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# INTRODUCTORY NOTE TO WALDMAN V. PALESTINE LIBERATION ORGANIZATION (U.S. CT. APP. SECOND CIRCUIT)

BY WILLIAM SLOMANSON*

[August 31, 2016]

## Introduction

The 2000–2005 al Aqsa Intifada spawned a horrific wave of violence in and near Jerusalem. Numerous individuals and entities were sued in U.S. courts, by both foreign and American victims, relying on a variety of liability theories and statutes.[1] The seminal Anti-Terrorism Act (ATA) case was filed in 2007 in the U.S. District Court for the Southern District of New York as *Sokolow v. Palestine Liberation Organization*. It also named the Palestinian Authority (PA) and individuals including Yasser Arafat.

There were multiple pre-trial (and in-trial) motions and published opinions preceding trial.[2] In a pivotal decision, the district court denied the defendants' renewed motion to dismiss for lack of personal jurisdiction.[3]

The case went to trial, resulting in a jury verdict of $218,500,000. That amount was trebled to $655,500,000, implementing the congressional policy underpinning ATA liability. The Palestine Liberation Organization (PLO) and PA were the key appellants (after Arafat's death in 2004). The jury's verdict was negated by the Second Circuit's 2016 due process determination that the trial court had lacked personal jurisdiction over the defendants. The Second Circuit thus vacated the more than half-billion-dollar trial court judgment.[4] In 2018 the U.S. Supreme Court denied certiorari,[5] driving the final nail into the case coffin.

## Analysis

The Second Circuit opinion initially addressed three threshold issues. First, it noted that the defendants had not waived their objections to personal jurisdiction. They "repeatedly argued . . . [lack of] personal jurisdiction . . . [premised on] their minimal presence in, and the lack of any nexus between the facts underlying the plaintiffs' claims and the United States."[6]

Second, the court found that, contrary to the plaintiffs' assertion, the defendant entities were entitled to due process rights. Although foreign sovereign states do not possess such rights (despite being entitled to sovereign immunity), the United States does not recognize either the PA or the PLO as being a sovereign governmental entity. Nor did it recognize any country as having sovereignty over Jerusalem at the time of the shootings and bombings at issue in this litigation.[7] Thus, "because neither defendant is a state [but instead both are unincorporated associations], the defendants [*do*] have due process rights."[8]

Third, the plaintiffs and amici curiae Former Federal Officials unsuccessfully argued that the comparatively restrictive state-centric Fourteenth Amendment due process standard could not be incorporated into the Fifth Amendment's more lenient restrictions (focusing on foreign defendant contacts with the United States, rather than with a particular state). While the Supreme Court "has consistently reserved the question," the Second Circuit has consistently held that the "analysis . . . is basically the same under both the Fifth and Fourteenth Amendments."[9]

The Second Circuit then tackled its primary task: the constitutional due process issue. The PA and PLO asserted that their contacts with the United States were minimal, especially compared to their contacts elsewhere. But the trial judge had instead determined that:

> [Their] continuous and systematic business and commercial contacts within the United States are sufficient to support the exercise of general jurisdiction . . . [Those ties do] not lead to the conclusion that . . . [they are] "at home" in any one of those [other] countries. . . . [The] record is therefore insufficient to conclude that either defendant is "at home" in a particular jurisdiction *other than* the United States.[10]

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The Second Circuit's jurisdictional calculation found otherwise. The panel focused on the same intervening Supreme Court cases the defendants had relied on in their unsuccessful renewed motion to dismiss. The Supreme Court's 2014 *Daimler* decision—in the Argentina "Dirty War" case[11]—focused on general (all-purpose) jurisdiction. There, the German corporate parent could not be shoehorned into the familiar place of incorporation or principal place of business bases for general jurisdiction. Premised on then-recent precedent, *Daimler* articulated the proper inquiry as being "not whether . . . [its] in-forum contacts can be said to be in some sense 'continuous and systematic,' [but instead] . . . whether that corporation's [ ]affiliations with the State are so 'continuous and systematic' as to render [it] essentially *at home* in the forum State."[12]

The Second Circuit noted the intervening District of Columbia decisions holding that the PA and PLO contacts with the district did *not* yield general personal jurisdiction. The key observation of the trial court in those cases was that "the single ascertainable place where a government such as the Palestinian Authority should be amenable to suit for all purposes is the place where it governs. Here, that place is the West Bank, not the United States."[13] Following this reasoning, the Second Circuit held that the trial court lacked general personal jurisdiction over the defendants.

The remaining question on appeal was the possibility of *specific* personal jurisdiction,[14] a stone unturned by the district court. As heinous as the jury-determined acts of shooting and bombings were, the circuit court found that they "were not sufficiently connected to the United States to provide specific personal jurisdiction. . . . There is no basis to conclude that the defendants participated in these acts in the United States or that their liability for these acts resulted from their actions that did occur in the United States."[15]

## Conclusion

The *Sokolow-Waldman* jury finding on the merits—that the PA and PLO knowingly provided material support to various foreign terrorist organizations including the Al Aqsa Martyr Brigades and Hamas—was unquestioned. The victims, their families, a learned trial judge, and former jury members were all presumably disappointed by the Supreme Court's one-sentence certiorari denial. This denial effectively acquiesced in the Second Circuit's negation of the jury verdict, affirming a jurisdictional decision totally sequestered from the merits. But *Sokolow-Waldman* displayed excellent craftsmanship and a state-of-the-art analysis of U.S. constitutional due process.

Yet a court should *not* totally sequester responsibility for the type of vicious acts for which "the defendants were [found] liable[,] . . . affect[ing] United States citizens . . . [who] were victims of indiscriminate violence that occurred abroad."[16] Those aging atrocities will not be revisited by a foreign or international tribunal,[17] notwithstanding the theoretically applicable jurisdictional premises of international law.

The underlying ATA statute sounds in terms of the established universal ("international terrorism") and passive personality ("national of the United States injured") principles of international criminal jurisdiction.[18] But as *Sokolow-Waldman* reaffirms, U.S. domestic law functions under a stringent application of the territorial principle, instead focusing on the defendants' connection to the forum to determine jurisdiction. Thus, this treatment of "heinous" international terrorism in U.S. courts will certainly not be the last of its type.

## ENDNOTES

1 The *Sokolow* plaintiffs sued under the 1992 federal Anti-Terrorism Act (ATA), 18 U.S.C. §2333(a): "Any national of the United States injured . . . by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor. . . ." Similar suits have been filed under the 1789 Alien Tort Statute (ATS), 28 U.S.C. §1350: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

2 A rich array of substantive and procedural issues was untouched by the Second Circuit's personal jurisdiction opinion. However, the trial court's 2014 summary judgment opinion fills that void. *See* Sokolow v. PLO, 60 F.Supp.3d 509 (2014).

3 Sokolow v. PLO, 2014 WL 6811395 (S.D.N.Y. 2014) (renewed after intervening U.S. Supreme Court decisions) [hereinafter Sokolow Trial Court Decision]. (For the ensuing judgment and verdict, see 2015 WL 10852003.)

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4 *See* Waldman v. PLO, 835 F.3d 317 (2d Cir. 2016) [hereinafter Sokolow-Waldman Appeal].

5 *Id.*, cert. denied, 2018 WL 1568032 (2018).

6 Sokolow-Waldman Appeal, *supra* note 4, at 322.

7 Zitovsky v. Kerry, 135 S.Ct. 2076, 2094 (2015).

8 Sokolow-Waldman Appeal, *supra* note 4, at 329.

9 Brief of the U.S. as Amicus Curiae, 2013 WL 3377321 at *3 n.1, DaimlerAG v. Bauman, 571 U.S. 117 (2013) [hereinafter Daimler] (Supreme Court). *See* Sokolow-Waldman Appeal at 330, citing circuit precedent (Second Circuit).

10 Sokolow Trial Court Decision, *supra* note 3, at *2 (emphasis added, and referring to contacts including an embassy, consulates, and lobbying firm, as well as the UN presence in the United States).

11 *Daimler* arose under the Alien Tort Statute, *supra* note 1, and its related Torture Victims Protection Act. Plaintiffs alleged that Daimler's wholly owned Argentinian subsidiary collaborated with state security forces to kidnap, detain, torture, and kill the plaintiffs and their relatives. *Sokolow-Waldman* arose under the Anti-Terrorism Act, *supra* note 1.

12 Daimler, *supra* note 9, at 139, citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) (emphasis added) [hereinafter Goodyear]. The Second Circuit had already so ruled in 2014—as to foreign *corporations*. Gucci America, Inc. v. Weixing Li, 768 F.3d 122, 135 (2d Cir. 2014).

13 PA: Livnat v. Palestinian Authority, 82 F.Supp.3d 19, 30 (D.D.C. 2015) (citing *Daimler*). PLO (as well): Klieman v. Palestinian Authority, 82 F.Supp.3d 237, 245–246 (D.D.C. 2015).

14 Procedural case law differentiates between *general* all-purpose jurisdiction and *specific* forum-linked jurisdiction; e.g., "A court may assert general jurisdiction . . . to hear any and all claims against [defendants] . . . when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State. . . . In contrast . . . specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction [in the particular forum].'" Goodyear, *supra* note 12, at 919.

15 Sokolow-Waldman Appeal, *supra* note 4, at 337.

16 *Id*.

17 For example, the United States is not a party to, nor does it support, the International Criminal Court. The "Government of Palestine" has accepted the Court's jurisdiction, but only for crimes occurring after mid-2014.

18 Parenthetical quotes: *see* ATA, *supra* note 1. *See generally* AISLING O'SULLIVAN, UNIVERSAL JURISDICTION IN INTERNATIONAL CRIMINAL LAW: THE DEBATE AND THE BATTLE FOR HEGEMONY (2017) (Universal Principle); Geoffrey R. Watson, *The Passive Personality Principle*, 28 TEX. INT'L L. J. 1 (1993) (Passive Personality Principle).

