# 11-3294-cv(L),

**11-3407-cv(CON), 11-3490-cv(CON), 11-3494-cv(CON), 11-3495-cv(CON), 11-3496-cv(CON), 11-3500-cv(CON), 11-3501-cv(CON), 11-3502-cv(CON), 11-3503-cv(CON), 11-3505-cv(CON), 11-3506-cv(CON), 11-3507-cv(CON), 11-3508-cv(CON), 11-3509-cv(CON), 11-3510-cv(CON), 11-3511-cv(CON)**

## United States Court of Appeals
## for the
## Second Circuit

IN RE: TERRORIST ATTACKS ON SEPTEMBER 11, 2001

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

# APPELLANTS' CONSOLIDATED BRIEF WITH RESPECT TO PERSONAL JURISDICTION

RONALD L. MOTLEY
ROBERT T. HAEFELE
MOTLEY RICE LLC
28 Bridgeside Boulevard
Mount Pleasant, South Carolina 29464
(843) 216-9000

STEPHEN A. COZEN
ELLIOTT R. FELDMAN
SEAN P. CARTER
COZEN O'CONNOR
1900 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-2000

– and –

CARTER G. PHILLIPS
RICHARD KLINGLER
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

*Attorneys for All Plaintiffs-Appellants*

*(For Further Appearances See Reverse Side of Cover)*

ANDREA BIERSTEIN
HANLY CONROY BIERSTEIN SHERIDAN
FISHER & HAYES, LLP
112 Madison Avenue, 7th Floor
New York, New York 10016
(212) 784-6400

ROBERT M. KAPLAN
FERBER CHAN ESSNER & COLLER, LLP
530 Fifth Avenue, 23rd Floor
New York, New York 10036
(212) 944-2200

JAMES P. KREINDLER
JUSTIN T. GREEN
KREINDLER & KREINDLER LLP
750 Third Avenue, 32nd Floor
New York, New York 10017
(212) 687-8181

JERRY S. GOLDMAN
ANDERSON KILL & OLICK, P.C.
1251 Avenue of the Americas
New York, New York 10020
(212) 278-1000

CHRIS LEONARDO
ADAMS HOLCOMB LLP
1875 Eye Street N.W., Suite 810
Washington, D.C. 20006
(202) 580-8820

*Attorneys for All Plaintiffs-Appellants*

## CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, appellants certify as follows:

*Docket No. 11-3509 (Ashton v. Al Qaeda Islamic Army):*

Appellants are natural persons.

*Docket Nos. 11-3503, 11-3505, 11-3506, 11-3507 (Burnett v. Al Baraka Investment & Development Corp.):*

Appellants are natural persons.

*Docket No. 11-3508 (Cantor Fitzgerald & Co. v. Akida Bank Private Limited):*

Appellants Cantor Fitzgerald & Co.; Cantor Fitzgerald Securities; Cantor Fitzgerald, L.P.; CO2e.com, LLC (now known as Cantor CO2e, LLC); and Cantor Index Limited have no parent corporation and there is no public corporation that holds more than 10% of any of them.

Appellant eSpeed, Inc. (now known as BGC Partners, Inc.) has no parent corporation and there is no public corporation that holds more than 10% of it; BCG Partners, Inc. is publicly-held.

Appellants Cantor Fitzgerald Associates, L.P. (now known as BGC Capital Markets, L.P.); Cantor Fitzgerald Brokerage, L.P. (now known as BGC Environmental Brokerage Services, L.P.); Cantor Fitzgerald International (now known as BGC International); Cantor Fitzgerald

Partners (now known as Seminole Financial); eSpeed Securities, Inc. (now known as Aqua Securities, L.P.); Tradespark, L.P; and eSpeed Government Securities, Inc. (now known as eSpeed Brokerage, L.P.) have no parent corporation; BGC Partners, Inc., a publicly-traded corporation, owns more than 10% of each of them.

The parent company of Appellant Cantor Fitzgerald Europe is Cantor Fitzgerald, L.P. ; no publicly-traded corporation owns more than 10% of it.

*Docket No. 11-3510 (Continental Cas. Co. v. Al Qaeda Islamic Army):*

Appellants Transcontinental Insurance Company, Transportation Insurance Company, National Fire Insurance Company of Hartford and American Casualty Company of Reading, Pennsylvania are wholly-owned subsidiaries of plaintiff-appellant Continental Casualty Company; plaintiff-appellant Valley Forge Insurance Company is a wholly-owned subsidiary of plaintiff-appellant American Casualty Company of Reading, Pennsylvania; and plaintiff-appellant Continental Casualty Company is a wholly-owned subsidiary of CNA Financial Corp., which is publicly traded.

*Docket Nos. 11-3294, 11-3407 (Estate of John P. O'Neill v. Republic of Iraq):*

The Estate is not a corporate entity.

*Docket No.s 11-3496, 11-3500, 11-3501, 11-3502 (Euro Brokers, Inc. v. Al Baraka Inv. & Dev. Corp.):*

Appellant BGC Brokers US, L.P. (successor to Euro Brokers, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant BGC Financial, L.P. (f/k/a Maxcor Financial, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

BGC Financial Asset Management, Inc. (successor to Maxcor Financial Asset Management, Inc.) dissolved December 23, 2010.

Appellant BGC Information, L.P. (successor to Maxcor Information, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Seminole Financial Limited (successor to Euro Brokers Ltd.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant Tradesoft Technologies, Inc. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant Euro Brokers Financial Services Limited dissolved April 23, 2008.

Appellant Euro Brokers Mexico, S.A. de C.V. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant Euro Brokers (Switzerland) S.A. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

*Docket Nos. 11-3490, 11-3494, 11-3495, 11-3511 (Federal Ins. Co. v. al Qaida):*

Appellants Federal Insurance Company, Pacific Indemnity Company, Chubb Custom Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of Canada, Chubb Insurance Company of New Jersey, Great Northern Insurance Company, and Vigilant Insurance Company are members of the Chubb Group of Insurance Companies. Appellants' parent organization, The Chubb Corporation, a publicly traded corporation, owns more than 10% of their stock.

Appellants One Beacon Insurance Company, One Beacon America Insurance Company, American Employers' Insurance Company, The Camden Fire Insurance Association, and Homeland Insurance Company of

New York are members of the One Beacon Insurance Group. Appellants' parent organization, White Mountains Insurance Group Ltd., a publicly traded corporation, owns more than 10% of their stock.

Appellant TIG Insurance Company is a member of the Fairfax Financial Group. Appellant's parent organization, Fairfax Financial Holdings Ltd, a publicly traded corporation, owns more than 10% of their stock.

Appellants American Alternative Insurance Corporation, Great Lakes Reinsurance U.K. PLC, and The Princeton Excess and Surplus Lines Insurance Company are members of the Munich Re Group. Appellants' parent organization, Muenchener Rueckversicherungs-Gesellschaft Aktienqesellschaft, a publicly traded corporation, owns more than 10% of their stock.

Appellant Allstate Insurance Company is a member of The Allstate Insurance Group. Allstate Insurance Company is wholly owned by The Allstate Corporation, a publicly traded corporation.

Appellants Boston Old Colony Insurance Company, The Continental Insurance Company, Commercial Insurance Company of Newark, NJ, CNA Casualty of California, Continental Insurance Company of New

Jersey, Fidelity and Casualty Company of New York, Glens Falls Insurance Company, and National Ben Franklin Insurance Company of Illinois are members of the CNA Insurance Companies. Appellants' parent organization, the CNA Financial Corporation, a publicly traded corporation, owns more than 10% of their stock.

Appellant Hiscox Dedicated Corporation Member, Ltd. is a member of Lloyds' Syndicate 33.

Appellants ACE American Insurance Company, ACE Capital V Ltd for itself and as representative of all subscribing underwriters for ACE Global Markets Syndicate 2488, ACE Bermuda Insurance Ltd, ACE INA (Canada), ACE Indemnity Insurance Company, ACE Insurance SA-NV, ACE Property & Casualty Insurance Company, Atlantic Employers Insurance Company, Bankers Standard Insurance Company, Indemnity Insurance Company of North America, Insurance Company of North America, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, and Pacific Employers Insurance Company are members of ACE INA Group. Appellants' parent organization, ACE Limited, a publicly traded corporation, owns more than 10% of their stock.

Appellant Woburn Insurance Ltd. is a captive insurance company, wholly owned by Viacom Inc.

Appellants AXA Corporate Solutions Assurance, AXA Corporate Solutions Insurance Company, AXA Corporate Solutions Assurance UK Branch, AXA Corporate Solutions Assurance (Canada), AXA RE Asia Pacific Pte. Limited, AXA RE, AXA RE Canadian Branch, AXA RE UK Plc., AXA Corporate Solutions Reinsurance Company, AXA Art Insurance Corporation, SPS Reassurance, AXA Re Madeira Branch, Compagnie Gererale de Reinsurance de Monte Carlo, AXA Versicherung AG, AXA Cessions and AXA Global Risks UK, Ltd. are members of the AXA Group. Appellants' parent organization, AXA S.A., a publicly traded corporation, owns more than 10% of their stock.

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

*Page*

## CASES

**STATUTES, RULES, AND REGULATIONS**

## OTHER AUTHORITIES

## PRELIMINARY STATEMENT

Plaintiffs-Appellants are family members of the nearly 3,000 people killed in the September 11, 2001 terrorist attacks; thousands of individuals who were severely injured as a result of the attacks; and commercial entities that incurred billions of dollars of property damage and other losses as a result of the attacks. Plaintiffs brought these lawsuits, which were consolidated below by the Judicial Panel on Multi-District Litigation, to hold accountable the charities, financial institutions, individuals, and other parties that knowingly provided material support or resources to al-Qaeda for more than a decade before September 11, 2001, and thereby provided al-Qaeda with the means to successfully conceive, plan, coordinate, and carry out the September 11th Attacks. In four separate orders issued in 2005 and 2010, the district court dismissed plaintiffs' claims against approximately 60 defendants, including 36 defendants who are appellees herein, pursuant to Fed.R.Civ.P. 12(b)(2), holding that it lacked personal jurisdiction over these entities and individuals.[1] This

[1] The district court also granted motions to dismiss under Rule 12(b)(6) filed by approximately 20 defendants, five of which are appellees herein, and further granted motions to dismiss under Rule 12(b)(1) with respect to nine defendants who claimed sovereign immunity under the Foreign

Court should reverse the district court's jurisdictional rulings with respect to the Defendants because the pleadings in these cases, and the massive record submitted by plaintiffs in connection with the motions to dismiss, demonstrate that each of the Defendants knowingly provided material support and resources to al-Qaeda in the years leading up to the September 11th Attacks in support of al-Qaeda's declared mission to wage jihad against the United States.

The facts and allegations supporting plaintiffs' theories of liability and personal jurisdiction are set forth in their respective complaints, numerous RICO and More Definite Statements offering particular details concerning the conduct of the individual defendants, and voluminous extrinsic materials submitted of record in opposition to Defendants' motions to dismiss. Collectively, the complaints, RICO and More Definite Statements, and extrinsic materials formed a vast record in support of

---

Sovereign Immunities Act ("FSIA"), three of which are appellees herein. Some defendants were dismissed on multiple grounds. The dismissals under Rule 12(b)(6) and under the FSIA are addressed in Appellants' Consolidated Brief with Respect to Dismissals for Failure to State a Claim and Foreign Sovereign Immunity filed concurrently with this brief. This Brief addresses only the dismissals under Rule 12(b)(2). The Appellees who were dismissed for lack of personal jurisdiction are referred to throughout this brief simply as Defendants.

plaintiffs' theories of liability and jurisdiction, which the district court was required to accept as true and interpret generously in resolving the motions to dismiss. These pleadings and facts of record established that each of the Defendants provided material support and resources to al-Qaeda, with an awareness that al-Qaeda was using those resources to build a global terrorist organization to attack American citizens and interests throughout the world, and that the September 11th Attacks were carried out in furtherance of that campaign and made possible by the resources al-Qaeda amassed from its sponsors over a period of many years. For purposes of the due process analysis, that showing satisfied plaintiffs' modest burden at the pleading stage to allege that the Defendants engaged in conduct aimed at the United States, such that they could reasonably expect to be haled into U.S. court.

The district court, however, failed to credit the allegations in the pleadings, failed to draw inferences favorable to plaintiffs, in some cases drew inferences favorable to Defendants, and even purported to resolve factual disputes in favor of Defendants without affording plaintiffs the opportunity for a hearing. The district court also incorrectly applied the law, erroneously requiring a level of participation in the September 11

attacks that is not warranted by precedents of this Court, other Courts of Appeals, or the Supreme Court, and which, if adopted by this Court, could limit the intended scope of a range of anti-terrorism statutes. This Court should reverse and hold that each of these Defendants is subject to personal jurisdiction in the United States in connection with the September 11th Attacks.[2]

## STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The United States District Court for the Southern District of New York had subject matter jurisdiction over these actions pursuant to 28 U.S.C. § 1330, 1331, 1332, 1350, 1367, 1407, and 1605, 18 U.S.C. §§ 1964 and 2338, and 49 U.S.C. § 40101. Plaintiffs assert claims under the Anti-Terrorism Act, 18 U.S.C. §§ 2331 *et seq.*, and under the Racketeer-Influenced and Corrupt Organizations ("RICO") statute, 18 U.S.C. §§ 1962 *et seq.*, which conferred jurisdiction on the district court through the specific grants of jurisdiction applicable to each statute and pursuant to 28 U.S.C. § 1331. In some of the underlying cases, plaintiffs and defendants were diverse, in that defendants were citizens of foreign states or of states

[2] As described in more detail below, *see infra* Point II, Plaintiffs also allege that three of the Defendants are subject to general jurisdiction in the United States.

different from the states in which plaintiffs were citizens. Plaintiffs who are not U.S. persons assert claims for violations of international law, over which the district court had jurisdiction pursuant to the Alien Tort Statute, 28 U.S.C. § 1350. The district court further had supplemental jurisdiction over plaintiffs' common law claims pursuant to 28 U.S.C. § 1367. Where defendants claimed immunity under the Foreign Sovereign Immunities Act and plaintiffs asserted the application of one or more exceptions to immunity, the court had jurisdiction pursuant to 28 U.S.C. §§ 1330, 1605. In addition, actions originally filed in other jurisdictions were transferred to the Southern District of New York by the Judicial Panel on Multi-District Litigation pursuant to 28 U.S.C. § 1407.

This Court has appellate jurisdiction of this matter pursuant to 28 U.S.C. § 1291. The district court dismissed defendants in this case in six orders dated January 18, 2005 (*In re Terrorist Attacks on September 11, 2001*, 349 F. Supp. 2d 765 ("*Terrorist Attacks I*") (S.D.N.Y 2005)); September 21, 2005 (*In re Terrorist Attacks on September 11, 2001*, 392 F. Supp. 2d 539 ("*Terrorist Attacks II*") (S.D.N.Y 2005)); November 20, 2006 (*In re Terrorist Attacks on September 11, 2001*, 462 F. Supp. 2d 561 ("*SAMBA I*") (S.D.N.Y. 2006)); December 14, 2006 (*In re Terrorist Attacks on September 11, 2001*, 464

F. Supp. 2d 335 ("*DMI-Kamel*") (S.D.N.Y. 2006)); June 17, 2010 (*In re Terrorist Attacks on September 11, 2001*, 718 F. Supp. 2d 456 ("*Terrorist Attacks IV*") (S.D.N.Y. 2010)); and September 13, 2010 (*In re Terrorist Attacks on September 11, 2001*, 740 F. Supp. 2d 494 ("*Terrorist Attacks V*") (S.D.N.Y. 2010)).[3] Additional defendants remain in the case, which is still pending below. On July 14, 2011, the district court entered a partial final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure in favor of 75 defendants dismissed in those four orders, including each of the appellees. Plaintiffs timely filed their notices of appeal on August 9, 2011, August 10, 2011, and August 11, 2011.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether a defendant alleged to have knowingly provided financial or other support abroad to al-Qaeda, within the scope of 18 U.S.C. § 2333, is subject to personal jurisdiction in U.S. courts for claims arising from al-Qaeda's September 11, 2001 attacks upon the United States.

---

[3] A previous Rule 54(b) partial final judgment was entered with respect to certain of the defendants dismissed in In *re Terrorist Attacks I* and *In re Terrorist Attacks II*. This Court's decision affirming those dismissals is reported at 538 F.3d 71 (2d Cir. 2008) ("*In re Terrorist Attacks III*").

2. Whether, without regard to issue 1, plaintiffs' allegations with respect to the actions of each of the 36 Defendants, accepted as true and with all reasonable inferences drawn from them in plaintiffs' favor, constitute a *prima facie* showing establishing specific personal jurisdiction over each defendant.

3. Whether plaintiffs' allegations with respect to the actions in the United States of Abdullah Binladin, Yeslam Binladin, and National Commercial Bank constitute a *prima facie* showing establishing general personal jurisdiction over each of those defendants.

## STATEMENT OF THE CASE

### Nature of the Case and Course of Proceedings

Plaintiffs incorporate by reference the portion of Statement of the Case addressing the Nature of the Case and the Course of Proceedings in their companion Brief Concerning Appeals of Dismissals for Failure to State a Claim and Lack of Subject Matter Jurisdiction Under the Foreign Sovereign Immunities Act (FSIA) (the "Companion Brief') and respectfully draw the Court's attention thereto.

**The Disposition Below**

This brief addresses the thirty-six Defendants dismissed for lack of personal jurisdiction by the district court. The dismissals arose from two opinions issued by the court on June 17, 2010 (*In re Terrorist Attacks on September 11, 2001*, 718 F. Supp. 2d 456 ("*Terrorist Attacks IV*") (S.D.N.Y. 2010)) and September 13, 2010 (*In re Terrorist Attacks on September 11, 2001*, 740 F. Supp. 2d 494 ("*Terrorist Attacks V*") (S.D.N.Y. 2010)) respectively. SPA152-211, 214-253. Between those two opinions, the district court held that plaintiffs had not made sufficient allegations to support specific personal jurisdiction over all thirty-six of the Defendants at issue in this brief. SPA180-211, 218-227.[4] The court also held that plaintiffs' allegations did not support general personal jurisdiction with respect to twenty-one of the Defendants within that same group. SPA163-179.

The district court based its specific jurisdictional dismissals largely upon its interpretation of this Court's decision in *Terrorist Attacks III*. The district court "synthesized" the discussion in that decision into a "cohesive

[4] Citations in the form "SPA#" are to pages in the Special Appendix. Citations in the form "JA#" are to pages in the Joint Appendix. Citations in the form "R.#" are to the docket number of documents in the record on appeal. Unless otherwise indicated, citations to the record refer to the docket numbers on the MDL 1570 docket sheet.

principle of controlling law," under which "providing indirect funding to al Qaeda" would not subject a Defendant to personal jurisdiction. SPA183. The court recognized, however, that *Terrorist Attacks III* left open the question of "what acts would constitute intentional conduct" that *could* establish specific jurisdiction. *Id.* Nevertheless, without analysis or citation, the court concluded that "in the context of a [*sic*] terrorism-related litigation" "conduct that is intended to directly aid in the commission of a terrorist act, with knowledge that the brunt of the injuries will be felt in the United States" would suffice for specific jurisdiction. SPA183-84. The court went on to explain that its standard would not permit specific jurisdiction over Defendants who provided "material support to al Qaeda ... under the guise of charitable donations," nor would it extend jurisdiction to Defendants alleged to have provided material support through "concerted action," *i.e.*, under a theory of secondary liability for aiding and abetting or conspiring with al-Qaeda. SPA184, 186.

