20-3849

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TEMIMA SPETNER, JASON KIRSCHENBAUM, ISABELLE KIRSCHENBAUM, individually and for the ESTATE OF MARTIN KIRSCHENBAUM, JOSHUA KIRSCHENBAUM, SHOSHANA BURGETT, DAVID KIRSCHENBAUM, DANIELLE TEITELBAUM, NETANEL MILLER, CHAYA MILLER, AHARON MILLER, SHANI MILLER, ADIYA MILLER, ALTEA STEINHERZ, JONATHAN STEINHERZ, TEMIMA STEINHERZ, JOSEPH GINZBERG, PETER STEINHERZ, LAUREL STEINHERZ, JACQUELINE CHAMBERS, individually and as the Administrator of the ESTATE OF ESTHER BABLAR, LEVANA COHEN, individually and as the Administrator of the ESTATE OF ESTHER BABLAR, ELI COHEN, SARAH ELYAKIM, JOSEPH COHEN, GRETA GELLER, as the Administrator of the ESTATE OF GRETA GELLER, ILANA DORFMAN, as the Administrator of the ESTATE OF GRETA GELLER, REPHAEL KITSIS, as the Administrator of the ESTATE OF GRETA GELLER, TOVA GUTTMAN, as the Administrator of the ESTATE OF GRETA GELLER, GILA ALUF, SHABTAI SHATSKY, individually and for the ESTATE OF KEREN SHATSKY, JOANNE SHATSKY, individually and for the ESTATE OF KEREN SHATSKY, TZIPPORA SHATSKY SCHWARZ, YOSEF SHATSKY, SARA SHATSKY TZIMMERMAN, MIRIAM SHATSKY, DAVID SHATSKY, HILLEL TRATTNER, RONIT TRATTNER, ARON TRATTNER, SHELLEY TRATTNER, HADASSAH DINER, EFRAT

(*Caption continued on inside cover*)

On Appeal from the United States District Court
for the Eastern District of New York
No. 1:19-CV-0005(EK)(RLM)

BRIEF OF AMICI CURIAE AGUDATH ISRAEL OF AMERICA, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, STAND WITH US, AND ONE ISRAEL FUND, LTD. IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Plaintiffs-Appellants,

ARIE MILLER,
Plaintiff,

v.

PALESTINE INVESTMENT BANK,
Defendant-Appellee.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure:

Agudath Israel of America certifies that it is a non-profit organization, that it does not have a parent corporation, and that no publicly held corporation owns more than ten percent of its stock.

Union of Orthodox Jewish Congregations of America certifies that it is a non-profit organization, that it does not have a parent corporation, and that no publicly held corporation owns more than ten percent of its stock.

Israel Emergency Alliance, doing business as StandWithUs (hereinafter, "StandWithUs"), is a California nonprofit corporation. It is not a subsidiary or affiliate of any other corporation. No other corporation owns 10% or more of its stock.

One Israel Fund, Ltd. certifies that it is a non-profit organization, that it does not have a parent corporation, and that no publicly held corporation owns more than ten percent of its stock.

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INTEREST OF AMICI CURIAE[1]

Agudath Israel of America

Agudath Israel of America ("Agudath Israel"), founded in 1922, is a national grassroots Orthodox Jewish organization. Among its other functions and activities, Agudath Israel articulates and advances the position of the Orthodox Jewish community on a broad range of legal issues affecting religious rights and religious liberty. Agudath Israel regularly intervenes at all levels of government—federal, state, and local; legislative, administrative, and judicial (including through the submission or participation in amicus curiae briefs) to advocate and protect the interests of the Orthodox Jewish community throughout the United States, and in other countries as well.

In particular, since 1948, multitudes of Jewish American citizens have emigrated to Israel—and continue to do so.[2] Given the large population of American Jews who reside in Israel and elsewhere across the globe, Agudath Israel is

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[1] Appellants have consented to the filing of this brief. Appellees have not. *Amici* have filed a motion for leave to file this brief. No party's counsel has authored this brief in whole or in part; no party nor party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person—other than amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief. Fed. R. App. ProcP. 29(a)(4)(E).