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# WALDMAN V. PALESTINE LIBERATION ORGANIZATION
(U.S. CT. APP. SECOND CIRCUIT)*
[August 31, 2016]

15-3135(L)
Sokolow v. Palestine Liberation Organization

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2015

Argued: April 12, 2016 Decided: August 31, 2016

Docket Nos. 15-3135-cv(L); 15-3151-cv(XAP)

EVA WALDMAN, REVITAL BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER AND YEHUDA BAUER, 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, NORMAN GRITZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID GRITZ, MARK I. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAMIE A. SOKOLOW, RENA M. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAIME A. SOKOLOW, JAMIE A. SOKOLOW, MINOR, BY HER NEXT FRIENDS AND GUARDIAN 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, ALAN J. BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER AND YEHUDA BAUER, YEHONATHON BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, BINYAMIN BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, DANIEL BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, YEHUDA BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, RABBI LEONARD MANDELKORN, KATHERINE BAKER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, REBEKAH BLUTSTEIN, RICHARD BLUTSTEIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, LARRY CARTER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DIANE ("DINA") CARTER, SHAUN COFFEL, DIANNE COULTER MILLER, ROBERT L COULTER, JR., ROBERT L. COULTER, SR., INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JANIS RUTH COULTER, CHANA BRACHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, ELIEZER SIMCHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, ESTHER ZAHAVA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, KAREN GOLDBERG, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STUART SCOTT GOLDBERG/NATURAL GUARDIAN OF PLAINTIFFS CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG, TZVI YEHOSHUA GOLDBERG, SHOSHANA MALKA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, TZVI YEHOSHUA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, YAAKOV MOSHE GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, YITZHAK SHALOM GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, NEVENKA GRITZ, SOLE HEIR OF NORMAN GRITZ, DECEASED,

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*Plaintiffs - Appellees - Cross-Appellants*,

—v.—

PALESTINE LIBERATION ORGANIZATION, PALESTINIAN AUTHORITY, AKA PALESTINIAN INTERIM SELF-GOVERNMENT AUTHORITY AND OR PALESTINIAN COUNCIL AND OR PALESTINIAN NATIONAL AUTHORITY,

*Defendants - Appellants - Cross-Appellees*,

YASSER ARAFAT, MARWIN BIN KHATIB BARGHOUTI, AHMED TALEB MUSTAPHA BARGHOUTI, AKA AL-FARANSI, NASSER MAHMOUD AHMED AWEIS, MAJID AL-MASRI, AKA ABU MOJAHED, MAHMOUD AL-TITI, MOHAMMED ABDEL RAHMAN SALAM MASALAH, AKA ABU SATKHAH, FARAS SADAK MOHAMMED GHANEM, AKA HITAWI, MOHAMMED SAMI IBRAHIM ABDULLAH, ESTATE OF SAID RAMADAN, DECEASED, ABDEL KARIM RATAB YUNIS AWEIS, NASSER JAMAL MOUSA SHAWISH, TOUFIK TIRAWI, HUSSEIN AL-SHAYKH, SANA'A MUHAMMED SHEHADEH, KAIRA SAID ALI SADI, ESTATE OF MOHAMMED HASHAIKA, DECEASED, MUNZAR MAHMOUD KHALIL NOOR, ESTATE OF WAFA IDRIS, DECEASED, ESTATE OF MAZAN FARITACH, DECEASED, ESTATE OF MUHANAD ABU HALAWA, DECEASED, JOHN DOES, 1–99, HASSAN ABDEL RAHMAN,

*Defendants*.

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Before: LEVAL AND DRONEY, Circuit Judges, and KOELTL, District Judge.*

The defendants-appellants-cross-appellees ("defendants") appeal from a judgment of the United States District Court for the Southern District of New York (Daniels, *J.*) in favor of the plaintiffs-appellees-cross-appellants ("plaintiffs"). A jury found the defendants—the Palestine Liberation Organization and the Palestinian Authority—liable under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in Israel that killed or wounded United States citizens. The jury awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million. The defendants appeal, arguing that the district court lacked general and specific personal jurisdiction over the defendants, and, in the alternative, seek a new trial because the district court abused its discretion by allowing certain testimony by two expert witnesses. The plaintiffs cross-appeal, asking this Court to reinstate claims the district court dismissed.

We vacate the judgment of the district court and remand the case with instructions to dismiss the action because the federal courts lack personal jurisdiction over the defendants with respect to the claims in this action. We do not reach the remaining issues.

KENT A. YALOWITZ, Arnold & Porter, LLP, for Plaintiffs-Appellees-Cross-Appellants.

GASSAN A. BALOUL (Mitchell R. Berger, Pierre H. Bergeron, John A. Burlingame, Alexandra E. Chopin, on the brief), Squire Patton Boggs (US), LLP, for Defendants-Appellants-Cross-Appellees.

David A. Reiser, Zuckerman Spaeder, LLP, and Peter Raven-Hansen, George Washington University Law School, on the brief for Amici Curiae Former Federal Officials in Support of Plaintiffs-Appellees-Cross-Appellants.

James P. Bonner, Stone, Bonner & Rocco, LLP, and Steven R. Perles, Perles Law Firm, on the brief for Amici Curiae Arthur Barry Sotloff, Shirley Goldie Pulwer, Lauren Sotloff, and the Estate of Steven Joel Sotloff in Support of Plaintiffs-Appellees-Cross-Appellants.

John G. Koeltl, District Judge:

In this case, eleven American families sued the Palestine Liberation Organization ("PLO") and the Palestinian Authority ("PA") (collectively, "defendants")[1] under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in Israel that killed or wounded the plaintiffs-appellees-cross-appellants ("plaintiffs") or their family members.[2]

The defendants repeatedly argued before the District Court for the Southern District of New York that the court lacked personal jurisdiction over them in light of their minimal presence in, and the lack of any nexus between the facts underlying the plaintiffs' claims and the United States. The district court (Daniels, *J.*) concluded that it had general personal jurisdiction over the defendants, even after the Supreme Court narrowed the test for general jurisdiction in Daimler AG v. Bauman, 134 S. Ct. 746 (2014). See Sokolow v. Palestine Liberation Org., No. 04-cv-397 (GBD), 2014 WL 6811395, at *2 (S.D.N.Y. Dec. 1, 2014); see also Sokolow v. Palestine Liberation Org., No. 04-cv-397 (GBD), 2011 WL 1345086, at *7 (S.D.N.Y. Mar. 30, 2011).

After a seven-week trial, a jury found that the defendants, acting through their employees, perpetrated the attacks and that the defendants knowingly provided material support to organizations designated by the United States State Department as foreign terrorist organizations. The jury awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million.

* The Honorable John G. Koeltl, of the United States District Court for the Southern District of New York, sitting by designation.

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On appeal, the defendants seek to overturn the jury's verdict by arguing that the United States Constitution precludes the exercise of personal jurisdiction over them. In the alternative, the defendants seek a new trial, arguing that the district court abused its discretion by allowing certain testimony by two expert witnesses. The plaintiffs cross-appeal, asking this Court to reinstate non-federal claims that the district court dismissed, and reinstate the claims of two plaintiffs for which the district court found insufficient evidence to submit to the jury.

We conclude that the district court erred when it concluded it had personal jurisdiction over the defendants with respect to the claims at issue in this action. Therefore, we VACATE the judgment of the district court and REMAND the case to the district court with instructions to DISMISS the case for want of personal jurisdiction. Accordingly, we do not consider the defendants' other arguments on appeal or the plaintiffs' cross-appeal, all of which are now moot.

## I.

### A.

The PA was established by the 1993 Oslo Accords as the interim and non-sovereign government of parts of the West Bank and the Gaza Strip (collectively referred to here as "Palestine"). The PA is headquartered in the city of Ramallah in the West Bank, where the Palestinian President and the PA's ministers reside.

The PLO was founded in 1964. At all relevant times, the PLO was headquartered in Ramallah, the Gaza Strip, and Amman, Jordan. Because the Oslo Accords limit the PA's authority to Palestine, the PLO conducts Palestine's foreign affairs.

During the relevant time period for this action, the PLO maintained over 75 embassies, missions, and delegations around the world. The PLO is registered with the United States Government as a foreign agent. The PLO has two diplomatic offices in the United States: a mission to the United States in Washington, D.C. and a mission to the United Nations in New York City. The Washington, D.C. mission had fourteen employees between 2002 and 2004, including two employees of the PA, although not all at the same time.[3] The Washington, D.C. and New York missions engaged in diplomatic activities during the relevant period. The Washington, D.C. mission "had a substantial commercial presence in the United States." Sokolow, 2011 WL 1345086, at *4. It used dozens of telephone numbers, purchased office supplies, paid for certain living expenses for Hassan Abdel Rahman, the chief PLO and PA representative in the United States, and engaged in other transactions. Id. The PLO also retained a consulting and lobbying firm through a multi-year, multi-million-dollar contract for services from about 1999 to 2004. Id. The Washington, D.C. mission also promoted the Palestinian cause in speeches and media appearances. Id.

Courts have repeatedly held that neither the PA nor the PLO is a "state" under United States or international law. See Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47–48 (2d Cir. 1991) (holding the PLO, which had no defined territory or permanent population and did not have capacity to enter into genuine formal relations with other nations, was not a "state" for purposes of the Foreign Sovereign Immunities Act); Estates of Ungar v. Palestinian Auth., 315 F. Supp. 2d 164, 178–86 (D.R.I. 2004) (holding that neither the PA nor the PLO is a state entitled to sovereign immunity under the Foreign Sovereign Immunities Act because neither entity has a defined territory with a permanent population controlled by a government that has the capacity to enter into foreign relations); see also Knox v. Palestine Liberation Org., 306 F. Supp. 2d 424, 431 (S.D.N.Y. 2004) (holding that neither the PLO nor the PA was a "state" for purposes of the Foreign Sovereign Immunities Act).

