the PLO and PA. Two factors make this a particularly strong basis for the constitutional exercise of personal jurisdiction: *First,* the long historical pedigree of the rule of consent to jurisdiction by presence within a sovereign's territory weighs heavily in favor of constitutionality. *Second,* the U.S.-activities prong is also fundamentally fair because it is linked to benefits and protections enjoyed by the Defendants within U.S. territory.

As a factual matter, the record shows that Defendants have engaged in the type of persistent, purposeful activities within the United States that the Political Branches have determined are jurisdictionally dispositive. No court has addressed the effect of these activities or this aspect of the statute; nor has any court consider the line of precedent Plaintiffs have invoked in support of the constitutionality of the U.S.-activities prong. They merit attention before a court of the United States strikes down an Act of Congress as unconstitutional at the behest of a foreign government.

I. The U.S. Government Has an Absolute Right to Exclude the PLO and PA from U.S. Territory to Further the U.S. Interest in Curbing International Terrorism and Has Exercised That Right

As the Government points out, the ability of the PLO and PA "to operate within the United States is

dependent on the judgments of the political branches, which have long imposed restrictions on these entities' U.S. operations based in part on the same concerns that motivated enactment of the ATCA and PSJVTA—namely, concerns about their historical support for acts of terrorism."[65] The Government is correct. The PLO and PA are permitted to operate in the United States solely by the grace of the U.S. Government, and not by any constitutional right to be present on U.S. soil. As the D.C. Circuit held in *Palestine Information Office,* excluding the PLO is "clearly within the constitutional power of the government."[66] It added: "We can conceive of no argument that the executive branch, acting as here pursuant to an express congressional grant of authority, is without constitutional authority to close a foreign mission."[67] The court also recognized the Government's "strong interest in being able to close foreign missions of entities that we do not recognize that are located on American soil."[68] It emphasized also "the strong interest of the government in defending the country against foreign encroachments and dangers," *id.* at 941-42 (cleaned up), and credited the State Department's determination that this interest was advanced by excluding the PLO from the United States "to demonstrate U.S. concerns over terrorism committed and supported by organizations affiliated with the PLO" and to send "a strong signal

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[65] DOJ Brief at 11-12 [ECF 1043] (collecting statutes).

[66] 853 F.2d at 940.

[67] *Id.*

[68] *Id.*

of how we feel about the question of international terrorism and groups that associate with it."[69]

The Second Circuit is in accord: "were the PLO not a permanent observer at the U.N., it would not be entitled to enter New York at all."[70] Other authorities confirm that if Congress and the President wish to exclude the PLO Mission entirely, they may do so. As the court explained in *United States v. Palestine Liberation Organization,* "Congress *has the power* to enact statutes abrogating prior treaties, including those concerning the United Nations."[71] Similarly, the Department of Justice's Office of Legal Counsel opines that it is within the President's constitutional authority to close the PLO office and enforce § 1003's restrictions upon a determination that doing so "is in the interest of United States foreign policy."[72]

II. Territory-Based Deemed Consent Is a Traditional Basis for Exercising Personal Jurisdiction

The exercise of territory-based deemed consent in this case satisfies due process. It is black-letter law that even *without* minimum contacts, "personal jurisdiction can be based on the defendant's consent to have the case adjudicated in the forum."[73] Thus, the

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[69] *Id.* at 942 (quotation marks omitted).

[70] *Klinghoffer,* 937 F.2d at 51.

[71] 695 F. Supp. at 1465 (emphasis in original).

[72] U.S. Dep't of Justice, Off. of Legal Counsel, *Statutory Restrictions on the PLO's Washington Office* at 24-25 (Sept. 11, 2018).

[73] 4 Wright & Miller's *Fed. Prac. & Proc. §* 1067.3 (4th ed.); *see* 16 Moore's Federal Practice—Civil § 108.53 (2020) ("Consent is a traditional basis of jurisdiction that may be upheld even in the absence of minimum contacts between the defendant and the forum state.") (citation omitted); *The Constitution of the*

Second Circuit has acknowledged the continuing vitality of cases holding that "a defendant may consent to personal jurisdiction without regard to what a due process analysis of its contacts would yield."[74]

The reasoning of the Supreme Court in *Burnham v. Superior Court* guides the analysis. In *Burnham,* the Court unanimously upheld personal jurisdiction over a foreign individual who did not have "minimum contacts," but rather was served with process in California during a brief visit. Writing for a plurality, Justice Scalia held that, regardless of minimum contacts, such jurisdiction was constitutional because "tag" jurisdiction is "[a]mong the most firmly established principles of personal jurisdiction," and "its validation is its [historical] pedigree."[75] The Second Circuit followed *Burnham* to uphold "tag" jurisdiction on a partnership, because "historical pedigree of transient jurisdiction provides a defendant voluntarily present in a particular state with clear notice that he is subject to suit in the forum."[76]

United States of America: Analysis and Interpretation, S. Doc. No. 112-9, at 1999 (2012 & Supp. 2017); *Hawkins v. i-TV Digitalis Tavkozlesi zrt.,* 935 F.3d 211, 228 (4th Cir. 2019) ("unless the party consents to jurisdiction, there must be ... minimum contacts") (citation omitted); *Waite v. All Acquisition Corp.,* 901 F.3d 1307, 1312 (11th Cir. 2018) ("Even where neither the forum state's long-arm statute nor the due process minimum contacts analysis is satisfied, a court may exercise personal jurisdiction over a party if the party consents.").

[74] *Brown v. Lockheed Martin Corp.,* 814 F.3d 619, 641 (2d Cir. 2016).

[75] 495 U.S. 604, 621 (1990) (Scalia, J.).

[76] *First Am. Corp. v. Price Waterhouse LLP,* 154 F.3d 16, 21 (2d Cir. 1998) (internal quotation marks omitted).

In contrast, the concurrence in *Burnham* acknowledged that tradition is an *important* factor, but argued that fairness is also relevant, finding that the exercise of personal jurisdiction is fair where a defendant in the physical territory of a sovereign, even briefly, and receives "significant benefits," such as guarantees of "health and safety," freedom to travel, and "the fruits of the State's economy.[77]

Both modes of reasoning compel a finding that due process is satisfied in this case by territory-based deemed consent to personal jurisdiction. Cases upholding personal jurisdiction on the basis of deemed consent by physical presence in the territory of a sovereign date to the nineteenth century. And a benefit-based fairness analysis strongly supports the conclusion that the PSJVTA's U.S.-activities prong comports with due process.

Begin with tradition. For more than a century and a half, the Supreme Court has consistently held that if a sovereign is permitted to exclude an entity from its territory, the sovereign has the right to permit entry on the condition that the entity consent to suit. Only two years after the Fourteenth Amendment was ratified, the Supreme Court decided *Baltimore & Ohio Railroad Co. v. Harris.*[78] The Baltimore & Ohio (B&O), incorporated and headquartered in Baltimore, ran a railroad from Washington, D.C., to the Ohio River. Harris boarded a train in Washington and sustained severe injuries in a train wreck in Virginia. The Supreme Court upheld the assertion of personal jurisdiction in Washington, D.C. It explained that Congress had no obligation to permit the B&O to

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[77] *Id.* at 637-38 (Brennan, J., concurring).

[78] 79 U.S. (12 Wall.) 65 (1870).

operate in the District of Columbia, and so Congress was within its rights to determine that such a corporation "may exercise its authority in a foreign territory [*i.e.,* the District of Columbia] upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it does business there, it will be presumed to have assented, and will be bound accordingly."[79]

Later cases similarly approved statutes that implied consent to service of process and personal jurisdiction "as a condition upon which a foreign corporation shall be permitted to do business within her limits," so long as the state's jurisdictional interest was "reasonable" and the defendant had actual "notice of [the] suit."[80] In *Hess v. Pawloski,* the Court explained that the "power of a state to exclude foreign corporations, although not absolute," "is the ground on which" the "transaction of business in [the] state" supports the implication of "consent to be bound by the process of its courts."[81] There, the Court upheld a statute providing for "implied consent" to jurisdiction by out-of-state motorists, because "the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways."[82] As the Supreme Court summarized the rule in another case upholding a statutorily "designated" corporate agent for receiving service of process:

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[79] *Id.* at 81.

[80] *St. Clair v. Cox,* 106 U.S. 350, 356 (1882).

[81] 274 U.S. 352, 355 (1927).

[82] *Id.* at 356.

> The state need not have admitted the corporation to do business within its borders. ... It has repeatedly been said that qualification of a foreign corporation in accordance with the statutes permitting its entry into the state constitutes an assent on its part to *all the reasonable conditions imposed*.... And for this reason a state may not exact arbitrary and unreasonable terms respecting suits against foreign corporations as the price of admission.[83]

International Shoe did not overturn this rule. The *International Shoe* Court itself cited deemed-consent cases with approval, explaining that in appropriate circumstances, corporate actions "may be deemed sufficient to render the corporation liable to suit," because they "were of such a nature as to justify" "resort to the legal fiction that it has given its consent."[84] Indeed, only one month after *International Shoe,* the Supreme Court applied a consent-to-jurisdiction statute, explaining: "By designating an agent to receive service of process and consenting to be sued in the courts of the state, the corporation had consented to suit in the district court."[85] And the Court continued to assume the validity of such statutes long after that.[86]

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[83] *Washington v. Superior Ct. of Wash.,* 289 U.S. 361, 364-65 (1933) (emphasis added).

[84] *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 318 (1945).

[85] *Mississippi Pub. Corp. v. Murphree,* 326 U.S. 438, 442 (1946).

[86] *See, e.g., Bendix Autolite Corp. v. Midwesco Enters., Inc.,* 486 U.S. 888, 892 (1988) (stating that a corporation could appoint "a resident agent for service of process in Ohio and subject itself to the general jurisdiction of the Ohio court").

To be sure, in *Daimler,* the Supreme Court significantly restricted the availability of *general* jurisdiction "over a foreign corporation that has not consented to suit in the forum" to cases in which the defendant corporation is "essentially at home in the forum state."[87] Based on that case, courts today are divided on whether *states* can condition doing any business in the state on consent to general *(i.e.,* all-purpose) jurisdiction.[88]

But *Daimler* and its progeny do not foreclose jurisdiction over the PLO here pursuant to *federal* law. For one thing, the PSJVTA does not subject the PLO to general jurisdiction within the United States; it authorizes jurisdiction in only a narrow class of suits brought by victims of terrorism. That distinguishes this case from cases concerning business-registration statutes requiring consent to *general* jurisdiction.[89] Those cases, moreover, raise serious questions about whether such state statutes reasonably advance a legitimate governmental interest in the context of our federal system; and, as the Government points out, those statutes implicate important issues not present here, including fair warning and federalism concerns.[90] Here, the PSJVTA unquestionably advances a legitimate—indeed, compelling—governmental interest in curbing international ter-

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[87] *Daimler AG v. Bauman*, 571 U.S. 117, 122, 129 (2014) (internal quotation marks omitted).

[88] *Compare Brown,* 814 F.3d at 640 (such statutes present a "difficult constitutional question"), *and Mallory v. Norfolk S. Ry. Co.,* No. 3 EAP 2021, 2021 WL 6067172 at *18 (Pa. Dec. 22, 2021) (striking down such a statute), *with Cooper Tire & Rubber Co. v. McCall,* 863 S.E.2d 81, 90 (Ga. 2021) (upholding statute).

[89] *See, e.g.,* cases cited *supra,* n. 88.

[90] DOJ Mem. 17-19 [ECF 1043].

rorism and protecting American citizens abroad. That uniquely federal interest does not implicate any federalism concerns, and there is no question that the PLO and PA had fair warning that their continued conduct in the United States would subject them to personal jurisdiction. We are aware of no case that has abandoned the rule that a sovereign with unquestioned power to exclude an entity may admit the entity to its territory subject to the condition that the entity be deemed to consent to the exercise of personal jurisdiction by the sovereign in cases that are reasonably related to the sovereign's legitimate interests.

In addition, Defendants are receiving substantial benefits from their U.S. activities, for reasons even stronger than those Justice Brennan found compelling in his concurrence in *Burnham.* Defendants are using U.S.-based agents to manage accounts at U.S.-based social media companies, giving U.S.-based interviews to U.S.-based media companies, and meeting with U.S.-based community groups, all for the purpose of influencing the U.S. public and the U.S. government in the service of their own political interests. Defendants' agents enjoy substantial freedoms and are able to convey Defendants' message to a large segment of the society of the United States because they benefit from large companies functioning in our economy and dependent on our legal and physical infrastructure. Defendants' agents enjoy public benefits such as police and fire protection. Indeed, Defendants have piggybacked on state law, using U.S.-based, state-authorized notaries for the purpose of legalizing documents to allow Defendants' agencies in their home territory to engage with U.S.-based individuals and entities. Again, these agents' abilities to conduct activities on Defendants' behalf is

enhanced by the U.S. economy and by U.S. government services. It is eminently fair to condition Defendants' receipt of such benefits on their consent to personal jurisdiction in cases involving a compelling U.S. interest—that of curbing international terrorism—particularly when the U.S. government has the absolute right to exclude them from U.S. territory in furtherance of that very same U.S. interest.

III. Defendants' U.S. Activities Meet the PSJVTA

The PSJVTA provides that a defendant "shall be deemed to have consented to personal jurisdiction" in ATA cases if, after January 4, 2020, it "continues to maintain any office, headquarters, premises, or other facilities or establishments in the United States" or conducts any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority."[91] This provision is subject to three exceptions relevant here:

> (A) any office, headquarters, premises, or other facility or establishment used exclusively for the purpose of conducting official business of the United Nations;
>
> (B) any activity undertaken exclusively for the purpose of conducting official business of the United Nations; * * * or,
>
> (F) any personal or official activities conducted ancillary to activities listed under this paragraph.[92]

[91] 18 U.S.C. § 2334(e)(1)(B).

[92] 18 U.S.C. § 2334(e)(3).

Three categories of Defendants' post-enactment conduct meet these statutory terms.

A. "Consular" Activities

As described above, Defendants' authorized U.S. notaries performed notarial acts in the United States "in connection with" Defendants' own certification and legalization of documents required for use in PA governmental agencies by notarizing the documents, sending them to Defendants' offices in Canada and Mexico for certification, receiving certified documents back from those offices, and then sending the certified documents on to PA officials for use in territories administered by the PA. *See supra* pp. 10-11 & nn. 53-62. In short, these services were performed "on behalf of" the PLO and PA and in the United States within the meaning of § 2334(e)(l)(B), which, according to the statute itself, must be construed "liberally" in order "to carry out the purposes of Congress to provide relief for victims of terrorism."[93] The phrase *on behalf of means* "in the interest of," "as a representative of," or "for the benefit of."[94]

Workaday principles of agency confirm that these relationships were among "the mundane ubiquity of lawful agency relationships, in which 'one person, to one degree or another, acts as a representative of or otherwise acts on behalf of another person.'"[95] As the *Restatement (Third) of Agency* explains, an agency relationship arises when a principal "manifests asset"

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[93] PSJVTA § 903(d)(1)(A) (18 U.S.C. § 2333 note).

[94] *Madden v. Cowen & Co.,* 576 F.3d 957, 973 (9th Cir. 2009) (quoting *Webster's Third New Int'l Dictionary* 198 (2002)).