[2] *See, e.g.*, Daphna Berman, *Need an Appointment at the U.S. Embassy? Get on Line!*, Haaretz (Jan. 22, 2008), https://www.haaretz.com/1.4982840 (as of 2008, "[a]ccording to estimates, some 200,000 American citizens live in Israel and the Palestinian territories[]").

committed to ensuring the United States is able to protect American nationals abroad.

Accordingly, Agudath Israel has a strong interest in safeguarding the authority of United States courts to exercise personal jurisdiction over those who commit acts of international terrorism against American citizens. Moreover, Agudath Israel seeks to ensure that United States courts may hold accountable those who provide terrorists with material support, "directly or indirectly[,]" "wherever acting and wherever they may be found" – as intended by Congress. Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, § 2(b), 130 Stat. 852, 853 (2016) ("JASTA") ("Purpose").

Acts of international terrorism abroad have frequently resulted in injuries or loss of life to American Jews, as well as many others.[3] Thus, Agudath Israel's has an interest in reducing the number of terrorist attacks against Americans by cutting terrorists off from the sources that finance support their activities. Agudath Israel believes one of the most effective ways to achieve that goal is to ensure that financial institutions that are legally responsible for supporting the activities of terrorist organizations can be hauled into United States courts to be held accountable.

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[3] *See, e.g.*, *American Victims of Terrorist Attacks (1970 – Present)*, Jewish Virtual Library, https://www.jewishvirtuallibrary.org/american-victims-of-terrorist-attacks (last visited Feb. 17, 2021) (projecting that "[a]pproximately 4,000 Americans have been killed in terrorist attacks since 1970" including references to many Jewish victims).

Union of Orthodox Jewish Congregations of America

The Union of Orthodox Jewish Congregations of America ("Orthodox Union") is the nation's largest Orthodox Jewish synagogue organization, representing nearly 1000 congregations across the Nation. The Orthodox Union, through its OU Advocacy Center, has participated in many cases before courts across the nation that implicate important matters of concern to the Orthodox Jewish community. Through *amicus curiae* briefs, the Orthodox Union seeks to inform courts of the perspective of our community and the impact a ruling in a given case will have.

The Orthodox Union is especially concerned about the devastating impact that foreign terrorist organizations and those who fund them can have on its constituents and American citizens around the world. Thus, the Orthodox Union is committed to ensuring that terrorists and their supporters who carry out attacks on Americans are brought to justice. Particularly, the Orthodox Union seeks to ensure that United States courts send a message to terrorists across that globe that they cannot exploit U.S. laws to avoid punishment, and, that victims of international terror—including those from the communities the Orthodox Union represents—can seek justice.

StandWithUs

StandWithUs is an international, nonprofit Israel education organization founded in 2001. Its staff and volunteers are inspired by their love for Israel, their

belief that education is the road to peace, and their commitment to stand up for Israel and the Jewish people when they are publicly attacked or misrepresented. StandWithUs is dedicated to educating people of all ages about Israel and combating the extremism and antisemitism that often distort Israel-related issues. While providing positive education to millions, StandWithUs also vigorously challenges discriminatory boycotts and other campaigns of hate, including through the use and application of Title VI of the Civil Rights Act of 1964.

As such, StandWithUs has a fundamental interest in safeguarding the ability of United States courts to exercise personal jurisdiction over financers, including but not limited to individual financers and corporate financial institutions, that provide terrorists with material support. As a United States-based organization with staff and volunteers who live in Israel and regularly travel to places throughout the world where they could serve as targets for terrorists based on their status as, or association with, Jews or Israelis, StandWithUs has a primary interest in preserving the ability to pursue such financers of terrorism in United States courts. Therefore, StandWithUs' interest in this case is to reduce financial support for terrorist activities through ensuring that the financers legally responsible for such support can be tried and held accountable in the United States.

One Israel Fund, Ltd.