While the United States does not recognize Palestine or the PA as a sovereign government, see Sokolow v. Palestine Liberation Org., 583 F. Supp. 2d 451, 457–58 (S.D.N.Y. 2008) ("Palestine, whose statehood is not recognized by the United States, does not meet the definition of a 'state,' under United States and international law . . . .") (collecting cases), the PA is the governing authority in Palestine and employs tens of thousands of security personnel in Palestine. According to the PA's Minister of Finance, the "PA funds conventional government services, including developing infrastructure; public safety and the judicial system; health care; public schools and education; foreign affairs; economic development initiatives in agriculture, energy, public works, and public housing; the payment of more than

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155,000 government employee salaries and related pension funds; transportation; and, communications and information technology services."

**B.**

The plaintiffs sued the defendants in 2004, alleging violations of the ATA for seven terror attacks committed during a wave of violence known as "the al Aqsa Intifada," by nonparties who the plaintiffs alleged were affiliated with the defendants. The jury found the plaintiffs liable for six of the attacks.[4] At trial, the plaintiffs presented evidence of the following attacks.

### i. January 22, 2002: Jaffa Road Shooting

On January 22, 2002, a PA police officer opened fire on a pedestrian mall in Jerusalem. He shot "indiscriminately at the people who were on Jaffa Street," at a nearby bus stop and aboard a bus that was at the stop, and at people in the stores nearby "with the aim of causing the death of as many people as possible." The shooter killed two individuals and wounded forty-five others before he was killed by police. The attack was carried out, according to trial evidence, by six members of the PA police force who planned the shooting. Two of the plaintiffs were injured.

### ii. January 27, 2002: Jaffa Road Bombing

On January 27, 2002, a PA intelligence informant named Wafa Idris detonated a suicide bomb on Jaffa Road in Jerusalem, killing herself and an Israeli man and seriously wounding four of the plaintiffs, including two children. Evidence presented at trial showed that the bombing was planned by a PA intelligence officer who encouraged the assailant to conduct the suicide bombing, even after the assailant had doubts about doing so.

### iii. March 21, 2002: King George Street Bombing

On March 21, 2002, Mohammed Hashaika, a former PA police officer, detonated a suicide bomb on King George Street in Jerusalem. Hashaika's co-conspirators chose the location because it was "full of people during the afternoon." Hashaika set-off the explosion while in a crowd "with the aim of causing the deaths of as many civilians as possible." Two plaintiffs were grievously wounded, including a seven-year-old American boy. Evidence presented at trial showed that a PA intelligence officer named Abdel Karim Aweis orchestrated the attack.

### iv. June 19, 2002: French Hill Bombing

On June 19, 2002, a seventeen-year-old Palestinian man named Sa'id Awada detonated a suicide bomb at a bus stop in the French Hill neighborhood of Jerusalem. Awada was a member of a militant faction of the PLO's Fatah party called the Al Aqsa Martyr Brigades ("AAMB"), which the United States Department of State had designated as a "foreign terrorist organization" ("FTO"). The bombing killed several people and wounded dozens, including an eighteen-year-old plaintiff who was stepping off a bus when the bomb exploded.

### v. July 31, 2002: Hebrew University Bombing

On July 31, 2002, military operatives of Hamas—a United States-designated FTO—detonated a bomb hidden in a black cloth bag that was packed with hardware nuts in a café at Hebrew University in Jerusalem. The explosion killed nine, including four United States citizens, whose estates bring suit here.

### vi. January 29, 2004: Bus No. 19 Bombing

On January 29, 2004, in an AAMB attack, a PA police officer named Ali Al-Ja'ara detonated a suicide vest on a crowded bus, Bus No. 19 traveling from Malha Mall toward Paris Square in central Jerusalem. The suicide bombing killed eleven people, including one of the plaintiffs. The bomber's aim, according to evidence submitted at trial, was to "caus[e] the deaths of a large number of individuals."

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## C.

In 2004, the plaintiffs filed suit in the Southern District of New York. The defendants first moved to dismiss the claims for lack of personal jurisdiction in July 2007. The district court denied the motion, subject to renewal after jurisdictional discovery. After the close of jurisdictional discovery, the district court denied the defendants' renewed motion, holding that the court had general personal jurisdiction over the defendants. See Sokolow, 2011 WL 1345086, at *7.

The district court concluded, as an initial matter, that the service of process was properly effected by serving the Chief Representative of the PLO and the PA, Hassan Abdel Rahman, at his home in Virginia, pursuant to Federal Rule of Civil Procedure 4(h)(1)(B) (providing that a foreign association "must be served[ ] . . . in a judicial district of the United States . . . by delivering a copy of the summons and of the complaint to an officer, a managing or general agent . . . ."); see also 18 U.S.C. § 2334(a) (providing for nationwide service of process and venue under the ATA); Sokolow, 2011 WL 1345086, at *2.

The district court then engaged in a two-part analysis to determine whether the exercise of personal jurisdiction comported with the due process protections of the United States Constitution. First, it determined whether the defendants had sufficient minimum contacts with the forum such that the maintenance of the action did not offend traditional notions of fair play and substantial justice. Sokolow, 2011 WL 1345086, at *2 (citing Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 396 (2d Cir. 2009)).

The district court distinguished between specific and general personal jurisdiction—specific jurisdiction applies where the defendants' contacts are related to the litigation and general jurisdiction applies where the defendants' contacts are so substantial that the defendants could be sued on all claims, even those unrelated to contacts with the forum—and found that the district court had general jurisdiction over the defendants. Id. at *3. The court considered what it deemed the defendants' "substantial commercial presence in the United States," in particular "a fully and continuously functional office in Washington, D.C.," bank accounts and commercial contracts, and "a substantial promotional presence in the United States, with the D.C. office having been permanently dedicated to promoting the interests of the PLO and the PA." Id. at *4.

The district court concluded that activities involving the defendants' New York office were exempt from jurisdictional analysis under an exception for United Nations' related activity articulated in Klinghoffer, 937 F.2d at 51–52 (UN participation not properly considered basis for jurisdiction); see Sokolow, 2011 WL 1345086, at *5. The district court held that the activities involving the Washington, D.C. mission were not exempt from analysis and provided "a sufficient basis to exercise general jurisdiction over the Defendants." Id. at *6 ("The PLO and the PA were continuously and systematically present in the United States by virtue of their extensive public relations activities.").

Next, the district court considered "'whether the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice"—that is, whether it is reasonable under the circumstances of the particular case.'" Id. (quoting Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 568 (2d Cir. 1996)). The court found that the exercise of jurisdiction did not offend "traditional notions of fair play and substantial justice," pursuant to the standard articulated by International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), and its progeny. See Sokolow, 2011 WL 1345086, at *6–7. The district court concluded that "[t]here is a strong inherent interest of the United States and Plaintiffs in litigating ATA claims in the United States," and that the defendants "failed to identify an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy." Id. at *7.

In January 2014, after the Supreme Court had significantly narrowed the general personal jurisdiction test in Daimler, 134 S. Ct. 746, the defendants moved for reconsideration of the denial of their motion to dismiss.

On April 11, 2014, the district court denied the defendants' motions for reconsideration, ruling that Daimler did not compel dismissal. The district court also denied the defendants' motions to certify the jurisdictional issue for an interlocutory appeal. See Sokolow, 2014 WL 6811395, at *1. The defendants renewed their jurisdictional argument in their motions for summary judgment, arguing that this Court's decision in Gucci America, Inc. v. Weixing Li, 768 F.3d 122 (2d Cir. 2014), altered the controlling precedent in this Circuit, requiring dismissal of the case. See

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Sokolow, 2014 WL 6811395, at *1. The district court concluded that it still had general personal jurisdiction over the defendants, describing the action as presenting "'an exceptional case,'" id. at *2, of the kind discussed in Daimler, 134 S. Ct. at 761 n.19, and Gucci, 768 F.3d at 135.

The district court held that "[u]nder both Daimler and Gucci, the PA and PLO's continuous and systematic business and commercial contacts within the United States are sufficient to support the exercise of general jurisdiction," and that the record before the court was "insufficient to conclude that either defendant is 'at home' in a particular jurisdiction other than the United States." Sokolow, 2014 WL 6811395, at *2.

Following the summary judgment ruling, the defendants sought *mandamus* on the personal jurisdiction issue. This Court denied the defendants' petition. See In re Palestine Liberation Org., Palestinian Authority, No. 14-4449 (2d Cir. Jan. 6, 2015) (summary order).

The case proceeded to trial in January 2015. During the trial, the defendants introduced evidence about the PA's and PLO's home in Palestine. The trial evidence showed that the terrorist attacks occurred in the vicinity of Jerusalem. The plaintiffs did not allege or submit evidence that the plaintiffs were targeted in any of the six attacks at issue because of their United States citizenship or that the defendants engaged in conduct in the United States related to the attacks.

At the conclusion of plaintiffs' case in chief, the defendants moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a), arguing, among other grounds, that the district court lacked personal jurisdiction over the defendants. The Court denied the motion. The defendants renewed that motion at the close of all the evidence and again asserted that the court lacked personal jurisdiction.

During and immediately after trial, the District Court for the District of Columbia issued three separate decisions dismissing similar suits for lack of personal jurisdiction by similar plaintiffs in cases against the PA and the PLO. See Estate of Klieman v. Palestinian Auth., 82 F. Supp. 3d 237, 245–46 (D.D.C. 2015), *appeal docketed*, No. 15-7034 (D.C. Cir. Apr. 8, 2015); Livnat v. Palestinian Auth., 82 F. Supp. 3d 19, 30 (D.D.C. 2015), *appeal docketed*, No. 15-7024 (D.C. Cir. Mar. 18, 2015); Safra v. Palestinian Auth., 82 F. Supp. 3d 37, 47–48 (D.D.C. 2015), *appeal docketed*, No. 15-7025 (D.C. Cir. Mar. 18, 2015).