[95] *Great Minds v. Fedex Off & Print Servs., Inc.,* 886 F.3d 91, 95 (2d Cir. 2018) (quoting *Restatement (Third) of Agency* § 1.01 cmt. c (2006) (ellipses omitted).

to an agent that the agent will "act on the principal's behalf and subject to the principal's control," and the agent "consents to so act."[96] The parties' own labeling is not controlling, and manifestation of assent can be through words or conduct.[97]

Here, the relationship between Defendants and the notaries meets all three elements of a lawful agency relationship. *First,* Defendants manifested asset to the notaries acting on their behalf by listing their names and addresses on their website and by preparing a pre-printed form of agreement stating that "[a]uthorized" notaries were "to provide notary services for use by the [PLO Delegation to the U.S.]."[98] When the U.S. Government required Defendants to close their Washington office in 2018, Defendants further manifest their assent by announcing that they "would find alternate ways of continuing to provide consular services, and guarantee the continued provision of services to [their] citizens."[99]

Second, the notaries manifested their asset to act as agents by their words and conduct. As one testified, "they called me, and they asked me, and I said

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[96] *Restatement (Third) of Agency §* l.01 (2006); *see In re Tribune Co. Fraudulent Corm Litig.,* 946 F.3d 66, 80 (2d Cir. 2019) (following Restatement).

[97] *Id.* §§ l.02, 1.03.

[98] Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 3 at 1 [ECF 1035-3]; *see* Russell Decl. at 6, 36-49, Yalowitz Supp. Decl. (Feb. 9, 2021) Ex. B [ECF 1023-2].

[99] Russell Decl. at 6, 29, Yalowitz Supp. Decl. (Feb. 9, 2021) Ex. B [ECF 1023-2].

I agree. * * * I told him, 'yes, I agree.'"[100] They also manifested their asset to act for Defendants by actually sending notarized documents to Palestinian officials in Mexico and Canada for certification; receiving the certified copies; and then retransmitting the certified documents on to PA officials for use in territories administered by the PA. *See supra* p. 11 & nn. 60-62.

Third, Defendants maintained control of the key element of the relationship—certification of the documents for use in territories they administer—as shown by the pre-printed contract stating that Defendants "will maintain the right to reject to authenticate documents notarized by [the notary] for any reason and is not required by this contract to reveal, explain or justify those reasons."[101] The case of *Sanchez-Ramirez v. Consulate General of Mexico* confirms that the notaries were providing a service in furtherance of a governmental function. There, the court held that an individual who provided "notarial services" to Mexican nationals was "assist[ing] in official governmental functions such as the provision of notarial services" and that his employment was "'intertwined' with government activity."[102] Although the individual was a full-time employee, the court's determination turned not on his employment status, but on the *function* he performed. Here, too, the

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[100] Abu Hbda Dep. 116-17, Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 9 [ECF 1035-9].

[101] Letter to the Court re: Response to Defendants' Arguments in *Fuld v. PLO* (July 6, 2021) Ex. 3 at 2 [ECF 1035-3].

[102] *Sanchez-Ramirez v. Consulate Gen. of Mexico,* No. C 12-3485 PJH, 2013 WL 4013947, at *9 (N.D. Cal. Aug. 5, 2013), *aff'd,* 603 F. App'x 631 (9th Cir. 2015).

notaries acted in furtherance of Defendants' official governmental functions.

B. Public Relations

After the PSJVTA's effective date, Defendants made public appearances and maintained and regularly updated a website and social media accounts in English to influence the U.S. public and U.S. policymakers. These activities, which were conducted in the United States, included press conferences in the United States by their Chairman, Mahmoud Abbas, appearances by their top official in the United States, Riyad Mansour, at an undergraduate seminar hosted by Seton Hall University, and a "webinar" hosted by a U.S. not-for-profit group. Defendants criticized U.S. policies, aired grievances against the Government of Israel, and engaged in self-promotion. These activities constituted the distribution of "political material intended to influence the foreign policies of the United States," *i.e.,* "propaganda."[103] As such, they do not come within either of the statutory exceptions that defendants invoke.

1. Exception (B) Does Not Apply

The public relations activities do not come within Exception (B), which is limited to those activities "undertaken *exclusively* for the purpose of conducting *official business* of the United Nations."[104] To the contrary, they are exactly the type of activities by Defendants' U.N. representatives that the Second Circuit and other courts have repeatedly held *not* to be official U.N. business. In *Klinghoffer,* the Second Circuit held that "speak[ing] in public and to the

[103] *Meese v. Keene,* 481 U.S. 465, 470 (1987).

[104] 18 U.S.C. § 2334(e)(3)(B) (emphasis added).

media in New York in support of the PLO's cause" are "non-U.N. activities," and expressed its understanding that such activities would violate § 1003.[105] On remand in *Klinghoffer,* Judge Stanton held that "speeches," "interviews," "media appearances," and distribution of "informational pamphlets" are "sufficiently separate from [the PLO's] U.N. activities that they may be considered in determining" to exercise personal jurisdiction.[106] In *Ungar v. Palestinian Authority,* the court followed *Klinghoffer* to find, repeatedly, that Defendants' "speeches and interviews" constituted non-U.N. activities which served as a basis for the court to exercise jurisdiction.[107] In *Knox v. PLO,* the court drew the inference that discovery about Defendants' non-U.N. activities "would only confirm the propriety of this Court's assertion of personal jurisdiction over them."[108] And in this case, the Court followed *Klinghoffer* to exercise personal jurisdiction after finding as a fact that Defendants had engaged in activities beyond those "commensurate with their special diplomatic need for being present" at the United Nations.[109] Finally, in *Klieman v. Palestinian Authority,* the D.C. Circuit observed that Defendants' Twitter and Facebook social media posts—which have continued since January 4, 2020—were "rather similar promo-

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[105] *Klinghoffer,* 937 F.2d at 52.

[106] 795 F. Supp. at 114.

[107] *See* 325 F. Supp. 2d at 53; 153 F. Supp. 2d at 88.

[108] *Knox v. PLO,* 229 F.R.D. 65 (S.D.N.Y. 2005), *aff'g* No. 03 Civ. 4466 (VM) (THK), 2005 WL 712005, at *4 (S.D.N.Y. March 21, 2005).

[109] *Sokolow v. PLO,* No. 04 Civ. 397 (GBD), 2011 WL 1345086, at *5 (S.D.N.Y. Mar. 30, 2011), *rev'd sub nom. Waldman v. PLO,* 835 F.3d 317 (2d Cir. 2016), *vacated,* 140 S. Ct. 2714 (2020).

tional activities" to those supporting jurisdiction in *Klinghoffer,* and suggested that they were a "violation" of § 1003.[110]

In addition, self-promotional activities by a member of a deliberative body are not *official business* of the deliberative body. In an analogous context, courts have held that a deliberative body's "official business" simply does not include self-promoting public relations activities by its members.[111] Defendants have argued, however, that because a U.N. committee wants to "raise international awareness" of the "inalienable rights of the Palestinian people," and Defendants' promotional activities further that cause, Defendants' promotional activities have now transformed into "official business of the United Nations" within the meaning of § 2334(e)(l)(B). By that logic, *anything* done in furtherance of the U.N.'s expansive aspirations qualifies as "official business." The U.N.'s Economic and Financial Committee, for instance, aims to promote the "eradication of poverty."[112] Thus, any activity by Defendants purporting to further this "cause" would qualify as "official business of the United Nations" under § 2334(e)(l)(B) according to Defendants' theory. The Court should decline Defendants' invitation to disregard *Klinghoffer* on the theory that the U.N. has so expanded the scope of official business that the decision has become obsolete. Accepting that invitation would mean that the PSJVTA' s U.N.-activities exception entirely

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[110] 923 F.3d at 1131.

[111] *See Hoellen v. Annunzio,* 468 F.2d 522, 526 (7th Cir. 1972); *Rising v. Brown,* 313 F. Supp. 824, 826-27 (C.D. Cal. 1970).

[112] *See The GA Handbook: A practical guide to the United Nations General Assembly* at 71, https ://www.unitar.org/sites/default/files/media/publication/doc/unpga_new_handbook_0.pdf.

swallows the rule—exactly the opposite of Congress's instruction that the statute be "liberally construed to carry out the purposes of Congress to provide relief for victims of terrorism."[113]

Accepting Defendants' theory would also conflict with U.S. law and U.N. practice.

U.S. law is clear that the "conduct of any activities ... outside the United Nations Headquarters District by any individual ... authorized by the United Nations to conduct official business in connection with that organization or its agencies ... may be permitted or denied or subject to reasonable regulation, as determined to be in the best interests of the United States and pursuant to this chapter."[114]

Recently, the United States indicted an individual employed by the Permanent Mission of the Islamic Republic of Iran to the United Nations. (Iran, unlike Defendants, is a member of the United Nations and maintains a U.N. mission despite its lack of diplomatic relations with the United States.[115]) The indictment charges that the defendant violated the Foreign Agents Registration Act,[116] which imposes registration and disclosure obligations on persons who act as publicity agents and public-relations counsel for foreign principals.[117]

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[113] PSJVTA § 903(d)(1)(A) (18 U.S.C. § 2333 note).

[114] 22 U.S.C. § 4309A(b)(1).

[115] *See* Compl. & Aff. in Support of Application for Arrest Warrant, ¶ 5, *United States v. Afrasiabi,* No. 21 Cr. 46 (ERK), ECF No. 1.

[116] 22 U.S.C. § 611 et seq.

[117] Indictment, *United States v. Afrasiabi,* No. 21 Cr. 46 (ERK) (E.D.N.Y. Jan. 25, 2021), ECF No. 6.

According to evidence presented by the United States in that case, the defendant (Afrasiabi) is an employee of Iran's U.N. Mission, who, among other things, "Fin the course of his employment," "made television appearances to advocate for" Iran's views on world events, and "authored articles and opinion pieces" espousing Iran's position on various matters of foreign policy.[118] The evidence on the docket in that case includes extensive quotations from written correspondence and describes telephone conversations between Afrasiabi and individuals in Iran's U.N. Mission on matters of substance relating to these public relations activities.[119] While representatives of U.N. members enjoy immunity "while exercising their functions," such immunity does not extend to public-relations activities like those engaged in by Afrasiabi.[120] The same is true of Defendants' public-relations activities, which are subject at all times to U.S. regulation.

United Nations practice also undermines Defendants' position that their public relations activities are official business of the United Nations. The actual U.N. document inviting the PLO to function as an observer sets out the particular "modalities" of its "participation in the sessions and work" of the United Nations. Public relations are not among them:

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[118] *See* Compl. & Aff. in Support of Application for Arrest Warrant, ¶ 13, *United States v. Afrasiabi,* No. 21 Cr. 46 (ERK), ECF No. l.

[119] *E.g., id.* ¶¶ 36-38, 40-42, 44-45, 47-48, 50-56, 58-59, 69-75, 84-93.

[120] *See* Order, *United States v. Afrasiabi,* No. 21 Cr. 46 (ERK) (Feb. 19, 2021) ("The UN's agreements and alleged informal practices are not a basis to dismiss the indictment, which is founded on U.S. federal law.").

1. The right to participate in the general debate of the General Assembly.
2. Without prejudice to the priority of Member States, Palestine shall have the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting.
3. The right of reply.
4. The right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer.
5. The right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues. Such draft resolutions and decisions shall be put to a vote only upon request from a Member State.
6. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly.
7. Seating for Palestine shall be arranged immediately after non-member States and before the other observers; and with the allocation of six seats in the General Assembly Hall.

8. Palestine shall not have the right to vote or to put forward candidates.[121]

In addition, the U.N.'s Office of Legal Affairs has defined "official business of the United Nations," as the "performance of official duties on behalf of the United Nations," attending to "the business of the Organization," or "an official act."[122] The Legal Advisor has also linked a claim of immunity for observers to conduct "in their official capacity *before relevant United Nations organs.*"[123] In sum, an observer's own public-relations and community-engagement activities are simply not official business of the United Nations.

2. Exception (E) Does Not Apply

Press conferences and social media releases also do not come within the catch-all exception for "personal or official activities conducted *ancillary* to activities listed under this paragraph," 18 U.S.C. § 2334(e)(3)(F), because they are not "ancillary" to official U.N. business. Ancillary means "providing necessary support

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[121] Annex to General Assembly Resolution 52/250, Participation of Palestine in the work of the United Nations (July 13, 1998).

[122] 1968 U.N. Jurid. Y.B. 194-95; 1985 U.N. Jurid. Y.B. 148.

[123] *Permanent Observer Mission of the African Union,* 2014 U.N. Jur. Y.B. 328 (emphasis added); *see Permanent Observer Mission of the Org. of the Islamic Conf.,* 1999 U.N. Jur. Y.B. 409; *Scope of Privileges and Immunities of a Permanent Observer Mission,* 1982 U.N. Jur. Y.B. 206; *Privileges and Immunities of a Person Designated by a Member State,* 1976 U.N. Jur. Y.B. 229; *see also Report of the Committee on Relations with the Host Country* ¶¶ 32-33 (Oct. 14, 1982), Supp. No. 26 (A/37/26) (Statement of the Legal Advisor).

to the essential operations of a central organization."[124] It is defined as:

> 1. Subservient, subordinate, ministering (to)
>
> 2. *lit.* (after Latin.) Of or pertaining to maid-servants....
>
> 3. Designating activities and services that provide essential support to the functioning of a central service or industry; also, of staff employed in these supporting roles. Now used esp. of non-medical staff and services in hospitals....[125]

The Supreme Court's decision in *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.,* illustrates the correct usage of the word "ancillary." That case concerned the reach of the term "solicitation of orders" in a federal statute, which the Court read as covering not only "actual requests for purchases," but also "activities that are entirely ancillary to requests for purchases."[126] The Court explained that an activity is "ancillary" to the main activity if "the only reason to do it is to facilitate" the main activity—which is to say, only if it "serve[s] no purpose apart from [its] role in facilitating" the main activity.[127] Thus, "ancillary" activities were those

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[124] *Fowler's Dictionary of Modern English Usage* 48 (4th ed. 2015).

[125] *Oxford English Dictionary* (online ed.), https://www.oed.com/view/Entry/7258; *see Webster's Third New International Dictionary* at 80 (2002) ("subordinate or auxiliary to a primary or principal legal document, proceeding, office, or officer").

[126] *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.,* 505 U.S. 214, 226, 228 (1992) (emphasis omitted).

[127] *Id.* at 229, 234.

serving "no independent business function apart from their connection to the soliciting of orders."[128] In contrast, "activities that the company would have reason to engage in anyway" were *not* "ancillary."[129] The Court then applied its holding to the activity of sales representatives replacing stale chewing gum at stores. The Court acknowledged that replacing the stale gum facilitated the solicitation of orders by encouraging consumers to buy gum; but the activity was not "ancillary" because it *also* resulted in sales, "thereby providing a business purpose for supplying the gum quite independent from the purpose of soliciting consumers."[130]

Here, as in *Wrigley,* Defendants' activities are "ancillary" to official U.N. business *only* if they serve "no independent purpose" other than to facilitate U.N. business. For example, taking a cab to the U.N. Headquarters in order to deliver a speech is not "official business of the United Nations,"[131] but it serves no independent purpose but to facilitate the speech's delivery and therefore is "ancillary" to the conduct of official U.N. business. In contrast, tweeting out accusations that Israel engages in racism, ethnic cleansing, terror, and gratuitous cruelty,[132] and retweeting statements from U.S. politicians about Defendants' relationship with Israel,[133] have an

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[128] *Id.* at 228-29.