One Israel Fund, Ltd. is the premier U.S. charity fulfilling humanitarian, educational, religious and civilian security needs of the Israeli and American residents of Judea and Samaria (the West Bank). We share one trait with Defendant Palestine Investment Bank and other financial facilitators of Palestinian terrorism: we do not discriminate between Israeli and American citizens who live in Judea and Samaria and Israeli and American citizens who live within the 1949 Armistice line (the Green Line). And there the similarity ends as we enhance, enrich and protect Israeli and American lives while Defendant rewards, encourages and facilitates murder of Israelis and Americans and contributes to a culture of death among the people it claims to serve. We respectfully ask this court to enforce the letter and spirit of the Anti-Terrorism Act and to hold Defendant accountable for providing material support to terrorist organizations.

SUMMARY OF THE ARGUMENT

The Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2331 *et seq.*, is supposed to be just that: Anti-Terrorism. It is supposed to combat terrorism by, among other things, cutting terrorists off from the sources of money flowing to them through financial institutions — especially foreign banks that use the United States' banking system to fund them in U.S. dollars. But the district court's rationale for dismissing appellants' claims on personal jurisdiction grounds, can rightly be read as creating a shield for financial institutions that provide material support to terrorist organizations. If affirmed, the lower court's decision creates a veritable safe harbor enabling foreign financial institutions to exploit the U.S. and New York banking systems to funnel U.S. dollars to terrorist organizations that could then use those U.S. dollars to attack Americans. This Court must reverse the lower court's decision to ensure that does not occur.

In the early 2000s, the Palestine Investment Bank ("PIB") is alleged to have knowingly provided as much as $35 million in bounty payments—facilitated by Saddam Hussein's Arab Liberation Front ("ALF")—to the families of terrorists who killed, maimed, and injured civilians in Israel, including providing an additional bonus to the families of "successful" Palestinian suicide bombers. Additionally, PIB allegedly maintained a U.S. dollar-denominated account for the Holy Land Foundation ("HLF"), a United States-based fundraising front organization for

Hamas, a known terrorism organization. PIB allegedly did so through both the Arab Jordan Investment Bank ("AJIB") which facilitated transfers of funds and through the Palestinian Monetary Authority ("PMA")—both of which acted as PIB's New York agents.

Through the ATA and subsequent anti-terrorism legislation, Congress has attempted to combat terrorism by providing terror victims with a meaningful path to obtaining relief while at the same time also creating a deterrence for would-be funders of terrorist organizations by holding them financially liable for the consequences of their support. Instead of discouraging entities and individuals from financing terrorist organizations, however, the district court's decision will have the opposite effect. It will inspire more terror financing activity (and thus more terrorism) by suggesting United States courts cannot reach certain foreign financial institutions even though those institutions knowingly use the United States banking system (so long as it does not direct which banks or states the intermediary uses) to materially support terrorist organizations.

The district court's decision creates a safe harbor that Congress did not authorize, empowering at least some foreign banks to fund terrorist organizations subjecting themselves to U.S. jurisdiction simply by structuring their U.S. dollar-denominated transactions through another foreign intermediary bank. The district court's decision must be reversed.

ARGUMENT

I. Congress Intends U.S. Courts to Have Personal Jurisdiction Over Foreign Banks that Use New York's Banking System to Fund Foreign Terrorist Organizations Using U.S. Dollars Even When They Operate Through Intermediate Banks

When it enacted JASTA, Congress reaffirmed that the ATA was intended to reach foreign financial institutions in the very situation presented in this appeal. Congress confirmed that it intended courts to have personal jurisdiction over, and impose civil liability on, foreign banks that—like PIB —provide material support and resources to terrorist organizations that attack, injure, and kill American citizens.