Turning to the individual Defendants, the district court elaborated upon its previously-announced standard to demand an even closer nexus for specific jurisdiction. The court held that material support to al-Qaeda must have been rendered within sufficient "temporal, geographical or

causal connection, or proximity to the 9/11 attacks" in order to support specific jurisdiction. SPA189. Consistent with this, the court held that even "a key al Qaeda operative" who nevertheless was not alleged to have "himself played any role in the 9/11 terrorist attacks" could not be subject to personal jurisdiction for offering material support to al-Qaeda. SPA223-24. The court likewise repeatedly rejected the possibility that serving as the head of charities and financial institutions known to support al-Qaeda, created a reasonable inference that a Defendant had giving material support to the organization. SPA223-25, 227. Similarly, the court declined to draw any inferences from evidence presented by the plaintiffs, such as the Golden Chain document, or Specially Designated Global Terrorist status. SPA222-23. The court also rejected the idea that providing ideological support and justification for al-Qaeda suicide attackers could constitute tortious conduct that would give rise to personal jurisdiction. SPA192.

The district court frequently dismissed defendants in groups, without describing the particular allegations pertaining to each one of them. SPA190, 191, 193. Nevertheless, the court concluded that plaintiffs had

failed to allege facts sufficient for personal jurisdiction over each of the thirty-six Defendants at issue in this brief.

The district court based its general jurisdictional analysis upon the familiar, generic touchstones of "continuous and systematic contacts with the forum," here the United States, and conduct "by which the defendant purposefully avails himself of the privilege of conducting activities in the forum." SPA163-65.

In applying these principles to specific Defendants, the court elaborated upon them. The court required that a Defendant's contacts with the United States have continued up until the filing of the complaint.[5] The court also declined to accept or draw inferences from some of plaintiffs' allegations supporting general jurisdiction, such as the existence of a Defendant's U.S.-based aviation division or residency in Arizona.[6] For the Defendant company Dallah Avco, the court held that that an employee apparently based in the United States only for nefarious purposes and not "any traditional or legitimate business-related activities" could therefore

[5] SPA163.

[6] SPA170, 179.

not serve as a jurisdictional contact.[7] After reviewing allegations related to the Defendants at issue in this brief, the court held that it lacked general jurisdiction over each of them.

## STATEMENT OF FACTS

### The Origins of al-Qaeda

As alleged in plaintiffs' pleadings and confirmed by countless governmental investigations, al-Qaeda has its origins in the jihad against the Soviet occupation of Afghanistan, which served as a rallying point for Islamic extremists in the Middle East.[8] In 1980, Osama bin Laden traveled to Afghanistan to participate in the jihad, and gained prominence for his role in establishing the financial and logistical infrastructure that sustained the mujahedeen fighters.

> Bin Ladin understood better than most of the volunteers the extent to which the continuation and eventual success of the jihad in Afghanistan depended on an increasingly complex, almost worldwide organization. This organization included a financial support network that came to be known as the "Golden Chain," put together mainly by financiers in Saudi

[7] SPA174.

[8] JA3602-04, 3776-78, 7863-64.

> Arabia and the Persian Gulf states. Donations flowed through charities or other non-governmental organizations (NGOs).[9]

Together with Abdullah Azzam, bin Laden founded the Maktab al Khidmat ("Office of Services") to facilitate the provision of financial and logistic support to the mujahedeen.[10] Throughout the Afghan jihad, Maktab al Khidmat worked in concert with a network of purported charities and relief organizations, including the Muslim World League ("MWL"), International Islamic Relief Organization ("IIRO"), Rabita Trust, Al Haramain Islamic Foundation ("Al Haramain"), Muwafaq Foundation ("Muwafaq"), and the Saudi Red Crescent Society, to provide travel documents, funds, transportation, training facilities, arms, physical assets and other support to the mujahedeen.[11] Fueled by donations from wealthy

---

[9] Final Report of the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission Final Report"), available at http://www.911commission.gov/report/911Report.pdf, p. 55; JA7864; R.1015, Ex. 2 (CIA Fact Sheet, *Usama Bin Laden - Islamic Extremist Fundraiser*).

[10] JA3602-07, 3776, 7864.

[11] JA3777, 7864-65, 4186-91; R.1257, Ex. 4, pp. 17-18 (United States Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements, *United States v. Enaam Arnaout*, 02-cr-892, (N.D. Il.) (incorporated by reference into the *Federal* FAC at ¶ 88 [JA3782] (hereinafter referred to as "Arnaout Evidentiary Proffer"); R.963, Ex. 1, pp. 4-5, 7-8, 10-11 (1996 CIA Report); R.209, Exs. 1 and 2 (June 2004 Press

supporters in Saudi Arabia and the Gulf, this network of ostensible charities established a vast infrastructure to support the mujahedeen opposition to the Soviet occupation of Afghanistan.[12]

At the conclusion of the Afghan jihad, bin Laden determined that the network that supported the mujahedeen in Afghanistan should not be abandoned, but rather adapted to serve as a foundation for waging a global jihad against all of the perceived enemies of Islam, and in particular, the United States.[13] As the 9-11 Commission explained:

> April 1988 brought victory for the Afghan jihad. Moscow declared it would pull its military forces out of Afghanistan within the next nine months. As the Soviets began their withdrawal, the jihad's leaders debated what to do next.
>
> Bin Ladin and [Abdullah] Azzam agreed that the organization successfully created for Afghanistan should not be allowed to dissolve. They established what they called a base or

---

Releases issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation); R.977, Ex. E, p. 4 (August 2002 FBI Report - Interview with former Al Qaeda member Jamal Al Fadl); R.277, Ex. 6, p. 5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Muwafaq Foundation).

[12] JA3777, 4186-91, 7865.

[13] JA3777-78, 4186, 7865.

> foundation (al Qaeda) as a potential general headquarters for future jihad.[14]

Once al-Qaeda was established, bin Laden turned its focus towards the United States. This was not done secretly, but rather publicly, in a series of *fatwas*. "Bin Ladin began delivering diatribes against the United States before he left Saudi Arabia [in 1991]. He continued to do so after he arrived in Sudan. In early 1992, the Al-Qaeda leadership issued a jihad against the Western 'occupation' of Islamic lands...[s]pecifically singling out U.S. forces for attack."[15] In a 1996 *fatwa*, tellingly entitled "Declaration of War against the Americans Occupying the Land of the Two Holy Places," bin Laden asserted that "the occupying American enemy is the principle and the main cause of the situation. Therefore efforts should be concentrated on destroying, fighting and killing the enemy until, by the Grace of Allah, it is completely defeated." In 1998, Bin Laden proclaimed to the world:

---

[14] 9/11 Commission Final Report, p. 56; JA7865.

[15] 9/11 Commission Final Report, p. 59; R.2059 (Order by Judge George B. Daniels holding that "1992 is the year prior to the 1993 attacks against the United States, and the year when it is alleged that Osama bin Laden and other senior al Qaeda leadership issued a formal fatwah, specifically calling for jihad against the United States and other Western allies.").

> The ruling to kill Americans and their allies - civilians and military - is an individual duty for every Muslim who can do it in any country in which it is possible to do.[16]

These *fatwas* ensured that those who provided support to al-Qaeda knew and understood that al-Qaeda was directing its conduct at the United States.

**The Role of Ostensible Charities in al-Qaeda's Growth and Development**

Consistent with bin Laden's plan to adapt the infrastructure developed during the Afghan jihad to build a global terrorist movement, al-Qaeda relied on the network of charities and wealthy individual donors established for the Afghan jihad to sustain its growth and development.[17] According to the United Nations Security Council Committee Concerning al-Qaeda and the Taliban:

> From its inception al-Qaida has relied heavily on charities and donations from its sympathizers to finance its activities. Charities provide al-Qaida with a very useful international channel for soliciting, collecting, transferring and distributing the funds it needs for indoctrination, recruitment, training, and logistical and operational support. These funds are often merged with and hidden among funds used for other legitimate humanitarian or social programs. Al-Qaida supporters and financiers have also established front charity

---

[16] JA3630-31.

[17] JA3602-03, 3629-30, 3655-56, 3778-80, 3848-49.

> networks whose main purpose is to raise and deliver funds to al-Qaida. The roots of these charity networks stem from the anti-Soviet jihad in Afghanistan during the late 1980s. During that time, al-Qaida could draw on a number of state-assisted charities and other deep pocket donors that supported the anti-Soviet cause.[18]

As confirmed by internal al-Qaeda historical records seized during a 2002 raid of an al-Qaeda front charity, the partnerships forged during the Afghan jihad with the Muslim World League, International Islamic Relief Organization, and Saudi Red Crescent Society were among those seamlessly adapted to build and sustain the global infrastructure needed to support the planned jihad against the United States.[19] Additional "charities," such as al Haramain Islamic Foundation, Muwafaq Foundation, and the Saudi Joint Relief Committee, would emerge as important al-Qaeda partners as bin Laden's organization grew and expanded its global terrorist and military operations to regions as diverse as the Philippines, Bosnia, Chechnya, Kosovo, Sudan, Ethiopia, Kashmir,

---

[18] JA3778-79.

[19] JA3650-52, 3656-66, 3788-98, 3807-09, 3982-86, 4052-54, 4129-30, 4210-14, 4427-30, 4538-41, 7867-71, 7882-94; R.1257, Exs. 3, pp. 15-17 (Second Report of the United Nations Monitoring Group on Al Qaida) and Ex. 4, pp. 28-32 (Arnaout Evidentiary Proffer).

Somalia, Palestine, Pakistan, Yemen, Kenya, Tanzania, Egypt, Indonesia, and Malaysia.[20]

Plaintiffs' pleadings and other record materials describe in detail the pervasive involvement of these purported charities in knowingly and directly supporting al-Qaeda in the years preceding the September 11th Attacks.[21] As detailed in the record, the nature of the support provided by these organizations to al-Qaeda has taken many forms, and viewed collectively reflects their intimate, systematic, and longstanding ties to al-Qaeda. In this regard, plaintiffs' pleadings and extrinsic evidence demonstrate that these purported charities have: (1) raised and laundered funds on behalf of al-Qaeda; (2) channeled donated funds to al-Qaeda; (3) provided financial and logistical support and physical assets to al-

---

[20] JA3673-90, 3693-3707, 3779, 3801-05, 3810, 3818, 3830, 3842, 3982, 4073-74, 4166-68, 4187-89, 4200-01, 4292, 4430, 4451-54, 4478-82, 4535, 4501-04, 4537-38, 6188-96, 7867-71, 7879-94; R.963, Ex. 1, pp. 4-5, 10-11 (1996 CIA Report); R.1257, Ex. 3, pp. 16-17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.209, Ex. 2 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation); R.277, Ex. 6 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Muwafaq Foundation); R.1031, Ex. 8, pp. 14-15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

[21] JA3602-3728, 3778-3821.

Qaeda; (4) permitted al-Qaeda members to use ostensible employment with their organizations as a vehicle for covertly traveling in furtherance of al-Qaeda's operations; (5) performed reconnaissance within conflict regions on behalf of al-Qaeda; (6) served as liaisons to localized terrorist organizations on behalf of al-Qaeda, thereby assisting al-Qaeda in expanding its operational base and sphere of influence; (7) funded and facilitated shipments of arms and supplies to al-Qaeda; (8) funded camps used by al-Qaeda to train soldiers and terrorists; (9) actively recruited Muslim youths on behalf of al-Qaeda; (10) served as channels for distributing information and documentation within al-Qaeda, and from al-Qaeda to the media; (11) disseminated publications designed to advance al-Qaeda's radical Islamist ideology throughout the Muslim world and legitimize violent jihad against Christians and Jews on the grounds that they are "infidels" who do not deserve to live; and (12) openly advocated for young Muslims to take up arms against Western and democratic societies.[22]

[22] JA3778-3821, 4139-40.

Contrary to the defendants' tireless efforts to cast plaintiffs' pleadings as conclusory, this Court commented in relation to a prior appeal in this proceeding that plaintiffs' allegations concerning the terrorist activities of the purported charities "include a wealth of detail (conscientiously cited to published and unpublished sources) that, if true, reflect close working arrangements between ostensible charities and terrorist networks, including al Qaeda." *Terrorist Attacks III*, 538 F.3d at 76.

Defendants Aqeel al Aqeel, Soliman al Buthe, Abdullah Naseef, Abdullah bin Saleh al Obaid, Abdullah Muhsen al Turki, Adnan Basha, Mohammed Jamal Khalifa, Abdulrhaman al Swailem, Suleiman al Ali (the "Charity Official Defendants"), Yassin al Kadi, and Abdulrahman bin Mahfouz served as senior officials of one or more of al-Qaeda's front charities, and are alleged to have used their authority over those organizations to orchestrate their material support and sponsorship of al-Qaeda.[23] Each of these defendants is specifically alleged to have acted with

[23] JA3646-47, 3656-66, 3693-3707, 3714, 3717-22, 3802, 3812, 3818, 3862-68, 3982-86, 4166-68, 4210-14, 4451-54, 4478-82, 4496-4504, 6175-99, 7867-71, 7882-94; R.1257, Ex. 3, pp. 16-17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.209, Ex. 1 and 2 (June 2004 Press Releases issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation);

knowledge that the organizations under their control were channeling material support and resources to al-Qaeda, and that the support flowing to al-Qaeda from the organizations under their control would be used to support al-Qaeda's jihad against the United States.[24] These allegations are corroborated by the very nature and scope of the support flowing from the charities under defendants' control to al-Qaeda, which extended to separate branch offices throughout the world over a period of many years.[25] In many cases, these partnerships grew out of the charities' well publicized sponsorship of bin Laden and the mujahedeen in Afghanistan, a legacy which was well known to the heads of those organizations.[26] In the ensuing years, each of these purported charities was repeatedly and

---

R.1039, Ex. 4, p. 1 (September 9, 2004 Press Release from the U.S. Department of the Treasury regarding the designations of Soliman Al Buthe and the U.S. branch of Al Haramain Islamic Foundation); R.277, Ex. 6, (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Yassin al Kadi and Muwafaq Foundation).

[24] JA3982-86, 4120-4214, 4166-68, 4451-54, 4478-82, 4496-4504, 6175-99.

[25] JA3778-3821.

[26] JA3983-84, 4211-12.

publicly implicated in terrorist activities, and yet their support for al-Qaeda continued unabated while under the leadership of defendants.[27]

In several instances, the Charity Official defendants were directly responsible for appointing senior al-Qaeda members to positions of authority within the purported charities, a pattern that further reflects the intimacy of the partnership between those organizations and al-Qaeda. For instance, while serving as the head of both the Saudi Red Crescent Society and Saudi Joint Relief Committee ("SJRC"), Defendant Dr. Abdul Rahman al Swailem appointed Wa'el Jelaidan to serve as Director of the SJRC's office in Pristina, Kosovo.[28] Jelaidan is a founding al-Qaeda member, whose ties to bin Laden date to the Afghan jihad when Jelaidan served as Director of the MWL's office in Peshawar, Pakistan and orchestrated that purported charity's support for the mujahedeen.[29] According to U.S. authorities, Jelaidan proceeded to use the SJRC as a front to "move money

---

[27] JA3792, 3795-96, 3803-04, 3809.

[28] JA4188-89, 4200-01, 4535; R.1257, Ex. 3, p. 17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.1031, Ex. 8, p. 15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

[29] JA3790-91, 4130, 6177-79; R.1257, Ex. 4, p. 18 (Arnaout Evidentiary Proffer).

and men into and from the Balkans" for Osama bin Laden.[30] On September 6, 2002, the United States listed Jelaidan as a Specially Designated Global Terrorist pursuant to Executive Order 13224, explaining that "the United States has credible information that Wa'el Julaidan is an associate of Osama bin Laden and several of bin Laden's top lieutenants. Julaidan has directed organizations that have provided financial and logistical support to al-Qa'ida."[31]

The leaders of the MWL and IIRO similarly ensconced well known bin Laden associates as senior officials of those organizations, thereby providing al-Qaeda with an efficient mechanism to support its global expansion. Defendant Abdullah Naseef met personally with Osama bin Laden around the time of al-Qaeda's formation, and reached agreement with bin Laden at that meeting that al-Qaeda would use MWL offices to launch attacks.[32] This meeting and agreement are documented in the

---

[30] JA3810, 4188-89, 4200-01, 6180.

[31] JA3790-91, 4130, 6177-81; R.1257, Ex. 3, p. 17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.977, Ex. H (September 2002 Press Release from the U.S. Department of the Treasury regarding the designation of Wa'el Hamza Jelaidan).

[32] JA3791-92; R.277, Ex. 3 (Arnaout Evidentiary Proffer, Exhibit of the U.S. Government - correspondence on MWL and IIRO letterhead discussing a

historical records of al-Qaeda's formation seized during the 2002 raid in Bosnia.[33] Naseef proceeded to leave Wa'el Jelaidan, who to Naseef's knowledge was responsible for directing the MWL's assistance for the Afghan mujahedeen and a founding al-Qaeda member, in his position as Director of the MWL, thus ensuring a direct channel for coordinating MWL's collaboration with al-Qaeda.[34]

Around this same time, Naseef formed Rabita Trust, appointing Jelaidan to a senior position within that organization as well, as reflected by the Treasury Department's own press release concerning Rabita Trust's designation under E.O. Order 13224 indicating that "Rabita Trust is headed by Wa'el Hamza Julaidan, one of the founders of al-Qaida with bin Laden. He is the logistics chief of bin Laden's organization and fought on bin Laden's side in Afghanistan."[35] In this regard, the MWL-headed Nassef retained Jelaidan as a Director of its operations for several years following the establishment of al-Qaeda, despite his close ties to bin Laden and

---

meeting with Naseef and the agreement to launch attacks from MWL offices).

[33] JA3791-92.

[34] JA868-69, 2063, 3658-59, 3790-91, 4212, 4130, 6179.

[35] JA878, 1842-43, 3705, 5686.

primary role in supporting the jihad in Afghanistan.[36] Jelaidan's role in the MWL allowed the nascent al-Qaeda organization to use the MWL as an "umbrella" under which the terror group's members could operate, including using MWL offices for launching terrorist attacks.[37]

Similarly, as head of the MWL, Naseef approved the appointment of Mohammed Jamal Khalifa, also a founding al-Qaeda member and bin Laden's brother-in-law, to head the Philippine office of MWL subsidiary IIRO.[38] Through that position, Khalifa used the IIRO as a platform for al-Qaeda's expansion into Southeast Asia, providing funds and other support through the IIRO for the 1993 World Trade Center bombing and the 1995 "Bojinka" plot to simultaneously bomb multiple airplanes while in transit

---

[36] JA3790-91, 4212, 4130.

[37] JA3791-92; R.277, Ex. 3, p. 3 (Arnaout Evidentiary Proffer, Exhibit of the U.S. Government).