[129] *Id.* at 229.

[130] *Id.* at 231-34.

[131] *See* 1977 U.N. Jurid. Y.B. at 247.

[132] Yalowitz Declaration (Nov. 12, 2020) ¶¶ 213-15 & Exs. 35-36, 52-58 [ECF 1018-35, 1018-36, 1018-52, 1018-53, 1018-54, 1018-55, 1018-56, 1018-57, 1018-58].

[133] *Id.* ¶ 215 (o) & Ex. 35.

obvious independent purpose: to influence U.S. policymakers and the U.S. public on issues of interest to Defendants. Such activities are thus *not* "ancillary" to official U.N. business.

Canons of construction also support a narrow reading of Exception (F). Courts read statutory exceptions "narrowly in order to preserve the primary operation of the [main] provision."[134] "When a statute sets forth a general principle, coupled with an exception to it, it is logical to assume, in the face of ambiguity in the exception, that the legislature did not intend the exception to be so broad as to leave nothing of the general principle."[135] Courts typically "place metes and bounds on [even] very broad language of [a] catchall provision,"[136] rather than "allow a catchall term" to "dictate the particulars" of the statutory scheme.[137] Indeed, the statute itself instructs that it be "liberally construed to carry out the purposes of Congress to provide relief for victims of terrorism."[138] Reading the catch-all broadly would violate these canons and contravene Congress's instruction.

Finally, the PSJVTA' s legislative history also supports applying the main modern meaning of "ancillary," as explained by the bill's lead sponsor:

> What our bill ... does is strike a balance between Congress's desire to provide a path

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[134] *Comm'r v. Clark,* 489 U.S. 726, 739 (1989).

[135] *Capitol Recs., LLC v. Vimeo, LLC,* 826 F.3d 78, 91 (2d Cir. 2016).

[136] *United States v. Aguilar, 515* U.S. 593, 599 (1995).

[137] *Epic Sys. Corp. v. Lewis,* 138 S. Ct. 1612, 1617 (2018).

[138] PSJVTA 903(d)(1)(A) (18 U.S.C. § 2333 note).

forward for American victims of terror to have their day in court and the toleration by the Members of this body to allow the PA/PLO to conduct a very narrow scope of activities on U.S. soil—such as activities pertaining to official business at the United Nations ... —without consenting to personal jurisdiction in civil ATA cases. This delicate balance is supported by a bipartisan coalition of Members of Congress, the executive branch, and American victims of international terrorism and their families.

For 25 years, the Federal courts struck this balance by holding that the PLO's and PA's presence and activities in the United States subject them to jurisdiction in our courts unless they can demonstrate that their offices in the United States deal exclusively with the official business of the United Nations and that their activities in this country are commensurate with their special diplomatic need for being present here.

The courts correctly held that the PLO's and PA's fundraising and public relations activities such as press releases and public appearances, whether characterized as diplomatic public speaking or proselytizing, are not essential to their diplomatic functions at the United Nations Headquarters. The bill codifies the distinction recognized in these cases while giving the PLO and PA a clear choice. Unless they limit their presence to official business with the United Nations and their U.S. activities commensurate with their special diplomatic need to be in the

> United States, they will be consenting to personal jurisdiction in ATA cases.
>
> In this regard, the exception in the language for "ancillary" activities is intended to permit only essential support or services that are absolutely necessary to facilitate the conduct of diplomatic activities expressly exempted in the bill.

165 Cong. Rec. S7182 (Dec. 19, 2019).

Defendants rely on a post-enactment "clarification" by Senator Leahy that "ancillary activities are those which may *not* be essential for the minimal functioning of the mission but which support the mission's primary operations." [139] This "clarification" arose following several meetings between Defendants' own lobbyists and Senator Leahy's staff.[140] In committee, Senator Leahy had opposed the bill, but said he would support it on the floor to "get recourse for victims" if changes were made to protect the opportunity for "quiet discussions" at the U.N.[141] Senator Leahy's post-enact statement is not a valid interpretive source because arguments based on "sub-

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[139] 166 Cong. Rec. S627 (Jan. 28, 2020).

[140] *See* Squire Patton Boggs, FARA Supplemental Statement attachment D-3 (July 31, 2020), https://efile.fara.gov/docs/2165-Supplemental-Statement-20200731-34.pdf.

[141] "I want to be able to ... try to get recourse for victims. I don't want to do something that may selectively close doors to the U.N., where, as you know as well as I, many times it's the quiet discussions held between the United States and others at the U.N. that solve a lot of problems." Executive Business Meeting, Comm. on the Judiciary, at l:02:37-l:03:07 (Oct. 17, 2019), https://www.judiciary.senate.gov/meetings/10/17/2019/executive-business-meeting.

sequent legislative history" "should not be taken seriously.[142]

C. Defendants' Office

Defendants maintain an office in their townhouse at 115 East 65th Street in Manhattan, which they use to conduct promotional activities. *See supra* p. 9 nn. 45-48. This brings it within paragraph (4), which provides that "any office ... premises, or other facility or establishment within the territory of the United States that is not *specifically exempted by paragraph (3)(A)* shall be considered to be in the United States for purposes of paragraph (1)(B)." Paragraph (3)(A), referenced in paragraph (4), provides an exemption for an office "used exclusively for the purpose of conducting official business of the United Nations." As demonstrated above, Defendants use their New York office to conduct promotional activities, which are not "*official business* of the United Nations." By the strict terms of paragraph (4), they cannot invoke the exemption for "ancillary activities" in connection with the office, because paragraph (4)'s rule of construction specifies only the exception in paragraph (3)(A), not the catch-all in paragraph (3)(F). "Where Congress explicitly enumerates certain exceptions ... additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent."[143]

CONCLUSION

For the foregoing reasons, the Court should comply with the Second Circuit's mandate and make addi-

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[142] *Bostock v. Clayton Cty., Georgia,* 140 S. Ct. 1731, 1747 (2020) (quoting *Sullivan v. Finkelstein,* 496 U.S. 617, 632 (1990) (Scalia, J., concurring)).

[143] *United States v. Smith,* 499 U.S. 160, 167 (1991).

tional findings of fact regarding whether Defendants have satisfied the PSJVTA's "U.S. activities" prong. The Court should also hold that that prong is constitutional.

Dated: March 24, 2022

New York, New York

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 04 Civ. 397 (GBD)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

-against-

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION

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Introduction

There is nothing new in Plaintiffs' motion for reconsideration, which recycles Plaintiffs' longstanding allegations and the same jurisdictional-discovery borrowed from the *Shatsky* litigation that Plaintiffs long ago tendered to this Court. Just as in the two other cases (*Shatsky* and *Fuld*) that held the PSJVTA unconstitutional—after holding that the statute applied by its terms— no additional factual resolution is required for this Court to adhere to its conclusion that the PSJVTA violates Due Process. That constitutional conclusion remains unaltered by any further factual debate for several reasons.

First, "Congress simply took conduct in which the PLO and PA had previously engaged — conduct that the Second and D.C. Circuits had held was insufficient to support personal jurisdiction in *Waldman I*, *Livnat*, *Shatsky*, and *Klieman* — and declared that such conduct "shall be deemed" to be consent. ... But the conduct to which Congress attached jurisdictional consequence in the PSJVTA is not 'of such a nature as to justify the fiction' that Defendants actually consented to the jurisdiction of the Court." *Fuld v. Palestine Liberation Org.*, No. 20-3374, 2022 U.S. Dist. LEXIS 3102, *18 (S.D.N.Y. Jan. 6, 2022). This is purely a legal question.

Second, in attempting to convert such constitutionally-insufficient conduct into "consent," Congress offered no benefit to Defendants that might have satisfied the reciprocity test of *Hess v. Pawloski*, 274 U.S. 352, 356 (1927). *Hess* "hold[s] that a defendant's receipt of a benefit can be deemed to be consent" to jurisdiction. *Fuld*, at 38 n.10. But, the PSJVTA provides no benefit to Defendants—as Plaintiffs were the first to tell this Court. *See* ECF 1022 at 26-27. To the contrary,

Palestine's UN Mission personnel operate under U.S. government obligations long pre-dating the PSJVTA under the UN Headquarters Agreement. The well-known and unchanged activities of Palestine's UN Mission personnel have never been challenged by the U.S. government—an intervener here—as falling outside the UN ambit. The absence of any *benefit* conferred by the PSJVTA—the fulcrum for reciprocity consent under *Hess*—is purely a legal question that does not require further factual resolution by this Court.

Third, Defendants are not subject to "tag" jurisdiction under *Burnham*—a concept that Plaintiffs try to confect into some form of consent—because *Burnham* applies only to individuals. In this very case, however, the Second Circuit held that Defendants are subject to general jurisdiction, if at all, only under *Daimler*'s different set of rules governing entities. This, too, is a purely legal question that does not require further factual resolution. Still further, only legal analysis—not additional factual finding—is required to confirm that the PSJVTA cannot constitutionally provide any form of specific jurisdiction because Plaintiffs' claims indisputably do not arise from or relate to the activities specified in the PSJVTA's factual predicates. The Court of Appeals held as much in *Waldman I*, as did the D.C. Circuit in *Livnat*, *Shatsky*, and *Klieman*.

Fourth, accepting the facts as Plaintiffs allege and as reflected in the *Shatsky* jurisdictional discovery materials, the activities of third-party notaries do not alter the constitutional analysis of the PSJVTA. Those facts fail to establish that Defendants exercise any measure of control over such notaries—in fact, they establish exactly the opposite; and, control is the *sine qua non* of a principal-agent relationship. Because Defendants do not exercise control over those state-

licensed notaries in New Jersey and California, the notaries' activities are not imputable to Defendants for jurisdictional purposes.

None of this analytic framework is new to this Court. Back in May 2021, in confronting the constitutional questions presented by the PSJVTA, this Court correctly explained that "I'm not going to be able to resolve this issue based on whether you did or didn't engage in certain activities." ECF 1029 at 80. Rather, this Court continued, the real question is "whether Congress can pass a law that says if you engage in that activity, you've consented to jurisdiction." *Id*. This Court ultimately held that the PSJVTA did not create free and voluntary consent as required by the Due Process Clause. *Sokolow v. PLO*, 2022 U.S. Dist. LEXIS 43096, *15 (S.D.N.Y. Mar. 10, 2022). For all of these reasons, the PSJVTA is unconstitutional regardless of whether either PSJVTA factual predicate was satisfied in this case.

Indeed, Plaintiff's motion for reconsideration recycles the same facts as before, but attempts to dress them up with new legal theories. Plaintiffs thus fail to satisfy the standard for reconsideration: "A motion for reconsideration is 'not a vehicle for relitigating old issues, ... or otherwise taking a 'second bite at the apple.'" *Cimontubo - Tubagens Soldadura, LDA v. Petróleos De Venez., SA*, 2021 U.S. Dist. LEXIS 210973, at *2 (S.D.N.Y. Nov. 1, 2021) (Daniels, J.); *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (applying the same standard to motions under Rule 59). "[R]econsideration is generally denied," and "is not warranted where the party seeks 'solely to relitigate issues already decided,'" *Wachovia Mortg. v. Toczek*, 841 F. App'x 267, 272 (2d Cir. 2021). Even Plaintiffs' new legal theories merely repackage

arguments this Court has considered through hundreds of pages of briefing over the past two years. *Pelczar v. Pelczar*, 833 F. App'x 872, 875-76 (2d Cir. 2020) ("A motion to reconsider 'should not be granted where the moving party seeks solely to relitigate an issue already decided.'") (citation omitted). In any case, Plaintiffs' new legal theories are inconsistent with the holdings of *Daimler* and *Waldman I*.

If this Court nonetheless undertakes further factual analysis, it should hold that all of the activities of Palestine's UN Mission are well within official UN business and activities with U.S. and foreign government officials under 18 U.S.C. 2334(c)(3)—and in any event would be jurisdictionally-exempt activities "ancillary" thereto. The social media and civil society activities of Palestine's UN Mission are the same as those of other UN Missions, and are focused on the Mission's official business as explicitly described by the relevant UN committee on the Question of Palestine. The state-licensed notaries, touted by Plaintiffs, testified without contradiction that Defendants exercise no control over them, negating any agency theory. Finally, the UN Mission office is not considered to be in the United States under the relevant treaties between the United States and the United Nations. This Court should deny Plaintiff's motion for reconsideration.

I. This Court's analysis applies to both of the PSJVTA's factual predicates.

This Court's constitutional analysis applies equally to both the payment and activity prongs under the facts alleged by Plaintiffs, as neither set of facts is constitutionally sufficient to establish consent to personal jurisdiction. After holding that the PSJVTA applies because the payment predicate is satisfied, the

Court moved to the broader constitutional inquiry: Whether Defendants "are 'deemed to consent to personal jurisdiction'" by "meet[ing] *any* of the factual predicates identified in 18 U.S.C. 2334(e)(1)(A) or (B)". *Sokolow*, 2022 U.S. Dist. LEXIS 43096, *15 (emphasis added). With the word "any," this Court recognized that its constitutional analysis applied to both of the statute's factual predicates. This Court's opinion found no evidence that Defendants had voluntarily intended to submit to personal jurisdiction, such as by "refus[ing] to comply with discovery orders regarding personal jurisdiction." *Id.* at *17-18. It explained that the "conduct at issue is unrelated to the underlying issues in the litigation," and "Defendants did not violate any discovery orders." *Id.* at *18-20. It concluded that any "finding that Defendants have impliedly consented to personal jurisdiction based solely on their conduct in violation of the PSJVTA would violate the due process clause of the constitution." *Id.* at *20. Though the court highlighted the payment predicate, that legal conclusion applies equally to both factual predicates.

This Court also invoked Judge Furman's opinion in *Fuld v. Palestine Liberation Org.*, No. 20-3374, 2022 U.S. Dist. LEXIS 3102 (S.D.N.Y. Jan. 6, 2022), which applied a similar analysis. Like this Court, *Fuld* first found that the PSJVTA applied based on the payment predicate. *Id*. at *11-12. Then the court considered whether the exercise of jurisdiction under the PSJVTA's two predicates would be consistent with due process. *Id.* at 14-15. Looking for knowing and voluntary consent, *Fuld* concluded that "the PSJVTA does not constitutionally provide for personal jurisdiction over Defendants in this case." *Id.* at 18. Examining both factual predicates, the court concluded that "[n]either form of conduct, as alleged in this case, even remotely

signals approval or acceptance of the Court's jurisdiction." *Id.* at *19.

The *Fuld* plaintiffs made the same factual claims as the *Sokolow* Plaintiffs, alleging that Defendants "provided consular services in the United States, and conducted press-conferences, distributed informational materials, and engaged the United States media in order to influence American foreign policy and public opinion." *Id.* at *9. They also pled that Defendants maintained an office in the United States that was not used solely for official United Nations business and ancillary matters. *Id.* at *9-10. The *Shatsky* plaintiffs make all of the same claims as well.