Congress could not have been more clear. The ATA, as amended by JASTA, provides "civil litigants with the broadest possible basis, consistent with the Constitution of the United States, *to seek relief*." JASTA, § 2(b) (emphasis added). Through the ATA, Congress has provided terror victims with a right of action for extraterritorial acts against individuals and organizations "wherever acting and wherever they may be found." *Id.* It made the claim for relief available regardless whether the defendants are primary perpetrators of the terrorist acts or secondary actors that provide material support to the primary perpetrators. *Id.* A claim for relief exists regardless whether material support is provided "directly or indirectly." *Id.* And, foreign actors who carry out, facilitate, and support "terrorist activities against the United States" are liable for civil damages. 18 U.S.C. § 2333(a).

To make terror victims' right "to seek relief" meaningful, Congress also intended that defendants be subject to personal jurisdiction on the "broadest possible basis, consistent with the Constitution of the United States." Broad jurisdictional authority was necessary for several reasons. Indeed, the very definitions Congress adopted for the ATA require a broad grant of extraterritorial jurisdiction over defendants. *See* 18 U.S.C. § 2331(1)(C) (defining "international terrorism as activities that "occur primarily outside the territorial jurisdiction of the United States."). Also, terrorist organizations "raise significant funds outside the United States for conduct directed and targeted at the United States" and often raise those funds "through affiliated groups or individuals" who are not U.S. citizens. JASTA, § 2(a)(3). Furthermore, Congress intended the ATA to impose liability on anyone that "knowingly or recklessly contribut[ed] material support or resources" to terrorist organizations that threaten American citizens. JASTA, § 2(a)(6), 2(b). Congress further found that entities providing material support to terrorist organizations that attack Americans "necessarily direct their conduct at the United States," making it reasonable for them to "anticipate being brought to court in the United States to answer for such activities, "wherever acting and wherever they may be found." JASTA, § 2(a)(6), 2(b).

Thus, for claims arising under the ATA, Congress intends U.S. courts to exercise personal jurisdiction over foreign banks—like PIB—that (i) "directly or

indirectly" avail themselves of the U.S. and New York banking systems to (ii) fund terrorist organizations using U.S. dollars that (iii) are then used to carry out terrorist attacks (iv) against U.S. citizens, including Jewish Americans, living and traveling in and near Israel. Congress intended U.S. courts to exercise personal jurisdiction on the "broadest possible basis, consistent with the United States Constitution," for two inter-related reasons.

A. The Twin Aims of the ATA

The ATA serves two overarching objectives. It provides American terror victims with a civil remedy in U.S. courts for acts that occur outside the United States and, at the same time, creates an effective tool for reducing terrorism by exposing entities providing material support to terrorists to liability in U.S. courts. *See Linde v. Arab Bank, PLC*, 706 F.3d 92, 112 (2d Cir. 2013) (quoting 136 Cong. Rec. S14279, 14284 (daily ed. Oct. 1, 1990) (statement of Senator Grassley) (Amendment No. 2921), in emphasizing "the important U.S. interests at stake in arming private litigants with the 'weapons available in civil litigation' to deter and punish the support of terrorism.").

Congress initially extended the jurisdiction of United States courts to foreign terrorist activities, those who carry them out, and those who provide material support for them in the wake of the Palestine Liberation Organization's 1985 assassination of Leon Klinghofer on the Achille Lauro while it was in the Mediterranean Sea. In

1992, Congress passed the ATA, Federal Courts Administration Act of 1992, Pub. L. No. 102-572, tit. X, § 1003, 106 Stat. 4506, 4521-24 (codified as amended at 18 U.S.C. § 2331 *et seq.*), to provide expressly an extraterritorial private right of action for "[a]ny national of the United States injured by reason of an act of international terrorism." 18 U.S.C. § 2333(a); *In re September 11 Litig.*, 751 F.3d 86, 93 (2d Cir. 2014) (quoting H.R. 2222, 102d Cong. (1992)).

At a fundamental level, Congress intended the ATA to "open[] the courthouse door to victims of international terrorism," and to "extend[] the same jurisdictional structure" at the core of "American criminal law to the civil remedies that [the ATA] defines." S. Rep. No. 102-342, at 45 (1992). In other words, the ATA was enacted with the unambiguous goal of snuffing out terrorism that occurred primarily outside the United States. 18 U.S.C. § 2331(1)(C); *see Weiss v. Nat'l Westminster Bank PLC*, 768 F.3d 202, 207 (2d Cir. 2014).