In light of these cases, on May 1, 2015, the defendants renewed their motion to dismiss for lack of both general and specific personal jurisdiction. The defendants also moved, in the alternative, for judgment as a matter of law or for a new trial pursuant to Federal Rules of Civil Procedure 50(b) and 59. The district court reviewed the decisions by the District Court for the District of Columbia, but, for the reasons articulated in its 2014 decision and at oral argument, concluded that the district court had general personal jurisdiction over the defendants. The district court did not rule explicitly on whether it had specific personal jurisdiction over the defendants.

The jury found the defendants liable for all six attacks and awarded the plaintiffs damages of $218.5 million, an amount that was trebled automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing the total award to $655.5 million.

The parties engaged in post-trial motion practice not relevant here, the defendants timely appealed, and the plaintiffs cross-appealed.

## II.

### A.

"We review a district court's assertion of personal jurisdiction *de novo*." Dynegy Midstream Servs. v. Trammochem, 451 F.3d 89, 94 (2d Cir. 2006).[5]

To exercise personal jurisdiction lawfully, three requirements must be met. "First, the plaintiff's service of process upon the defendant must have been procedurally proper. Second, there must be a statutory basis for personal jurisdiction that renders such service of process effective. . . . Third, the exercise of personal jurisdiction must comport with constitutional due process principles." Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 59–60 (2d Cir. 2012) (footnotes and internal citations omitted), *certified question accepted sub nom.* Licci v. Lebanese

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Canadian Bank, 967 N.E.2d 697 (N.Y. 2012), *and certified question answered sub nom.* Licci v. Lebanese Canadian Bank, 984 N.E.2d 893 (N.Y. 2012).

Constitutional due process assures that an individual will only be subjected to the jurisdiction of a court where the maintenance of a lawsuit does not offend "traditional notions of fair play and substantial justice." Int'l Shoe, 326 U.S. at 316 (internal quotation marks omitted). Personal jurisdiction is "a matter of individual liberty" because due process protects the individual's right to be subject only to lawful power. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011) (plurality opinion) (quoting Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982)).

The ATA provides that process "may be served in any district where the defendant resides, is found, or has an agent . . . ." 18 U.S.C § 2334(a). The district court found that the plaintiffs properly served the defendants because they served the complaint, pursuant to Federal Rule of Civil Procedure 4(h)(1)(B) (providing that service on an unincorporated association is proper if the complaint is served on a "general agent" of the entity), on Hassan Abdel Rahman, who "based upon the overwhelming competent evidence produced by Plaintiffs, was the Chief Representative of the PLO and the PA in the United States at the time of service." Sokolow, 2011 WL 1345086, at *2.[6]

The defendants have not disputed that service was proper and that there was a statutory basis pursuant to the ATA for that service of process. Therefore, the only question before the Court is whether the third jurisdictional requirement is met—whether jurisdiction over the defendants may be exercised consistent with the Constitution.

**B.**

Before we reach the analysis of constitutional due process, the plaintiffs raise three threshold issues: First, whether the defendants waived their objections to personal jurisdiction; second, whether the defendants have due process rights at all; and third, whether the due process clause of the Fifth Amendment to the Constitution and not the Fourteenth Amendment controls the personal jurisdiction analysis in this case.

First, the plaintiffs argue that the defendants waived their argument that the district court lacked personal jurisdiction over them. The plaintiffs contend that the defendants could have argued that they were not subject to general jurisdiction under the "at home" test before Daimler was decided because the "at home" general jurisdiction test existed after Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915 (2011). This argument is unavailing because this Court in Gucci looked to the test in Daimler as the appropriate test for general jurisdiction over a corporate entity. See Gucci, 768 F.3d at 135–36. The defendants did not waive or forfeit their objection to personal jurisdiction because they repeatedly and consistently objected to personal jurisdiction and invoked Daimler after this Court's decision in Gucci. Furthermore, the district court explicitly noted that the "Defendants' motions asserting lack of personal jurisdiction are *not* denied based on a theory of waiver." Sokolow, 2014 WL 6811395, at *2 n.2 (emphasis added).

Second, the plaintiffs argue that the defendants have no due process rights because the defendants are foreign governments and share many of the attributes typically associated with a sovereign government. Foreign sovereign states do not have due process rights but receive the protection of the Foreign Sovereign Immunities Act. See Frontera Res., 582 F.3d at 396–400. The plaintiffs argue that entities, like the defendants, lack due process rights, because they do not view themselves as part of a sovereign and are treated as a foreign government in other contexts. The plaintiffs do not cite any cases indicating that a non-sovereign entity with governmental attributes lacks due process rights. All the cases cited by the plaintiffs stand for the proposition that *sovereign* governments lack due process rights, and these cases have not been extended beyond the scope of entities that are separate sovereigns, recognized by the United States government as sovereigns, and therefore enjoy foreign sovereign immunity.

While sovereign states are not entitled to due process protection, see id. at 399, neither the PLO nor the PA is recognized by the United States as a sovereign state, and the executive's determination of such a matter is conclusive. See Zivotofsky v. Kerry, 135 S. Ct. 2076, 2088 (2015); see also Ungar, 315 F. Supp. 2d at 177 ("The PA and PLO's argument must fail because Palestine does not satisfy the four criteria for statehood and is not a State under prevailing international legal standards."); Knox, 306 F. Supp. 2d at 431 ("[T]here does not exist a state of Palestine which meets the legal criteria for statehood. . . ."); accord Klinghoffer, 937 F.2d at 47 ("It is quite clear that the PLO

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meets none of those requirements [for a state]."). Because neither defendant is a state, the defendants have due process rights. See O'Neill v. Asat Trust Reg. (In re Terrorist Attacks on Sept. 11, 2001), 714 F.3d 659, 681–82 (2d Cir. 2013) ("O'Neill") (dismissing for lack of personal jurisdiction claims against charities, financial institutions, and other individuals who are alleged to have provided support to Osama Bin Laden and al Qaeda); Livnat, 82 F. Supp. 3d at 26 (due process clause applies to the PA (collecting cases)).

Third, the plaintiffs and *amici curiae* Former Federal Officials argue that the restrictive Fourteenth Amendment due process standards cannot be imported into the Fifth Amendment and that the due process clause of the Fifth Amendment to the Constitution,[7] and not the Fourteenth Amendment,[8] applies to the ATA and controls the analysis in this case. The argument is particularly important in this case because the defendants rely on the standard for personal jurisdiction set out in Daimler and the Daimler Court explained that it was interpreting the due process clause of the Fourteenth Amendment. Daimler, 134 S. Ct. at 751.

The plaintiffs and amici argue that the Fourteenth Amendment due process clause restricts state power but the Fifth Amendment should be applied to the exercise of federal power. Their argument is that the Fourteenth Amendment imposes stricter limits on the personal jurisdiction that courts can exercise because that Amendment, grounded in concepts of federalism, was intended to referee jurisdictional conflicts among the sovereign States. The Fifth Amendment, by contrast, imposes more lenient restrictions because it contemplates disputes with foreign nations, which, unlike States, do not follow reciprocal rules and are not subject to our constitutional system. See, e.g., J. McIntyre Mach., 564 U.S. at 884 (plurality opinion) ("Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State. This is consistent with the premises and unique genius of our Constitution."). To conflate the due process requirements of the Fourteenth and Fifth Amendments, the plaintiffs and *amici* argue, would impose a unilateral constraint on United States courts, even when the political branches conclude that personal jurisdiction over a defendant for extraterritorial conduct is in the national interest.[9]

This Court's precedents clearly establish the congruence of due process analysis under both the Fourteenth and Fifth Amendments. This Court has explained: "[T]he due process analysis [for purposes of the court's *in personam* jurisdiction] is basically the same under both the Fifth and Fourteenth Amendments. The principal difference is that under the Fifth Amendment the court can consider the defendant's contacts throughout the United States, while under the Fourteenth Amendment only the contacts with the forum state may be considered." Chew v. Dietrich, 143 F.3d 24, 28 n.4 (2d Cir. 1998).

Indeed, this Court has already applied Fourteenth Amendment principles to Fifth Amendment civil terrorism cases. for example, in O'Neill, 714 F.3d at 673–74, this Court applied Fourteenth Amendment due process cases to terrorism claims brought pursuant to the ATA in federal court. See In re Terrorist Attacks on Sept. 11, 2001, 538 F.3d 71, 93 (2d Cir. 2008), *abrogated on other grounds by* Samantar v. Yousuf, 560 U.S. 305 (2010); see also Tex. Trading & Milling Corp. v. Fed. Republic of Nigeria, 647 F.2d 300, 315 n.37 (2d Cir. 1981) (declining to apply different due-process standards in a case governed by the Fifth Amendment compared to one governed by the Fourteenth Amendment), *overruled on other grounds by* Frontera Res., 582 F.3d at 400; GSS Grp. Ltd v. Nat'l Port Auth., 680 F.3d 805, 816–17 (D.C. Cir. 2012) (applying Fourteenth Amendment case law when considering minimum contacts under the Fifth Amendment).

*Amici* Federal Officials concede that our precedents settle the issue, but they argue those cases were wrongly decided and urge us not to follow them. We decline the invitation to upend settled law.[10]

Accordingly, we conclude that the minimum contacts and fairness analysis is the same under the Fifth Amendment and the Fourteenth Amendment in civil cases and proceed to analyze the jurisdictional question.