But exactly like this Court, *Fuld* and *Shatsky* were able to resolve the constitutional question based on the PSJVTA's failure to provide valid "consent" under the Plaintiffs' allegations concerning the U.S. activities prong. Because he was acting on a motion to dismiss, Judge Furman accepted *all* of Plaintiffs' factual allegations—but found them to be constitutionally insufficient. The alleged activities were far "too thin to support a meaningful inference of consent to jurisdiction in this country." *Id.* at *19. The "predicate conduct" that was alleged by the plaintiffs "would have to be a much closer proxy for actual consent than the predicate conduct at issue is here." *Id.* at *20. In *Shatsky*, Judge Vyskocil came to the same conclusion that "it is not reasonable to infer an intention to consent to suit in U.S. courts from the factual predicates in the PSJVTA." *Shatsky v. PLO*, No. 1:18-cv-12355, Op. & Order, ECF 165, p. 9 (S.D.N.Y. Mar. 18, 2022).

Because the three sets of plaintiffs allege identical facts, there is no reason why the constitutional due process analysis would be any different in this case.

The alleged activities simply do not show free and voluntary consent, as a matter of law, and so they cannot support jurisdiction under the Due Process Clause. As explained in *Fuld*, in the absence of the forum contacts required by *Daimler v. Bauman,* 571 U.S. 117 (2014), and *Walden v. Fiore*, 134 S. Ct. 1115 (2014), due process requires conduct "'of such a nature as to justify the fiction' that the party actually consented to submit itself to the jurisdiction of the court." *Fuld*, 2022 U.S. Dist. LEXIS 3102 at *18 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)).

This is no surprise: the Second Circuit held the same thing in *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016) ("*Waldman I*"), finding that the same types of activities that were later listed in the PSJVTA did not create jurisdiction under the Due Process Clause. This Court should deny Plaintiffs' motion for reconsideration because further factual development regarding the U.S.-activities prong of the PSJVTA would not make any difference to the constitutional analysis.

II. This Court should reject Plaintiffs' two new legal arguments.

Struggling to create a new theory that focuses on the activities prong, Plaintiffs have abandoned their claim that rational-basis review applies to the PSJVTA. They instead propose two novel legal rules that have never been accepted by any court. They first create a new theory of jurisdiction out of whole cloth, called "territory-based deemed consent jurisdiction." Plaintiffs argue that Congress can deem any actions occurring within the territorial jurisdiction of the United States to constitute consent under *Burnham*'s "tag" jurisdiction. *Burnham*, however, only applies to individuals, and not to entities like Defendants. More fundamentally, it

does not cure the PSJVTA's fundamental problem: the lack of any conduct by Defendants from which it would be reasonable to infer consent to jurisdiction under the Due Process Clause.

To support their new jurisdictional theory, Plaintiffs' argue that exercising jurisdiction over Defendants is fair because the PA and PLO have the benefit of operating in the territory of the United States. This argument goes nowhere, given that Congress has categorically barred any such operations. Plaintiffs' attempt to shoehorn the UN Mission into that theory fails as a matter of law both because the Mission is not considered to be in the United States and because the PSJVTA does not provide any benefit to Defendants—due to the already-existing prohibitions from operating in the United States under the ATA. Indeed, the ATA is a "wide gauged restriction of PLO activity within the United States," *United States v. PLO*, 695 F. Supp. 1456, 1471 (S.D.N.Y. 1988), that Congress enacted for the express purpose of "deny[ing] the PLO the benefits of operating in the United States." *Mendelsohn v. Meese*, 695 F. Supp. 1474, 1484 (S.D.N.Y. 1988)

A. Tag jurisdiction under *Burnham* cannot apply under *Waldman I* and because *Burnham* only applies to individuals.

This Court should reject Plaintiffs' attempt to craft a new, hybrid theory of "territory-based deemed consent jurisdiction." Motion at 16. They argue for personal jurisdiction based on activities that the PSJVTA treats as "deemed" consent, invoking "tag" jurisdiction under *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990). Though they now claim that *Burnham* "guides the analysis" (Motion at 15), this is the first time Plaintiffs have ever cited *Burnham* in their PSJVTA briefs. But *Burnham* does not, in any

case, support this theory—courts are unanimous that it only applies to individuals, and not to entities. And Plaintiffs cannot find a single case to support their idea of "territory-based deemed consent."

Rather than dream up new forms of jurisdiction, this Court is obliged to follow *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014), which held that general jurisdiction requires an entity be "at home" in the forum. In *Waldman I*, the Second Circuit specifically found that *Daimler* governs the question of personal jurisdiction over Defendants as unincorporated associations. 835 F.3d at 331-32. *Waldman I* held that Defendants are not subject to general jurisdiction based on their alleged presence in the forum. *Id*. at 333-34. The Second Circuit expressly considered and rejected Plaintiffs' jurisdiction theory based on the same types of alleged activities in the forum. *Id*. Similarly, because their ATA claims do not arise from Defendants' alleged U.S. activities, *Waldman I* held that the claims also cannot support specific jurisdiction. *Id*. at 337.

But even without the binding result of *Waldman I*, "tag" jurisdiction under *Burnham* only applies to individuals and not to entities like Defendants. After *Daimler*, "'tag' jurisdiction— personal service on an individual within the state—remains a valid method of acquiring personal jurisdiction over an individual, *though not over a corporation through the persons of its officers*.'" *Mohamad v. Rajoub*, No. 17-2385, 2018 U.S. Dist. LEXIS 41238, *15 (S.D.N.Y. Mar. 12, 2018) (emphasis added). As a result of the Supreme Court's decision in *Daimler*, "*Burnham* does not apply to corporations. A court may exercise general personal jurisdiction over a corporation only when its contacts 'render it essentially at home' in the state." *Martinez v.*

Aero Caribbean, 764 F.3d 1062, 1064 (9th Cir. 2014). While an individual can be "physically present" in a forum, the rules for the presence of an entity are necessarily different. *See In re del Valle Ruiz*, 939 F.3d 520, 526 n.7 (2d Cir. 2019) ("Tag jurisdiction refers to a court's exercise of personal jurisdiction over an *individual* who is served, and thus 'tagged,' while physically present in the forum."). Plaintiffs rely heavily on pre-Daimler cases (and even pre-International Shoe cases) because their "territory-based consent" theory is not compatible with current law.

B. While the acceptance of reciprocal statutory benefits can support jurisdiction, the PSJVTA does not provide any benefit to Defendants.

Plaintiffs attempt to support their "territory-based consent" theory under *Burnham* with a second new argument: they claim personal jurisdiction is reasonable because Defendants receive the benefit of operating within the United States. This position will come as a surprise to Congress, as 22 U.S.C. §5201 states that "the PLO and its affiliates ... should not benefit from operating in the United States." To that end, Section 5202 categorically forbids anyone from receiving "anything of value" from the PLO and from expending "funds" from the PLO. That section also bans anyone from having "an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by" the PLO and its affiliates. 22 U.S.C. §5202. As a result, the PLO has been absolutely barred from operating in the United States. Long before the PSJVTA, the PLO benefited from a waiver of those provisions and operated an

office in Washington, D.C., but there has been no such waiver (or acceptance of such a waiver) during the PSJVTA's tenure.

Plaintiffs' position on benefits may also surprise this Court, because Plaintiffs previously argued that the PSJVTA provided no "benefit" to Defendants (as part of Plaintiffs' effort to avoid the unconstitutional conditions doctrine). *See* ECF 1022 at 26-27 ("although Defendants identify a constitutional right they have relinquished—the right to object to personal jurisdiction—they fail to identify a 'benefit' they are receiving from the government"). Based on Plaintiffs' concession, Defendants argued at the oral argument that, because the PSJVTA provide them no "benefit," the reciprocity required by *Hess* was absent. Hearing Tr., ECF 1029 at 50 (Defendants' counsel: "jurisdictional due process turns fundamentally on -- and I'm quoting here -- reciprocal obligations, reciprocal obligations, between the defendant and the forum").

Defendants agree that *Hess* and its progeny allow consent to be inferred from a defendant's conduct—but only when the conduct itself reflects a defendant's implicit agreement to submit to jurisdiction in exchange for the "privilege" or "benefit" of engaging in the specified activity— which the forum conditions on consent. *See Hess*, 274 U.S. at 354-57 ("acceptance by a nonresident of the rights and privileges [to drive on public roads]" constituted "signification of his agreement" to consent to jurisdiction); *Brown v. Lockheed Martin Corp*., 814 F.3d 619, 632-33 (2d Cir. 2016) (explaining business registration statutes condition the benefit of doing business in the state on consent to jurisdiction in state court). *Fuld* also recognized those "cases holding that a defendant's

receipt of a benefit can be deemed to be consent." *Fuld*, 2022 U.S. Dist. LEXIS 3102, *38 n.10.

The activities purportedly giving rise to "deemed" consent in this case do *not* evince any implied agreement to jurisdiction because they do not involve the acceptance of any benefit from the forum (the United States). As explained above, U.S. law already prohibits, or imposes liability for, each type of U.S. activity on which "deemed" consent is based, and the PSJVTA does not waive these prohibitions. U.S. law, in the form of its treaties with the United Nations, also already granted the UN the power to name Palestine as an invitee that fully participates in the UN through its UN Mission. *See U.S. v. PLO*, 695 F. Supp. at 1470 (Palestine's UN mission exists pursuant to the UN treaties); *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione*, 937 F.2d 44, 51 (2d Cir. 1991) (Palestine's "participation in the UN is dependent on the legal fiction that the UN Headquarters is not really United States territory at all"). Given the absence of a benefit offered to Defendants in the PSJVTA, there is nothing for them to accept or reject, and thus no implied agreement to consent to jurisdiction.

The Supreme Court has long held that Congress may condition the grant of benefits on a party's willingness to consent to jurisdiction in a federal forum—but requires that the act of accepting the benefits be knowing and voluntary. *In College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999), for example, the Court rejected the Government's argument that a State defendant impliedly consented to jurisdiction for false advertising claims by knowingly and voluntarily engaging in interstate marketing, after a statute made clear that such activity would subject it to suit. *Id*. at

671-72. The Supreme Court held that "[t]here is a fundamental difference between a State's expressing unequivocally that it waives its immunity, and Congress's expressing unequivocally its intention that if the State takes certain action it shall be deemed to have waived that immunity. In the latter situation, the most that can be said with certainty is that the State has been put on notice that Congress intends to subject it to suits brought by individuals. That is very far from concluding that *the State* made an 'altogether voluntary' decision to waive its immunity." *Id*. at 680-81. "'[C]onstructive consent is not a doctrine commonly associated with the surrender of constitutional rights.'" *Id*. More is required to show that the defendant "*in fact consents* to suit." *Id*. at 680 (emphasis added).

As explained by Judge Furman, *College Savings Ban*k "all but compels the conclusion that personal jurisdiction is lacking here." *Fuld* at 22-23. Quoting the Supreme Court, he continued that "although Congress has put the PA and PLO 'on notice that Congress intends to subject [them] to suits' in the United States .... 'That is very far from concluding that' either the PLO or the PA 'made an altogether voluntary decision to' submit to such suits." *Id*., quoting *College Savings Bank*, 527 U.S. at 680-81. Plaintiffs' theory that notice is all that is required for consent "would effectively mean that there are no due process limitations on the exercise of personal jurisdiction. Congress or a state legislature could provide for jurisdiction over any defendant for any conduct so long as the conduct post-dated enactment of the law at issue." *Id*. at 27.

The "benefits" posited by the Plaintiffs are in fact no benefits at all, and are therefore constitutionally

inadequate to imply or deem consent. Similarly, Plaintiffs have asserted "federal interests" since the beginning of this case but this Court, *Waldman I*, *Fuld*, and *Shatsky* uniformly rejected the claim that the due process standards for "knowing and voluntary" should be undermined by the Government's interest. In the end, "the requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause ... and protects an individual liberty interest"—as such, personal jurisdiction is not a Congressional gift to litigants that can be taken away at will. *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 2104 (1982).

III. This Court should reject Plaintiffs' factual claims regarding the PSJVTA's U.S. activities prong.

This Court previously considered the parties arguments whether: (1) certain public notaries were acting on behalf of Defendants as their agents; (2) the activities of Palestine's UN Mission are either official UN business or "ancillary" thereto; and (3) the "use" of Palestine's UN Mission "office" is defined by the "activities" of Mission personnel. Plaintiffs now merely repeat those prior arguments. This Court need not entertain these arguments again to reaffirm that application of the PSJVTA to Defendants is unconstitutional. But if this Court does engage in any further factual resolution, the record evidence demonstrates that none of the activities of the PA or PLO are sufficient to trigger the U.S. activities prong.

A. Plaintiffs' motion for reconsideration simply repeats factual claims they made in previous briefs.

This Court has already considered all of the factual claims made in Plaintiffs' motion for reconsideration. Reconsideration is improper where a party "attempts to take a second bite at the apple." *Dunnegan v. 220 E. 54th St. Owners, Inc.*, 2021 U.S. Dist. LEXIS 90810, at *3 (S.D.N.Y. May 12, 2021) (Daniels, J.). This Court rejects such arguments that are merely *"regurgitating arguments made previously at oral argument and in its briefs." Id.* (emphasis added). This Court therefore need not indulge Plaintiffs' request to revisit the same issues and facts this Court previously considered.

Plaintiffs claimed in previous briefs, using the same evidence, that certain American notaries are actually Defendants' agents. ECF 1015 at 17-18, 21 ("Defendants have offered consular services ... through consular agents located in the United States, including ... Awni Abu Hbda"). Defendants responded that the alleged activities, even if true, would not satisfy the PSJVTA. ECF 1021 at 20 (pointing out that document authentication "would easily be considered 'incidental' or 'supplemental'"). Plaintiffs again made those claims at the oral argument this Court held in May 2021. ECF 1029 at 25, 27-28. Defendants then directed the Court to the actual depositions (*see* ECF 1031), which showed that Defendants exercise no control over the notaries, have not delegated them any authority, and do not compensate them in any way. *See* ECF 1034, taking judicial notice of Defendants' brief in *Fuld*, ECF 42, p. 22-23; *id*. at *Fuld*, ECF 50 at 9. *See infra* at III.B.1 (discussing control as a required element of agency).

Similarly, this Court has already considered Plaintiffs' evidence about social media posts, website posts, and

events like President Abbas' press conference. *See* ECF 1015 at 18 (Abbas "held a press conference in New York City" and "Defendants maintain and regularly update a website and Twitter and Facebook accounts"). In response, Defendants pointed out that President Abbas' press conference together with an Israeli statesman was a "foreign official" meeting and that the point of the conference was to discuss the Security Council meeting President Abbas had just left—thus qualifying under *both* the government official and UN business PSJVTA subsections. *Id*. at 13-14. Defendants also showed that all "written communications" quoted in Plaintiffs' brief "plainly fall within the UN's definition of 'official' business, as they are official UN communications archived on the UN's website with official UN designations." ECF 1021 at 13. Defendants further pointed out that their Twitter and Facebook accounts parallel the official social media accounts of the U.S., U.K, and Holy See—and that the Mission's social media accounts discuss subjects that fall "squarely within ongoing, official UN General Assembly and Security Council matters." *Id*. at 13-14.