To put a fine point on it: Congress drafted the ATA—and President Bush signed it into law—for the express purpose of "ensur[ing] that a remedy will be available for Americans injured abroad by senseless acts of terrorism." *Statement by President George Bush Upon Signing S. 1569*, 28 Weekly Comp. Pres. Docs. 2112 (Oct. 29, 1992), https://www.govinfo.gov/content/pkg/PPP-1992-book2/html/PPP-1992-book2-doc-pg2090-2.htm. The ATA is, therefore, aimed at, and must be interpreted with an eye toward ensuring that, victims of terrorist acts

carried out by foreign terrorist organizations outside the United States can actually obtain relief in U.S. courts against those who are responsible for the acts as well as those who provide material support for the acts---that "a *remedy* will be available for Americans" who seek redress under the ATA. *Id.* (emphasis added); *see Stansell v. Revolutionary Armed Forces of Columbia*, No. 19-20896-CIV, 2020 WL 4692748, at *1 (S.D. Fla. July 16, 2020) (stressing the importance of "compensat[ing]" victims under the ATA); *see also* 18 U.S.C. § 2334(a), (d).

Simultaneously, an equally important purpose of the ATA was to deter international terrorism by cutting off its funding streams by exposing financial institutions to damages caused by their material support for terrorist organizations. *See* S. Rep. 102-342, at 22 ("[T]he imposition of liability at any point along the causal chain of terrorism, [] would interrupt, or at least imperil, the flow of money."); *Linde*, 882 F.3d at 320 ("Congress enacted JASTA, which expands ATA civil liability") (emphasis added). Indeed, "the Government's interest in combating terrorism," as the U.S. Supreme Court has recognized, "is an urgent objective of the highest order." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010); *see Hassoun v. Searls*, 968 F.3d 190, 200 (2d Cir. 2020) (emphasizing the important interest of combatting terrorism).

Thus, not only is the ATA intended to combat the perpetrators of the acts of terror themselves, but also to prevent financial institutions and other entities from

financing terror. *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 690 (7th Cir. 2008) ("Damages are a less effective remedy against terrorists and their organizations than against their financial angels."). As this Court noted "'[g]iving money to [terrorist organizations]'" is akin to "'giving a loaded gun to a child[]'" since although "neither transfer is a violent act, both are acts 'dangerous to human life.'" *Linde v. Arab Bank, PLC*, 882 F.3d 314, 327 (2d Cir. 2018) (quoting *Boim*, 549 F.3d at 690) (first bracket in original).

Accordingly, one of the ATA's most potent tools is the civil litigant's authority to hold accountable foreign financial institutions that provide material support to terrorist organizations—particularly when those institutions provide terrorist organizations with U.S. dollars to finance their activities. *See Weiss*, 768 F.3d at 208 (citing *Humanitarian Law Project*, 561 U.S. at 31); *see also Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33, 43–44 (E.D.N.Y. 2019) (emphasizing that Arab Bank "chose to operate a branch in New York and *benefit from New York's legal and economic* infrastructure" (emphasis added)). In fact, it is no secret that the U.S. dollar (and the American financial system more broadly) is the funding vehicle of choice for terrorist organizations and their supporters. *See* Michael Fabrizio, *Joseph Jesner, et al. v. Arab Bank, PLC. 138 S. Ct. 1386 (2018)*, 32 N.Y. Int'l L. Rev. 43, 44 (2019) ("The U.S. dollar . . . is the preferred currency for accomplishing

[terrorist financing] transfers into the West Bank and Gaza." (quotation marks omitted) (ellipsis in original)).

B. JASTA and the ATCA Confirmed that Congress Intends U.S. Courts to have Personal Jurisdiction Over Foreign Banks that Materially Support Terrorist Organizations with U.S. Dollar-Denominated Transactions.