## III.

Pursuant to the due process clauses of the Fifth and Fourteenth Amendments, there are two parts to the due process test for personal jurisdiction as established by International Shoe, 326 U.S. 310, and its progeny: the "minimum contacts" inquiry and the "reasonableness" inquiry. See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 127 (2d Cir. 2002) (Sotomayor, J.). The minimum contacts inquiry requires that the court determine

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whether a defendant has sufficient minimum contacts with the forum to justify the court's exercise of personal jurisdiction over the defendant. See Daimler, 134 S. Ct. at 754; Calder v. Jones, 465 U.S. 783, 788 (1984); Int'l Shoe, 326 U.S. at 316; Metro. Life Ins., 84 F.3d at 567–68. The reasonableness inquiry requires the court to determine whether the assertion of personal jurisdiction over the defendant comports with "'traditional notions of fair play and substantial justice'" under the circumstances of the particular case. Daimler, 134 S. Ct. at 754 (quoting Goodyear, 564 U.S. at 923); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476–78 (1985).

International Shoe distinguished between two exercises of personal jurisdiction: general jurisdiction and specific jurisdiction. The district court in this case ruled only on the issue of general jurisdiction. We conclude that general jurisdiction is absent; the question remains whether the court may nonetheless assert its jurisdiction under the doctrine of specific jurisdiction.

A court may assert general personal jurisdiction over a foreign defendant to hear any and all claims against that defendant only when the defendant's affiliations with the State in which suit is brought "are so constant and pervasive 'as to render [it] essentially at home in the forum State.'" Daimler, 134 S. Ct. at 751 (quoting Goodyear, 564 U.S. at 919); see also Goodyear, 564 U.S. at 924. "Since International Shoe, 'specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced rule.'" Daimler, 134 S. Ct. at 755 (quoting Goodyear, 564 U.S. at 925). Accordingly, there are "few" Supreme Court opinions over the past half-century that deal with general jurisdiction. Id.

"Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Goodyear, 564 U.S. at 919 (alterations, internal quotation marks, and citation omitted). The exercise of specific jurisdiction depends on in-state activity that *"gave rise to the episode-in-suit*." Id. at 923 (quoting Int'l Shoe, 326 U.S. at 317) (emphasis in original). In certain circumstances, the "commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections." Id. (quoting Int'l Shoe, 326 U.S. at 318).

**A.**

The district court concluded that it had general jurisdiction over the defendants; however, that conclusion relies on a misreading of the Supreme Court's decision in Daimler.

In Daimler, the plaintiffs asserted claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991, see 28 U.S.C. §§ 1350 & note, as well as other claims, arising from alleged torture that was committed in Argentina by the Argentinian government with the collaboration of an Argentina- based subsidiary of the German corporate defendant. See Daimler, 134 S. Ct. at 750–52. The Supreme Court rejected the argument that the California federal court could exercise general personal jurisdiction over the German corporation based on the continuous activities in California of the German corporation's indirect United States subsidiary. See id. at 751. Daimler concluded that the German corporate parent, which was not incorporated in California and did not have its principal place of business in California, could not be considered to be "at home in California" and subject to general jurisdiction there. Id. at 762.

Daimler analogized its "at-home test" to that of an individual's domicile. "[F]or a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home. With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction." Id. at 760 (alterations, internal quotation marks, and citations omitted).

As an initial matter, while Daimler involved corporations, and neither the PA nor the PLO is a corporation—the PA is a non-sovereign government and the PLO is a foreign agent, and both are unincorporated associations, see Part I.A—Daimler's reasoning was based on an analogy to general jurisdiction over individuals, and there is no reason to invent a different test for general personal jurisdiction depending on whether the defendant is an individual, a corporation, or another entity. Indeed, in Gucci this Court relied on Daimler when it found there was no general personal jurisdiction over the Bank of China, a non-party bank that was incorporated and headquartered in China and owned by the Chinese government. The Court described the Daimler test as applicable to "entities." "General, all-purpose

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jurisdiction permits a court to hear 'any and all claims' against an *entity*." Gucci, 768 F.3d at 134 (emphasis added); see id. at 134 n.13 ("The essence of general personal jurisdiction is the ability to entertain 'any and all claims' against an entity based solely on the entity's activities in the forum, rather than on the particulars of the case before the court."). Consequently, we consider the PLO and the PA entities subject to the Daimler test for general jurisdiction. See Klieman, 82 F. Supp. 3d at 245–46; Livnat, 82 F. Supp. 3d at 28; Safra, 82 F. Supp. 3d at 46.

Pursuant to Daimler, the question becomes, where are the PA and PLO "'fairly regarded as at home'"? 134 S. Ct. at 761 (quoting Goodyear, 564 U.S. at 924). The overwhelming evidence shows that the defendants are "at home" in Palestine, where they govern. Palestine is the central seat of government for the PA and PLO. The PA's authority is limited to the West Bank and Gaza, and it has no independently operated offices anywhere else. All PA governmental ministries, the Palestinian president, the Parliament, and the Palestinian security services reside in Palestine.

As the District Court for the District of Columbia observed, "[i]t is common sense that the single ascertainable place where a government such a[s] the Palestinian Authority should be amenable to suit for all purposes is the place where it governs. Here, that place is the West Bank, not the United States." Livnat, 82 F. Supp. 3d at 30; see also Safra, 82 F. Supp. 3d at 48. The same analysis applies equally to the PLO, which during the relevant period maintained its headquarters in Palestine and Amman, Jordan. See Klieman, 82 F. Supp. 3d at 245 ("Defendants' alleged contacts . . . do not suffice to render the PA and the PLO 'essentially at home' in the United States.")

The activities of the defendants' mission in Washington, D.C.—which the district court concluded simultaneously served as an office for the PLO and the PA, see Sokolow, 2011 WL 1345086, at *3—were limited to maintaining an office in Washington, promoting the Palestinian cause in speeches and media appearances, and retaining a lobbying firm. See id. at *4.

These contacts with the United States do not render the PA and the PLO "essentially at home" in the United States. See Daimler, 134 S. Ct. at 754. The commercial contacts that the district court found supported general jurisdiction are like those rejected as insufficient by the Supreme Court in Daimler. In Daimler, the Supreme Court held as "unacceptably grasping" a formulation that allowed for "the exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" 134 S. Ct. at 761. The Supreme Court found that a court in California could not exercise general personal jurisdiction over the German parent company even though that company's indirect subsidiary was the largest supplier of luxury vehicles to the California market. Id. at 752. The Supreme Court deemed Daimler's contacts with California "slim" and concluded that they would "hardly render it at home" in California. Id. at 760.

Daimler's contacts with California were substantially greater than the defendants' contacts with the United States in this case. But still the Supreme Court rejected the proposition that Daimler should be subjected to general personal jurisdiction in California for events that occurred anywhere in the world. Such a regime would allow entities to be sued in many jurisdictions, not just the jurisdictions where the entities were centered, for worldwide events unrelated to the jurisdiction where suit was brought. The Supreme Court found such a conception of general personal jurisdiction to be incompatible with due process. The Supreme Court explained:

> General jurisdiction . . . calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States. Nothing in International Shoe and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity.

Id. at 762 n.20 (internal citations omitted). Regardless of the commercial contacts occasioned by the defendants' Washington, D.C. mission, there is no doubt that the "far larger quantum" of the defendants' activities took place in Palestine.

The district court held that the record before it was "insufficient to conclude that either defendant is 'at home' in a particular jurisdiction other than the United States." Sokolow, 2014 WL 6811395, at *2. That conclusion is not

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supported by the record. The evidence demonstrates that the defendants are "at home" in *Palestine*, where these entities are headquartered and from where they are directed. See Daimler, 134 S. Ct. at 762 n.20.[11]

The district court also erred in placing the burden on the defendants to prove that there exists "an alternative forum where Plaintiffs' claims could be brought, and where the foreign court could grant a substantially similar remedy." Sokolow, 2011 WL 1345086, at *7. Daimler imposes no such burden. In fact, it is the plaintiff's burden to establish that the court has personal jurisdiction over the defendants. See Koehler v. Bank of Bermuda Ltd., 101 F.3d 863, 865 (2d Cir. 1996) ("[T]he plaintiff bears the ultimate burden of establishing jurisdiction over the defendant by a preponderance of evidence . . . ."); Metro. Life Ins., 84 F.3d at 566–67; see also Klieman, 82 F. Supp. 3d at 243; Livnat, 82 F. Supp. 3d at 30; Safra, 82 F. Supp. 3d at 49.[12]

Finally, the district court did not dispute the defendants' ties to Palestine but concluded that the court had general jurisdiction pursuant to an "exception" that the Supreme Court alluded to in a footnote in Daimler. In Daimler, the Supreme Court did not "foreclose the possibility that in an exceptional case, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." 134 S. Ct. at 761 n.19 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447–48 (1952)).

Daimler analyzed the 1952 Perkins case, "'the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.'" Id. at 755–56 (quoting Goodyear, 564 U.S. at 928). The defendant in Perkins was a company, Benguet Consolidated Mining Company ("Benguet"), which was incorporated under the laws of the Philippines, where it operated gold and silver mines. During World War II, the Japanese occupied the Philippines, and Benguet's president relocated to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. Perkins, 342 U.S. at 447–48. The plaintiff, a nonresident of Ohio, sued Benguet in a state court in Ohio on a claim that neither arose in Ohio nor related to the corporation's activities in Ohio, but the Supreme Court nevertheless held that the Ohio courts could constitutionally exercise general personal jurisdiction over the defendant. Id. at 438, 440. As the Supreme Court later observed: "'Ohio was the corporation's principal, if temporary, place of business.'" Daimler, 134 S. Ct. at 756 (quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780 n.11 (1984)).

Such exceptional circumstances did not exist in Daimler, id. at 761 n.19, or in Gucci. In Gucci, this Court held that, while a nonparty bank had branch offices in the forum, it was not an "exceptional case" in which to exercise general personal jurisdiction where the bank was incorporated and headquartered elsewhere, and its contacts were not "'so continuous and systematic as to render [it] essentially at home in the forum.'" 768 F.3d at 135 (quoting Daimler, 134 S. Ct. at 761 n.19).