[38] JA3795; R.1257, Ex. 3, pp. 16 and 18 (Second Report of the United Nations Monitoring Group on Al Qaida); R.219, Ex. 1, pp. 3-8, 14 (U.S. Government's Response Brief in Support of Decision of the Immigration Judge Denying Respondent Bail, *In the Matter of Mohammad J. A. Khalifa Respondent, In Bond* Proceedings, Case No. A29-457-661 - stating that Khalifa, a known international terrorist, "has been providing support to terrorist groups which have undertaken bombings of civilian targets in [the Philippines], including theaters, and have kidnapped American citizens.").

to the United States.[39] The Bojinka plot was conceived by September 11th mastermind Khalid Sheikh Mohammed, and was a precursor to the September 11th Attacks.[40] Khalifa also used IIRO funds and resources to establish Abu Sayyef Group, a Philippine terrorist organization that has served as an al-Qaeda proxy in the Far East since its establishment.[41] Appellee Adnan Basha assumed control over the IIRO, after serving as a senior officer of its parent the MWL, in the immediate aftermath of the disclosure of IIRO's involvement in the aforementioned plots and terrorist activities, and proceeded to expand IIRO's support for al-Qaeda by providing $60 million to fund al-Qaeda training camps in Afghanistan, as confirmed by a 1996 CIA Report.[42]

The direct involvement of Appellee Aqeel and al-Buthe in orchestrating al Haramain's terrorist activities was also well documented. As defendant Aqeel himself stated, "[t]he [al Haramain branch] offices'

---

[39] JA3660-61, 3714-15, 3795, 4052-53, 4538-39; R.963, Ex. 1, p. 8 (1996 CIA Report).

[40] R.1762, Ex. 10, pp. 4-5 (Substitution for the Testimony of Khalid Sheikh Mohammed, *U.S. v. Moussaoui*).

[41] JA3764, 4539; R.1257, Ex. 3, p. 18 (Second Report of the United Nations Monitoring Group on Al Qaida).

[42] JA3794; R.963, Ex. 1, pp. 7-8 (1996 CIA Report).

directors are employees who follow directions of the main office with regards to hiring workers at the offices and making any decisions on cooperation with any party."[43] In designating Aqeel as a terrorist in 2005, the United States asserted that "[t]hese entities and this individual [defendant Aqeel] have provided financial, material and logistical support to the al-Qaida network, Usama bin Laden or the Taliban, fueling and facilitating their efforts to carry out vile acts against innocent individuals and the civilized world."[44] The Treasury Department further stated that Defendant Aqeel "controlled [al Haramain] and was responsible for all [al Haramain] activities, including its support for terrorism."[45]

On September 9, 2004, the United States Department of Treasury designated defendant Soliman al Buthe as a Specially Designated Global Terrorist for his role with al Haramain in the United States which the

---

[43] JA1776-77.

[44] R.209, Ex. 1, p. 1 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation).

[45] JA2442-43; R.209, Ex. 2, p. 3 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation).

Treasury Department stated had "direct links" with bin Laden.[46] Defendant al Buthe was also indicted on allegations that he diverted charitable donations from al Haramain to al-Qaeda fighters in Chechnya.[47] Al Buthe's role in directing al Haramain's activities are also revealed in the record which states that a "document obtained by the U.S. government shows that in October, 1997, [al Haramain] in Saudi Arabia appointed Al-Buthe its true and lawful attorney in its name, place, and stead" and "appears to give Al-Buthe broad legal authority to act on [al Haramain's] behalf within the United States."[48]

Plaintiffs' allegation that defendant Yassin al Kadi co-founded Muwafaq Foundation with defendant Khalid bin Mahfouz for the specific purpose of serving as a front for al-Qaeda operations likewise enjoys support in the facts and allegations concerning al Kadi's appointment of known terrorists to head various Muwafaq offices.[49] For instance, al Kadi,

---

[46] R.1039, Ex. 4 (September 9, 2004 Press Release from the U.S. Department of the Treasury regarding the designations of Soliman Al Buthe and the U.S. branch of Al Haramain Islamic Foundation).

[47] JA2445-46.

[48] R.1038, p. 19.

[49] JA3813, 4451, 4502-04, 4478-81, 6189-90, 7867-71; R.277, Ex. 6, pp. 4-5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss

himself a close associate of Jelaidan, appointed Chafiq Ayadi to head the Muwafaq operations in Europe and Bosnia.[50] On October 12, 2001, the United States listed Ayadi as a Specially Designated Global Terrorist.[51] Other Muwafaq offices throughout the world were similarly populated with al-Qaeda operatives, and al Kadi acknowledges having personally selected the managers responsible for running Muwafaq's various offices.[52] As a result of al Kadi's deep involvement in sponsoring al-Qaeda, through Muwafaq as well as various businesses under his control or influence, the United States listed him as a Specially Designated Global Terrorist on October 12, 2001.[53]

---

officials regarding Yassin al Kadi and Muwafaq Foundation) and Ex. 7 (German Intelligence Report, Investigation of Yassin Qadi and Muwafaq).

[50] JA4480-81, 4503, 7869-71; R.277, Exs. 6, p. 5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Yassin al Kadi and Muwafaq Foundation) and Ex. 7 (German Intelligence Report, Investigation of Yassin Qadi and Muwafaq).

[51] JA6189.

[52] JA4502, 6189, 7868-70.

[53] JA3818, 4478, 6175; R.1257, Ex. 3, p. 16 (Second Report of the United Nations Monitoring Group on Al Qaida); R.1762, Ex. 5, p. 7 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

Read in context and collectively, the allegations concerning the charities' sponsorship of al-Qaeda while under the direction and control of the Charity Official defendants provide ample support for plaintiffs' specific contention that each of the these defendants played a direct role in facilitating the respective charities' sponsorship of al-Qaeda. In particular, the pleadings make clear that the charities embraced al-Qaeda's Islamist vision and used their global infrastructures to support al-Qaeda's jihad against the United States *as an institutional matter.*[54] The institutional character of the collaboration between al-Qaeda and the purported charities is reflected by the pervasiveness of their support, which followed a common pattern at separate branch offices throughout the world. In several cases, the Charity Official defendants enhanced their organizations' collaboration with al-Qaeda by appointing senior al-Qaeda officials to positions of authority within their organizations. Further, although the charities were repeatedly implicated in terrorist activities in the years following the formation of al-Qaeda, the pattern of sponsorship continued unabated under the direction and leadership of the Charity Official

[54] JA3778-3780, 3782-3783, 3785-3786, 3790-3792, 3794-3795, 3802, 3808-3809, 3810.

defendants for a period of many years, and in many cases even after the September 11th Attacks. These allegations, and the logical inferences arising therefrom, established for purposes of the jurisdictional disputes that the Charity Official defendants engaged in tortious conduct directed at the United States.

**Al-Qaeda's Collaborators in the Financial Industry**

Beyond the charity sector, al-Qaeda also benefited immensely from close working relationships with a number of financial institutions, many of which worked in concert with al-Qaeda's charity sponsors and supporters to facilitate the transfer of resources to al-Qaeda operations and affiliates through the international banking system.[55] By virtue of its own Islamist agenda, as well as for pragmatic reasons, al-Qaeda sought in particular partnerships with financial institutions operating under principles of Sharia compliant finance, and was successful in finding willing collaborators within that industry.[56] As the Council on Foreign Relations observed in its report on terrorist financing, "[m]any prominent Islamic banks operate under loose regulatory oversight, in part because

---

[55] JA3821-44, 4281-83, 4352-55, 4465-69, 5891-93, 6208-20, 7863-94.

[56] JA3882.

they are based in jurisdictions without proper controls, but also because their religious nature often allows them a greater degree of autonomy owing to obvious domestic considerations. Islamic banks regularly co-mingle funds from depositors to place them within group investments by fund managers, creating ready opportunities for anonymous money transfers and settlements. Moreover, al-Qaeda and other terrorist groups that use Islam to justify their actions are also more likely to find willing collaborators within the Islamic banking system."[57] Al-Qaeda's willing collaborators within the financial industry included Defendants National Commercial Bank, Al Rajhi Banking and Investment Corp. ("Al Rajhi Bank"), Al Shamal Bank, Faisal Islamic Bank-Sudan, Tadamon Islamic Bank, DMI Trust, DMI Administrative Services S.A., Saudi American Bank, and Al Baraka Investment.[58]

---

[57] Testimony of Lee S. Wolosky to the National Commission on Terrorist Attacks Upon the United States, April 1, 2003. *See also* Council on Foreign Relations, *Terrorist Financing*, Maurice R. Greenberg, William F. Wechsler, and Lee S. Wolosky, available at www.cfr.org/content/publications/.../Terrorist_Financing_TF.pdf.

[58] JA3606-16, 3708-10, 3715-28, 3827-31, 3835-38, 4281-83, 4292, 4329-43, 4352-55, 4465-69, 4478-82, 4496-4504, 5981-93, 6208-20.

The character of support provided by al-Qaeda's sponsors in the financial industry also took several forms, but in every instance involved the knowing provision of financial services and other forms of material support to al-Qaeda. In certain cases, al-Qaeda officials were directly embedded in the infrastructures of those financial institutions, and al-Qaeda openly maintained accounts and carried out transactions with the knowledge and consent of senior officials of the financial institution in question. For example, during the period that al-Qaeda was headquartered in the Sudan under the protection of the ruling National Islamic Front regime, it openly used Defendants Al Shamal Islamic Bank ("Al Shamal") and Faisal Islamic Bank-Sudan ("FIBS") to support its operations and terrorist agenda.[59] (Together with Defendants DMI Administrative Services S.A. ("DMI S.A.") and Tadamon Islamic Bank ("Tadamon"), Al Shamal and FIBS are referred to herein as the "Sudanese Defendants."). According to the testimony of former al-Qaeda finance chief Jamal al Fadl,

---

[59] JA3606-16, 3835-38, 4329-42, 4352-55, 5981-93, 6208-20; R.1015, Exs. 2, pp. 1-2 (CIA Fact Sheet, *Usama Bin Laden – Islamic Extremist Fundraiser*) and Ex. 3, p. 2 (March 24, 2004 Testimony of Former National Security Advisor Richard A. Clarke before the 9/11 Commission); R. 1257, Ex. 4 (Arnaout Evidentiary Proffer).

previously deemed credible by this Court,[60] Al Shamal maintained accounts for Osama bin Laden and several other al-Qaeda officials, and carried out large cash and wire transactions in furtherance of al-Qaeda operations.[61] Al Fadl similarly testified that FIBS, which in turn is the founder of Al Shamal, partnered with al-Qaeda by maintaining accounts for al-Qaeda and by embedding al-Qaeda officials in the infrastructure of Al Shamal.[62] Tadamon also maintained accounts for al-Qaeda members according to al Fadl, including an account for bin Laden's personal bodyguard, who handled money for bin Laden and used the account for bin Laden's activities on behalf of al-Qaeda.[63]

More frequently, al-Qaeda's partners in the financial sector operated covertly within its global infrastructure, by providing financial services to al-Qaeda's charity fronts with full knowledge that those accounts were being used to support al-Qaeda, and by themselves providing funds to al-Qaeda, typically through their own *zakat* charitable contributions to al-

---

[60] *United States v. Bin Laden, et al.*, 397 F. Supp. 2d 465, 515-516, 518 (S.D.N.Y. 2005).

[61] JA3606-16, 3837-38, 4334-35, 4354, 5983-84, 6212-14.

[62] JA3835, 4333-54, 5998, 6215-17.

[63] JA6209-10, 6237-38.

Qaeda's charity fronts. The allegations and record evidence relating to Al Rajhi Bank and National Commercial Bank ("NCB") are illustrative of this pattern of support.[64] Testifying before Congress just three weeks after the September 11th Attacks, former Central Intelligence Agency Chief of Counterterrorism Operations Vincent Cannistraro affirmed that "[t]here is little doubt that a financial conduit to Bin Laden was handled through the National Commercial Bank, until the Saudi government finally arrested a number of persons and closed down the channel. It was evident that several wealthy Saudis were funneling contributions to Bin Laden through this mechanism."[65]

The "mechanism" through which "wealthy Saudis" channeled support to bin Laden via NCB involved large transfers to IIRO, Muwafaq Foundation, Saudi Red Crescent, SJRC and other al-Qaeda charity fronts.[66] Conveniently, NCB maintained accounts for many of these ostensible charities, including in particular IIRO and SJRC, and promoted contributions to those accounts via advertisements, with specific awareness

---

[64] JA3827-31, 3715-22, 4073-74, 4281-83, 4292, 4465-69, 4478-82, 4496-4504, 6188-94, 7863-94.

[65] JA3718-19, 4073, 4498, 4883, 6191.

[66] JA3830, 3718-22, 4292, 4073-74, 4498-99, 7882-85.

that those entities were supporting al-Qaeda.[67] At all times, NCB was aware of the terrorist activities of those purported charities, by virtue of the extensive public reporting concerning those activities in the Muslim world prior to 9/11, and by virtue of the longstanding ties between senior executives of NCB (including its Chairman Appellee Khaled bin Mahfouz and Appellee Yassin al Kadi, who was the architect of NCB's Islamic Banking Division), and bin Laden, as described in further detail below.[68] (Together with Abdulrahman bin Mahfouz, Khaled bin Mahfouz and Yassin al Kadi are referred to here is the "NCB Defendants.")

Al Rajhi Bank played an analogous and equally important role in al-Qaeda's financial infrastructure, by also providing financial services to al-Qaeda charity fronts including the MWL, IIRO, al Haramain, and Benevolence International Foundation.[69] In addition, Al Rajhi Bank funneled its own zakat contributions to al-Qaeda, via contributions to al-Qaeda's charity fronts.[70] Like NCB, Al Rajhi Bank was aware at all relevant

---

[67] JA3830, 4073-74, 4292, 4498, 7884-85

[68] JA3718, 3831, 4478, 4501, 6175-99, 7885-93.

[69] JA3716-17, 3827-28, 4281-83, 4466-71, R.1031, Ex. 8, p. 14 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

[70] JA4282-83.

times that MWL, IIRO, al Haramain and Benevolence International Foundation were fronts for al-Qaeda, again by virtue of the public reporting concerning the terrorist activities of those organizations, and because senior Al Rajhi Bank officials, including in particular the bank's founder Suleiman al Rajhi,[71] were themselves important al-Qaeda benefactors with direct ties to bin Laden dating from the Afghan jihad.[72]

Defendants DMI Trust and DMI S.A., in turn, sat at the apex of a deliberately decentralized financial network, which included Defendants Al Shamal, FIBS and Tadamon, established for purposes of "pursuing financial jihad." Functioning as the operational arm of DMI Trust and implementing the Trust's strategies and objectives, including its material sponsorship of al-Qaeda, DMI S.A. handled accounts for al-Qaeda members and primary financiers, including Wa'el Jelaidan and Yassin al

---

[71] The other officials of Al Rajhi Bank who are defendant-appellees in this appeal are Abdullah al Rajhi, Saleh al Rajhi, and Sheik Saleh al-Hussayen. Together, these individuals and Suleiman al Rajhi are referred to as the "Al Rajhi Defendants."

[72] JA3828, 4281-83, 4465-69.

Kadi, syphoned off charitable donations to support al-Qaeda, and used its own zakat contributions to support al-Qaeda.[73]

As referenced above, Plaintiffs' pleadings and supplemental materials allege that support for al-Qaeda's agenda emanated from the founders and most senior officials of al-Qaeda's partners in the financial industry, many of whom had longstanding direct ties to bin Laden, and several of whom also held positions within al-Qaeda's charity fronts, thus placing them in a unique position to facilitate the provision of resources to al-Qaeda via the network of financial institutions and charitable organizations under their influence. In the case of Al Shamal, bin Laden was himself one of its major shareholders, having contributed $50 million in capital to the bank around the time he relocated al-Qaeda to the Sudan.[74] The Sudanese regime that invited bin Laden and al-Qaeda to Sudan also held a direct ownership in Al Shamal, as did Saleh Kamel, a wealthy patron of al-Qaeda's endeavours.[75] Al Shamal's Chairman was Adel Abdul Jalil Batterjee, a close bin Laden associate who also headed al-Qaeda charity

---

[73] JA2569-70.

[74] JA3607, 3836-37, 4334, 4353, 5982-83, 6212; R.1015, Ex. 2, p. 2 (CIA Fact Sheet, *Usama Bin Laden – Islamic Extremist Fundraiser*).

[75] JA3606-08, 3836, 4333-34, 5981, 6164, 6211.

fronts Benevolence International Foundation and its Saudi parent, Lajnat al Bir.[76] Batterjee's primary role in al-Qaeda's support infrastructure prompted the United States to list him as a Specially Designated Global Terrorist after the September 11th Attacks.[77]

Faisal Islamic Bank's leadership is similarly intertwined with the al-Qaeda organization. As is true of Al Shamal, the Sudanese regime that provided safehaven and support to bin Laden and al-Qaeda held a direct interest in Faisal Islamic Bank.[78] Its founders included Yousef Nada, another al-Qaeda financial patron designated by the United States pursuant to Executive Order 13224, and two of its Directors, Abdullah Omar Naseef and Amin Aqeel Attas, in turn were founders of Rabita Trust, an entity also designated by the United States under Executive Order 13224 based on its role in sponsoring al-Qaeda.[79]

---

[76] JA3609, 3780, 3838, 3868-69, 4513, 4530-31, 5982, 6212; R.1257, Ex. 4, pp. 16-17, 27 (Arnaout Evidentiary Proffer); R.1030, Ex. P, p. 19 (9/11 Commission Monograph on Terrorist Financing).

[77] JA3607, 4512-15, 4530, 5982, 6212; R.977, Ex. U (December 21, 2004 Press Release from the U.S. Department of the Treasury regarding the designation of Adel Abdul Jalil Batterjee).

[78] JA4332, 5988, 6216.

[79] JA3812, 3823; R.277, Ex. 5 (January 4, 2002 letter from the U.S. Department of the Treasury to Swiss officials regarding Yousef Nada);

Tadamon and the DMI entities were similarly intertwined with al-Qaeda's leadership and other members of al-Qaeda's inner support circle. Osama bin Laden was himself a shareholder in Tadamon, and Tadamon's other shareholders included al-Qaeda material sponsors FIBS, Saleh Kamel, Al Baraka Investment, Mohammed Hussein al Amoudi, and Dubai Islamic Bank.[80] DMI Trust appointed Hassan al Turabi, the noted Islamist leader of the National Islamic Front who invited bin Laden to the Sudan to build al-Qaeda, to serve on its Board of Supervisors, and also held direct or indirect stakes in Al Shamal, FIBS and Tadamon.[81]

The pleadings similarly allege that al-Qaeda's collaborations with NCB and Al Rajhi Bank were implemented by NCB Chairman Khaled bin Mahfouz and Al Rajhi Bank Managing Director Suleiman al Rajhi,[82] both of

---

R.1031, Ex. 9 (August 29, 2002 Press Release from the U.S. Department of the Treasury regarding the designations of Yousef Nada-related entities); R.1762, Ex. 5, p. 10 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

[80] JA3838-39, 4365, 6208-09, 6236.

[81] JA3724.