When Congress amended the ATA as part of JASTA, it confirmed the reach of U.S. court's personal jurisdiction under the ATA. The amendment made clear that Congress intended to give United States courts jurisdiction over not just the terrorist acts and those who engage in primary violations relating to those acts, but also over anyone who "aids and abets," provides "substantial assistance" to, or "conspires with" those who carry out acts of "international terrorism." 18 U.S.C. § 2333(d)(2).

JASTA's Findings and Purpose demonstrate that Congress intend United States courts to have personal jurisdiction over foreign financial institutions — like PIB — that help terrorist organizations "raise significant funds outside the United States" and "contribute material support or resources" to foreign terrorist organizations. JASTA § 2(a)(4). To remove doubt, Congress even addressed fundamental elements of the personal jurisdiction analysis. If found that financial institutions providing material support for terrorist activities were "necessarily direct[ing] their conduct at the United States" and "should reasonably anticipate being brought into court in the United States"— regardless where they were "acting

and wherever they may be found." *Id.* at § 2(a)(6), 2(b). In light of such considerations, Congress intended U.S. courts to have personal jurisdiction over foreign financial institutions like PIB that intentionally used the United States banking system and its currency to fund a terrorist organization that killed United States citizens—the fact that it did so through an intermediary should not change the jurisdictional analysis.

The 2018 Anti-Terrorism Clarification Act, Pub. Law 115-254, Sec. 4, 123 Stat. 3183 ("ATCA"), is further evidence that Congress intends United States courts to have personal jurisdiction over terrorist organizations, and those that provide material support to them, consistent with the United States Constitution. Section 4 of the ATCA specified that defendants were "deemed to have consented to personal jurisdiction" in ATA actions if they were receiving various types of financial assistance from the United States. ATCA § 4(e). More recently, Congress explicitly targeted the Palestine Liberation Organization's and Palestinian Authority's material support for terrorism in the form of "martyr payments," by amending the ATCA to provide that the PLO and the PA "shall be deemed to have consented to personal jurisdiction" in ATA actions so long as they maintained any office, premises or facility in the United States. *See* Promoting Security and Justice for Victims of

Terrorism Act of 2019, Pub. L. No. 116–94, div. J, tit. IX, § 903, 133 Stat. 2534, 3082 (included as part of 2020 Appropriations Acts); 18 U.S.C. § 2334(e).[4]

The history of Congressional anti-terrorism legislation shows a consistent pattern of providing that U.S. courts have personal jurisdiction over not only foreign terrorist organizations that carry out terrorist attacks outside the United States, but also over entities that outside the United States provide material support to terrorist organizations that attack, injure, and kill Americans.

II. The District Court's Decision Unnecessarily Contravenes Congress' Intent to Give U.S. Courts Personal Jurisdiction Over Banks Accessing U.S. Banking Systems to Fund Foreign Terrorist Organizations.

In contrast to the broad jurisdictional paradigm established by Congress, the district court adopted an artificially narrow and overly rigid interpretation of New York's long-arm statute—one that, for the reasons persuasively explained in Appellants' opening brief, is not required by either New York law or federal due process concerns.

Appellants opening brief demonstrates that instead of superficial or formalistic conventions, New York law looks at "the totality of Defendants' contacts

[4] Shortly after enacting the ATCA, Congress also passed the Taylor Force Act, Taylor Force Act, Pub. L. 115-141 Title X, § 1004(a)(1), 132 Stat. 797-98 (Mar. 23, 2018), which prohibits the United States from providing financial assistance to the Palestinian Authority ("PA") and Palestine Liberation Organization ("PLO") if they continue providing economic assistance to terrorists who kill or injure United States citizens.

with the forum state." *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 164 (2d Cir. 2010); *see Walden v. Fiore*, 571 U.S. 277, 283–84 (2014); *see also Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 61 (2d Cir. 2012) ("*Licci II*") (examining § 302(a) in the ATA context). New York law examines the true relationship between the defendants, the defendant's actions, and the State of New York. *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 366 (2d Cir. 1986) ("In determining whether an agency exists under § 302, courts have focused on the realities of the relationship in question rather than the formalities of agency law."); *see Grove Press, Inc. v. Angleton*, 649 F.2d 121, 122 (2d Cir. 1981).