Plaintiffs also discussed the social media posts at great length at the May 2021 hearing. ECF 1029 at 26-30, 38-40. This Court, however, pointed out that successful UN business in the modern world requires more than closed-door meetings between diplomats:

> [T]here are a lot of things that you do to engage in UN business. .... You may have to persuade other members of the UN of your position that's going to be addressed at the UN. You may need public support for that position. You may need to communicate to your constituents, and even those who disagree with you, why you're taking that

> position at the UN and why that's a legitimate position to take.

ECF 1029 at 41. In their motion for reconsideration, Plaintiffs yet again offer their exceedingly narrow view of how they think the UN should conduct its own business—rather than addressing the actual activities of today's UN bodies and UN missions.

The parties have also repeatedly briefed Plaintiffs' claim that the UN Mission office itself triggers the factual predicates of the PSJVTA because Defendants' social media posts and various meetings usually occur in that office. *See* ECF No. 1015 at 16-17, 19-21. Among other things, Defendants explained that the activities are official business and that the Mission's office is not considered to be within the United States. ECF No. 1021 at 11-12. None of these arguments are anything that this Court has not seen multiple time—itself a reason to deny Plaintiffs' motion.

B. If this Court reaches these issues, it should hold that Plaintiffs' evidence does not satisfy the factual predicates of the PSJVTA.

As discussed above, even assuming that Plaintiffs have met the U.S. activities prong, the alleged conduct is "too thin" to imply submission to jurisdiction. *Fuld* at 19. None of the facts are in dispute—the notaries' deposition testimony is undisputed, the Twitter and Facebook posts are in the record. The *only* issue is a legal one—whether those facts show that the Palestinian UN Mission is undertaking activities in the United States sufficient to show that the PA and PLO have freely and voluntarily submitted to personal jurisdiction. Plaintiffs, on the other hand, treat constitutional due process as a game of "gotcha," as if tweets about the Israel-Palestine conflict that arguably

cross an imaginary line (which only Plaintiffs can see) were enough to satisfy due process.

If this Court nevertheless opts to make formal fact findings regarding the "activities" prong of the PSJVTA, it should find that Plaintiffs have not met their burden of proving that the predicate has been met in the first instance. ECF 1029 at 3 (Plaintiffs' counsel: "It's my burden to show by a preponderance of the evidence that the statute is being met."). All of Defendants' activities are well within the PSJVTA's exclusions under 18 U.S.C. 2334(e)(3). The state-licensed notaries testified that Defendants have no control or authority over them. The social media and civil society activities of Palestine's UN Mission are *exactly* the same as the activities of other UN Missions and are focused on the Mission's official business as explicitly laid out by the relevant UN committee. And the Mission's physical office is not "in the United States" in any case under the treaties between the United States and the United Nations.

1. The "consular services" evidence proves that the state-licensed notaries are not agents of the PA or PLO.

The depositions in the record prove that the notaries are not agents of the PA or PLO. In an agency relationship, "the principal must maintain control over key aspects of the undertaking." *Comm. Union Ins. v. Alitalia Airlines, SPA*, 347 F.3d 448, 462 (2d Cir. 2003); *In re Tribune Co. Fraud. Conveyance Litig.*, 946 F.3d 66, 79 (2d Cir. 2019) (same). As such, an "agency relationship exists *only* if the agent is acting on behalf of and subject to the control of the principal." *APL Co. v. Kemira Water Sol's*, 890 F. Supp. 2d 360, 369 (S.D.N.Y. 2012) (citation omitted). Under both federal and New York law, "[t]he element of control often is

deemed the essential characteristic of the principal-agent relationship." *White v. Pacifica Found.*, 973 F. Supp. 2d 363, 377 (S.D.N.Y. 2013) (citation omitted). Under the Restatement, which Plaintiffs cite, "[a]n essential element of agency is the principal's right to control the agent's actions." Restat 3d of Agency § 1.01, cmt f. Plaintiffs failed to show that Defendants controlled the notaries in any way.

Both notaries testified repeatedly that (1) they never conducted notarial services on behalf of Defendants;[1] (2) they do not have, nor have they ever had, authority to act on behalf of Defendants;[2] (3) Defendants had no power to control or limit their actions;[3] and (4) Defendants never compensated them.[4] The alleged "consular services" are nothing more than the traditional activities of *any* state-licensed notary public. Individuals go to these notaries, who are licensed under state law, to have documents notarized.[5] Where requested by a client, they send the notarized documents to the PLO consulates in *Canada* or *Mexico* for authentication.[6] These actions are performed "on

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[1] ECF 1035-9, Awni Abu Hbda Dep. (04/07/2021) at 155:9-18 ("Hbda Dep."); ECF 1035-10, Fuad Ateyeh Dep. (04/08/2021) at 69:11-23 ("Ateyeh Dep.").

[2] Hbda Dep. at 92:8-15; Ateyeh Dep. at 22:24-24:23.

[3] Hbda Dep. at 92-32, 128-29, 199, 155; Ateyeh Dep. at 22-24, 43, 46.

[4] Hbda Dep. at 93:9-12; 119:12-15, 149:6-25; Ateyeh Dep. at 43:15-23.

[5] Hbda Dep. at 64:23-65:4; Ateyeh Dep. at 31:7-12; Hbda Dep. at 36:22-24 (commissioned as a notary by New Jersey); Ateyeh Dep. at 19:24-25 (licensed as a notary by California).

[6] Hbda Dep. at 39:23-40:20, 56:23-57:7, 61:18-20, 75:10-16, 83:12-84:5, 90:19-91:4, 97:4-98:5; Ateyeh Dep. at 31:13-20, 32:21-33:10.

behalf of" their clients, not pursuant to any authority granted by Defendants.

It is well-established that public notaries do not act on behalf of any government—not even the licensing government. *Worthington v. Palmer*, No. 3:15-410, 2015 U.S. Dist. LEXIS 159441, *16 (E.D. Va. Nov. 24, 2015) ("a notary public is not a state official"); *Sanders v. Cnty of Bradford*, No. 3:11-01723, 2014 U.S. Dist. LEXIS 184620, at *12 n.6 (M.D. Pa. Nov. 21, 2014) (same); *Hieshetter v. Amann*, No. 1:19-725, 2020 U.S. Dist. LEXIS 10287, at *18 (W.D. Mich. Jan. 22, 2020) (same); *Ezell v. Payne*, No. 16-1166, 2017 U.S. Dist. LEXIS 31809, at *19 (W.D. La. Jan. 31, 2017) (same). As explained in *Williams v. Nat'l Notary Assoc.-Fla.*, No. 3:08-357, 2008 U.S. Dist. LEXIS 118569, *11-12, 16 (M.D. Fla. Nov. 4, 2008), "[w]hile performing functions that have some connection to activities in which the State is involved, [notaries public] do not act for the state, and their actions are not fairly attributable to the State."

Plaintiffs rely on *Sanchez-Ramirez v. Consulate Gen. of Mexico*, No. 12-3485, 2013 U.S. Dist. LEXIS 109888, *16 (N.D. Cal. Aug. 5, 2013), but that notary was "employed by defendant Consulate General of Mexico," *id*. at *2, received "life insurance, an annual bonus[,] ... thirty days' vacation," "health benefits and relief from ... taxes." *Id*. at *29. He held an A-2 visa, which applies to travel "on behalf of [a] national government *to engage solely in official activities for that government*." *Id*. at *16 n.2 (citation omitted; emphasis added). The reasoning in *Sanchez* does not apply to notaries that are not employed, paid, or controlled by Defendants.

The United States authenticates documents from foreign notaries in the same way the PLO consulates in Canada and Mexico authenticate documents from

American notaries. The State Department advises Americans abroad that they can "have a document notarized by a local foreign notary" and then U.S. consular officers will authenticate the document for use in the United States.[7] Those foreign notaries are not acting for the U.S. government; only U.S. consular officers act on behalf of the U.S. Government. In the same way, PLO consular employees in Canada and Mexico act on behalf of the PLO, but the "foreign" U.S. notaries do not when they send a notarized document to Canada or Mexico to be authenticated there.[8] A finding otherwise would result in thousands of foreign notaries becoming U.S. agents, to the surprise of both the notaries and the U.S. government.

Plaintiffs also cite actions taken by the PLO's delegation in Washington, DC—which was closed long before the January 2020 effective date of the PSJVTA.

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[7] *Notarial and Authentication Services of U.S. Consular Officers Abroad*, State Department Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/records-and-authentications/authenticate-your-document/Notarial-Authentication-Services-Consular.html ("How do you get a documents notarized overseas?").

[8] *Compare id.* ("What is authentication? An authentication is the placing of the consular seal over the seal of a foreign authority whose seal and signature is on file with the American Embassy or Consulate. A consular authentication in no way attests to the authenticity of the contents of a document but merely to the seal and signature of the issuing authority."), *with* Hbda Dep. at 62-22 ("Q. But the purpose of submitting the document to the foreign embassy is to obtain a signature or a stamp on the document from an official of the government whose embassy that is; is that correct? A. Yes; correct."); *id.* at 72:13-75:16 (describing the seals and stamps used by the General Palestinian Delegation in Canada when authenticating documents notarized by Mr. Hbda for his clients); Ateyeh Dep. at 46:20-47:16 (explaining the seals used by the Special Palestinian Mission in Mexico when authenticating documents notarized by Mr. Ateyeh for his clients).

Plaintiffs claim that Mr. Hbda was listed on a website as an Arabic-speaking notary helping Palestinian-Americans, but the website was of the PLO Delegation to the United States, which closed before the PSJVTA was passed.[9] Plaintiffs also refer to a "pre-printed contract," yet that agreement was sent by the PLO's U.S. delegation *in 2014* and was never signed by either notary.[10] If those notaries were agents of Defendants, then they would have had to register under FARA or face prosecution. Plaintiffs cite to only one FARA statement, but it was filed by an *employee* of Defendants in their Washington office from 2012, Mr. Hakam Takash. Motion at 10. Plaintiffs fail to disclose that Mr. Takash was the *Palestinian Consul* to the United States when the Washington delegation was open. In any case, Ambassador Mansour confirmed that Palestine had not provided any consular services in the United States after January 2020.[11] Unsurprisingly, therefore, no notary is registered under FARA as an agent of Defendants, and the U.S. government—an intervener here—has never suggested that they should have registered.

2. Palestine's UN Mission performs exactly the same activities as other UN Missions—all of which are UN business.

Just like every other mission to the United Nations, Palestine's UN Mission has a website, a social media account, and engagement with civil society organizations. Plaintiffs argue that the PSJVTA is a gag order to stop the UN Mission from complaining about Israel's human rights abuses, because discussing the Israel-

[9] Hbda Dep. at 115-118

[10] Hbda Dep. at 128-130, 132-136.

[11] Mansour Dep. at 146-48.

Palestine question is not UN business. *See* Motion at 23-24, 30. Yet the Israel-Palestine question is an *omnipresent* topic at the UN, with formal resolutions and speeches condemning Israel's violence against Palestinian civilians[12] and UN Missions tweeting about Israel's appalling record in Palestine.[13] As a result, Israel complains about being too-often criticized by the UN.[14] Plaintiffs similarly argue that Palestine's UN Mission cannot discuss "the eradication of poverty," Motion at 25, but that is also a frequent topic for social media posts for nearly all UN organizations.[15] Plaintiffs ignore the modern reality that the UN and UN Missions frequently communicate through websites and social media about the Israel-Palestinian conflict:

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[12] *See*, *e.g.,* Meetings Coverage, GA/12325 (António Guterres: "If there is a hell on earth, it is the lives of children in Gaza") (May 20, 2021), G.A. Res. No. A/C.4/73/L.18 (Nov. 14, 2018) (condemning "the excessive use of force by the Israeli occupying forces against Palestinian civilians, resulting in the death and injury of civilians"); G.A. Res. No. A/73/L.32 (Nov. 23, 2010) (condemning "acts of violence, intimidation and provocation by Israeli settlers against Palestinian civilians ... settlement construction and expansion, home demolitions, evictions ...").

[13] *See, e.g.,* Twitter: @UKUN_NewYork ("What hope is there for 2-state solution when communities are simply removed from the map?") (Oct 14, 2016), @FranceONU (Feb. 24, 2020) ("No further settlements. No colonization."); @Turkey_UN (Apr. 23, 2020) ("All illegal settlement and demolition activities must stop.").

[14] *UN condemned Israel 17 times in 2020*, Times of Israel (Dec. 23, 2020), at: www.timesofisrael.com/un-condemned-israel-17-times-in-2020-versus-6-times-for-rest-of-world-combined/

[15] *See, e.g.*, @UNDP (discussing "Int'l Day for the Eradication of Poverty) (Oct. 17, 2020); @ChinaMission2UN (China "is ready to cooperate with other UN member states ... in poverty alleviation") (Apr. 26, 2022).

public discussion of that conflict is *most certainly* official UN business.[16]

Because Congress did not define what constitutes "official" business, this Court should use the UN's own view that extends to anything "directly related" to a "mission or project." UN Juridical Yearbook at 154-55 (1985). More specifically, the UN has provided its own description of the official business of Palestine's UN Mission. As explained by the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People ("CEIRPP"), the Palestinian mission is expected to "participate[] in the work of [the CEIRPP]" as part of its UN-invitee status.[17] That work focuses on efforts to "mobilize the international community to stay steadfast in its support for the inalienable rights of the Palestinian people" and to raise "awareness of the political, human rights and humanitarian developments on the ground ... to mobilize the broadest possible international support."[18]

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[16] *See, e.g.,* @Turkey_UN (discussing UN meeting about Palestine and supporting "an independent, sovereign & contiguous State of #Palestine") (Feb. 8, 2022); @MYNewYorkUN1 (Malaysian UN Mission expressing "Malaysia's support to the Palestinian cause"); *see also* G.A. Res. No. A/C.4/73/L.18 (Nov. 14, 2018) which condemns "the excessive use of force by the Israeli occupying forces against Palestinian civilians, resulting in the death and injury of civilians," and G.A. Res. No. A/73/L.32 (Nov. 23, 2010), which condemns "acts of violence, intimidation and provocation by Israeli settlers against Palestinian civilians ... settlement construction and expansion, home demolitions, evictions ...."

[17] Report, CEIRPP, UN Doc. A/75/35, at: https://www.un.org/ga/search/view_doc.asp?symbol=A/75/35, ¶ 31.

[18] Programme of Work for 2020, CEIRPP, UN Doc. A/AC.183/2020/1 (Feb. 7, 2020), at: https://www.un.org/unispal/document/palestinian-rights-committee-programme-of-work-for-2020-a-ac-183-2020-1/.

The CEIRPP "has a mandate from the United Nations General Assembly" to network with "more than 1,000 civil society organizations from all regions of the world, active on the question of Palestine."[19] Together with Palestine's UN Mission, the CEIRPP and other UN bodies and missions use the internet to communicate with each other and with the international community. These activities are not "propaganda," but instead are the official UN business at the heart of one of the longest-standing and most important UN issues: the Question of Palestine. UN G.A. Res. 3236, A/RES/3236 (XXIX) (Nov. 22, 1974).