[82] The pleadings allege that al Rajhi Bank senior officers Saleh al Rajhi, Suleiman al Rajhi's brother and al Rajhi Bank's Chairman, Abdullah al Rajhi, the bank's General Manager, and Sheikh Saleh al Hussayen, a member of its Sharia Board, also participated directly and knowingly in al

whom have direct ties to bin Laden.[83] Both bin Mahfouz and al Rajhi are identified as primary al-Qaeda sponsors on the "Golden Chain," a document discovered during a 2002 raid of the Bosnian offices of Benevolence International Foundation that uncovered a trove of internal documents on a computer hard drive.[84] After careful review of the materials, U.S. intelligence agencies concluded that they were internal al-Qaeda documents, chronicling the formation of al-Qaeda and details of its financial and organizational structure.[85] The Golden Chain document was found within this broader collection, and U.S. intelligence and law enforcement agencies have concluded that it is an authentic al-Qaeda document identifying al-Qaeda's most important financial benefactors, and

---

Rajhi Bank's sponsorship of al-Qaeda. JA828, 3715-18, 4281-83, 4465-69. By virtue of their positions and the pervasive character of al Rajhi Bank's systematic sponsorship of al-Qaeda, the allegations concerning their participation in al Rajhi bank's sponsorship of al-Qaeda are well founded. *Id.*

[83] JA3866-68, 4465-69, 4496-4504; R.1031, Ex. 8, pp. 14-15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

[84] JA3785-86, 3866-68, 4467, 4500-01, 4529, 6164-65; R.977, Ex. G (Exhibit to Arnaout Evidentiary Proffer - the "Golden Chain"); R.1762, Ex. 5, p. 6 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

[85] JA3785, 4467, 4500-01, 4529, 6164-65.

the individuals responsible for coordinating their contributions to al-Qaeda.[86] The Golden Chain has been authenticated by former al-Qaeda finance chief Jamal al Fadl, and the Treasury Department has used inclusion on the list as a basis for designating individuals pursuant to Executive Order 13224.[87]

The authenticity of the Golden Chain as a list of al-Qaeda's most important financiers has been widely accepted. The 9/11 Commission Monograph on Terrorism Financing cites to "a group of wealthy donors from the Persian Gulf region known as the 'Golden Chain,' which provided support to ... Usama Bin Ladin."[88] The 9/11 Monograph continues:

> The material seized [in Bosnia] included many documents never before seen by U.S. officials, such as the actual minutes of al Qaeda meetings, the al Qaeda oath, al Qaeda organizational

---

[86] JA3785-86, 4467, 4500-01, 4529, 6164-65; R.1257, Ex. 4, pp. 18-19 (Arnaout Evidentiary Proffer); R.1030, Ex. P, pp. 102-103 (9/11 Commission Monograph on Terrorist Financing); R.1762, Ex. 5, p. 6 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

[87] JA4467, 4500-01, 4514-15, 4529, 6164-65; R.977, Ex. E, pp. 23-24 (August 2002 FBI Report – Interview with former Al Qaeda member Jamal Al Fadl).

[88] R.1030, Ex. P, p. 94 (9/11 Commission Monograph on Terrorist Financing).

> charges, and the "Golden Chain" list of wealthy donors to the Afghan mujahideen. . . .[89]

The Council on Foreign Relations Studies ("CRS") produced a report in October 2002 that also made use of the Golden Chain. Relying on the 9/11 Commission report, CRS report described the Golden Chain as:

> an informal financial network of prominent Saudi and gulf individuals originally established to support the anti-Soviet Afghan resistance movement in the 1980s. U.S. officials state that this network collected funds and funneled it to Arab fighters in Afghanistan, and later to Al Qaeda, using charities and other non-governmental organizations .... *Saudi individuals and other financiers associated with the Golden Chain enabled bin Laden and Al Qaeda to replace lost financial assets and establish a base in Afghanistan following their abrupt departure from Sudan in 1996.*[90]

The Golden Chain thus provides a list of the most significant donors to al-Qaeda. These donors, moreover, did not give money to al-Qaeda unwittingly, through an al-Qaeda front masquerading as a legitimate charity; they were, rather, bin Ladin's original list of financial backers for his al-Qaeda enterprise. The appearance on this list of Khalid bin Mahfouz

---

[89] R.1030, Ex. P, pp. 102-103 (9/11 Commission Monograph on Terrorist Financing).

[90] R.1030, Ex. R, pp. 2-3 (CRS Report for Congress, *Saudi Arabia, Terrorist Financing Issues*, December 8, 2004).

and Sulaiman al Rajhi is strong evidence of their knowing and active financial support of al-Qaeda.

In addition to the positions within their respective financial institutions, Khalid bin Mahfouz, Suleiman al Rajhi, and Abdullah al Rajhi also played significant roles in al-Qaeda charity fronts. As mentioned above, bin Mahfouz founded Muwafaq Foundation along with Defendant al Kadi, with the intent that it would serve as a front for al-Qaeda operations.[91] Al Rajhi served as a Board Member of the IIRO, and also founded the SAAR Foundation, a U.S. based charity established by al Rajhi to support Islamic extremists.[92] These allegations and facts concerning their longstanding ties to bin Laden, and positions within financial institutions and charities with documented links to al-Qaeda, place bin Mahfouz and al Rajhi at the center of the al-Qaeda financial and logistic network.

**Al-Qaeda's Additional Wealthy Financiers**

A number of other wealthy financiers and sponsors played critical roles in the advancement of the al-Qaeda enterprise, by providing much of

---

[91] JA3831, 3867-68, 4478, 4501, 6188-91, 7867.

[92] JA3827-28, 3866-67, 4465-66.

the funding al-Qaeda needed to sustain its global operations, estimated by the U.S. government at more than $30 million per year in the period immediately preceding the September 11th Attacks.[93] These wealthy individual sponsors included defendants Bakr bin Laden, Tariq bin Laden, Yeslam bin Laden, Omar bin Laden, Abdullah bin Laden, Yousef Jameel, and Saleh Kamel—Bakr bin Laden, Jameel, and Kamel are themselves members of the Golden Chain.[94]

Bakr, Tariq, Omar, and Yeslam bin Laden are Osama's half-brothers. Bakr, Tariq, and Omar are alleged to have used their positions within the Saudi Binladin Group, the bin Laden family construction empire, to channel support to their sibling Osama after he formed al-Qaeda and made clear his intent to conduct jihad against the United States.[95] Consistent with those allegations, the National Commission on Terrorist Attacks' Staff Monograph on terrorist financing confirms that Osama bin Laden continued to receive disbursements from SBG following the establishment of al-Qaeda in 1988 through 1993 or 1994, to a tune of approximately $1

---

[93] 9/11 Commission Final Report, pp. 169-170.

[94] JA3785-86.

[95] JA3710-14, 3845, 3870-71, 4394-4402.

million per year, until the Saudi government allegedly "forced the Bin Ladin family to find a buyer for Usama's share of the family company."[96] Bin Laden used those funds to provide economic support to the National Islamic Front regime, a central component of the bargain under which the NIF provided safehaven, training camps and other support for al-Qaeda.[97] In addition, Bakr is a member of the Golden Chain, and a primary contributor to al-Qaeda front charity IIRO.[98]

Abdullah bin Laden sponsored al-Qaeda through his roles in establishing two US branches of al-Qaeda front charities, Taibah International and WAMY USA, both of which have extensive ties to al-Qaeda.[99] Yeslam bin Laden supported al-Qaeda through the management of Swiss bank accounts for Osama's benefit.[100]

---

[96] 9/11 Commission Monograph on Terrorist Financing, available at www.9-11commission.gov/staff.../911_TerrFin_Monograph.pdf.

[97] JA4394-95, 5982-83, 6212-13.

[98] JA4394.

[99] JA3662, 3665, 3671, 3677-81, 4399-4401.

[100] JA4024-30.

Defendants Kamel and Jameel also are members of the Golden Chain.[101] Both are alleged to have longstanding ties to al-Qaeda, and to have supported al-Qaeda through a variety of channels.[102] Jameel's sponsorship of al-Qaeda flowed largely through purported charities, known to Jameel to be al-Qaeda fronts.[103] Kamel also contributed generously to al-Qaeda through its known charity fronts, and also supported al-Qaeda through various businesses and financial institutions under his control, including Defendant Dallah al Baraka.[104]

## SUMMARY OF ARGUMENT

A defendant who provides support to a terrorist organization known to target Americans, like al-Qaeda, is subject to specific personal jurisdiction in relation to claims arising from the organization's terrorist attacks on the U.S. because such a defendant can reasonably expect to be haled into U.S. courts to account for those acts of support. Plaintiffs' extensive pleadings readily establish that the Defendants who were dismissed for lack of specific personal jurisdiction each knowingly

---

[101] JA3785, 3870, 4318-19, 4529.

[102] JA3832-33, 4302-05, 4314-20, 4528-45.

[103] JA3870, 4528-45.

[104] JA3724-28, 3832-33, 4302-05, 4314-20.

provided material support to al-Qaeda prior to the September 11th Attacks. Indeed, those pleadings in nearly every instance met a quite higher standard, especially given the absence of jurisdictional discovery and the district court's rulings on motions to dismiss. They placed each defendant at the center of a web of funding and operational support for al-Qaeda's operations, and provided the context and detail to establish each defendant's extensive role in furthering al-Qaeda's terrorist activities directed toward the United States. Plaintiffs have appealed the dismissals of only those defendants with the clearest and closest links to al-Qaeda's operations and leaders, forgoing appeal of dozens of other dismissed defendants. The defendants subject to this appeal include the al-Qaeda front groups, key financiers, persons officially designated as global terrorists by the U.S. government, and others most directly connected to, and knowledgeable about, al-Qaeda's terrorist objectives, history, and plans and operations. The allegations supporting these conclusions are surveyed in detail for each defendant in Point I.B.2, *infra*, and in the Companion Brief at I.B.2.

Even a plausible allegation that a defendant knowingly provided support to al-Qaeda readily meets the U.S. Supreme Court's due process

standard, which establishes that specific jurisdiction exists when a defendant may reasonably expect that his acts will cause him to be "haled into U.S. court." This is especially so where recovery is predicated on defendants' intentional tort, knowingly contributing to a terrorist organization that targets the U.S. within the scope of 18 U.S.C. § 2333. Targeting the U.S. is at the heart of al-Qaeda's terrorist enterprise, which it has notoriously proclaimed since before the 1993 World Trade Center bombing and the subsequent attacks on U.S. interests. Congress imposed civil and criminal liability for – and indicated that the U.S. courts should be open to address – support to just such terrorist organizations. A conclusion that judicial action is unwarranted would present the most severe separation of powers concerns in light of the extensive Executive Branch and Congressional action predicated on an assessment that terrorism financing abroad has a close nexus to the most significant U.S. interests. Even absent those statutes, defendants providing such support to al-Qaeda would be foolish to think that the United States would fail to respond against them with all available tools -- diplomatic, financial, regulatory, law enforcement, and, yes, judicial process.

A series of legal errors led the district court to find personal jurisdiction lacking and to ignore the sufficiency of the abundant allegations. Many of those errors concerned the record. The court consistently understated the scope of the allegations, viewed each allegation without regard to the context of plaintiffs' broader allegations, failed to draw the most basic inferences favorable to plaintiffs' claims from the allegations, and even weighed and found plaintiffs' "evidence" wanting in the course of addressing motions to dismiss. Other errors concerned the appropriate legal standard. The district court variously required a showing of specific intent to assist an attack on the United States, personal involvement in such an attack, and even involvement in the September 11th Attacks themselves. The court applied per se rules against jurisdiction based on support for al-Qaeda provided more than a few years prior to the September 11th or based on support to al-Qaeda provided through an intermediary - in both cases, no matter how significant and knowing the support for an attack on the U.S. might be. In these and other respects, the decisions below simply lost track of the first principles of the Due Process Clause, which are focused on the appropriateness of a defendant's being haled into the forum when he

undertakes an intentional tort, in violation of local law, assisting efforts directed at and causing harm in the forum.

Similar errors affected the district court's treatment of the extensive allegations and detail that supported a finding of general jurisdiction for a handful of defendants with extensive ties to the United States. Plaintiffs' detailed allegations of those defendants' activities easily satisfies the traditional jurisdictional standard, as the district court would have recognized had it credited plaintiffs' pleadings, drawn reasonable inferences from them, and declined to assess the "evidence" in the course of deciding motions to dismiss.

## STANDARD OF REVIEW

The court reviews "de novo a district court's dismissal of a complaint under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction." *Schultz v. Safra Nat'l Bank of N.Y.*, 377 F. App'x 101, 102 (2d Cir. 2010) (*citing Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996)). Where no jurisdictional discovery has been undertaken, a plaintiff need only make a prima facie showing of jurisdiction based solely upon factual allegations. *In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 206 (2d Cir. 2003) (per curiam). The court must "construe the pleadings and affidavits in the light

most favorable to plaintiffs, resolving all doubts in their favor." *Chloe v. Queen Bee of Beverly Hills*, LLC, 616 F.3d 158, 163 (2d Cir. 2010) (internal quotation omitted). Only after jurisdictional discovery must a plaintiff's prima facie showing include an averment of facts that, if credited by the trier of fact, would suffice to establish jurisdiction. *Magnetic Audiotape*, 334 F.3d at 206. Here, no relevant jurisdictional discovery has taken place, and the court therefore accepts the facts pleaded by the plaintiffs as true.[105]

## ARGUMENT

### I. THE COURT HAS SPECIFIC PERSONAL JURISDICTION OVER THE DEFENDANTS

The district court dismissed 36 Defendants on the ground that plaintiffs did not adequately plead facts supporting specific personal jurisdiction. When a terrorist organization notoriously targets the United States and its attacks give rise to unspeakable harm in the United States, U.S. courts have, in relation to claims arising from those attacks, specific jurisdiction over any defendant who knowingly provided support to that

[105] For National Commercial Bank ("NCB") discovery was conducted as to general jurisdiction. The district court specifically denied plaintiffs the discovery they sought in support of their theories of specific jurisdiction concerning NCB's sponsorship of al Qaeda through al Qaeda fronts Muwafaq, IIRO and SJRC. *See infra*, at p. 128 n.134.

terrorist organization within the meaning of Section 2333 of the Anti-Terrorism Act. *See infra* Point I.A. Plaintiffs extensively and more than adequately pled facts that established a *prima facie* case that each of the dismissed defendants violated Section 2333 by knowingly providing support to al-Qaeda, which was notoriously targeting its terrorist acts against the United States. *See infra* Point I.B.2. Indeed, those pleadings would satisfy an even more stringent legal standard. In reaching a different conclusion, the district court erred to the extent that it found that such violations of Section 2333 could not establish personal jurisdiction and in failing to acknowledge and accept the implications of the extensive pleadings establishing that defendants violated Section 2333. *See infra* Parts I.B.1 & 2.

### A. U.S. Courts Have Jurisdiction Over Defendants Who Are Alleged to Have Knowingly Supported Terrorist Organizations Hostile to the United States and Causing Injury Here.

United States courts have jurisdiction over persons who knowingly support a terrorist organization, such as al-Qaeda, that is undertaking actions directed against the United States and causes injury here. Because such defendants have "engaged in unabashedly malignant actions directed

at [and] felt in this country," they "should therefore reasonably anticipate being haled into court here by those injured as a result of those actions." *Mwani v. bin Laden*, 417 F.3d 1, 4 (D.C. Cir. 2005) (*quoting Burger King v. Rudzewicz*, 471 U.S. 462, 473-74 (1985)) (additional internal quotation omitted).

*1. Personal Jurisdiction Exists Under Supreme Court Precedent Because Supporters of Terrorist Organizations Hostile to the U.S. Should Reasonably Anticipate Being Haled Into United States Courts.*

Personal jurisdiction over supporters of terrorist organizations directing their actions against the Unites States reflects a straightforward application of Supreme Court precedent. Due process "require[es] that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.'" *Burger King*, 471 U.S. at 472 (second alteration in original) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977)). That "requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum" and the litigation "arises out of or relate[s] to those activities." *Id.* (internal quotations omitted). "[T]he 'foreseeability' of causing injury in the forum can establish such [minimum] contacts where 'the defendant's conduct and connection with

the forum ... are such that he should reasonably anticipate being haled into court there.'" *Mwani*, 417 F.3d at 12 (quoting *Burger King*, 471 U.S. at 474). This requirement is readily met even in the absence of physical contacts with the forum where defendants' "intentional conduct [beyond the forum is] calculated to cause injury" within the forum. *Calder v. Jones*, 465 U.S. 783, 791 (1984). While this standard is not met by "mere untargeted negligence," it is met when a defendant's "intentional, and allegedly tortious, actions were expressly aimed at [the forum]" because they "must 'reasonably anticipate being haled into court there' to answer" for their wrong. *Id.* at 789-90 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). And, in such circumstances "where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477; *see Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 129 (2d Cir. 2002).

In three separate respects, these principles readily establish that personal jurisdiction exists over parties that knowingly provide material support to al-Qaeda, which was notoriously undertaking terrorist attacks

against the United States since its formation in 1988 and since at least its declaration of war against the United States in 1992, the 1993 attack on U.S. soldiers in Mogadishu, Somalia, the 1993 World Trade Center bombing, and its attacks on the U.S. embassies in 1998.

*First*, such support for terrorism readily satisfies the touchstone of personal jurisdiction: whether the defendant's acts in relation to the forum "are such that he should reasonably anticipate being haled into court there." *Burger King*, 471 U.S. at 474 (internal quotation omitted); *see Calder v. Jones*, 465 U.S. at 790. By knowingly providing support to al-Qaeda, a person or entity also assists al-Qaeda's terrorist efforts, which are directed in large measure against the United States and its interests. Long before the attacks of September 11, 2001, Congress passed a series of statutes creating criminal and civil liability for those who act abroad and provide material support to terrorist organizations threatening U.S. interests. *See infra* pp. 71-73. Section 2333 of the Antiterrorism Act ("ATA"), enacted in 1992, is one of those statutes and provides a civil remedy for harms arising from violations of various criminal counter-terrorism laws. Because the criminal laws which underlay Section 2333, "all contemplated the assertion by a United States court of jurisdiction over a foreign national for terrorist

activities committed abroad, irrespective of the number and nature of that individual's other 'contacts' with the United States," defendants whose conduct violates the criminal statutes "should have anticipated the possibility of being 'haled into court' in the United States" in a civil capacity "for the same acts." *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 54, 59-60 (D.D.C. 2003).

Indeed, even if none of these statutes existed, defendants supporting al-Qaeda's terrorism in these circumstances "'could not reasonably have expected that the United States would not respond to attacks on its citizens, and not undertake measures to prevent similar attacks in the future,'" *Daliberti v. Rep. of Iraq*, 97 F. Supp. 2d 38, 54 (D.D.C. 2000), and they "should reasonably expect that if [U.S.] interests were harmed, [they] would be subject to a variety of potential responses, including civil actions in United States courts." *Rein v. Socialist People's Libyan Arab Jamahiriya*, 995 F. Supp. 325, 330 (E.D.N.Y. 1998) *aff'd in part*, 162 F.3d 748 (2d Cir. 1998); *see Mwani*, 417 F.3d at 13-14; *Morris v. Khadr*, 415 F. Supp. 2d 1323, 1336 (D. Utah 2006) (finding a defendant may reasonably expect being haled into U.S. court for any "personal participation in al Qaeda's terrorist agenda, not just an attack" (internal quotation omitted)); *Sisso v. Islamic Rep. of Iran*, 448 F.