More specifically, this Court has held that § 302(a) encompasses U.S. dollar-denominated transactions by foreign banks whose only nexus to New York is the financial transactions conducted through correspondent accounts. *See Licci IV*, 732 F.3d at 171–72; *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 984 N.E.2d 893 (2012). And, New York law reaches defendants even when they try to shield themselves from personal jurisdiction in New York courts by engaging in New York activities behind an intermediary. *Pittsburgh, PA. v. BP Amoco P.L.C.*, 319 F. Supp. 2d 352 (S.D.N.Y. 2004). Thus, consistent with the scope of personal jurisdiction Congress intends for the ATA, a defendant in New York courts "cannot avoid jurisdiction by doing indirectly—through an intermediary—that which would plainly give rise to jurisdiction if the party did so directly."

These jurisdictional principles are especially important in connection with the provision of banking services to terrorist organizations. "The U.S. dollar . . . is the preferred currency for accomplishing [terrorist financing] transfers into the West Bank and Gaza[,]" Fabrizio, 32 N.Y. Int'l L. Rev. at 44, and foreign banks typically process U.S. dollar transactions through New York where many foreign banks establish correspondent banking relationships, either directly or indirectly through other banks. *See, e.g.*, *Miller*, 372 F. Supp. 3d at 43–44 (discussing defendant's desire to "benefit from New York's legal and economic infrastructure").

Further, New York's banks play a central role in the global banking system. Therefore, New York has a substantial interest in monitoring the financial transactions conducted through its banks. As this Court previously recognized when finding that New York's long-arm statute reached over another foreign bank that was also financing terrorism:

> It is true, moreover, that the injuries and deaths for which compensation is sought occurred in Israel. The claims, which are premised on LCB's use of a correspondent account to support a terrorist organization, however, involve acts by banks in New York. And although not controlling, weighed in the balance is the United States' and New York's interest in monitoring banks and banking activity to ensure that its system is not used as an instrument in support of terrorism, money laundering, or other nefarious ends.

Licci IV, 732 F.3d at 174.

Established principles governing NY C.P.L.R. § 302(a) are, therefore, consistent with, and do not limit, the scope of personal jurisdiction Congress

intended for the ATA. For the reasons appellants explain in their opening brief, New York's long-arm statute permits its courts to exercise personal jurisdiction over foreign banks, like PIB, that do not, themselves, have correspondent accounts at New York banks, but that, nevertheless, repeatedly and purposefully use other, intermediary banks with New York correspondent accounts to provide United States dollar-denominated check clearing and other financial services to terrorist organizations. When terrorist organizations thereafter use those U.S. dollars to attack, injure, and kill United States citizens, the foreign financial institutions providing them with material support may properly be brought into New York courts and be held accountable.

III. The District Court's Decision Creates a Safe Harbor for Terrorist Organizations and the Banks that Provide Material Support to Them.

Unless reversed, the district court's rationale for refusing to exercise personal jurisdiction over PIB creates a safe harbor from ATA liability that Congress not only did not authorize but that directly contradicts Congress' stated intentions and purposes—a safe harbor that is, furthermore, not required by New York long-arm jurisprudence. In addition to a safe harbor, the district court's decision rolls out a proverbial "welcome mat" for terrorist organizations and the financial institutions that fund them. It opens the door for foreign banks to repeatedly, purposefully, and with impunity access New York's banking system to provide terrorist organizations

with highly coveted U.S. dollars that can then be used throughout the world to fund terrorist attacks that injure and kill American citizens.

The import of the district court's decision has not overlooked by terrorist organizations and the financial institutions that help fund them. They recognize the opportunity the district court's decision has created and intend to take full advantage of it. Within days, the Lebanese press extolled the decision, exclaimed that it was "precedent-setting," and said the decision:

> [M]ade clear that a non-US bank, such as a Lebanese bank, cannot be subject to US jurisdiction based on dollar-denominated transactions with its correspondent banks outside the United States, even if those non-US correspondent banks then route the transactions through the United States.