Other UN organs, missions, and observers engage in exactly the same kinds of official activities as Palestine's UN Mission. American news media regularly interview UN Ambassadors on issues important to the United Nations. CNN interviewed the UN Ambassador from Morocco; it also covered a New York press conference given by China's UN Ambassador.[20] NBC interviewed Iran's UN Ambassador, and Reuters interviewed Ethiopia's UN representative.[21] The Saudi Arabian

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[19] United Nations, UNISPAL, Civil Society and the Question of Palestine: Overview, at: https://www.un.org/unispal/data-collection/civil-society/.

[20] CNN News Update (Sept. 22, 2020), at: https://www.cnn.com/2021/03/09/world/meanwhile-in-america-march-9-intl/index.html (covering a news conference held in New York by China's UN Ambassador); CNN News (Nov. 23, 2020), at https://www.cnn.com/videos/world/2020/11/23/connect-the-world-omar-hilale-western-sahara.cnn (interview with Morocco's UN ambassador).

[21] NBC News Interview (Jan. 26, 2021), at https://www..com/politics/national-security/iran-s-un-ambassador-says-iran-waiting-president-biden-make-n1255608 (interview with Iran's UN ambassador); Reuters News (Mar. 29, 2021), at https://www.youtube.com/watch?v=qIbZIpzUoXk (interview with Ethiopia's UN ambassador).

UN Ambassador spoke with an English-language Chinese news service about the Israeli-Palestinian issue.[22] UN missions of all kinds are encouraged to frequently talk with civil society organizations and university and student groups.[23]

Plaintiffs' counter arguments are inapt. They claim that a member of Iran's UN Mission was indicted for media appearances on behalf of Iran. He was *not* a member of Iran's UN mission—but instead received secret, illegal payments improperly funneled through that mission.[24] The defendant *admitted* he was not a "diplomat" of Iran's UN mission. He was therefore indicted under the Foreign Agents Registration Act (FARA), which does not apply to UN missions. By contrast, the United States—an intervener here—has long been aware of the media activities of Palestine's UN Mission, but does not claim that the Mission has gone beyond the parameters of official UN business,

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[22] CGTN America (Sept. 10, 2020), at https://america.cgtn.com/2020/09/10/un-general-assembly-interview-with-saudi-ambassador-to-un (interview with Saudi Arabia's UN ambassador); MSNBC (May 30, 2019), at https://www.msnbc.com/ali-velshi/watch/israeli-amb-to-un-on-new-vote-political-chaos-in-israel-60583493582 (interview with Israel's UN ambassador).

[23] *See Francophone panel discussion marked the launch of the festival*, Princeton University, at https://fit.princeton.edu/node/4156 (discussion panel with UN representatives from Mali, Ivory Coast, and Romania); *Liechtensteinian Ambassador Christian Wenaweser critiques current state of the UN*, Daily Princetonian (Feb. 28, 2020), at https://www.dailyprincetonian.com/article/2020/02/princeton-christian-wenaweser-un-liechtenstein-ambassador-trump-indifferent; Oxford Union Society (Mar 7, 2021), at https://www.youtube.com/watch?v=iWDv-mfdNmA (event featuring the European Union's UN ambassador).

[24] *See* Indictment [Dkt.6], Affidavit [Dkt. 16], Motion [Dkt. 44], *U.S. v. Afrasiabi*, No. 21-cr-0046 (E.D.N.Y.).

has failed to register under FARA, or that it has broken any law prohibiting Palestinian government activity in the United States. *See* ECF 1043 (brief of United States).

Plaintiffs also ignore that Palestine's UN Mission has changed significantly since the 1991 TV interviews that were viewed as not in furtherance of its UN status in *Klinghoffer*. As this Court noted, the PLO "participated in at least 158 public interviews" in just a few years, mostly on "on major national news networks such as CNN, Fox News Channel, ABC, and MSNBC." *Sokolow v. PLO*, 2011 U.S. Dist. LEXIS 36022, *19-21 (S.D.N.Y. Mar. 30, 2011). However, Palestine now debates in the General Assembly, addresses the Security Council, and, in 2012, gained "Observer State" status[25] allowing it to, *inter alia*, chair the Group of 77.[26] Its current speech is exactly like that of every other UN mission—and while the U.S. sued (in *U.S. v. PLO*) to stop the *Klinghoffer* media blitz, subsequent administrations have seen no problem.

Palestine's UN Mission now benefits from strong protections, which include "immunity from legal process in respect of words spoken and written or any act performed in the exercise of the observer functions." UN Juridical Yearbook, Chapter VI, § A(13) (2000). As such, "[a]ny measure which might impede ... its ability to discharge its official functions" would

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[25] UN G.A. Res 67/19, *State of Palestine in the United Nations*, A/RES/67/19 (Nov. 29, 2012).

[26] UN Press Release, *State of Palestine to Gain Enhanced Rights, Privileges in General Assembly Work, Sessions When It Assumes 2019 Group of 77 Chairmanship* (Oct. 16, 2018) *at*: https://www.un.org/press/en/2018/ga12078.doc.htm.

"contravene" the UN Charter, the Headquarters Agreement, and "General Assembly resolutions." *Id.* The United States later warned courts of the "political and legal quagmire" that could result from infringing upon the Palestinian UN Mission's protected status. U.S. Statement of Interest, *Ungar v. Palestinian Auth.*, No. 18-302, at 25-27 (S.D.N.Y. Sept. 12, 2005). In view of Palestine's continually-evolving status at the United Nations – gaining additional rights in 1998, 2000, 2012, and 2018 – Plaintiffs' reliance on inapt sources from the 1990s (*see* Motion at 27-28) is a strange choice to seek to limit the scope of the UN Mission's current official duties.

3. The office of Palestine's UN Mission is specifically exempted from jurisdictional consideration by the PSJVTA.

While Plaintiffs claim that the UN Mission's physical office triggers the PSJVTA, the Second Circuit already rejected that argument in *Waldman v. PLO*, 925 F.3d 570, 575 (2d Cir. 2019). When Plaintiffs pointed to the same types of activities, the Second Circuit explained that "the plaintiffs in this case have not shown that the defendants have established or continued to maintain an office or other facility within the jurisdiction of the United States. .... The Observer Mission is not considered to be within the jurisdiction of the United States." *Id*.

The leading case on the application of the treaty-based rights of Palestine's UN Mission is *United States v. PLO*, which has been accepted as binding law by the United States. That case explains how "the United Nations has, from its incipiency, welcomed various non-member observers to participate in its proceedings," including the Palestinian Mission, which "is present at the United Nations as its invitee." 695 F.

Supp. at 1458-59. When the UN's right to invite Palestinians was challenged, the "court upheld the presence of a PLO representative in New York." *Id*. Since that time, Palestine "has maintained its Mission to the United Nations without trammel, largely because of the Headquarters Agreement" and the U.S. "has, for fourteen years, acted in a manner consistent with a recognition of the PLO's rights in the Headquarters Agreement." *Id*. at 1459, 1466. Those rights come "not only from the language of the Headquarters Agreement but also from forty years of practice under it." *Id*. at 1465.

Consistent with decades of U.S. compliance with the Headquarters Agreement, the PSJVTA's provisions exclude the UN Mission as a basis for deeming consent to jurisdiction. The PSJVTA provides that certain offices are considered "in the United States" for PSJVTA predicate purposes only if they are not "exempted by paragraph (3)(A)." § 2334(e)(4). In turn, paragraph 3(A) provides that any office is exempt if it is "used exclusively for the purpose" of conducting UN business or meeting with foreign officials. § 2334(e)(3)(a). Furthermore, and as discussed in more detail below, with respect to Defendants' activities at their offices, courts may not consider "any personal or official activities conducted ancillary to" Defendants' official UN business. § 2334(e)(3)(F).

Plaintiffs argue that Palestine's UN Mission is "in the United States" under the rule of construction in §2334(e)(4), which specifically exempts any office also "exempted by paragraph (3)(A)." But the only possible purpose of the PSJVTA's exemption is to help preserve the "legal fiction that the UN Headquarters is not really United States territory at all." *Klinghoffer*, 937 F.2d at 51. Because activities must be performed "in

the United States" to trigger the U.S. activities predicate, the Mission's communications and other activities performed in the Mission office cannot satisfy the statute's factual predicates. Plaintiffs' reasoning is ultimately circular, arguing that the UN Mission office is "in the United States" because activities performed inside that office render that office "in the United States."

Further, as explained above, the social media and civil society activities of Palestine's UN Mission personnel—whether inside or outside of Mission premises—are the same as those of other UN Missions, and are focused on the Mission's official business as explicitly described by the relevant UN committee on the question of Palestine. *See supra* at III.B.2. Plaintiffs are also wrong to claim that *Estate of Klieman v. Palestinian Auth.*, 923 F.3d 1115, 1130-31 (2019), found a "violation" of the ATA by Defendants. *See* Motion at 25. The D.C. Circuit was only contrasting the plaintiffs' allegations that Defendants had violated the ATA (having taken their factual claims at face value) with the formal Executive-branch "waiver" that was necessary to trigger the Anti-Terrorism Clarification Act. *Klieman*, 923 F.3d at 1131.

Plaintiffs also assume that Congress meant to overturn the longstanding protections of the Headquarters Agreement without actually saying so. This turns the canon of construction on its head. But the rule is that Congress "would have said so" when it intends to abrogate the decades-old protections in the treaty. *Enron Power Mktg. v. Luzenac Am.*, 2006 U.S. Dist. LEXIS 62922, *36 (S.D.N.Y. Aug. 31, 2006) ("Congress is unlikely to intend any radical departures from past practice without making a point of saying so.") (citation omitted). Indeed, the only possible

purpose of the PSJVTA's rule-of-construction is to help preserve the "legal fiction that the UN Headquarters is not really United States territory at all." *Klinghoffer*, 937 F.2d at 51. The Mission's communications and other activities performed in the Mission office therefore cannot satisfy the statute's factual predicates.

Plaintiffs also cite to 22 U.S.C. § 4309a, a statute that undermines their own claims. It explicitly acknowledges the United States' "obligation" under the Headquarters Agreement to allow any individuals "authorized by the United Nations to conduct official business" to obtain "facilities in order to conduct such activities within or in proximity to the United Nations Headquarters District." § 4309a(a)(1) (emphasis added). The statute reserves the ability for "reasonable regulation including regulation of the *location* and *size* of such facilities." *Id*. (emphasis added). This reservation applies to all UN missions, is of extremely limited scope, and has nothing to do with the issues before this Court.

4. This Court should use the natural meaning of "ancillary" to describe activities supplemental and adjacent to official UN business.

This Court need not decide the scope of the PSVJTA's "ancillary" catch-all because all of the actions of the UN Mission fall under official UN business. But the statute does allow for "any personal or official activities" ancillary to UN business or government meetings. PSJVTA, §2334(e)(3) (emphasis added). Ancillary means "supplementary," Black's Law Dictionary (11th ed. 2019), "incidental or peripheral," The Wolters Kluwer Bouvier Law Dictionary Desk Ed. (2012), or "subordinate, subsidiary," Webster's Third New Int'l Dictionary, Unabridged (2002). The Oxford

English Dictionary (Online ed., 2020) lists hotels, road vehicles, and canals as services ancillary to a railway. Those services are "supplementary" but not essential or necessary to the railway's operations—the very words Plaintiffs use to define ancillary. Moreover, the word "any" must be broad because very few, if any, personal activities would qualify as "necessary" to perform official UN business.

The PSJVTA thus allows Defendants to "meet with advocates regarding relevant issues, make public statements, and otherwise engage in public advocacy and civil society activities that are ancillary to the conduct of official business without consenting to personal jurisdiction." Statement of Sen. Leahy, Cong. Rec.—Sen., S267, 116th Cong. (Jan. 28, 2020). Worried about an earlier version of the bill (which was supported by Senator Lankford), Senator Leahy formed a "bipartisan" group for a "negotiation that resulted in" the ancillary activities exemption on the "understand[ing] that it is in our national interest to permit certain activities related to the official representation of the PA and PLO." *Id*. Senator Leahy voted for the final bill. Having voted for the bill *and negotiated the language at issue*, his views deserve "special weight." *Reynolds-Naughton v. Norwegian Cruise Line*, 386 F.3d 1, 5 (1st Cir. 2004) ("the sponsors of the language [at issue] ... would ordinarily get special weight").

Plaintiffs, on the other hand, rely on Senator Lankford. He sponsored an early version of the bill *before* Senator Leahy negotiated the introduction of the "ancillary" exception. Once the language was changed, however, he voted *against* the bill. *See* S7182, 116th Cong. (Dec. 19, 2019). Senator Lankford's comments, quoted by Plaintiffs, were made after

passage of the Omnibus bill was certain, and he sought to minimize the "ancillary" exception by describing the bill that he originally sponsored—rather than the bill Congress actually passed. Plaintiffs note Defendants' lobbying efforts, yet Plaintiffs also lobbied Congress regarding Senator Lankford's version of the PSJVTA.[27] The difference is that it was Senator Leahy's version of the bill that actually became law, and not the Lankford-sponsored version that Plaintiffs sought.

Finally, Plaintiffs cite *Wis. Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 228-34 (1992), which distinguished between activities that are "essential" and those that are "ancillary" because they have a "connection" to an activity. But *Wrigley* did not interpret the word ancillary in a statute, rather "ancillary" was the Supreme Court's shorthand description for the "independent business function" test under tax law. But even under the independent business function test, the Supreme Court found that ancillary activities were those that a company would not "have reason to engage in anyway" without the proper purpose. *Id*. The activities of the UN Mission easily meet that test—the Mission and its Ambassadors would not even *exist* without the United Nations. Moreover, *Wrigley* and cases interpreting *Wrigley* take broad views of what is "entirely ancillary," including advertising and educating consumers and downstream sellers as "ancillary" to sales. *See Blue Buffalo Co. v. Comptroller*, 221 A.3d 1130, 1139-40 (Md. Ct. Spec. App. 2019). If education and advertising are ancillary

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[27] See Arnold & Porter, Lobbying Disclosure Act Reports for Plaintiffs in Sokolow v. PLO, 2018-2020, available at https://www.opensecrets.org/federal-lobbying/clients/reports?cycle=2018&id=F219414.

to selling chewing gum, they are at least equally ancillary to selling Palestine's UN agenda. That said, this Court need not decide the scope of the "ancillary" catch-all because the actions of Palestine's UN Mission fall under official UN business—and because those facts, in any case, do not show consent under the Due Process Clause.

Conclusion

Plaintiffs' motion for reconsideration does nothing but recycle previously-made factual arguments (and require Defendants to repeat their own arguments). But even taking every factual allegation by Plaintiffs at face value, those facts are insufficient to show "free and voluntary" consent to personal jurisdiction under the Constitution. This Court thus need not make any further factual findings to adhere to its conclusion that the PSJVTA violates Due Process under either or both of its factual predicates. This Court should deny Plaintiffs' motion for reconsideration because it pushes novel legal arguments unmoored from *Daimler* and *Waldman I* but also restates the same evidence that this Court has reviewed many times before.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, a true and correct copy of the foregoing was filed with the Clerk via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Gassan A. Baloul
Gassan A. Baloul (GB-4473)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 04 Civ. 397 (GBD)

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

-against-

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Defendants.