Supp 2d 76, 90 (D.D.C. 2006) (finding it "entirely foreseeable that an indiscriminate attack" in Israel would injure U.S. interests and that defendants "should hardly be surprised to find that they are called to account for it" in U.S. courts). Indeed, for activities foreseeably prompting the full weight of U.S. criminal law enforcement, financial sanctions administered by the Departments of Treasury and State, and, in certain cases, U.S. military action, *see infra* pp. 70-75, it seems hardly a close question that the jurisdiction of the civil courts could reasonably have been anticipated and is now appropriate.

*Second*, personal jurisdiction and the reasonable anticipation of being haled into U.S. courts are especially clear because conduct that violates Section 2333 constitutes an intentional tort, one clearly directed against the United States when the support is provided to a terrorist organization such as al-Qaeda that notoriously targets the United States. *See Calder*, 465 U.S. at 789-90. Section 2333 is an intentional tort, requiring a showing that a defendant "either knows that the organization engages in such acts [of terrorism] or is deliberately indifferent to whether it does or not." *Boim v. Holy Land Found. for Relief & Dev.* ("*Boim III*"), 549 F.3d 685, 693 (7th Cir. 2008) (en banc). If this knowledge requirement is satisfied, Section 2333

applies whenever there is any financial or other support provided, directly or indirectly, to al-Qaeda: Congress expressly found that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that *any contribution to such an organization* facilitates that conduct." Anti-terrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, § 301(a)(7), 110 stat. 1214, 1247 (1996) (enacting 18 U.S.C. § 2339B) (emphasis added); *see J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality) (recognizing that in cases of "an intentional tort, the defendant might well fall within the State's" specific jurisdiction "authority by reason of his attempt to obstruct its laws"). As the Supreme Court emphasized, "Congress's use of the term 'contribution' is best read to reflect a determination that any form of material support furnished 'to' a foreign terrorist organization should be barred, which is precisely what the material-support statute does." *Holder v. Humanitarian Law Project*, 130 S.Ct. 2705, 2725 (2010). "Congress intended these provisions [§ 2333 and the underlying ATA criminal provisions] to impose 'liability at any point along the causal chain of terrorism.' S. Rep. No. 102-342, at 22." *Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp. 2d 609, 631 (E.D.N.Y. 2006); *see Boim v. Quaranic Literacy Inst.* ("*Boim I*"), 291 F.3d 1000,

1020-21 (7th Cir. 2002) ("Congress purposefully drafted" the ATA "to extend liability to all points along the causal chain of terrorism."). Thus, a contribution of funds or services to al-Qaeda with knowledge of the organization's character amounts to an intentional, tortious act directed against the United States. *Cf. Boim III*, 549 F.3d at 693-94, 695 ("A knowing donor to Hamas ... would know that Hamas is gunning for Israelis" and "[t]he mental element required to fix liability on a donor to Hamas is therefore present if the donor knows the character of that organization."); *Stansell v. BGP, Inc.*, No. 8:09-CV-2501-T-30AEP, 2011 WL 1296881, at *7 (M.D. Fla. Mar. 31, 2011) ("[P]rovision of money to a terrorist organization ... is clearly dangerous to human life."). It is not an act of "mere untargeted negligence" or one where there is "foreseeability" of harm to the United States in the absence of an intentional wrong directed to the forum. *Calder*, 471 U.S. at 789; *id.* at 788-89 (distinguishing the conditions not satisfying personal jurisdiction from the intentional tort that does so). Instead, even more so than a defendant outside the forum who assists production of an allegedly libelous article where injury can be anticipated in the forum, *see id.* at 789-90, a defendant who assists or provides support abroad to a terrorist organization targeting the U.S. in violation of U.S. law

where Congress has signaled an intent to use federal courts is clearly subject to personal jurisdiction for injury occurring here. *See infra* pp. 71-73. Because plaintiffs have amply pled that the defendants knowingly provided material support to al-Qaeda in violation of Section 2333 of the Anti-Terrorism Act, *see infra* Point I.B.2, they have more than met their burden of making the *prima facie* showing that establishes the court's jurisdiction over defendants in the face of a motion to dismiss.

Third, that defendants providing material support to al-Qaeda should anticipate being haled into U.S. courts is further confirmed by yet another line of cases, featuring a decision of this Court, addressing similar due process principles. "[T]he Due Process Clause limits the United States' assertion of jurisdiction over criminal conduct committed outside our borders," and jurisdiction will lie over a defendant for acts undertaken abroad only where "'there [is] a sufficient nexus between the defendant and the United States, so that such application [of law] would not be arbitrary or fundamentally unfair.'" *United States v. Yousef*, 327 F.3d 56, 111 (2d Cir. 2003) (quoting *United States v. Davis*, 905 F.2d 245, 248-49 (9th Cir. 1990)); *see Goldberg v. UBS AG*, 690 F. Supp. 2d 92, 105 (E.D.N.Y. 2010). "The nexus requirement serves the same purpose as the 'minimum

contacts' test in personal jurisdiction. It ensures that a United States court will assert jurisdiction over a defendant who 'should reasonably anticipate being haled into court' in this country." *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1257 (9th Cir. 1998) (quoting *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 287, 297 (1980)); *see United States v. Perlaza*, 439 F.3d 1149, 1168 (9th Cir. 2006) (same); *United States v. Al Kassar*, 582 F. Supp. 2d 488, 494 (S.D.N.Y. 2008) (same); *cf. Nicastro*, 131 S. Ct. at 2787 (plurality); *United States v. Sisal Sales Corp.*, 274 U.S. 268, 276 (1927) (because defendants "brought about forbidden results within the United States," they "are within the jurisdiction of our courts and may be punished for offenses against our laws."). In *Yousef*, this Court applied the due process test to establish jurisdiction over a defendant charged with terrorism offenses who bombed a Philippine Airlines jet abroad, injuring only non-U.S. persons - but who did so in preparation for an attack on U.S. airlines that never came to pass. Because the bombing was "a 'test run' in furtherance of this conspiracy," and advanced "the substantial intended effect of their attack on the United States and its citizens, it cannot be argued seriously that the defendants' conduct was so unrelated to United States interests as to render their prosecution in the United States arbitrary or fundamentally

unfair." *Yousef*, 327 F.3d at 112. Other terrorism cases are to like effect. *See Goldberg*, 690 F. Supp. 2d at 106-08 (sufficient nexus for due process purposes, to support civil ATA suit resting on violations of criminal law, between bank's offshore services in support of terrorist organization and the United States); *Al Kassar*, 582 F. Supp. 2d at 494 (nexus requirement met by allegations of plot to kill U.S. citizens abroad). Because the due process requirement of a link between the forum and the defendant's acts sufficient to establish a court's jurisdiction is certainly no higher in the civil context, *see Goldberg v. UBS AG* ("*Goldberg I*"), 660 F. Supp. 2d 410, 431 (E.D.N.Y. 2009), these cases directly support finding personal jurisdiction over defendants alleged to be liable under Section 2333 based on their support provided to terrorist organizations directing action against the United States.

*2. Courts Addressing Terrorism Claims Have Overwhelmingly Found that Material Supporters of Terrorist Organizations Targeting the United States Are Liable Under Section 2333 and Subject to U.S. Courts' Jurisdiction.*

In addition to this Court's decision in *Yousef* and related decisions of courts within this Circuit, *see supra* pp. 61-63, courts addressing personal jurisdiction over defendants in relation to terrorism claims have

overwhelmingly followed the due process analysis set out above. *See, e.g., Mwani*, 417 F.3d 1; *Wultz v. Islamic Rep. of Iran*, 755 F. Supp. 2d 1, 35-36 (D.D.C. 2010); *Morris*, 415 F. Supp. 2d at 1336; *Pugh*, 290 F. Supp. 2d at 59-60; *Daliberti*, 97 F. Supp. 2d at 54; *Rein*, 995 F. Supp. at 330; *Sisso*, 448 F. Supp. 2d at 89-90.

In *Mwani* the D.C. Circuit readily found that facilitating a terrorist attack in violation of U.S. law plainly implicates U.S. interests and puts the terrorist supporter on notice that judicial redress may follow. 417 F.3d at 13-14. In *Wultz*, the court held that "[w]here a bank has knowledge that it is funding terrorists ... contacts created by such funding can support ... a finding" of personal jurisdiction. 755 F. Supp. 2d at 34. Because the terrorist organization "purposefully directed terrorist activities toward the United States with the allegedly knowing support of BOC through the provision of financial services," the court reasoned, "it comports with due process to require BOC to defend itself in this Court." *Id.* at 35. These cases find jurisdiction and liability without finding, much less requiring, that the defendant "personally participate in the attack itself" or directly provide support to the terrorist organization. *Morris*, 415 F. Supp. 2d at 1336. In *Morris*, for instance, a father who encouraged his son to join a

band of al-Qaeda fighters was held subject to personal jurisdiction and liable under the ATA for the injuries that band inflicted upon American soldiers in Afghanistan. *Id;. see also Pugh*, 290 F. Supp. 2d at 59-60 (criminal statutes addressing terrorism meant defendants "should have anticipated the possibility of being 'haled into court' in the United States" for a civil suit under the FSIA); *Rein*, 995 F. Supp. at 330 ("Any foreign state" sponsoring terrorism against U.S. interests "should reasonably expect that if these interests were harmed, it would be subject to ... civil actions in United States courts."); *Wultz*, 755 F. Supp. 2d at 35; *cf. Collett v. Socialist Peoples' Libyan Arab Jamahiriya*, 362 F. Supp. 2d 230, 236 (D.D.C. 2005) (rejecting argument, in FSIA context, that "the material support provided by a nation to a terrorist organization must fund the specific acts that caused the alleged injury").

In a closely-related line of cases addressing the scope of liability under the Anti-Terrorism Act, courts have likewise found that Congress intended to open the federal courts to a broad array of claims against those who provide material support abroad to terrorist enterprises that threaten U.S. interests. *Cf.* Companion Brief at I.A. Whenever a defendant offers some kind of material assistance to a terrorist enterprise "know[ing] that

the organization engages in [terrorist] acts or [being] deliberately indifferent to whether it does or not," liability arises under the ATA. *Boim III*, 549 F. 3d at 693. In a criminal case, *Holder v. Humanitarian Law Project*, the Supreme Court held that Congress intended material-support liability to extend to anyone with "knowledge about the organization's connection to terrorism, *not specific intent to further the organization's terrorist activities.*" 130 S. Ct. at 2717 (emphasis added). So too, in the civil context. In *Goldberg I*, for example, the defendant bank was found within the scope of ATA liability merely for providing standard banking services to a proxy of Hamas. 660 F. Supp. 2d at 428. "Plaintiffs need not show that the defendant in fact knew its actions would further terrorism," the court held. *Id.* "Rather it is sufficient to show that it knew the entity had been designated as a terrorist organization" while "continuing to provide financial services to the organization." *Id.*; *cf. Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 584 (E.D.N.Y. 2005) (plaintiffs pleaded sufficient facts for an ATA claim by, *inter alia*, alleging the defendant bank provided financial "services to organizations it knew to be terrorist organizations."); *Stansell*, 2011 WL 1296881, at *8 (The "only knowledge necessary to state a claim"

for recovery under the ATA's material support provision is "that the organization ... engages in terrorism.").

Consistent with the specific jurisdiction cases, these ATA liability cases make clear that it is not necessary that a material supporter "planned, or intended, or even knew about the particular act which injured [the] plaintiff." *Linde*, 384 F. Supp. 2d at 584. "Plaintiffs need not show that the defendant in fact knew its actions would further terrorism." *Goldberg I*, 660 F. Supp. 2d at 428; *accord Humanitarian Law Project*, 130 S. Ct. at 2717. Nor is it necessary that material support be transferred directly to terrorists for liability to accrue to the supporter. Under "'ordinary principles of agency law,'" a defendant is liable for "provid[ing] support to an alias or agent" of a terrorist organization. *Id.* at 432 (finding it "implausible," contrary to "the antiterrorism objective" of the statute, and "common sense as well" to suppose otherwise) (internal quotation marks omitted) (quoting *Nat'l Coun. Of Resistance of Iran v. Dep't of State*, 373 F.3d 152 (D.C. Cir. 2004)). These conclusions find strong support in the legislative record and in subsequent Executive Branch enforcement of the ATA provisions and related counter-terrorism measures. *See infra* pp. 70-75.

Although this Court's decision in *In re Terrorist Attacks on September 11, 2001* ("*Terrorist Attacks III*"), 538 F.3d 71, 93-95 (2d Cir. 2008), can be read as being in some tension with the principles outlined above and the vast range of other cases addressing jurisdiction over supporters of terrorism, it cannot fairly be applied to foreclose specific jurisdiction over those whose knowing support to terrorist enterprises violates Section 2333. While the decision did note an unexceptional aspect of *Burger King*, that mere "'foreseeability of causing *injury*'" in a forum "'is not a "sufficient benchmark" for exercising personal jurisdiction,'" *Id.* at 95 (quoting *Burger King*, 471 U.S. at 474), it never addressed or applied the touchstone test established in that decision: whether defendants' acts make it reasonable to anticipate being "haled into" and held to account in U.S. courts, "the foreseeability that *is* critical to due process analysis." 471 U.S. at 474 (quotation omitted) (emphasis added). The decision did not even address this Court's *Yousef* decision, much less purport to narrow its scope or undermine its analysis. The decision also preceded *Humanitarian Law Project*, and the panel did not even address the relationship between its own personal jurisdiction analysis and the scope of the provisions of the ATA.

As the United States argued in its opposition to U.S. Supreme Court review of the case, *Terrorist Attacks III*, if read broadly, is clearly inconsistent with *Calder*, 465 U.S. at 789:

> To the extent the court of appeals' language suggests that a defendant must specifically intend to cause injury to residents in the forum before a court there may exercise jurisdiction over him, that is incorrect. It is sufficient that the defendant took "intentional *** tortious, actions" and "knew that the brunt of th[e] injury would be felt" in the foreign forum.

Br. for the U.S. at *19, *Fed. Ins. Co. v. Kingdom of Saudi Arabia*, 2009 WL 1539068 (June 1, 2009) (alteration and omission in original). The Government observed that it was "unclear precisely what legal standard the court of appeals applied in affirming the district court's holding that it lacked personal jurisdiction over" the particular defendants in that case, and concluded that *Terrorist Attacks III* should be read narrowly, based upon "case-specific holdings" that would not apply in a broader context. *Id.* at *19, *20. Judge Daniels, in the decisions under review, likewise construed *Terrorist Attacks III* as having no bearing on direct provision of material support to a terrorist organization, *see* SPA183 (*Terrorist Attacks IV*), and a narrow construction of the decision is also consistent with the clarity of the defendants' role in supporting al-Qaeda here, *see infra* pp.

Point I.B.2, compared to that of the defendant Princes in *Terrorist Attacks III*. Providing a clarifying, narrowing construction of the decision would also not be inconsistent with the disposition of the other two portions of that decision: One, regarding the Foreign Sovereign Immunity Act's application to individual officials, has been overruled by a subsequent decision of the Supreme Court, *see Samantar v. Yousuf*, 130 S. Ct. 2278 (2010), and the other, addressing the scope of FSIA § 1605(a)(5), has been overruled by this Court through the "mini-*en banc*" process employed in *Doe v. Bin Laden*, No. 09-4958-cv, 2011 U.S. App. LEXIS 22516, at *17 n.10 (2d Cir. Nov. 7, 2011) (per curiam) (noting that "the [*Terrorist Attacks III* panel ... was presented with [a] sparse and one-sided argument on this point in the context of a very large and complex case that focused on other aspects of the FSIA").

*3. Determinations by the Executive Branch and Congress That Supporters of Terrorist Organizations Should be Subject to U.S. Criminal and Civil Laws, Including Section 2333, Further Confirm that Personal Jurisdiction Exists Over Defendants.*

The determination by both the Executive Branch and Congress that United States interests are directly affected by – and that courts should be available to address – provision of material support to terrorist

organizations is relevant to the personal jurisdiction determination in two respects. First, as outlined above, *supra* pp. 70-75, the statutes and Executive Branch enforcement actions indicating that judicial processes would be employed against those who provided financing and other support to al-Qaeda and other foreign terrorist organizations gave stark notice to supporters of terrorism that they should anticipate being held to account in U.S. court. Second, those statutes and enforcement actions also reflect the policy and empirical conclusions regarding the effects on the United States and its interests that are especially entitled to deference even in the course of making a constitutional determination. *See Humanitarian Law Project*, 130 S. Ct. at 2727-28; *infra* pp. 73-77.

Both the Executive Branch and Congress have determined that provision of funds abroad to terrorist organizations, directly or indirectly and without a precise understanding of how the funds are to be used, facilitates those organizations' terrorist acts and causes harm to the United States and its interests. *Cf.* Companion Brief at I.A. And they have determined that such acts should be redressed by U.S. courts. Congress embraced this sweeping approach directly by defining the scope of liability it established in a range of anti-terrorism statutes: most prominently for

present purposes in 18 U.S.C § 2333 itself, but also 18 U.S.C. §§ 2339A (prohibiting material support to terrorists), 2339B (prohibiting material support or resources to foreign terrorist organizations), & 2339C (prohibitions against the financing of terrorism). *See also generally* AEDPA, Pub. L. No. 104-132, 110 Stat. 1214 (1996); the Antiterrorism Act ("ATA"), Pub. L. No. 99-399, tit. XII, § 1202(a), 100 Stat. 853, 896-97 (1986); the Act to Combat International Terrorism, Pub. L. No. 98-533, tit. I, § 101(a), 98 Stat. 2706, 2706-08 (1984). "These criminal statutes all contemplated the assertion by a United States court of jurisdiction over a foreign national for terrorist activities committed abroad, irrespective of the number and nature of that individual's other 'contacts' with the United States." *Pugh*, 290 F. Supp. 2d at 59. Congress expressly found that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that *any contribution to such an organization* facilitates that conduct." AEDPA § 301(a)(7), 110 stat. at 1247 (enacting 18 U.S.C. § 2339B) (emphasis added). As the Supreme Court emphasized, "Congress's use of the term 'contribution' is best read to reflect a determination that any form of material support furnished 'to' a foreign terrorist organization should be barred, which is precisely what the material-support statute does."

*Humanitarian Law Project*, 130 S. Ct. at 2725. "Congress intended these provisions [§ 2333 and the underlying ATA criminal provisions] to impose 'liability at any point along the causal chain of terrorism.' S. Rep. No. 102-342, at 22." *Weiss*, 453 F.Supp.2d at 631; *see Boim I*, 291 F.3d at 1020-21 ("Congress purposefully drafted" the ATA "to extend liability to all points along the causal chain of terrorism.").