The defendants' activities in this case, as with those of the defendants in Daimler and Gucci, "plainly do not approach" the required level of contact to qualify as "exceptional." Daimler, 134 S. Ct. at 761 & n.19. The PLO and PA have not transported their principle "home" to the United States, even temporarily, as the defendant had in Perkins. See Brown v. Lockheed Martin Corp., 814 F.3d 619, 628–30 (2d Cir. 2016).

Accordingly, pursuant to the Supreme Court's recent decision in Daimler, the district court could not properly exercise general personal jurisdiction over the defendants.

**B.**

The district court did not rule explicitly on whether it had specific personal jurisdiction over the defendants, but the question was sufficiently briefed and argued to allow us to reach that issue.

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. for a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." Walden v. Fiore, 134 S. Ct. 1115, 1121 (2014) (internal quotation marks and citations omitted). The relationship between the defendant and the forum "must arise out of contacts that the 'defendant *himself*' creates with the forum." Id. at 1122 (citing Burger King, 471 U.S. at 475) (emphasis in original). The "'minimum contacts' analysis looks to

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the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Id. And the "same principles apply when intentional torts are involved." Id. at 1123.

The question in this case is whether the defendants' suit-related conduct—their role in the six terror attacks at issue—creates a substantial connection with the forum State pursuant to the ATA. The relevant "suit-related conduct" by the defendants was the conduct that could have subjected them to liability under the ATA. On its face, the conduct in this case did not involve the defendants' conduct in the United States in violation of the ATA. While the plaintiff-victims were United States citizens, the terrorist attacks occurred in and around Jerusalem, and the defendants' activities in violation of the ATA occurred outside the United States.

The ATA provides:

> Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

18 U.S.C. § 2333(a)

To prevail under the ATA, a plaintiff must prove "three formal elements: unlawful *action*, the requisite *mental state*, and *causation*." Sokolow, 60 F. Supp. 3d at 514 (quoting Gill v. Arab Bank, PLC, 893 F. Supp. 2d 542, 553 (E.D.N.Y. 2012)) (emphasis in original).

To establish an "unlawful action," the plaintiffs must show that their injuries resulted from an act of "international terrorism." The ATA defines "international terrorism" as activities that, among other things, "involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State." 18 U.S.C. § 2331(1)(A). The acts must also appear to be intended "(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping." 18 U.S.C. § 2331(1)(B)(i)-(iii).

The plaintiffs asserted that the defendants were responsible on a *respondeat superior* theory for a variety of predicate acts, including murder and attempted murder, 18 U.S.C. §§ 1111, 2332, use of a destructive device on a mass transportation vehicle, 18 U.S.C. § 1992, detonating an explosive device on a public transportation system, 18 U.S.C. § 2332f, and conspiracy to commit those acts, 18 U.S.C. § 371. See Sokolow, 60 F. Supp. 3d at 515. They also asserted that the defendants directly violated federal and state antiterrorism laws, including 18 U.S.C. § 2339B, by providing material support to FTO-designated groups (the AAMB and Hamas) and by harboring persons whom the defendants knew or had reasonable grounds to believe committed or were about to commit an offense relating to terrorism, see 18 U.S.C. § 2339 *et seq.*; see also Sokolow, 60 F. Supp. 3d at 520–21, 523.

The ATA further limits international terrorism to activities that "occur *primarily outside* the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum." 18 U.S.C. § 2331(1)(C) (emphasis added).

The bombings and shootings here occurred *entirely* outside the territorial jurisdiction of the United States. Thus, the question becomes: What other constitutionally sufficient connection did the commission of *these* torts by *these* defendants have to *this* jurisdiction?

The jury found in a special verdict that the PA and the PLO were liable for the attacks under several theories. In all of the attacks, the jury found that the PA and the PLO were liable for providing material support or resources that were used in preparation for, or in carrying out, each attack.

In addition, the jury found that in five of the attacks—the January 22, 2002 Jaffa Road Shooting, the January 27, 2002 Jaffa Road Bombing, the March 21, 2002 King George Street Bombing, the July 31, 2002 Hebrew University Bombing, and the January 29, 2004 Bus No. 19 Bombing—the PA was liable because an employee of the PA, acting

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within the scope of the employee's employment and in furtherance of the activities of the PA, either carried out, or knowingly provided material support or resources that were used in preparation for, or in carrying out, the attack.

The jury also found that in one of the attacks—the July 31, 2002 Hebrew University Bombing—the PLO and the PA harbored or concealed a person who the organizations knew, or had reasonable grounds to believe, committed or was about to commit the attack.

Finally, the jury found that in three attacks—the June 19, 2002 French Hill Bombing, the July 31, 2002 Hebrew University Bombing, and the January 29, 2004 Bus No. 19 Bombing—the PA and PLO knowingly provided material support to an FTO-designated group (the AAMB or Hamas).

But these actions, as heinous as they were, were not sufficiently connected to the United States to provide specific personal jurisdiction in the United States. There is no basis to conclude that the defendants participated in these acts in the United States or that their liability for these acts resulted from their actions that did occur in the United States.

In short, the defendants were liable for tortious activities that occurred outside the United States and affected United States citizens only because they were victims of indiscriminate violence that occurred abroad. The residence or citizenship of the plaintiffs is an insufficient basis for specific jurisdiction over the defendants. A focus on the relationship of the defendants, the forum, and the defendants' suit-related conduct points to the conclusion that there is no specific personal jurisdiction over the defendants for the torts in this case. See Walden, 134 S. Ct. at 1121; see also Goodyear, 564 U.S. at 923.

In the absence of such a relationship, the plaintiffs argue on appeal that the Court has specific jurisdiction for three reasons. First, the plaintiffs argue that, under the "effects test," a defendant acting entirely outside the United States is subject to jurisdiction "if the defendant expressly aimed its conduct" at the United States. Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 173 (2d Cir. 2013). The plaintiffs point to the jury verdict that found that the defendants provided material support to designated FTOs—the AAMB and Hamas—and that the defendants' employees, acting within the scope of their employment, killed and injured United States citizens. They also argue that the defendants' terror attacks were intended to influence United States policy to favor the defendants' political goals. Second, the plaintiffs argue that the defendants purposefully availed themselves of the forum by establishing a continuous presence in the United States and pressuring United States government policy by conducting terror attacks in Israel and threatening further terrorism unless Israel withdrew from Gaza and the West Bank. See Banks Brussels Lambert, 305 F.3d at 128. Third, the plaintiffs argue that the defendants consented to personal jurisdiction under the ATA by appointing an agent to accept process.

Walden forecloses the plaintiffs' arguments. First, with regard to the effects test, the defendant must "expressly aim []" his conduct at the United States. See Licci, 732 F. 3d at 173. Pursuant to Walden, it is "insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff" with the forum to establish specific jurisdiction. Walden, 134 S. Ct. at 1123 (quoting Burger King, 471 U.S. at 475). While the killings and related acts of terrorism are the kind of activities that the ATA proscribes, those acts were unconnected to the forum and were not expressly aimed at the United States. And "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." Id. That is not the case here.

The plaintiffs argue that United States citizens were targets of these attacks, but their own evidence establishes the random and fortuitous nature of the terror attacks. For example, at trial, the plaintiffs emphasized how the "killing was indeed random" and targeted "Christians and Jews, Israelis, Americans, people from all over the world." J.A. 3836. Evidence at trial showed that the shooters fired "indiscriminately," J.A. 3944, and chose sites for their suicide bomb attacks that were "full of people," J.A. 4030–31, because they sought to kill "as many people as possible," J.A. 3944; see also J.A. 4031.

The plaintiffs argue that "[i]t is a fair inference that Defendants *intended to* hit American citizens by continuing a terror campaign that continuously hit Americans . . . ." Pls.' Br. at 37 (emphasis in original). But the Constitution requires much more purposefully directed contact with the forum. For example, the Supreme Court has "upheld the assertion of jurisdiction over defendants who have purposefully 'reach[ed] out beyond' their State and into

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another by, for example, entering a contractual relationship that 'envisioned continuing and wide-reaching contacts' in the forum State," Walden, 134 S. Ct. at 1122 (alteration in original) (quoting Burger King, 472 U.S. at 479–80), or "by circulating magazines to 'deliberately exploi[t]' a market in the forum State." Id. (alteration in original) (quoting Keeton, 465 U.S. at 781). But there was no such purposeful connection to the forum in this case, and it would be impermissible to speculate based on scant evidence what the terrorists intended to do.

Furthermore, the facts of Walden also suggest that a defendant's mere knowledge that a plaintiff resides in a specific jurisdiction would be insufficient to subject a defendant to specific jurisdiction in that jurisdiction if the defendant does nothing in connection with the tort in that jurisdiction. In Walden, the petitioner was a police officer in Georgia who was working as a deputized Drug Enforcement Administration ("DEA") agent at the Atlanta airport. He was informed that the respondents, Gina Fiore and Keith Gipson, were flying from San Juan, Puerto Rico through Atlanta en route to their final destination in Las Vegas, Nevada. See Joint Appendix, Walden v. Fiore, 2013 WL 2390248, *41–42 (U.S.) (Decl. of Anthony Walden). Walden and his DEA team stopped the respondents and searched their bags in Atlanta and examined their California drivers' licenses. Id.; Walden, 134 S. Ct. at 1119. Walden found almost $100,000 in cash in the respondents' carry-on bag and seized it, giving rise to a claim for an unconstitutional search under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). See Walden, 134 S. Ct. at 1119–20. The Supreme Court found that the petitioner's contacts with Nevada were insufficient to establish personal jurisdiction over the petitioner in a Nevada federal court, even though Walden knew that the respondents were destined for Nevada. See id. at 1119.

In this case, the plaintiffs point us to no evidence that these indiscriminate terrorist attacks were specifically targeted against United States citizens, and the mere knowledge that United States citizens might be wronged in a foreign country goes beyond the jurisdictional limit set forth in Walden.