DEFENDANTS' SUR-REPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION

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INTRODUCTION

This Court, along with the courts in *Fuld* and *Shatsky*, has already held that the conduct at issue cannot support an inference that Defendants intended to submit to personal jurisdiction in the United States. In their reply in support of reconsideration, Plaintiffs continue to repackage their evidence and arguments in an effort to set aside well-established due process standards and convert constitutionally-inadequate conduct into consent. Their new evidence satisfies neither the PSJVTA's predicates nor constitutional due process requirements. And their territoriality theory is squarely foreclosed by the Second Circuit's holding in *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016) ("*Waldman I*"), that the mere presence of the PA and PLO in the United States does not create personal jurisdiction under the Due Process Clause.

In support of their reply, Plaintiffs improperly introduce a new declaration that attempts to put a new spin on their prior assertions that the conduct of state-licensed notaries can be imputed to Defendants under the U.S. activities prong. But the declaration in fact confirms that these notaries are not controlled by (and therefore are not "agents" of) Defendants, and do not act on Defendants' behalf. Plaintiffs also fall back on activities of Defendants' UN Mission—such as conducting meetings with "students and community groups" and "advocating for the Palestinian cause" in press interviews—but these activities fall under the PSJVTA's exemption for United Nations business and activities ancillary thereto. As before, Plaintiffs offer no new grounds for exercising jurisdiction under the PSJVTA and no basis for altering this Court's sound

constitutional conclusion that the PSJVTA violates due process.

ARGUMENT

I. Plaintiffs' New Evidence Regarding a Third-Party Notary Does Not Satisfy the "U.S. Activities" Prong of the PSJVTA.

To support their misguided theory that the activities of independent, third-party notaries somehow give rise to jurisdiction over Defendants under the PSJVTA, Plaintiffs rely on a reply declaration describing events from 2020 that could have been—but was not—submitted in support of Plaintiffs' motion for reconsideration. Plaintiffs' reliance on new evidence in their reply brief obviously is improper, warranting this sur-reply. *See Anghel v. N.Y. State Dep't of Health*, 947 F. Supp. 2d 284, 293 (E.D.N.Y. 2013). Where new issues are raised for the first time on reply, a sur-reply is appropriate. *See id*. (permitting sur-reply where other party raised "at least one new argument in its reply").

Even if the Court were to consider this new evidence, however, it suffers from the same flaws as Plaintiffs' earlier submissions. The facts alleged in the reply declaration confirm that under the Restatement test and Second Circuit law, the notaries were not acting "on behalf of" or as "agents" of Defendants. Rather, the notaries transmitted documents <u>on behalf of their clients</u> to Palestinian officials in Canada, Mexico, and Palestine, who in turn retained control over whether to accept or reject those <u>documents</u> for use in Palestinian legal proceedings. Palestinian officials did not, however, control the <u>notaries</u>.

Further, based on Plaintiffs' own description of these events, none of Defendants' activities with respect to those documents took place in the United States;

indeed, the notaries transmitted the documents to Palestinian officials in Canada and Mexico precisely because Defendants had ceased operating their U.S. Mission in Washington, D.C. well before passage of the PSJVTA. Accordingly, Plaintiffs' allegations regarding the activities of third-party notaries fail to establish any conduct by or on behalf of Defendants in the United States following the PSJVTA's effective date, and therefore cannot give rise to personal jurisdiction.

A. Plaintiffs' Evidence Confirms the Notaries Are Not "Agents" of Defendants.

The new evidence relied upon in Plaintiffs' reply declaration recites the same basic fact pattern already described in the deposition testimony of two other notaries (Awni Abu Hbda and Fuad Ateyeh). In February 2020, David Russell, an associate at Plaintiffs' law firm, contacted Saad Malley, a "U.S. based" notary, and "asked him to certify a document for use with the Palestinian government." ECF 1067-1, Russell Decl., at 1. Two years earlier, prior to the closure of Defendants' U.S. Mission in Washington, D.C., Malley was listed on the Mission's website as one of several Arabic-speaking U.S. notaries who might assist Palestinian citizens. *Id.* After mailing the document to Malley, Russell states that he "spoke by telephone with Mr. Malley," who "told me that he had received the certificate and had mailed it to the Palestinian Foreign Ministry."[1] *Id.* at 1-2. Mr. Russell further states that he spoke with Malley again the following day, and Malley "told me that the Palestinian Foreign Ministry had denied his request to certify the

[1] The Ministry of Foreign Affairs is located in Palestine. *See* State of Palestine, Ministry of Foreign Affairs, available at: https://www.mofa.ps/en/.

document." *Id.* at 2. Most of the declaration is plainly hearsay, and the record does not contain any testimony from Malley describing his submission of Russell's documents or any interactions with the Foreign Ministry in Palestine.[2] Nonetheless, the declaration appears to outline the same process previously described by Hbda and Ateyeh, in which an Arabic-speaking notary licensed by a U.S. state notarizes and submits documents on behalf of a private client (in this case, Mr. Russell) to Palestinian officials outside the United States, for potential use in Palestinian legal proceedings. *See* ECF 1064, Opp. to Recon. at 16 (describing testimony of Hbda and Ateyeh).

Such evidence, even if credited, does not satisfy the "U.S. activities" prong of the PSJVTA, for two reasons. First, based on Plaintiffs' own evidence, none of the activities of Palestinian officials in certifying, accepting, or rejecting documents for use in Palestinian legal proceedings took place in the United States. To the contrary, following the closure of Palestine's U.S. Mission in Washington, D.C. in 2018, Palestinian officials no longer provide any services in the United States. For that reason, third-party notaries such as Hbda, Ateyeh, and Malley transmit documents to Palestinian officials outside the United States (in Canada, Mexico, or Palestine) for authentication and certification. *See* ECF 1064, Opp. to Recon. at 16 ("where requested by a client," Hbda and Ateyeh "send the notarized documents to the PLO consulates in Canada or Mexico for authentication"); *see also* ECF 1067, Pls.' Reply at 3 (conceding notaries "sent the documents to Palestinian officials in Mexico and

[2] Indeed, Russell's conclusory declaration does not even provide a copy of the document purportedly submitted for certification, or any correspondence between Russell and Malley.

Canada for certification," and then "sent the certified documents on to other Palestinian officials in Ramallah for use by the Palestinian Land Authority or other PA departments"). The reply declaration merely confirms that any "activities" conducted by Defendants in certifying, accepting, or rejecting documents for use in Palestine take place outside the United States, and therefore do not trigger personal jurisdiction under the "U.S. activities" prong. *See* ECF 1067-1, Russell Decl. at 1-2 (stating Malley sent document to Foreign Ministry in Palestine, which refused certification).

Second, the reply declaration similarly confirms that U.S.-based notaries submitting documents on behalf of private clients such as Mr. Russell do not act as "agents" of Defendants. As Plaintiffs concede, an agency relationship requires that the principal assent to another person (the "agent") (1) acting "on the principal's behalf" and (2) "subject to the principal's control." ECF 1067, Pls.' Reply at 3. Neither of those requirements is satisfied here.

As both Hbda and Ateyeh explained in their prior depositions, licensed notaries act on behalf of their clients—not Defendants—in submitting a client's documents for authentication and certification by foreign officials. *See* ECF 1035-9, Hbda Dep. at 39-40, 51, 59, 69-70, 75, 92, 97, 102, 154-55; ECF 1035-10, Ateyeh Dep. at 21-27, 31-36, 43-44, 55-56, 68-69 (testifying that U.S. notaries submitted documents to Palestinian consulates on behalf of their clients, not on Defendants' behalf). The reply declaration reinforces this basic point, as Malley transmitted documents at Russell's request to the Foreign Ministry for certification. ECF 1067-1, Russell Decl. at 1. There is no evidence Defendants were aware of—much less "assented to"—Malley's efforts to certify a document

for Russell to "use with the Palestinian government." *See id*.

The reply declaration similarly confirms that U.S.-based notaries submitting documents for authentication or certification overseas are not subject to Defendants' "control." Indeed, Russell's declaration provides clear evidence of Defendants' lack of control over Malley's activities. In response to Russell's request that Malley submit a document for certification, Malley asked him to provide an apostille for the document. *Id*. After receiving an apostille from Russell, Malley then submitted the document to the Foreign Ministry for certification. *Id*. There is no evidence Defendants exercised any control over Malley's provision of notarial services, or instructed Malley to process Russell's request in a particular manner. To the contrary, the Foreign Ministry's subsequent denial of the request to certify the document plainly indicates Defendants did not assent to Malley's request, and that Malley acted on his own accord (on behalf of his client) in unsuccessfully seeking certification from the Foreign Ministry. *Id*. at 1-2. This, again, is consistent with the deposition testimony of Hbda and Ateyeh, who repeatedly testified that Defendants did not exercise any control over their provision of notarial services. *See* ECF 1035-9, Hbda Dep. at 83-84, 92-93, 119, 147-50, 154-55; ECF 1035-10, Ateyeh Dep. at 21-25, 43-44, 52, 60, 62-63, 68-69.

Plaintiffs conflate "control" over the document certification process in Palestine with "control" over the notaries themselves, asserting the notaries were Defendants' agents because "Defendants maintained decision-making control over the key element of the relationship—actual certification of the documents for

use in Defendants' Land Authority and other agencies." ECF 1067, Pls.' Reply at 4; *see also id.* at 5 (asserting Defendants' rejection of Malley's request for certification of the document "demonstrates the necessary element of control"). In determining whether an agency relationship exists, however, the type of "control" that matters is whether "the agent ... is subject to the control of the principal."[3] *APL Co. Pte. Ltd. v. Kemira Water Sol's*, 890 F. Supp. 2d 360, 369 (S.D.N.Y. 2012) (emphasis added). In this case, Defendants retained control over whether they would certify documents transmitted by the notaries for use in Palestine. But there is no evidence Defendants exercised control over the notaries themselves, and thus no basis for finding the notaries served as Defendants' "agents" in the United States.

B. Plaintiffs' Allegations Regarding "Lists" of Notaries and "Pre-Printed Forms" Do Not Transform the Notaries into Defendants' Agents.

In the absence of any evidence that the notaries acted on behalf of and subject to the control of Defendants, Plaintiffs attempt to manufacture an agency relationship by relying on "lists" of Arabic-

[3] Contrary to Plaintiffs' assertions (at 5), the Second Circuit's decision in Tribune Company is inapposite. In that case, *Tribune Company* "retained" Computershare to serve as its depository for a tender offer, and "manifested its intent to grant authority to Computershare" to act as its agent "by depositing the aggregate purchase price for the shares with Computershare." *In re Tribune Co. Fraudulent Conveyance Litig.*, 946 F.3d 66, 78-80 (2d Cir. 2019). In this case, by contrast, there is no evidence that Defendants "retained" the notaries to act as their agents. To the contrary, the notaries were "retained" by their individual clients to submit documents to Defendants.

speaking notaries and "pre-printed forms" that pre-date the PSJVTA. As Defendants have explained in prior briefing, none of these materials provides any evidence of an agency relationship between the notaries and Defendants.

Plaintiffs rely heavily on outdated information previously posted on the website of Palestine's U.S. Mission in Washington, D.C. in 2018—despite the fact that Defendants closed the Mission and took down the website at the behest of the U.S. government, prior to passage of the PSJVTA. Although Plaintiffs treat the information as if it were current, it is not. Indeed, Plaintiffs have to resort to the "Wayback Machine"—a website that continuously archives Internet pages— to resurrect the information they now provide to this Court. *See* ECF-1023-2, at 37-49.

The Mission's archived website lists the documents necessary for a passport or other then-available services from the Palestinian U.S. Mission, observing that some of those documents must be notarized. *Id.* at pp. 37-42. The next few pages list eight U.S.-licensed, but Arabic-speaking, notaries public. *Id*. at 43-49. Critically, the website does not claim these U.S.-licensed notaries were acting as Defendants' agents, nor does it indicate Defendants provided those notaries with authority to certify or authenticate documents on behalf of Defendants. Rather, the website simply identifies eight Arabic-speaking notaries who might be of assistance to Palestinians or others visiting the (now-defunct) website.

Contrary to Plaintiffs' assertions, there is nothing unusual or legally-significant about the Mission's decision to provide such information on its website. Although Plaintiffs claim—without support—that the "U.S. State Department does not publish lists of

authorized foreign notaries" (Reply at 7), that is incorrect. The U.S. Embassy in Australia, for example, expressly directs website visitors to local notaries, and provides no less than seven regional lists of notaries (complete with contact information) maintained by the Embassy.[4] The U.S. Embassy in the United Kingdom similarly recommends local notaries through the UK's "Notary Society" website.[5] U.S. embassies also frequently recommend local attorneys and notaries by name.[6] The U.S. Embassy in Iraq provides lists of Iraqi lawyers and doctors through its American Citizen Services Unit, which are not listed on the web-page "for security reasons."[7] The embassy's website also provides a list of security services, both American and international.[8] And in a direct parallel to the Palestine U.S. Mission's old website, the U.S. Embassy in Zambia provides a list of local attorneys and specifically notes they speak English "as a first language."[9] Plaintiffs fail

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[4] Under the heading "Using an Australian Public Notary" the State Department instructs "Step 1: Have your documents executed in front of an Australian Notary Public." *See* https://au.usembassy.gov/u-s-citizen-services/notaries-public/.

[5] Click "Legalization through the British system" and then "Notary Society's website." *See* https://uk.usembassy.gov/u-s-citizen-services/notary/

[6] *See* https://ca.usembassy.gov/u-s-citizen-services/local-resources-for-u-s-citizens/) which contains a PDF list of attorneys (*see, e.g.*, https://ca.usembassy.gov/wp-content/uploads/sites/27/ottawa_attorneys-2019.pdf), which also specifies whether the office provides notary or translation services.

[7] *See* https://iq.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/attorneys/

[8] *See* https://iq.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/security-companies/

[9] *See* https://zm.usembassy.gov/services/#local, then click on "List of Attorneys," available at: https://uploads.mwp.mprod.

to acknowledge this practice, let alone demonstrate that by directing U.S. citizens to these service providers, the U.S. government has suddenly taken on hundreds of "agents" in foreign countries.

Plaintiffs' reliance on a pre-printed form agreement from the PLO's now-closed Washington delegation is equally unavailing. As Plaintiffs concede, this pre-printed form "was prepared in 2014 and was not signed by either of the two notaries deposed."[10] ECF 1067, Pls.' Reply at 4 (emphasis added); *see* also ECF 1035-9, Hbda Dep. at 128-130, 132-136; ECF 1035-10, Ateyeh Dep. at 36:18-21. Accordingly, there is no evidence in the record supporting Plaintiffs' bald assertion that this unsigned, 2014 agreement somehow "manifests Defendants' assent" to the provision of notarial services following the passage of the PSJVTA. *See* ECF 1067, Pls.' Reply at 4. In any event, contrary to Plaintiffs' assertions, the pre-printed form did not provide that its (non-existent) signatories were acting on behalf of Defendants. ECF 1035-3 (unsigned copy of contract). Rather, the pre-printed form merely provided local notaries with the procedures they would need to follow to have the U.S. Mission authenticate notarized documents for use in Palestine. *Id.* As explained above, the PLO's U.S. Mission was closed at the U.S. government's direction in 2018, ending all of the Mission's U.S. activities. The closure of the Mission therefore terminated whatever relationship the notaries had with the U.S. Mission when the form was prepared in 2014, and provides no evidence of an

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getusinfo.com/uploads/sites/44/2022/01/List_of_Attorneys_Updated_February_2020.pdf

[10] Plaintiffs also have not provided any evidence that the third notary relied upon in their new declaration (Malley) or any other notary ever signed the pre-printed form.

ongoing agency relationship post-dating passage of the PSJVTA.