The actions and assessments of the Executive Branch are to like effect. The Departments of State and Treasury each designate individuals and organizations known to engage in and support terrorism and work to block financing to these entities. *See* 8 U.S.C. § 1189(a) (describing State Department procedures for designating Foreign Terrorist Organizations ("FTO") and Treasury Department procedures for freezing FTO assets); 31 C.F.R. ch. V (prohibiting financial dealings with "specially designated terrorists" identified by the Treasury Department's Office of Foreign Assets Control); 50 U.S.C. app. § 2405(j) (imposing export controls for countries identified by the State Department as providing support for international terrorism). The Department of Justice has brought a variety of criminal prosecutions against those whose actions abroad include financing and providing other support to terrorist organizations. *See, e.g., Yousef*, 327 F.3d

at 78-79; *United States v. Farhane*, 634 F.3d 127, 132-33 (2d Cir. 2011) (defendant agreed to provide technical support and training to al-Qaeda), *cert. denied*, No. 11-7184, 2011 WL 5295295 (Dec. 5, 2011); *United States v. Al Kassar*, 660 F.3d 108, 115 (2d Cir. 2011) (defendant agreed to supply arms to terrorist group targeting Americans); *United States v. Meskini*, 319 F.3d 88, 90-91 (2d Cir. 2003) (defendant assisted in international travel arrangements for plot to bomb LAX airport). And, the President has undertaken a variety of measures to address funding of terrorist organizations and al-Qaeda in particular. *See, e.g.*, Exec. Order No. 13224, 3 C.F.R. 49079 (2001) ("Blocking Property And Prohibiting Transactions With Persons Who Commit, Threaten To Commit, Or Support Terrorism"); Exec. Order No. 12947, 3 C.F.R. 319 (1996) ("Prohibiting Transactions With Terrorists Who Threaten To Disrupt The Middle East Peace Process"); Exec. Order No. 13099, 3 C.F.R. 208 (1999) ("Prohibiting Transactions With Terrorists Who Threaten To Disrupt The Middle East Peace Process") (including al-Qaeda and Osama bin Laden). The Supreme Court recently credited two particular assessments reflecting the Executive Branch's assessment of material support provided to terrorist organizations: "The State Department informs us that '[t]he experience and analysis of the U.S.

government agencies charged with combating terrorism strongly suppor[t]' Congress's finding that all contributions to foreign terrorist organizations further their terrorism," and "[i]n the Executive's view: '[g]iven the purposes, organizational structure and clandestine nature of foreign terrorist organizations, it is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal, terrorist functions.'" *Humanitarian Law Project*, 130 S.Ct. at 2727 (first two alterations in original) (quoting Government submission).

*Humanitarian Law Project* also points to the reasons this Court should give considerable deference to these empirical and policy conclusions and hesitate long before finding that the district courts lack personal jurisdiction over any defendants whose acts fall within the scope of Section 2333 and other statutes addressing support to foreign terrorist organizations. The logic of *Holder* strongly supports the conclusion that this Court should defer to the political branches' determination that those who support terrorist organizations such as al-Qaeda have a sufficient connection with and "effect" on the United States and sufficiently implicate important interests of this country, such that the court's jurisdiction is properly invoked under the *Calder* effects test and *Burger King* assessment

of the reasonableness of haling a defendant into court. *See supra* pp. 53-63. For counter-terrorism claims, "[i]t is vital in this context 'not to substitute ... our own evaluation of the evidence for a reasonable evaluation by the Legislative Branch,'" *Holder*, 130 S. Ct. at 2727 (omission in original) (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981)), and "[t]hat evaluation of the facts by the Executive, like Congress's assessment, is entitled to deference." *Id.* "[R]espect for the Government's conclusions is appropriate," and "[o]ne reason for that respect is that national security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess." *Id.*

Here, Congress and the Executive Branch have assessed that a direct nexus exists between the provision of support abroad to foreign terrorist organizations, such as al-Qaeda and terrorist attacks, including attacks on the United States, and they have concluded that such support poses severe risks and implicates the highest national interests. All doubts should be resolved in favor of opening the courts to plaintiffs who have been the victims of terrorist attacks, enabling them to call to account in the courts of the U.S. all who have directly or indirectly caused those attacks to succeed.

In that way the courts work in tandem with the other branches of government in the global war on terrorism.

In any event, deference to the assessments of those branches leads inexorably to the conclusion that intentional, tortious conduct within section 2333's scope has a sufficient "effect" upon and nexus with the United States to support a finding of personal jurisdiction. Likewise, failing to give effect to those conclusions would create the most severe separation of powers concerns, because a conclusion that no jurisdiction exists over one who provides material support for al-Qaeda, within the scope of section 2333 (as well as sections 2332, 2339A, 2339B, and 2339C), would effectively deem unconstitutional a substantial portion of the intended scope of those statutes.

### B. Plaintiffs' Allegations Readily Establish Specific Personal Jurisdiction Over the Defendants, Who At Least Knowingly Provided Material Support To Al-Qaeda.

Plaintiffs clearly and amply alleged, with specific facts, that each of the defendants subject to this appeal knowingly provided material support to al-Qaeda – and thus justified the assertion of personal jurisdiction over them. Indeed, the pleadings would satisfy a much higher due process standard, and place each defendant at the center of a tightly knit and

coordinated network of persons and entities dedicated to advancing terrorist activities, including those directed against the United States. An initial examination of the district court's errors of law and failure to acknowledge and credit the pleadings usefully places this record in context, and assists in showing how it supports personal jurisdiction. *See infra* Point I.B.1. The discussion that follows that analysis canvasses the particular pleadings for each defendant dismissed for lack of specific personal jurisdiction and summarizes the allegations regarding their extensive efforts to advance al-Qaeda's terrorist activities. *See infra* Point I.B.2.

*1. An Overview Of The District Court's Treatment of the Record and Its Legal Errors.*

(a) The District Court Failed To Treat The Allegations As True Or To Construe Them Favorably To Plaintiffs.

With respect to all the defendants addressed in this appeal and dismissed for lack of specific personal jurisdiction, plaintiffs undertook no jurisdictional discovery. In the absence of such discovery, a plaintiff need only allege a *prima facie* showing of jurisdiction based solely upon factual allegations. *Magnetic Audiotape*, 334 F.3d at 206. The court must "'construe the pleadings and affidavits in the light most favorable to plaintiffs,

resolving all doubts in their favor.'" *Chloe*, 616 F.3d at 163; *Daventree Ltd. v. Rep. of Azer.*, 349 F. Supp. 2d 736, 757 (S.D.N.Y. 2004) (court will "construe all factual inferences in [plaintiffs'] favor").

In three crucial respects, the district court erred in disregarding these basic principles. It failed to credit and consider the full range of plaintiffs' extensive allegations, failed to draw reasonable factual inferences from them that readily support personal jurisdiction, and even weighed and discounted the evidence presented, finding plaintiffs' evidentiary showings to be insufficient -- an approach wholly inappropriate at this stage of the litigation.

*(i) Failure to Consider and Credit Plaintiffs' Allegations.*

The district court repeatedly disregarded the nature, scope, and detail of plaintiffs' allegations of each defendant's support for al-Qaeda and involvement in furthering that organization's operations and core activities. Each of the thirteen groups of plaintiffs filed separate initial and amended complaints, and formally supplemented the complaints with detailed RICO statements and More Definite Statements describing each Defendant's relationship to al-Qaeda's terrorist enterprise, along with

extrinsic information introduced in the course of litigating jurisdictional disputes. *See supra* pp. 2-3. All these filings are relevant pleadings that support a prima facie case establishing personal jurisdiction. *Attorney Gen. of Can. v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103, 106 (2d Cir. 2001) (on motion to dismiss, drawing facts from the complaint and civil RICO statement); *ESI, Inc. v. Coastal Corp.*, 61 F. Supp. 2d 35, 50 n.54 (S.D.N.Y. 1999) ("In considering a Rule 12(b)(2) motion, the court may consider affidavits and documents submitted by the parties" in addition to the complaint "without converting the motion into one for summary judgment ...." (citation omitted)).

The particular details of the allegations that support the district court's assertion of personal jurisdiction over each defendant are summarized below, in Point I.B.2. *See infra* pp. 101-152; *cf.* Companion Brief at I.B.3. Those allegations and supporting details place each defendant and their acts of support for terrorism within an extensive web of dealings among supporters and members of al-Qaeda. Through familial relationships, membership on boards of organizations coordinating closely with senior al-Qaeda leaders, and roles as important financiers and suppliers of support to al-Qaeda, defendants had important operational

roles in the al-Qaeda network. For the same reasons, their roles in that network not only support, but compel an inference that they knew of al-Qaeda's terrorist capabilities and intentions and knew their support directly furthered those operations.

This scope of allegations, the particular details supporting them, and especially the broader context alleged, giving meaning to the particular allegations, are almost entirely absent from the district court's analysis. In contrast to the record canvassed below, *see infra* pp. 101-152, the district court often failed to address relevant allegations at all, focused on a few, general allegations to the exclusion of the supporting details and related claims alleged by plaintiffs, and entirely ignored the broader context of defendants' conduct set out in plaintiffs' filings. Rather than acknowledging or addressing the full array of allegations, the court for each defendant (or, at times, groups of defendants) noted a few points selected from among the key allegations, examined each in isolation, and then found that expurgated version of the pleadings to be insufficient. That plain error was pervasive in the ruling below. *See* SPA191 *(Terrorist Attacks IV)* (giving cursory treatment to al-Swailem); SPA225-27 *(Terrorist Attacks V)* (giving cursory treatment to Basha, Naseef and al-Ali); *infra* pp.

107 n.124, 109, 110. This Court has not hesitated to reverse in such circumstances, and it should do so again here. *See Magnetic Audiotape*, 334 F.3d at 207-08 (reversing and remanding 12(b)(2) dismissal for further discovery after district court failed to credit factual allegations in the plaintiff's complaint, undermining both specific and general jurisdictional holdings).

*(ii) Failure to Draw Reasonable Factual Inferences and Construe Pleadings in Plaintiffs' Favor.*

Even for the allegations that the district court did address, the court failed to draw the most basic inferences from those allegations and associated details or otherwise construe them in plaintiffs' favor. *See Chloe*, 616 F.3d at 163. Even where plaintiffs' detailed allegations placed a defendant at the center of a web of persons and entities closely associated with al-Qaeda, and set forth a pattern of dealing with them, the district court still found that there was insufficient detail to establish a particular defendant's knowledge that his funds or services were being provided to al-Qaeda or could be used in an attack upon the United States. *Cf.* Companion Brief at I.B.3.

For example, the court was unwilling to draw this very basic inference even for [two] defendants who had been formally designated by the United States Government as a "Specially Designated Global Terrorist." *See* SPA194-95 *(Terrorist Attacks IV)* (Asat Trust); SPA221-23 (*Terrorist Attacks V*) (Kadi); *infra* pp. 129-30 & n.134. It was unwilling to do so for three defendants who were *Osama bin Laden's half brothers*, even though they were also alleged to be and documented as key al-Qaeda financiers who worked closely with Osama Bin Laden. *See* SPA188-90 (*Terrorist Attacks IV*); *infra* pp. 134-41. It was unwilling to do so for financiers who were listed on key al-Qaeda documents as among the organization's most important financiers, where the U.S. Government has repeatedly emphasized the credibility of those documents and the importance to al-Qaeda's operations of those listed financiers. *See* SPA186-88 (*Terrorist Attacks IV*); *cf. infra* at pp. 54, 56-57, 58, 59, 60. It was unwilling to draw the inference for defendants who served as directors of organizations with close ties to al-Qaeda and who otherwise interacted with those closely associated with al-Qaeda. *See* SPA226-27 (*Terrorist Attacks V*); *infra* pp. 103-112. And, despite al-Qaeda's notorious and widely publicized efforts and intention to attack the United States, the district court failed to permit the

inference, at this initial pleading stage, that material support knowingly provided to al-Qaeda indicated an intent to assist efforts to harm the United States. *See* SPA226-27 (*Terrorist Attacks V*); *cf.* Companion Brief pp. I.B.3.

The unreasonableness of the district court's failure to consider the broader context of the allegations against the defendants is even clearer when compared to cases in the closely-related context of determining whether a Guantanamo detainee is "part of" al-Qaeda. The Guantanamo cases arise in a much more stringent context: the Government must establish its case by a preponderance of evidence (rather than the pre-discovery, *prima facie* showing required here), and the issue is whether a defendant has actually served as "part of" al-Qaeda (rather than whether it simply provided knowing support to al-Qaeda). Even in that more stringent context, however, the D.C. Circuit has squarely rejected the approach pursued by the district court here. Those cases consistently hold that an inference of being part of al-Qaeda may be drawn from a pattern of dealing with persons associated with al-Qaeda or from sharing characteristics with those persons, because such "evidence tended to show [the detainee's] close relationship with these men and thus strengthened

the probability he was part of al-Qaida." *Al-Adahi v. Obama*, 613 F.3d 1102, 1109 (D.C. Cir. 2010); *see id.* ("'familial ties'" with an aide of Osama bin Laden, in context of evidence of meetings with al-Qaeda leaders, "made it far more likely that [the detainee] was or became part of the organization."); *Uthman v. Obama*, 637 F.3d 400, 407 (D.C. Cir. 2011) ("[detainee's] actions and recurrent entanglement with al Qaeda show that he more likely than not was part of al Qaeda"); *id.* (circumstantial evidence, in the form of repeated dealings with al-Qaeda, sufficient to establish membership) (collecting cases). The Guantanamo cases also recognize – as the district court failed to do here – that courts "must view the evidence collectively rather than in isolation." *Salahi v. Obama*, 625 F.3d 745, 753 (D.C. Cir. 2010). "Merely because a particular piece of evidence is insufficient, standing alone, to prove a particular point does not mean that the evidence 'may be tossed aside and the next [piece of evidence] may be evaluated as if the first did not exist.'" *Id.* (alteration in original) (quoting *Al-Adahi*, 613 F.3d at 1105); *cf. Al-Bihani v. Obama*, 590 F.3d 866, 873 n.2 (D.C. Cir. 2010), (Evidence showing "a non-citizen seized abroad during the ongoing war on terror" had stayed at an al-Qaeda-affiliated guesthouse

"would seem to overwhelmingly ... justify the government's detention of such a non-citizen."), *cert. denied*, 131 S. Ct. 1814 (2011).

*(iii) Failure to Credit Allegations by Weighing Evidence and Requiring an Evidentiary Showing.*

The District Court in several instances justified its disregard of otherwise ample pleading by reference to the evidence submitted by defendants or to the court's own assessment of the evidence. That was clearly improper at this early stage of the proceedings. *Cf. Magnetic Audiotape*, 334 F.3d at 208 (A "factual argument" is "not proper for resolution in the context of a motion to dismiss.").

A striking example of this, discussed in detail below, arose in the district court's treatment of allegations surrounding the "Golden Chain" list of key al-Qaeda financiers. *See* SPA40-41 *(Terrorist Attacks I)*; SPA168-69 *(Terrorist Attacks IV)*; *infra* pp. pp. 54, 56-57, 58, 59, 60; *cf.* Companion Brief at I.B.4. The Golden Chain list implicates five defendants at issue in this appeal. In the pleadings, plaintiffs alleged and described how the list reflected (as the U.S. government had concluded) a roll of wealthy donors to the al-Qaeda movement. *See supra* pp. 41-44. Plaintiffs also pointed out that the *Final Report of the 9/11 Commission* similarly credited the document,

as did the U.S. Treasury Department in making terrorist designations for those on the list, and that the list had been authenticated by a former al-Qaeda leader. *See id.*

Even in the face of corroborating evidence – evidence the plaintiffs were not even required to proffer in making their *prima facie* showing of jurisdiction – the district court repeatedly made adverse evidentiary determinations about the Golden Chain list. *See* SPA41 (*Terrorist Attacks I*) ("the Court cannot make the logical leap that the document is a list of early al Qaeda supporters"); SPA189 (*Terrorist Attacks IV*) ("there is no basis to conclude that the reference to the 'bin Laden Brothers'" on the Golden Chain list "is specifically identifying Bakr, Omar, Tariq and Yeslam"); SPA245-47 (*Terrorist Attacks V*) (Golden Chain evidence "has previously been rejected as having no evidentiary value"). Not only were those determinations wrong on the merits, but were clearly instances of factual determinations "not proper for resolution in the context of a motion to dismiss." *Magnetic Audiotape*, 334 F.3d at 208.

To take another example, the district court concluded it lacked specific jurisdiction over defendant Saleh Al Rajhi, in part, because the court decided "the allegation that defendant Saleh Al Rajhi's telephone

number was found in the phone book of Osama bin Laden's secretary," was not "of any probative significance." SPA193-94 (*Terrorist Attacks IV*); *infra* p. 124. The court's unwillingness to draw the obvious inference of knowing support for al-Qaeda as well as its improper dismissal of evidence pervaded its treatment of the plaintiffs' pleadings.[106]

(b) The District Court Misapplied Due Process Principles To Require An Unduly Close Nexus Between Defendants' Actions And A Specific Attack on the United States.

As described in Section I.A., *supra* pp. 52-77, the due process principles set forth in *Burger King* and *Calder* are satisfied, in relation to a claim arising from a terrorist attack upon the United States, when a defendant knowingly provides material support to a terrorist organization, such as al-Qaeda, that is notoriously planning and executing attacks upon the United States. Such a defendant should anticipate being haled into U.S. court, because that conduct constitutes an intentional tort targeting the United States, thus establishing a clear nexus between the act and the U.S. forum. This straightforward application of due process principles also

[106] The district court extended the weighing of evidence and determinations at odds with plaintiffs' allegations into his consideration of general jurisdiction as well. *See infra* Point II.

accords with the determinations of Congress and the Executive that recognize that crucial U.S. interests are implicated (and a U.S. judicial forum is appropriate) by acts at "all points along the causal chain" when material support is provided to terrorist organizations such as al-Qaeda. *Boim I*, 291 F.3d at 1020.

The district court's broadest statement of the appropriate due process test was not necessarily incompatible with these principles. The court found that specific jurisdiction would be supported by allegations of "conduct that is intended to directly aid in the commission of a terrorist act, with knowledge that the brunt of the injuries will be felt in the United States." SPA183-84 (*Terrorist Attacks IV*); *see* SPA218-21 (*Terrorist Attacks V*). That should include anyone who materially contributes to a terrorist organization undertaking a highly public campaign targeting the United States, knowing or having reason to know the organization's character (and thus within the scope of ATA § 2333 and related criminal statutes), and thus frankly should have known to a moral certainty that they might be haled into U.S. court. *See Calder*, 465 U.S. at 791; *Boim III*, 549 F.3d at 693; *supra* Point I.A. Terrorist organizations are "so tainted by their criminal conduct that any contribution to such an organization" can reasonably be

presumed to "facilitate[] such conduct." AEDPA § 301(a)(7), 110 stat., at 1247 (enacting 18 U.S.C. § 2339B); *also see Humanitarian Law Project*, 130 S. Ct. at 2725.

The district court often applied its legal test, however, in a manner that was clearly inconsistent with the governing due process principles and the practices and expectations of coordinate branches. In three different respects canvassed below, the district court required an unduly tight nexus between the provision of material support and the attack on the United States giving rise to suit. In each of these respects, the district court denied personal jurisdiction in circumstances where a defendant providing support to al-Qaeda should, and should expect to, be held to account in a United States court. That is, the district court dismissed for lack of personal jurisdiction in circumstances where the touchstone of due process was satisfied. *See Burger King*, 471 U.S. at 474; *Calder*, 465 U.S. at 790.