Landmark' US court ruling gives Lebanese banks hope, Daily Star (Oct. 20, 2020 1:21 PM), https://www.dailystar.com.lb/Business/Local/2020/Oct-20/513290-landmark-us-court-ruling-gives-lebanese-banks-hope.ashx. The press then highlighted the logical consequence created by the district court's safe harbor: banks that fund terrorist organizations now have "the opportunity to protect themselves against costly US lawsuits by structuring their correspondent relationships to avoid US jurisdiction." *Id*.

That logical consequence has the potential to neutralize Congress' expressly stated purposes for the enacting the ATA. If upheld, the district court's decision means the ATA will no longer affect the decisions of foreign banks that must

consider the consequences of providing banking services to terrorist organizations. If upheld, Congress will have lost an important tool for interdicting the flow of money that terrorists organizations use to attack, injure, and kill American citizens. If upheld, the district court's decision means that U.S. dollars acquired through transactions that were conducted in New York's banking system will once again freely fund terrorist attacks against Americans. If upheld, terrorist organizations, from now on, need only use a non-U.S. bank that does not, itself, have a New York correspondent account.

This Court must, therefore, reverse the district court's decision so that foreign financial institutions that support terrorist organizations will not have a safe harbor shielding them from personal jurisdiction. The United States, and the State of New York, have significant interests in preventing that from happening.

The consequences of the district court's safe harbor will be devastating. There are currently large numbers of Jewish-American citizens residing in Israel, a country that lives with the threat of daily terrorist attacks. American citizens—such as appellants and many from the communities whose interests' *amici* represent—stand to bare the heavy burden created by the district court's decision. *See Boim*, 549 F.3d at 693–94,

While *amici* are principally concerned with the likely instances of future attacks against Americans in Israel, the ripple effects of the lower court's decision

will not end there. American citizens are targets for acts of terrorism wherever in the world they might be located. From a U.S. Marine barracks in Lebanon, to the U.S. Embassy in East Africa, to a community center in Buenos Aires—terrorist organizations attack in all corners of the world. And, terrorists in all corners of the world require access to banks that provide services that make available sufficient funds to carry out their terrorist attacks.

The very purposes of the ATA, as clarified by amendments included in JASTA, are to both give American citizens who are victims of terrorist attacks "the broadest possible basis, consistent with the Constitution of the United States, to seek relief" and to interfere with the flow of money financing terrorism. JASTA § 2(b). To do that, the ATA gave plaintiffs a claim for relief under federal law and gave U.S. courts personal jurisdiction over those who carry out terrorist attacks against American citizens and over those who provide material support for such attacks.

Congress clearly intended to impose liability for extraterritorial terrorist acts and for extraterritorial material support. Equally clearly, Congress also intended U.S courts to exercise personal jurisdiction over any entity that provided material support for terrorist organizations attacking American citizens. It does not matter whether the support was "direct or indirect" and the courts' personal jurisdiction reaches to any individual or entity "wherever acting and wherever they may be found" consistent with the United States Constitution. JASTA, § 2(b). The district court's

decision does the opposite. It improperly creates a safe harbor for foreign banks that take advantage of U.S. dollars transactions in the New York banking system to provide the material support for which they are liable under the ATA.

Because the district court's exercise of jurisdiction would be consistent with the Constitution of the United States and the New York long-arm statute, this Court should reverse the District Court's decision.

CONCLUSION

For the foregoing reasons, the undersigned *amici* ask that this Court reverse the decision of the United States District Court for the Eastern District of New York.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Local Rule 32.1(a)(4)(A) because this brief contains 5111 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, Times New Roman 14-point.

Dated: March 8, 2021

By: /s/ Douglass A. Mitchell
Douglass A. Mitchell

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2021, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 8, 2021 By: /s/ Douglass A. Mitchell
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