Finally, Plaintiffs' reliance on out-of-circuit case law addressing the legal status of notaries (Reply at 6-7) is misplaced. In *Sardariani*, the Ninth Circuit held that a notary public is a "person authorized by a state to administer oaths [and] certify documents," and thus "act[s] under the authority and as an agent of the [licensing] state" when certifying a document. *See United States v. Sardariani*, 754 F.3d 1118, 1121 (9th Cir. 2014). That holding is of no help to Plaintiffs here, as the notaries at issue are licensed by individual U.S. states (New Jersey and California)—not by Defendants. Accordingly, under *Sardariani*, the notaries act "under the authority and as ... agent[s] of" New Jersey and California—not Defendants—when authenticating or certifying documents for their clients.

Similarly, *Sanchez-Ramirez* addresses the legal status of notaries who—unlike the notaries at issue in this case—were "employed by defendant Consulate General of Mexico," which provided the notaries with "life insurance, an annual bonus[,] ... thirty days' vacation," "health benefits and relief from ... taxes." *Sanches-Ramirez v. Consulate Gen. of Mexico*, 2013 U.S. Dist. LEXIS 109888 at *2, 29 (N.D. Cal. Aug. 5, 2013). The notaries also held A-2 visas, which authorized travel to the United States "on behalf of [a] national government to engage solely in official activities for that government." *Id*. at *16 n.2. The court's conclusion that notaries employed and paid by the Mexican government to provide consular services qualified as "civil servants" has no bearing on this case, where the record indisputably establishes that the

third-party notaries were not employed or compensated by Defendants.[11]

II. The Activities of Palestine's UN Mission Do Not Trigger Personal Jurisdiction under the "U.S. Activities" Prong of the PSJVTA.

In addition to presenting new evidence regarding the purported activities of Arabic-speaking, U.S.-based notaries, Plaintiffs also continue to assert that "public relations activities" carried out by officials at Palestine's UN Mission satisfy the "U.S. activities" prong. *See* ECF 1067, Pls.' Reply at 7-15. Plaintiffs go so far as to assert that the 30-year-old decision in *Klinghoffer*—which predates both the passage of the PSJVTA and the PLO's enhanced status at the UN by several decades—"already held" that Defendants' post-PSJVTA activities do not constitute "official business" of the UN. *Id.* at 11. Such claims are inconsistent not only with the modern realities of the

[11] The Eleventh Circuit's decision in *Rine v. Imagitas, Inc*., 590 F.3d 1215 (11th Cir. 2009) does not involve notaries and is likewise of no help to Plaintiffs. The entity in that case contracted with the Florida Department of Highway Safety & Motor Vehicles ("DHSMV") to carry out the state function of mailing motor vehicle registration information to drivers. *Id*. at 1225. Pursuant to a Florida statute, the state agency was authorized to contract with vendors to produce public materials and carry out public functions "on behalf of" the state agency. *Id*. The state agency "retained control over the entire ... program" including all motor vehicular records, mandated approval of each ad, and reserved the right to reject any solicitation that might conflict with the interests of the state. *Id*. at 1215, 1219, 1225. Hence, the state controlled all central aspects of the mailings and the private vendor merely acted on its behalf. *Id*. at 1222, 1225. Plaintiffs offer no such evidence that Defendants contracted with the notaries to act on Defendants' behalf or exercised control over the notaries' services.

work of UN Missions, but also with the statutory text of the PSJVTA, which expressly prohibits courts from considering Defendants' UN activities, meetings with officials of the United States or other foreign governments, and "any personal or official activities conducted ancillary to [such] activities." 18 U.S.C. § 2334(e)(3) (emphasis added).

As Defendants explained in prior briefing, as part of Palestine's UN status, the UN expects Palestine's Mission to participate in the work of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People ("CEIRPP"). *See* ECF 1064, Defs. Opp. at 18-21. The CEIRPP "has a mandate from the United Nations General Assembly" to "mobilize the international community to stay steadfast in its support for the inalienable rights of the Palestinian people" and provide "the broadest possible international support," including by interacting with "civil society organizations from all regions of the world, active on the question of Palestine." *Id.* at 19-20. The types of activities described in Plaintiffs' reply brief—such as conducting meetings with "students and community groups" and "advocating for the Palestinian cause" in press interviews—are precisely the types of activities falling under CEIRPP's mandate.

Other activities, such as UN Ambassador Mansour's comments at a Beit Sahour meeting urging Palestinian-American students to "recognize their activism and their role in supporting the just cause of the Palestinians" by "becom[ing] even more active" and lobbying elected officials" (Reply at 8-9), are part of or "ancillary" to Defendants' UN/CEIRPP "mobiliz[ation]" work. As Ambassador Mansour and other UN Mission witnesses explained, the United States is a permanent member of the UN Security

Council, so advocating the Palestinian cause before American officials is particularly important to the UN Mission's mandate. *See* ECF 1038-2, Ghannam Dep. at 58-60, 66-67 of 69; ECF 1038-3, Mansour Dep. at 29, 47-48 of 64; ECF 1038-1, Abdelhady-Nasser Dep. at 79-80 of 82. By its express terms, the PSJVTA prohibits a court from considering such UN-related activities and outreach to foreign government officials, as well as "any personal or official activities conducted ancillary to" these activities. *See* 18 U.S.C. § 2334(e)(3). The fact that Palestine's UN officials discuss the Palestinian cause with civil society organizations or the press therefore provides no basis for personal jurisdiction under the PSJVTA.

Plaintiffs attempt to characterize such conduct as "self-promotion" rather than protected, UN or ancillary activity, asserting that Defendants' "public relations activities" and social media posts fall outside the activities exempted from consideration by the PSJVTA. If Defendants were truly engaged in political propaganda and "self-promotion" rather than UN-related activities, however, then they would have to register as "foreign agents" under FARA—as Plaintiffs themselves concede. *See* ECF 1067, Pls.' Reply Br. at 13 (arguing UN personnel are not exempt from FARA). Yet despite the fact that, according to Plaintiffs, Defendants have been engaged in such political activities in the United States since the 1970s (Reply at 7), the U.S. Government has never contended that Defendants' officials must register as foreign agents, nor has it prosecuted an official for conducting such activities in the United States without registering under FARA. The U.S. Government has, of course, intervened in this case, and is fully aware of Plaintiffs' allegations. The lack of any objection by the U.S. Government over the past 50 years provides clear

evidence that, contrary to Plaintiffs' assertions, Defendants have not exceeded the bounds of conducting protected, UN-related activities in the United States.[12]

III. Plaintiffs' "Territoriality" Arguments Do Not Satisfy Due Process.

Plaintiffs' theory of "territorial presence"—the legal framework Plaintiffs introduced for the first time on reconsideration—relies wholly on the fragmented, non-majority opinions in *Burnham v. Superior Ct.*, 495 U.S. 604 (1990). But as Defendants have explained, "tag" jurisdiction under *Burnham* applies only to individuals, not to entities like Defendants. *See* ECF 1064, Defs' Opp. to Recon. at 7-9 (collecting authority). The various opinions in Burnham itself do not address application of tag jurisdiction to entities. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1067-68 (9th Cir. 2014) (noting *Burnham* opinions do not address "artificial persons" and declining to extend *Burnham* to corporations). Plaintiffs offer no response to this critical distinction.

Burnham cannot be used to extend tag jurisdiction beyond individuals because no opinion in Burnham was endorsed by a majority of the Court. The Second Circuit recognizes that, where no opinion receives a majority vote, the case should have binding precedential value only on the narrowest ground that a

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[12] Plaintiffs also accuse Defendants of "ignor[ing]" the Foreign Missions Act, which they claim permits regulation of UN officials for any activity outside the UN Headquarters District. ECF 1067, Pls.' Reply at 12. The Foreign Missions Act has nothing to do with the scope of activities that may give rise to personal jurisdiction under the PSJVTA. Rather, the PSJVTA expressly prohibits a court from considering Defendants' activities in furtherance of official UN business, meetings with government officials, and any conduct "ancillary" to such activities.

majority of justices agreed upon—i.e., the ground "most nearly confined to the precise fact situation before the Court." *United States v. Martino*, 664 F.2d 860, 872-73 (2d Cir. 1981). As other courts have held, given that no opinion in *Burnham* garnered a majority, Burnham should be limited to its facts, which involved personal jurisdiction only over an individual, natural person. *See, e.g*., *WorldCare Ltd. Cor. v. World Ins. Co*., 767 F. Supp. 2d 341, 351 (D. Conn. 2011) ("[T]here was no plurality opinion written in *Burnham*, suggesting that perhaps the holding should be limited to the particular facts set forth therein.").

Exercising personal jurisdiction over entities based solely on physical presence is also squarely at odds with the Second Circuit's holdings in *Waldman I* on both general and specific jurisdiction. *Waldman I* held that the Defendants' purported presence in the United States through, among other things, its Washington, D.C. Mission did not render Defendants "essentially at home" under *Daimler*. 835 F.3d 317, 332-33 (2d Cir. 2016). *Waldman I* held the connection between these same activities and the ATA claims was too attenuated under *Walden* to give rise to specific jurisdiction. *Id.* at 341-42. Finally, *Waldman I* held that personal jurisdiction was not established by merely serving process on the representative of the PLO and PA present in Washington, D.C. *Id.* at 343. Plaintiffs nonetheless seek to contradict *Waldman* by arguing that Defendants' "very presence in the United States" provides grounds for personal jurisdiction. ECF 1067, Plfs' Reply at 17.

The Second Circuit's holdings are law of the case and not subject to reconsideration by this Court. It is well-settled that, "where the mandate limits the issues open for consideration on remand, the district court

ordinarily may not deviate from the specific dictates or spirit of the mandate by considering additional issues on remand." *Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry.*, 762 F.3d 165, 175 (2d Cir. 2014) (citation omitted); *see Kerman v. City of New York*, 374 F.3d 93, 109 (2d Cir. 2004) ("[W]here a case has been decided by an appellate court and remanded, the court to which it is remanded must proceed in accordance with the mandate and such law of the case as was established by the appellate court."). The Court of Appeals remanded the case to this Court "for the limited purposes" of deciding: (1) "the applicability of the PSJVTA to this case," and (2) "if the PSJVTA is determined to apply, any issues regarding its application to this case including its constitutionality." Remand Order, Case No. 15-3135, ECF. 369 (Sept. 8, 2020). Plaintiffs' attempt to establish personal jurisdiction based on their new territoriality theory reaches beyond the application of the PSJVTA and contravenes *Waldman I*'s prior holdings that Defendants' mere presence in the United States does not give rise to personal jurisdiction.

Plaintiffs also continue to press their new "territorial exclusion" argument, under which they contend the United States may condition entry to its territory on consent to suit. This argument is a distortion of *Hess v. Pawloski*, 274 U.S. 352 (1927)—a decision that actually supports Defendants' position that exercising personal jurisdiction over Defendants under the PSJVTA does not comport with due process. Plaintiffs accuse Defendants of not acknowledging *Hess* and related caselaw, ECF 1067, Plfs' Reply at 16. But as Defendants have repeatedly explained, while *Hess* provides a useful conceptual framework for deemed consent, it is not satisfied here because the PSJVTA confers no benefit on Defendants. *See, e.g.*,

ECF 1064, Defs' Opp. to Recon. at 9-10. As Judge Furman agreed, *Hess* "hold[s] that a defendant's receipt of a benefit can be deemed to be consent" to jurisdiction. *Fuld v. PLO*, No. 20-CV-3374 (JMF), 2022 U.S. Dist. LEXIS 3102, at *38 n.10 (S.D.N.Y. Jan. 6, 2022). Plaintiffs find no support in *Hess*, however, because they insisted at the outset of these remand proceedings that the PSJVTA does not confer any benefit on Defendants. ECF 1022 at 26-27. Even though Plaintiffs now find their prior concession inconvenient, the fact remains that the PSJVTA does not confer on Defendants the benefit of operating in the United States and Plaintiffs do not demonstrate otherwise. *See* ECF 1064, Defs' Opp. to Recon. at 6-7, 11-12. Nor does Palestine's UN Mission exist due to the PSJVTA's "legislative grace," Plfs' Reply at 17, but rather by virtue of antecedent obligation undertaken by the United States through the United Nations Headquarters Agreement. *See U.S. v. PLO*, 695 F. Supp. 1456, 1465-71 (S.D.N.Y. 1988). Palestine's UN Mission, furthermore, cannot provide grounds for personal jurisdiction because it is expressly excluded from the PSJVTA's predicates. *See* ECF 1064, Defs' Opp. to Recon. at 22-27.

Hess and its progeny more broadly stand for the proposition that implied consent requires conduct from which it is reasonable to infer that Defendants freely and voluntarily intended to submit to jurisdiction. Plaintiffs' freestanding "fairness" argument sidesteps this requirement and amounts to nothing more than a repackaging of the notice-plus-government interest test rejected by this Court in its initial decision, and by the courts in *Fuld* and *Shatsky*. This Court has already held that the conduct at issue does not demonstrate legal submission by the Defendants to personal jurisdiction. *Sokolow v. PLO*,

2022 U.S. Dist. LEXIS 43096, at *19-20 (S.D.N.Y. Mar. 10, 2022). And without needing to reach the question whether reciprocity (i.e., a benefit to Defendants under the PSJVTA) was required or satisfied here, Judge Furman in *Fuld* likewise concluded Defendants' alleged activities were far "too thin to support a meaningful inference of consent to jurisdiction in this country." *See Fuld* 2022 U.S. Dist. LEXIS 3102, at*19. To hold otherwise would "push the concept of consent well beyond its breaking point" because "the predicate conduct alleged here is not 'of such a nature as to justify the fiction' of consent." *Id.* at *38. Judge Vyskocil came to the same conclusion, holding "it is not reasonable to infer an intention to consent to suit in U.S. courts from the factual predicates in the PSJVTA." *Shatsky v. PLO*, No. 1:18-cv-12355, Op. & Order, ECF 165, p. 9 (S.D.N.Y. Mar. 18, 2022). Plaintiffs' arguments for reconsideration do not alter that analysis. If "fairness" alone were the jurisdictional test, moreover, then *Waldman I* would have presumably evaluated the ATA through this lens, rather than holding that the statute "does not answer the constitutional question." 835 F.3d at 343.

CONCLUSION

Every factual claim in Plaintiffs' reply brief is insufficient to show "free and voluntary" consent by Defendants to personal jurisdiction under the Constitution. This Court thus need not make any further factual findings to adhere to its conclusion that the PSJVTA violates Due Process under either or both of its factual predicates. This Court should deny Plaintiffs' motion for reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, a true and correct copy of the foregoing was filed with the Clerk via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Gassan A. Baloul
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