*(i) Participation in or Specific Intent for a U.S. Terrorism Attack*

In part, the district court appeared to acknowledge and apply the basic principles outlined above, whereby material support provided to a terrorist organization targeting the United States are acts with a sufficient

nexus to the United States. *See, e.g.*, SPA199-201. More often, however, the district court required a much higher showing and more direct nexus to an attack upon the United States. For example, with respect to one defendant, the court found that plaintiffs' "allege[d] that defendant Dr. Al-Turki . . . knowingly assist[ed] Saudi charities in sponsoring al Qaeda," but found that such allegations "do not support a finding that [the] defendant intentionally provided material aid to al Qaeda for *the specific purpose* that it be used to assist in the commission of a terrorist attack against the United States." SPA191 (*Terrorist Attacks IV*) (emphasis added); *infra* p. 107 n.124. The court elsewhere reasoned that there must be a showing of the defendant's "specific intent that [the support] be used to aid al Qaeda in the commission of a terrorist attack against the United States" and that "[m]erely helping an organization, that is hostile to the United States, by providing financial support does not suffice to confer specific jurisdiction over a foreign defendant, even when it used the received funds to continue to engage in violence." SPA197-98 (*Terrorist Attacks IV*).

At times, the nexus required by the court was absurdly tight, requiring in some instances a link to the September 11th Attacks themselves. For example, personal jurisdiction was found over one

defendant bank because it allegedly wired funds to two of the September 11th hijackers, who used the funds to carry out the attacks. That at least, the court held in a classic understatement, provided "an articulable nexus between the wire transfer services allegedly provided by [the defendant] to al-Qaeda and the specific terrorist attack that gives rise to plaintiffs' claims." SPA207 (*Terrorist Attacks IV*). Elsewhere, the court reasoned that serving as "a key al Qaeda operative" does not lead to specific jurisdiction because the defendant himself played no "role in the 9/11 terrorist attacks." SPA223 (*Terrorist Attacks V*); *infra* p. 121. For certain other defendants, the court found no personal jurisdiction because, despite allegations of extensive dealings between the defendants and al-Qaeda (and one defendant having been deemed a "Specially Designated Global Terrorist" by the U.S. Government), plaintiffs' allegations were "not accompanied by any factual allegations from which any of the defendant's *personal or direct participation in a terrorist attack upon the United States* can be reasonably inferred." SPA194 (*Terrorist Attacks IV*) (emphasis added). In another instance, the court found no personal jurisdiction over one defendant, also a "Specially Designated Global Terrorist," because it found that plaintiffs' various allegations of terrorist activities, including that he

"is a terrorist financier of several terrorist organizations, including al Qaeda, also does not demonstrate that he purposefully directed his activities at the United States and its residents." SPA221-23 (*Terrorist Attacks V*). In yet another, the court required a "showing that [the defendant] was personally involved as a primary actor in the conduct that is the subject of the litigation." SPA190 (*Terrorist Attacks IV*).

Although plaintiffs' allegations in many instances did meet even these heightened showings of involvement in or specific intent to undertake a terrorist attack on the United States, the district court's standard reflects two basic errors. The first is an unduly narrow view of the "primary" conduct that is subject to the ATA, that is reasonably understood as directed toward the United States, and that makes it entirely reasonable and foreseeable that a defendant will be haled into a United States court. When a person provides funds, services, or other support to al-Qaeda, with knowledge of the nature of that organization, the provision of support itself fosters and advances al-Qaeda's terrorist activities. *See Morris*, 415 F. Supp. 2d at 1336 ("Terrorist attacks require more than a triggerman—they also require financing, planning, and coordinating "); *Boim III*, 549 F.3d at 690 ("Giving money to Hamas" is like "giving a loaded

gun to a child"). That is, providing such support is an intentional wrong itself, a "primary," personal violation of traditional tort principles and the Anti-Terrorism Act - both Section 2333's civil damages provision and its associated criminal law provisions. *See Boim III*, 549 F.3d at 691-92; *Holder*, 130 S. Ct. at 2712. To the extent "primary" or "personal" participation in terrorist activities directed toward the United States is required, that standard is readily met by financing or other support knowingly provided to an organization such as al-Qaeda that is dedicated to attacking U.S. interests.

Second, the district court's requirement of a more direct nexus between the defendant and an attack on the United States far exceeds those compelled by Due Process. In circumstances where traditional intentional tort principles impose liability, where Congress and the Executive Branch have created liability or imposed sanctions (and provided notice of sanctions in U.S. courts), and where the nature of the potential harm would naturally impel a response from the forum state, there is nothing unfair or unanticipated in haling into court a person who provides material support for a terrorist organization that notoriously directs its operations at the United States. *See supra* pp. Point I.A at pp. 53-77. Providing such support

within the scope of Section 2333 meets those conditions. *See supra* pp. 63-70. Neither the Due Process Clause nor the Supreme Court's elaboration of its underlying principles requires any greater indication of an intent to cause harm in the United States, much less direct or personal participation in an attack undertaken here.

*(ii) Support to Al-Qaeda, 1991-1996.*

With respect to several defendants, the district court held that there was no personal jurisdiction because plaintiffs' allegations related to support provided to al-Qaeda in the early to mid-1990s and thus the support for al-Qaeda was too "remote" from the U.S. attacks. *See* SPA189, 195-96 (*Terrorist Attacks IV*). The court's treatment of the allegations related to four of Osama Bin Laden's half brothers illustrates the point. The court acknowledged that plaintiffs had alleged extensive, direct support of al-Qaeda and development of the network supporting al-Qaeda "'in collaboration with their brother Osama, [which] served as a foundation for al Qaeda to expand its operations in the early 1990s.'" SPA189 (*Terrorist Attacks IV*) (quoting plaintiffs). It also acknowledged plaintiffs' claim that Osama bin Laden and al-Qaeda's activities during "'that period, 1991-1996, the years [] Osama bin Laden spent in the Sudan, were crucial in

preparation and planning for 9/11.'" SPA188 (*Terrorist Attacks IV*) (alteration in original) (Indeed, plaintiffs' allegations were even more extensive, supporting the conclusion that this crucial formative period was essential to al-Qaeda's development of global terrorist capabilities. *See infra* pp. 136-37.) Even so, the court concluded that "provision of financial and other material support to al-Qaeda during the early 1990's, enabling it to expand its base of operations in the Sudan, is too remote to the terrorist attacks of September 11, 2001 to confer specific jurisdiction." SPA189 (*Terrorist Attacks IV*). This reasoning also served as the basis for the court's dismissal of other defendants. *See* SPA195-96 (*Terrorist Attacks IV*) ("[R]endering support to al Qaeda during its formative years ... [is] too remote and attenuated to support the exercise of specific jurisdiction.").

This conclusion is inconsistent with Congress's conclusion that U.S. interests are implicated by activities at "all points along the causal chain of terrorism," *Boim I*, 291 F.3d at 1020, and would be an inappropriate application of a proximate cause test even if one applied. Building a global terrorist capability in 1991-1996, with the United States and U.S. interests a principal target, is hardly removed from the 2001 attacks, much less isolated from the pattern of attacks against the World Trade Center in 1993,

the U.S. embassies in 1998, and the *U.S.S. Cole* in 2000 – and including the 2001 attacks. This is especially so because that period was essential to – a 'but for' cause of – al-Qaeda's ability to launch the September 11 attacks. *See infra* pp. 136-37.

The district court adopted a *per se* rule based on temporal concerns that pays no regard to how direct the acts undertaken in 1991-96 are to the September 11th Attacks. Under the district court's reasoning, personal jurisdiction over Osama bin Laden himself would be lacking based on his 1996 preparations for terrorist attacks mounted a few years later, but as the Seventh Circuit has explained, terrorism has its own timeline and "[t]errorism campaigns often last for many decades.... Seed money for terrorism can sprout acts of violence after the investment." *Boim III*, 549 F.3d at 699-700. One need not accept the Seventh Circuit's view that liability would lie for support for a terrorist organization that undertakes an attack 50 years later, although it is hard to dismiss the suggestion out of hand. *See id.* It is enough to recognize that it takes many years to develop the capabilities to execute a complicated, cross-border terrorist operation such as the September 11th Attacks; the actions alleged in 1991-1996 were essential to the development of those capabilities; and our experiences with

combating terrorist organizations show quite tragically that five years is a very brief period for the operations and organizations hostile to the United States. *See The 9/11 Commission Report* 59 (2004) (describing the origins of al-Qaeda's targeting of Americans in 1992).

*(iii) Direction of Material Support to Al-Qaeda Through an Intermediary*

The district court also held that specific jurisdiction could not be established by allegations of support provided to al-Qaeda through front charities and other institutions in the al-Qaeda network, as opposed to support provided directly to al-Qaeda. For example, a "defendant who allegedly indirectly provides funding to al Qaeda through charitable donations," even when the "defendant-donor may intend, and have every reason to believe, that the suspect charity will funnel those charitable funds to al-Qaeda, is not subject to personal jurisdiction because such a defendant "relinquishes all control over the donated funds" and "has no authority to direct how the monies are used nor the power or ability to direct his monetary donations into the hands of al Qaeda." SPA184-85 (*Terrorist Attacks IV*); *cf.* SPA190, 191-92, 196 (*Terrorist Attacks IV*).

Although the district court believed this Court's decision in *Terrorist Attack III* supported its conclusion, there is no basis in that decision or in the district court's reasoning for creating a *per se* rule. While there conceivably could be circumstances, including those addressed by this Court, where the absence of control and direction over the financing and the role of an intermediary does degrade the nexus between the financier and al-Qaeda, and thus to the United States, that limiting principle would not justify the district court's blanket exclusion from personal jurisdiction. Otherwise, a person providing material support through an intermediary, even while fully knowing and intending that the funds would be used for an al-Qaeda attack on the United States, would be able to undertake an intentional tort directed at the United States and could do so in circumstances where U.S. criminal and civil laws and the nature of the act create every reasonable expectation of being haled into U.S. court – while still escaping the jurisdiction of U.S. courts. That is, the district court's rule would apply to circumstances that meet every conceivable condition for personal jurisdiction established by even the most crabbed reading of *Calder* and *Burger King*, yet the rule would require a finding of no personal jurisdiction. And, the rule's practical implications are dire if the court's

jurisdiction can be avoided simply by interposing an intermediary between terrorist organizations and their financiers: as the Seventh Circuit and other courts have emphasized, terrorism financiers are far more sensitive to potential civil and criminal liability than are terrorist operatives, so the district court's rule would limit an important tool of counter-terrorism in precisely those circumstances where it would and should be most effective. *See Boim III*, 549 F.3d at 690.

The district court's rule would, to a significant degree, also effectively rule unconstitutional the intended enforcement of key counterterrorism statutes – 18 U.S.C. § 2333 as well as §§ 2332, 2339A, 2339B and 2339C – because Congress and the Executive have designed and enforced them to apply where terrorism support is channeled to an organization, such as al-Qaeda, through an intermediary. Thus, U.S. terrorism laws apply even when the contributor of funds relinquishes control and the funds may be diverted to non-terrorist activities. *Boim III*, 549 F.3d at 698; *Humanitarian Law Project*, 130 S. Ct. at 2725. And, they apply when funds are provided to an organization such as al-Qaeda either indirectly or directly, in recognition of the ways terrorist organizations operate and the policies the United States has established to fight them. *See Goldberg I*, 660 F. Supp. 2d

at 432; *Nat'l Council of Resistance of Iran v. Dep't of State*, 373 F.3d 152, 157-58 (D.C. Cir. 2004) ("Just as it is silly to suppose" that State Department designations of terrorist organizations did not survive organizational name changes, "so too it is implausible to think that Congress" did not "authorize the Secretary to prevent" terrorist organizations "from marshaling all the same support via juridically separate agents subject to its control."). These statutes and enforcement policies seek to protect important U.S. interests, and it would be ironic and tragic indeed if they were frustrated by a jurisdictional rule premised on the supposed lack of U.S. interest in redressing such acts.[107]

*2. Plaintiffs' Allegations Amply Support Finding Specific Personal Jurisdiction Over Defendants.*

As described above, the pleadings assert that Osama bin Laden formed al-Qaeda in and around 1988, in order "to wage war with the

[107] For nearly identical reasons, the district court erred in adopting a *per se* rule against assertions of personal jurisdiction based on a defendants' acts amounting to either conspiracy or aiding and abetting related to a resulting terrorist attack. SPA186 (*Terrorist Attacks IV*). As the district court acknowledged, this Court did not even address a conspiracy theory of jurisdiction in *Terrorist Attacks III*, *id.*, and a *per se* rule excluding jurisdiction over conspirators, even when they intend and act to direct harm toward the United States, is inconsistent with *Burger King* and *Calder*, as well as with the intended scope of the counter-terrorism statutes.

United States of America, which he believed to be the true enemy of Islam." JA3777 ¶ 77. In the ensuing years al-Qaeda openly announced to the entire world what was known to its material sponsors and collaborators from the outset - that al-Qaeda's primary mission was to attack America and kill American citizens. *See supra* at pp. 14-15. Al-Qaeda confirmed this objective by its actions as well, through a series of attacks and plots during the decade leading up to September 11, 2001. Thus, al-Qaeda's material sponsors and supporters were well aware, for many years prior to 9/11, that resources provided to al-Qaeda would be employed to advance its mission to attack the United States.

As reflected below, the Defendants are among those who knowingly provided such material support and resources to al-Qaeda, in support of its declared mission to attack America. Indeed, the wealth of allegations and facts of record place them at the heart of al-Qaeda's financial and logistical network, and amply meet the standards set forth supra in Point I.A, and would in fact meet a far more stringent test. Accordingly, the exercise of jurisdiction over the Defendants is more than reasonable.

(a) The Charity Official Defendants Are Subject to Jurisdiction

A review of the record before the district court relative to the claims against the Charity Official Defendants shows that these defendants are subject to jurisdiction in the United States. In this regard, the complaints make clear that bin Laden relied on the *institutional* relationships he established in Afghanistan with the MWL, IIRO, SRC, and Rabita Trust, and those al-Qaeda later forged with al Haramain, Muwafaq, and the SJRC, to provide the financial and logistic support necessary to achieve al-Qaeda's goal of carrying out jihad against the United States. *See supra* at pp. 16-30, JA3777-80, 4129-30, 4139-56, 4188-91,4200-03, 4496-4504, 61-6199. Plaintiffs' pleadings specifically asserted that each of those organizations acted as an al-Qaeda "front" and "fully integrated component of al-Qaeda's financial and logistical infrastructure," and that the September 11th Attacks were an "intended...product of [their] participation in al Qaida's jihadist campaign." JA3790-91, 3793-94, 3798, 3802, 3805, 3803-10. Those assertions were amplified by the detailed factual allegations concerning the systematic and pervasive involvement of branch offices of the respective charities throughout the world in sponsoring al-Qaeda operations, and

directly participating in al-Qaeda plots and attacks, over a period of many years. JA3780-12.

Illustrative of the character of the facts offered concerning the depth of the collaboration between the purported charities and al Qaeda are the allegations that:

> (1) The United States designated every branch of al Haramain throughout the world, as well as its principals (Appellees Aqeel and al Buthe), based on the organization's pervasive sponsorship of al-Qaeda's agenda. Al Haramain served not only as a primary funding and money laundering mechanism for al Qaeda operations,[108] but also participated directly in al Qaeda operations, including the 1998 African Embassy bombings,[109] and the procurement of weapons for al-Qaeda.[110]
>
> (2) The IIRO channeled (i) $60 million to fund al-Qaeda training camps in Afghanistan,[111] (ii) designated a senior al-Qaeda official as the Director of its branch office in the Philippines in

---

[108] R.585 at 5(b); JA852; R.697, Ex. A; R.518, Ex. A; JA2442-46; *see also* JA822, 848, 2533-34, 2442-46; (U.S. Treasury Department issued a press release stating that "[t]he branch offices of al Haramain in Somalia and Bosnia are clearly linked to terrorist financing").

[109] JA849, 852, 945, 1844, 2443, 2761, 2908, 2442-446; R.518 at Exhibit A.

[110] JA850, 1844, 2443, 2776-77, 2779-80; 2442-46; R.518 at Exhibit A.

[111] JA871, 1839, JA2066, 3794, 4052, 3662; JA871("As stated by Dr. Adan Basha, Secretary-General of the IIRO, the IIRO donated more than Sixty Million ($60,000,000) dollars to the Taliban Regime and Al Qaeda in Afghanistan."); *see also*, JA3714-15 (" The IIRO helps fund six militant training camps in Afghanistan" that trained several September 11 hijackers); ; .

order to assist al-Qaeda in expanding in the Far East,[112] (iii) provided funding and logistical support for numerous al-Qaeda plots (including the 1993 World Trade Center bombing, 1995 "Bojinka" plot, and plots to assassinate the Pope and President Clinton),[113] (iv) siphoned approximately 70% of its funds towards the promotion of terrorist and extremist causes,[114] and (v) used its office in the Philippines to establish Abu Sayyaf Group, an al-Qaeda proxy in the Far East.[115]

(3) The United States designated Rabita Trust, based on its role as an al-Qaeda front.[116]

(4) The SJRC (i) installed senior al-Qaeda member Wa'el Jelaidan as Director of its Pristina office with knowledge of his relationship to bin Laden, (ii) diverted more than $74 million to al-Qaeda members,[117] (iii) helped bin Laden "move money and men to and from the Balkans;[118] (iv) directly participated in a plot to attack US and NATO facilities in Pristina, Kosovo, prompting a raid of its offices by UN forces.[119]

(5) Muwafaq was established specifically to serve as a "vehicle for funding and otherwise supporting terrorist organizations, including al Qaida," employed numerous al-Qaeda members,

---

[112] JA868, 3794-95, 4052; R.1287, Ex. 1, p. 3; R.2241, Ex. F, p. 12.

[113] JA868, 870, 1840, 2060, 2062, 2065-66, 3602, 3795-96, 4052, , 3660-61, 3689, 3714-15; R.1287, Ex. 1, p. 3; R.1367, Ex. 1, p. 4; R.779, Ex. A, p. 1; R.1123, Ex. A, p. 17; R.1218, Ex. A, p. 12.

[114] JA868, JA870; JA4052-53; JA3661; JA870; JA2064-65; R.1287, Ex 1, p. 7.

[115] JA868, JA870, 3660-61, 3689, 3794-95, 2062-65; R.1287, Ex. 1, p. 7; R.2241, Ex. F, p. 12.

[116] JA845, 868, 1841-43, 3812; R.1287, Ex. 1, pg 2.

[117] JA851, 874, 878, 1843, 2949, 3112, 3810, 4200-01, 4563.

[118] JA3101; R.1257, Ex. 5, p. 2

[119] JA3101, 4201.

> and formally merged into al-Qaeda in July of 2001, according to the United States.[120]
>
> (6) The SRC (i) employed al-Qaeda member (now leader) Ayman al Zawahiri, who raised $500,000 under cover of the organization,[121] (ii) employed al-Qaeda member Wa'el Jelaiadan;[122] (iii) participated in numerous al-Qaeda plots and attacks, including the 1995 Egyptian Embassy bombing in Pakistan and 2001 plot to attack U.S. and British embassies in Sarajevo.[123]

As the district court properly understood plaintiffs' pleadings and acknowledged, the claims against the Charity Official Defendants were predicated on their respective roles in forging their charities' alliances with al-Qaeda, maintaining the channels of material support through the charities to al-Qaeda, and utilizing the charities to provide material support to al-Qaeda. SPA225-27 (*Terrorist Attacks V*), 740 F. Supp. 2d at 510-11. Each of the Charity Official Defendants is expressly alleged to have acted

---

[120] JA851, 921, 1843, 3097, 3101, 4563-64, 4501-04; *see also* JA3818 ("On October 12, 2001, the United States government designated Yasin al-Kadi and the Blessed Relief Foundation [a/k/a Muwafaq] under Executive Order 13224, based on their longstanding and integral role in advancing the al-Qaida movement.").