The plaintiffs cite to several cases to support their argument that specific jurisdiction is warranted under an "effects test." Those cases are easily distinguishable from this case. Indeed, they point to the kinds of circumstances that would give rise to specific jurisdiction under the ATA, which are not present here.

For example, in Mwani v. Bin Laden, 417 F.3d 1 (D.C. Cir. 2005), the Court of Appeals for the District of Columbia Circuit found that specific personal jurisdiction over Osama Bin Laden and al Qaeda was supported by allegations that they "orchestrated the bombing of the *American* embassy in Nairobi, not only to kill both American and Kenyan employees inside the building, but to cause pain and sow terror in the embassy's home country, *the United States*," as well as allegations of "an ongoing conspiracy to attack the United States, with overt acts occurring *within* this country's borders." Id. at 13 (emphasis added). The plaintiffs pointed to the 1993 World Trade Center bombing, as well as the plot to bomb the United Nations, Federal Plaza, and the Lincoln and Holland Tunnels in New York. Id. Furthermore, the Court of Appeals found that bin Laden and al Qaeda "'purposefully directed' [their] activities at residents" of the United States, and that the case "result[ed] from injuries to the plaintiffs 'that arise out of or relate to those activities,'" id. (quoting Burger King, 471 U.S. at 472).

"[E]xercising specific jurisdiction because the victim of a foreign attack happened to be an American would run afoul of the Supreme Court's holding that '[d]ue process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State.'" Klieman, 82 F. Supp. 3d at 248 (quoting Walden, 134 S. Ct. at 1123); see Safra, 82 F. Supp. 3d at 52 (distinguishing Mwani); see also In re Terrorist Attacks on Sept. 11, 2001, 538 F.3d at 95–96 (holding that even if Saudi princes could and did foresee that Muslim charities would use their donations to finance the September 11 attacks, providing indirect funding to an organization that was openly hostile to the United States did not constitute the type of intentional conduct necessary to constitute purposeful direction of activities at the forum); Livnat, 82 F. Supp. 3d at 33.

The plaintiffs also rely on O'Neill, 714 F.3d at 659, which related to the September 11 attacks. In that case, this Court first clarified that "specific personal jurisdiction properly exists where the defendant took 'intentional, and allegedly tortious, actions . . . expressly aimed' at the forum." Id. at 674 (quoting Calder, 465 U.S. at 789). This Court also noted that, "the fact that harm in the forum is foreseeable . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant." Id. This Court then held that the plaintiffs' allegations were insufficient to

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establish personal jurisdiction over about two dozen defendants, but that jurisdictional discovery was warranted for twelve other defendants whose "alleged support of al Qaeda [was] more direct." Id. at 678; see also id. at 656–66. Those defendants "allegedly controlled and managed some of [the front] 'charitable organizations' and, through their positions of control, they allegedly sent financial and other material support *directly* to al Qaeda when al Qaeda allegedly was known to be *targeting the United States*." Id. (second emphasis added).

The plaintiffs argue that this Court should likewise find jurisdiction because the defendants' "direct, knowing provision of material support to designated FTOs [in this case, Hamas and the AAMB] is enough—standing alone—to sustain specific jurisdiction because they knowingly aimed their conduct at U.S. interests." Pls.' Br. at 36. But that argument misreads O'Neill. In O'Neill, this Court emphasized that the mere "fact that harm in the forum is foreseeable" was "insufficient for the purpose of establishing specific personal jurisdiction over a defendant," 714 F.3d at 674, and the Court did not end its inquiry when it concluded that the defendants may have provided support to terror organizations. Indeed, the Court held that "factual issues persist with respect to whether this support was 'expressly aimed' at the United States," warranting jurisdictional discovery. Id. at 678–79. The Court looked at the specific aim of the group receiving support—particularly that al Qaeda was "known to be targeting the United States"— and not simply that it and other defendants were "terrorist organizations." Id. at 678.[13]

The plaintiffs also cite Calder v. Jones, 465 U.S. at 783. In that case, a California actress brought a libel suit in California state court against a reporter and an editor, both of whom worked for a tabloid at the tabloid's Florida headquarters. Id. at 784. The plaintiff's claims were based on an article written and edited by the defendants in Florida for the tabloid, which had a California circulation of about 600,000. Id. at 784–86. The Supreme Court held that California's assertion of personal jurisdiction over the defendants for a libel action was proper based on the effects of the defendants' conduct in California. Id. at 788. "The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California," the Supreme Court held. Id. at 788–89. "In sum, California is the *focal point* both of the story and of the harm suffered." Id. at 789 (emphasis added); see also Walden, 134 S. Ct. at 1123 (describing the contacts identified in Calder as "ample" to support specific jurisdiction). As the Supreme Court explained in Walden, the jurisdictional inquiry in Calder focused on the relationship among the defendant, the forum, and the litigation. Walden, 134 S. Ct. at 1123.

Unlike in Calder, it cannot be said that the United States is the focal point of the torts alleged in this litigation. In this case, the United States is not the nucleus of the harm—Israel is. See Safra, 82 F. Supp. 3d at 51.

Finally, the plaintiffs rely on two criminal cases, United States v. Yousef, 327 F.3d 56 (2d Cir. 2003) (per curiam), and United States v. Al Kassar, 660 F.3d 108 (2d Cir. 2011), for their argument that the "effects test" supports jurisdiction. In both cases, this Court applied the due process test for asserting jurisdiction over extraterritorial criminal conduct, which differs from the test applicable in this civil case, see Al Kassar, 660 F.3d at 118; Yousef, 327 F.3d at 111–12, and does not require a nexus between the specific criminal conduct and harm within the United States. See also United States v. Murillo, No. 15-4235, 2016 WL 3257016, at *3 (4th Cir. June 14, 2016) ("[I]t is not arbitrary to prosecute a defendant in the United States if his actions affected significant American interests—even if the defendant did not mean to affect those interests." (internal citation and quotation marks omitted)). In order to apply a federal criminal statute to a defendant extraterritorially consistent with due process, "'there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair.' For non-citizens acting entirely abroad, a jurisdictional nexus exists when the aim of that activity is to cause harm inside the United States *or* to U.S. citizens *or* interests." Al Kassar, 660 F.3d 108, 118 (emphasis added) (quoting Yousef, 327 F.3d at 111).

In a civil action, as Walden makes clear, "the defendant's suit-related conduct must create a substantial connection with the forum State." 134 S. Ct. at 1121.

Even setting aside the fact that both Yousef and Al Kassar applied the more expansive due process test in criminal cases, the defendants in both cases had more substantial connections with the United States than the defendants have in the current litigation. Yousef involved a criminal prosecution for the bombing of an airplane traveling from the Philippines to Japan. See 327 F.3d at 79. The Yousef defendants "conspired to attack a dozen United States-flag

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aircraft in an effort to inflict injury on this country and its people and influence American foreign policy, and their attack on the Philippine Airlines flight was a 'test-run' in furtherance of this conspiracy." Id. at 112.

In Al Kassar, several defendants were convicted of conspiring to kill United States officers, to acquire and export anti-aircraft missiles, and knowingly to provide material support to a terrorist organization; two were also convicted of conspiring to kill United States citizens and of money laundering. 660 F.3d at 115. On appeal, the defendants challenged their convictions on a number of grounds, including that the defendants' Fifth Amendment due process rights were violated by prosecuting them for activities that occurred abroad. Id. at 117–18. This Court rejected that argument because the defendants conspired to sell arms to a group "with the understanding that they would be used to kill Americans and destroy U.S. property; the aim therefore was to harm U.S. citizens and interests and to threaten the security of the United States." Id. at 118.

In this case, the defendants undertook terror attacks within Israel, and there is no evidence the attacks specifically targeted United States citizens. See Safra, 82 F. Supp. 3d at 53–54; see also Livnat, 82 F. Supp. 3d at 34.

Accordingly, in the present case, specific jurisdiction is not appropriate under the "effects test."

Second, Walden undermines the plaintiffs' arguments that the defendants met the "purposeful availment" test by establishing a continuous presence in the United States and pressuring United States government policy. The emphasis on the defendants' Washington, D.C. mission confuses the issue: Walden requires that the "suit-related conduct"—here, the terror attacks in Israel—have a "substantial connection with the forum." 134 S. Ct. at 1121. The defendants' Washington mission and its associated lobbying efforts do not support specific personal jurisdiction on the ATA claims. The defendants cannot be made to answer in this forum "with respect to matters unrelated to the forum connections." Goodyear, 564 U.S. at 923; see also Klieman, 82 F. Supp. 3d at 247 ("Courts typically require that the plaintiff show some sort of causal relationship between a defendant's U.S. contacts and the episode in suit.").

The plaintiffs argue on appeal that the defendants intended their terror campaign to influence not just Israel, but also the United States. They point to trial evidence—specifically pamphlets published by the PA—that, the plaintiffs argue, shows that the defendants were attempting to influence United States policy toward the Israel-Palestinian conflict. The exhibits themselves speak in broad terms of how United States interests in the region are in danger and how the United States and Europe should exert pressure on Israel to change its practices toward the Palestinians. It is insufficient for purposes of due process to rely on evidence that a political organization sought to influence United States policy, without some other connection among the activities underlying the litigation, the defendants, and the forum. Such attenuated activity is insufficient under Walden.

The plaintiffs cite Licci, 732 F.3d 161, to support their argument that the defendants meet the purposeful availment test. But the circumstances of that case are distinguishable and illustrate why the defendants here do not meet that test. In Licci, American, Canadian, and Israeli citizens who were injured or whose family members were killed in a series of terrorist rocket attacks by Hizbollah in Israel brought an action under the ATA and other laws against the Lebanese Canadian Bank, SAL ("LCB"), which allegedly facilitated Hizbollah's acts by using correspondent banking accounts at a defendant New York bank (American Express Bank Ltd.) to effectuate wire transfers totaling several million dollars on Hizbollah's behalf. Id. at 164–66. This Court concluded that the exercise of personal jurisdiction over the defendants was constitutional because of the defendants' "repeated use of New York's banking system, as an instrument for accomplishing the alleged wrongs for which the plaintiffs seek redress." Id. at 171. These contacts constituted "'purposeful[] avail[ment] . . . of the privilege of doing business in [New York],' so as to permit the subjecting of LCB to specific jurisdiction within the Southern District of New York . . . ." Id. (quoting Bank Brussels Lambert, 305 F.3d at 127).

"It should hardly be unforeseeable to a bank that selects and makes use of a particular forum's banking system that it might be subject to the burden of a lawsuit in that forum for wrongs *related to*, and *arising from*, *that use*." Id. at 171–72 (emphasis added) (footnote omitted).

In Licci, this Court also distinguished the "effects test" theory of personal jurisdiction which is "typically invoked where (*unlike here*) the conduct that forms the basis for the controversy occurs entirely out-of-forum, and the only relevant jurisdictional contacts with the forum are therefore in-forum effects harmful to the plaintiff." Id. at 173

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(emphasis added) (footnote omitted). The Court held that the effects test was inappropriate because "the constitutional exercise of personal jurisdiction over a foreign defendant" turned on conduct that "occur[ed] *within* the forum," id. (emphasis in original), namely the repeated use of bank accounts in New York to support the alleged wrongs for which the plaintiffs sued.

In this case, there is no such connection between the conduct on which the alleged personal jurisdiction is based and the forum. And the connections the defendants do have with the United States—the Washington, D.C. and New York missions—revolve around lobbying activities that are not proscribed by the ATA and are not connected to the wrongs for which the plaintiffs here seek redress.

At a hearing before the district court, the plaintiffs also cited Bank Brussels Lambert, 305 F.3d 120, as their "best case" for their purposeful availment argument. See J.A. 1128. But that case, too, is distinguishable. There, a client bank sued its lawyers for legal malpractice that occurred in Puerto Rico. Bank Brussels Lambert, 305 F.3d at 123. This Court held that the Puerto Rican law firm defendant had sufficient minimum contacts with the New York forum and purposely availed itself of the privilege of doing business in New York, because, although the law firm did not solicit the bank as a client in New York, the firm maintained an apartment in New York partially for the purpose of better servicing its New York clients, the firm faxed newsletters regarding Puerto Rican legal developments to persons in New York, the firm had numerous New York clients, and its marketing materials touted the firm's close relationship with the Federal Reserve Bank of New York. Id. at 127–29. "The engagement which gave rise to the dispute here is not simply one of a string of fortunate coincidences for the firm. Rather, the picture which emerges from the above facts is that of a law firm which seeks to be known in the New York legal market, makes efforts to promote and maintain a client base there, and profits substantially therefrom." Id. at 128. This Court held that there was "nothing fundamentally unfair about requiring the firm to defend itself in the New York courts when a dispute arises from its representation of a New York client—a representation which developed in a market it had deliberately cultivated and which, after all, the firm voluntarily undertook." Id. at 129. In short, the defendants' contacts with the forum were sufficiently related to the malpractice claims that were at issue in the suit.

That is not the case here. The plaintiffs' claims did not arise from the defendants' purposeful contacts with the forum. And where the defendant in Bank Brussels Lambert purposefully and repeatedly reached into New York to obtain New York clients—and as a result of those activities, it obtained a representation for which it was sued—in this case, the plaintiffs' claims did not arise from any activity by the defendants in this forum.

Thus, in this case, unlike in Licci and Bank Brussels Lambert, the defendants are not subject to specific personal jurisdiction based on a "purposeful availment" theory because the plaintiffs' claims do not arise from the defendants' activity in the forum.

Third, the plaintiffs' argue that the defendants consented to personal jurisdiction under the ATA by appointing an agent to accept process. It is clear that the ATA permitted service of process on the representative of the PLO and PA in Washington. See 18 U.S.C. § 2334(a). However, the statute does not answer the constitutional question of whether due process is satisfied.

The plaintiffs contend that under United States v. Scophony Corp. of America, 333 U.S. 795 (1948), meeting the statutory requirement for service of process suffices to establish personal jurisdiction. But Scophony does not stand for that proposition. The defendant in Scophony "was 'transacting business' of a substantial character in the New York district at the times of service, so as to establish venue there," and so that "such a ruling presents no conceivable element of offense to 'traditional notions of fair play and substantial justice.'" Id. at 818 (quoting Int'l Shoe, 326 U.S. at 316). Thus, Scophony affirms the understanding, echoed by this Court in Licci, 673 F.3d at 60, and O'Neill, 714 F.3d at 673–74, that due process analysis—considerations of minimum contacts and reasonableness—applies even when federal service-of-process statutes are satisfied. Simply put, "the exercise of personal jurisdiction must comport with constitutional due process principles." Licci, 673 F.3d at 60; see also Brown, 814 F.3d at 641. As explained above, due process is not satisfied in this case, and the courts have neither general nor specific personal jurisdiction over the defendants, regardless of the service-of-process statute.

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In sum, because the terror attacks in Israel at issue here were not expressly aimed at the United States and because the deaths and injuries suffered by the American plaintiffs in these attacks were "random [and] fortuitous" and because lobbying activities regarding American policy toward Israel are insufficiently "suit-related conduct" to support specific jurisdiction, the Court lacks specific jurisdiction over these defendants. Walden, 134 S. Ct. at 1121, 1123.

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The terror machine gun attacks and suicide bombings that triggered this suit and victimized these plaintiffs were unquestionably horrific. But the federal courts cannot exercise jurisdiction in a civil case beyond the limits prescribed by the due process clause of the Constitution, no matter how horrendous the underlying attacks or morally compelling the plaintiffs' claims.

The district court could not constitutionally exercise either general or specific personal jurisdiction over the defendants in this case. Accordingly, this case must be dismissed.

## CONCLUSION

We have considered all of the arguments of the parties. To the extent not specifically addressed above, they are either moot or without merit. For the reasons explained above, we **VACATE** the judgment of the district court and **REMAND** the case to the district court with instructions to **DISMISS** the case for want of jurisdiction.

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ENDNOTES

1 While other defendants, such as Yasser Arafat, were named as defendants in the case, they did not appear, and the Judgment was entered only against the PLO and the PA.

2 The plaintiffs are United States citizens, and the guardians, family members, and personal representatives of the estates of United States citizens, who were killed or injured in the terrorist attacks.

3 The district court concluded that "the weight of the evidence indicates that the D.C. office simultaneously served as an office for the PLO and the PA." Sokolow, 2011 WL 1345086, at *3.

4 The district court found claims relating to an attack on January 8, 2001 that wounded Oz Guetta speculative and did not allow those claims to proceed to the jury. The plaintiffs argue that this Court should reinstate the Guetta claims. Because we conclude that there is no personal jurisdiction over the defendants for the ATA claims, it is unnecessary to reach this issue.

5 The standard of review in this case is complicated because the issue of personal jurisdiction was raised initially on a motion to dismiss, both before and after discovery, and as a basis for Rule 50 motions at the conclusion of the plaintiffs' case and after all the evidence was presented. This Court typically reviews factual findings in a district court's decision on personal jurisdiction for clear error and its legal conclusions *de novo*. See Frontera Res., 582 F.3d at 395. In this case, the parties agree that this Court should review *de novo* whether the district court's exercise of personal jurisdiction was constitutional. See Pls.' Br. at 27; Defs.' Br. at 23. In any event, the issues relating to general jurisdiction are essentially legal questions that should be reviewed *de novo*. Assuming without deciding the question, we review the district court's assertion of personal jurisdiction *de novo*.

6 The district court found that the defendants are "unincorporated associations." See Sokolow v. Palestine Liberation Org., 60 F. Supp. 3d 509, 523–24 (S.D.N.Y. 2014).

7 The Fifth Amendment states in relevant part: ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. V.

8 The Fourteenth Amendment states in relevant part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV., § 1.

9 The plaintiffs also point to the brief filed by the United States Solicitor General in Daimler to support their argument that the due process standards for the Fifth and Fourteenth Amendments vary. However, the United States never advocated that the Fourteenth Amendment standard would be inapplicable to Fifth Amendment cases and, instead, urged the Court not to reach the issue. See Brief for the United States as Amicus Curaie Supporting Petitioner, DaimlerChrysler AG v. Bauman, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3377321, at *3 n.1 ("This Court has consistently reserved the question whether its Fourteenth Amendment personal jurisdiction precedents would apply in a case governed by the Fifth Amendment, and it should do so here.").

10 *Amici* argue for "universal"—or limitless—personal jurisdiction in terrorism cases. This Court has already rejected that suggestion. See United States v. Yousef, 327 F.3d 56, 107–08 (2d Cir. 2003) (per curiam) ("[T]errorism—unlike piracy, war crimes, and crimes against humanity—does not provide a basis for universal jurisdiction.").

11 It appears that the district court, when considering where the defendants were "at home," limited its inquiry to areas that are within a sovereign nation. We see no basis in precedent for this limitation.

12 The district court's focus on the importance of identifying an alternative forum may have been borrowed inappositely from *forum non conveniens* jurisprudence, pursuant to which a court considers (1) the degree of deference to be afforded to the plaintiff's choice of forum; (2) whether there is an

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adequate alternative forum for adjudicating the dispute; and (3) whether the balance of private and public interests tips in favor of adjudication in one forum or the other. See Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005). However, that is not the test for general jurisdiction under Daimler, 134 S. Ct. at 762 n.20.

13 Furthermore, the mere designation of a group as an FTO does not reflect that the organization has aimed its conduct at the United States. The Secretary of State may "designate an organization as a foreign terrorist organization" if the Secretary finds "the organization is a foreign organization," "the organization engages in terrorist activity," "or retains the capability and intent to engage in terrorist activity or terrorism," and "the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1)(A)-(C).

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