[121] JA870-71, 3098, 4189.

[122] JA3098, 4187-89.

[123] JA887, 1369, 3098, 4189-90.

knowingly in facilitating the charities' institutional support for al-Qaeda.[124] These allegations find inherent support in the very nature and extent of the charities' sponsorship of al-Qaeda, which extended to separate branches throughout the world under a similar pattern, and necessarily reflects institutional relationships between the charities and al-Qaeda forged at the highest levels. *See supra* at pp. 16-30; JA3780-3812; *see also Terrorist Attacks III*, 538 F.3d at 76 (plaintiffs' complaints "include a wealth of detail

---

[124] JA4052 ("Basha himself knew and intended that IIRO provide al Qaida $60 million to fund al Qaida terrorist training camps in Afghanistan, where several of the September 11th hijackers were trained); JA3984 ("As Minister of Islamic Affairs, Member of the Council of Ministers and head of the MWL, Dr. al-Turki knowingly used his authority to assist the Saudi charities in sponsoring Islamist extremists including al Qaida."); JA4210-11 ("Dr. al-Obaid's position with at least five [organizations that have ties and provided assistance to al Qaida] cannot be a coincidence. The only plausible inference is that Dr. al-Obaid himself was instrumental in funneling funds from the various organizations with which he was affiliated to Osama bin Laden and al Qaida to support their jihad against the United States... Dr. al-Obaid knowingly provided material support and resources to Al Qaeda."); JA4190 ("As head of the SRC, al-Swailem used his authority to foster the organization's continued role in Al Qaeda's global jihad. For example, as head of the SRC, al-Swailem was responsible for the decision to appoint Julaidan as a Director of the SJRC, thus placing a prominent and known al-Qaida figure in a position of authority within his charity.") ; JA6175-76 ("Al-Qadi has spent his entire career intentionally surrounding himself with individuals who either participate in or financially support Islamic terrorism...Al Qadi has knowingly provided materials assistance to Islamic terrorist groups such as al Qaida").

(conscientiously cited to published and unpublished sources) that, if true, reflect close working relationships between ostensible charities and terrorist networks, including Al Qaeda."). In most cases, the collaboration between the charities and al-Qaeda leadership grew out of the charities' well-documented and acknowledged roles in supporting the mujahedeen in Afghanistan, a legacy which was known to the Defendants. *See supra* at pp. 16-30. The continuing ties between the charities and al-Qaeda in the ensuing years were widely publicized and known to the Charity Official Defendants, yet the charities' support for al-Qaeda continued unabated under the direction and control of the Charity Official Defendants. *See supra* at pp. 14-15.

The pleadings and record materials also offer a number of direct and specific examples of actions undertaken by the Charity Official Defendants to promote their organizations' material sponsorship of al-Qaeda's jihad against the United States. For example, consistent with the declarations of the US government, the pleadings allege that Defendant Aqeel controlled all of al Haramain's branches worldwide from al Haramain's headquarters in Riyadh, Saudi Arabia, and personally orchestrated al Haramain's global

sponsorship of al-Qaeda.[125] The record similarly documents Defendant al Buthe's direct role in al Haramain's terror activities, through both his leadership position in the Saudi headquarters and direct involvement in the terrorist activities of the US branch. *See supra* at pp. 26-28. The pleadings also assert that Defendant Naseef forged al-Qaeda's partnerships with MWL and Rabita Trust at a personal meeting with bin Laden held around the time of al-Qaeda's formation, and installed al-Qaeda co-founder Wa'el Jelaidan in positions of authority within both organizations, in order to ensure a direct channel for coordinating their collaborations with al-Qaeda. *See supra* at pp. 23-26. MWL's partnership with al-Qaeda was sustained in the ensuing years by Defendants al Turki and al Obaid, as reflected by the continuous and pervasive involvement of the MWL in al-Qaeda's enterprise during that period, as well as the terrorist conduct of MWL's subsidiary and operational arm IIRO. *See supra* at pp. 109. The pleadings make clear that Defendant al Swailem, while serving as the head of both the SRC and SJRC, "was responsible for the decision to appoint Julaidan as a Director of the SJRC, thus placing a prominent and known al

[125] JA846.

Qaida figure in a position of authority within his charity." JA3790, 4190. Defendant Khalifa personally orchestrated IIRO's funding and support for the 1993 World Trade Center attack, the 1995 "Bojinka" plot, and the 1995 plots to assassinate the Pope and President Clinton. Defendant Basha assumed control of the IIRO in the immediate wake of IIRO's highly publicized roles in those events, and proceeded to *expand* IIRO's sponsorship of al-Qaeda, by providing funding through the IIRO for al-Qaeda camps in Afghanistan, as documented in a 1996 CIA Report of record. *See*JA 868, 870, 2062-65, 3660-61, 3689, 3795, 4052-54; R.963, Ex. 1 (1996 CIA Report). As the head of IIRO's U.S. branch, Defendant al-Ali channeled millions in IIRO funds to terrorist fronts, including Specially Designated Global Terrorist entity Holy Land Foundation, and the financial activities of IIRO under al-Ali's direction led to a federal terrorism investigation. JA1742-50.

Given al-Qaeda's declared intention to launch terrorist attacks against the United States, it was fundamentally illogical for the district court to conclude on the basis of the record before it, as summarized above, that the Charity Official Defendants should not have been aware that they may be haled into a U.S. court to answer for their conduct. The record

made clear that the Charity Official Defendants were aware that al-Qaeda was formed for the specific purpose of carrying out attacks against the United States, and that al-Qaeda maintained robust institutional relationships with the purported charities under Defendants' control. The pleadings and extrinsic evidentiary materials established that those purported charities were intimately involved in all aspects of al-Qaeda's jihadist campaign, from the provision of financial support to the direct participation in al-Qaeda plots and attacks, on a continuous basis for many years prior to 9/11. As the district court itself acknowledged, the claims against the Defendants were based on their respective roles in knowingly establishing, maintaining and promoting the charities' collaboration with al-Qaeda.

Those record facts and allegations, and the inferences arising from same, were more than sufficient to satisfy plaintiffs' modest burden to make a prima facie showing of jurisdiction at the pleadings stage. *See supra* at pp. 51-52, 78. To hold otherwise, and require in addition that a plaintiff demonstrate that an al-Qaeda sponsor intended that his support would be used to carry out a terrorist attack against the United States rather than for the general maintenance of the terrorist organization's infrastructure,

would "invite...two-track terrorism," eviscerate donor liability for foreign sponsors of terrorist aggression against the United States, and render the ATA a dead letter. *Boim III*, 549 F.3d at 702.

(b) The Sudanese Defendants Are Subject to Jurisdiction in the United States

The four Sudanese Defendants (FIBS, Shamal, Tadamon, and DMI) also are subject to jurisdiction in the United States. As alleged in the pleadings, these defendants "are interrelated entities with overlapping ownership and management." Osama bin Laden was a shareholder and investor in three of them (Shamal, FIBS, and Tadamon) and "all four [of these] defendants helped al Qaeda to grow, in its early years, by providing critical financial and logistical support to bin Laden in aid of al Qaeda's global jihad." SPA195 Moreover, at the time bin Laden was working to create al Qaeda, "[all four] defendants provided Osama bin Laden with funding, banking services and the financial infrastructure, in the Sudan, that he employed to establish al Qaeda training camps, train terrorists, and carry out terrorist attacks against the United States, including the September 11th attacks." SPA195 Thus, all four defendants "provided material support to al Qaeda by managing and holding bank accounts of

individuals and entities involved in al Qaeda's plot, making donations to purported al Qaeda front charities, and by becoming substantially involved in other banks and organizations actively supporting al Qaeda." SPA195

In finding that it lacked jurisdiction over these defendants, the district court erred in two principal respects. First, it failed to properly credit plaintiffs' factual allegations, while simultaneously improperly crediting defendants' competing allegations. Second, it failed to consider all of the allegations collectively. Although the district court recited a cursory summary of some allegations, it afforded plaintiffs' substantial allegations little more than lip service before granting dismissals. Considered in their proper context, collectively as to each defendant, plaintiffs' allegations adequately demonstrate that plaintiffs have alleged sufficient minimum contact to establish specific jurisdiction over each defendant. This Court should reverse the district court's dismissals and hold that specific jurisdiction exists over each of the Sudanese Defendants.

*(i) FIBS and Shamal*

Plaintiffs' allegations and evidence showed that FIBS and Shamal were knowing supporters and financiers of bin Laden and al-Qaeda. In fact, FIBS and Shamal openly maintained accounts for known al-Qaeda

members, including, in the case of Shamal, bin Laden himself. JA833, 902[126]; *see also* JA 25-26, 1855-56, 3256-57, 3609, 4331-35, 5968-69, 5982, 6009-10; R.1562, Ex. A, p. 6. Indeed, in a September 2001 press release, Shamal acknowledged that bin Laden held two accounts in the bank. JA 824-25, 3257, 3609, 5969, 5894, 5998, 6011-12; R.1562, Ex. A, at p. 6.

The al-Qaeda accounts at FIBS and Shamal were used for al-Qaeda operations, including large cash transfers to affiliated terrorist organizations, the purchase of a plane to be used to transport stinger missiles, and payment of salaries to al-Qaeda members. JA826-27, 1855, 3256-57, 3609-10, 3613-14, 5968-69, 5982-84, 6010-11, R.1562, Ex. A, p. 6. As reflected in the referenced Appendix citations, these details of plaintiffs' pleadings were corroborated by the testimony of former al-Qaeda members Jamal al Fadl and Wadi el Hage.

FIBS and Shamal were structurally intertwined with the al-Qaeda leadership as well, a fact that confirms that both acted knowingly in providing their material support to al-Qaeda. As reflected in the pleadings, FIBS and Shamal operated within a network of Sudanese businesses that

[126] *Accord* JA3609-10, 3835, 4354-55.

functioned within the broader framework of al-Qaeda's symbiotic relationship with the ruling National Islamic Front in Sudan, the government that, under the leadership of noted Islamist Hassan al Turabi, invited bin Laden to Sudan to build al-Qaeda. JA823, 1788-90, 3256, 3607-08, 5968, 5982-83, 6010; R.1562, Ex. A, p. 6.[127] As part of that relationship, bin Laden personally provided $50 million towards Shamal's capitalization, and both he and the NIF were shareholders of Shamal, along with Defendant Saleh Kamel. JA821, 823, 1788-90, 1854-55, 3254, 3256, 3607, 3836, 4683-84, 5968, 5982-83, 6010; R.1562, Ex. A, p. 6. FIBS was, in turn, a founder of al Shamal. JA3610, 3652-53.[128] The founders, shareholders, and senior officials of both institutions include numerous al-Qaeda members and sponsors, several of whom have been formally designated by the United States under Executive Order 13224. *See supra* at pp. 32-34.

According to reports cited in plaintiffs' allegations, as late as 2002, bin Laden remained a Shamal shareholder and "some of [bin Laden's businesses in Sudan] may still be operating." JA827, 3257-58, 5969, 5984-85, 6012; R.1562, Ex. A, p. 7; *see also* JA2586, 2626, 4335 (quoting Statement of

[127] *Accord* JA4332, 4353-54.

[128] *Accord* JA823-824, 832-33, 902, 908, 3836, 4353, 4333.

U.S. Senator Carl Levin, Hearing on National Money Laundering Strategy for 2001, U.S. Senate Committee on Banking, Housing and Urban Affairs (September 26, 2001) (stating that Al Shamal Islamic Bank continues to offer financial support and services to al-Qaeda and that Osama bin Laden "remains the leading shareholder of the bank" through trustees)).

Given its deep ties to al-Qaeda, it is hardly surprising that, in 1998, a spokesman and shareholder for Shamal issued a statement promoting the violent jihad promoted by al-Qaeda, urging "all those who are able to carry a gun to join the [military training] camps... Jihad had now become an obligation that comes before any other duty." ("Sudanese students enroll for controversial military service." JA5981, 6008-09; R.1562, Ex. A, p.6.

*(ii) Tadamon*

Plaintiffs' claims against Tadamon, and the court's authority to exercise specific personal jurisdiction, stem similarly from Tadamon's conduct of intentionally providing al-Qaeda material support while knowing al-Qaeda's violent intentions toward the U.S. In particular, plaintiffs allege that Tadamon knowingly and intentionally provided material support in the form of financial services to al-Qaeda, by, *inter alia*, maintaining and servicing bank accounts held in the names of al-Qaeda

members, including an account for bin Laden's personal bodyguard in Sudan, who handled money for bin Laden. *See* JA1788-90, 3427, 3771-75, 3838-39, 4674-75, 4684, 6208-11, 6235-38.

Appellants allege that, at all material times, Tadamon knew that al-Qaeda cells maintained accounts with the bank and that the accounts were used to launder and distribute funds for al-Qaeda operations and terrorist attacks. JA3839. As with Shamal and FIBS, Tadamon's network of interrelations with al-Qaeda operatives and sponsors support plaintiffs' express allegations of scienter. As a major shareholder of Shamal since 1986 and a member of Shamal's Provisional Board of Directors since 1988, Tadamon had at least as much familiarity with bin Laden and al-Qaeda's agenda to violently target the U.S. as previously indicated for Shamal. See JA3426, 3428, 3846-47, 4684, 6208-09, 6236-37. In addition, plaintiffs allege that Tadamon had other shareholders similarly alleged to be co-conspirators in supporting al-Qaeda, including bin Laden himself, as well as co-defendants Al Baraka Investment and Development Company, FIBS, Dubai Islamic Bank, Mohammed Hussein Al Amoudi, and Saleh Kamel. JA3426, 3838-39, 4684, 6208-20, 6235-6248. These ties to al-Qaeda make clear that Tadamon was aware that its material support of al-Qaeda would

advance its jihad against the United States, especially given al-Qaeda's public declarations of its intent to attack America during this period.

*(iii) DMI*

Plaintiffs also allege sufficient bases to assert specific personal jurisdiction over DMI.[129] Plaintiffs allege that DMI was a key facilitator within an intentionally compartmentalized al-Qaeda financial network, acting as a financial clearinghouse and facilitator of strategic activities for al-Qaeda support. JA790-92 (quoting *Terrorism Financing, Report of an Independent Task Force Sponsored by the Council on Foreign Relations*, 2002); *see generally* JA2571-76, 2612-36. Within that "deliberately decentralized, compartmentalized, flexible and diverse" financial framework, "DMI was founded for the purpose of pursuing a financial jihad in the modern era." JA606-67, 2563-64.

DMI, as administrator for DMI Trust, is the operational arm of the Trust, putting into action the investments, strategies, distributions, and policies of the Trust. JA2563 (citing Annual Report, DMI Trust, 1994); JA2606-07. As the operational entity, DMI is alleged to have provided more than merely routine banking services - it is the clearinghouse and

[129] *Cf. supra* p. 37.

financial facilitator for *all* strategic activities directed by DMI Trust, including activities allegedly in support of al-Qaeda. *See* Companion Brief at I.B.2.(d).

As a clearinghouse and financial facilitator, plaintiffs have alleged that DMI engaged in money laundering, executed weapons transactions, and channeled money directly to al-Qaeda and al-Qaeda operatives. Plaintiffs allege (1) that DMI "siphoned off charitable donations to sponsor terrorism," JA797; (2) that DMI "launder[ed] money for al-Qaeda, knowingly and intentionally provid[ed] financial services to al-Qaeda (including maintaining and servicing al-Qaeda bank accounts used to fund and support al-Qaeda), and/or facilitate[ed] weapons and military equipment purchases and money transfers for Al Qaeda," JA2569-70; *see also* JA2602-03 (alleging money laundering and tax evasion in support of al-Qaeda by DMI) and (al-Qaeda relied upon well-placed financial facilitators including DMI); (3) that DMI's "*zakat* accounts have been used to support Al Qaeda," JA2612; and (4) that DMI "has handled the accounts of Specially Designated Global Terrorists Yassin Al Kadi and Wael Jelaidan for Faisal Finance Switzerland in furtherance of violent Al Qaeda goals." JA2612. These intentional and direct acts of material support are far more

substantial than the "rendering support" and "performing routine banking services for customers" obliquely referenced by the district court.

Plaintiffs' allegations also sufficiently state, and support the strong inference, that DMI engaged in its intentional acts of material support with the knowledge that the effects of al-Qaeda's violent agenda would have results in the U.S. As outlined extensively in plaintiffs' allegations and in the preceding discussions concerning Shamal, FIBS, and Tadamon, the extensive integration between DMI Trust, DMI, Shamal, FIBS, Tadamon, and others with bin Laden, al-Qaeda, and other al-Qaeda operatives strongly support the inference that DMI acted intentionally and directly with knowledge of al-Qaeda's violent intentions targeted the U.S. *See, e.g.*, JA824, 832, 902, 2562, 2570, 2571, 2576-77, 2577-78, 2582-89, 2602-03.

With respect, when viewed by this Court *de novo,* considering all of plaintiffs' allegations collectively, in the light most favorable to plaintiffs, and drawing all reasonable inferences in favor of plaintiffs, those allegations show that Shamal, FIBS, Tadamon, and DMI all intentionally provided material support to al-Qaeda whose express aim was to cause injury in the United States—making the exercise of jurisdiction over each in the United States quite appropriate.

(a) The Al Rajhi Defendants Are subject to Jurisdiction in the United States

As noted above, Al Rajhi Bank was one of the banks central to supporting al-Qaeda. As described in detail in plaintiffs' Companion Brief, Al Rajhi Bank assisted al-Qaeda by (1) providing financial services for several known al-Qaeda front charities, including SDGT al Haramain; (2) providing financial services to the Spanish and Hamburg al-Qaeda cells; (3) allowing the "SAAR network" of terrorist support entities to use its correspondent account with a US bank to launder money for terrorist activities; (4) providing banking and financial services for Youssef Nada (another SDGT); and (5) acting as a correspondent bank for Bank al Taqwa, an SDGT. *See* JA827-28, 1066-77, 1082-85, 1849-50, 2533-36, 3245-47, 3715-18.

Of course, the bank could not act on its own. Rather it was directed and controlled by several individuals, including several members of the al Rajhi family who held key positions within the bank. According to a 2003 CIA Report: [130]

---

[130] The CIA Report was disclosed in a 2007 article in *The Wall Street Journal* and was introduced into the record in opposition to NCB's renewed motion to dismiss. In substance, the report merely corroborates the allegations of record as to Al Rajhi Bank and its principals from the outset.

> Islamic extremists have used Al-Rajhi Banking & Investment Corporation (ARABIC) since at least the mid-1990s as a conduit for terrorist transactions, probably because they find the bank's vast network and adherence to Islamic principles both convenient and ideologically sound. Senior al-Rajhi family members have long supported Islamic extremists and probably know that terrorists use their bank. Reporting indicates that senior al-Rajhi family members control the bank's most important decisions and that ARABIC's principle [sic] managers answer directly to Suleiman. The al-Rajhis know they are under scrutiny and have moved to conceal their activities from financial regulatory authorities.

JA7882, ¶ 55. The facts alleged with respect to those controlling Al Rajhi Bank – Sulaiman al Rajhi, Saleh al Rajhi, Abdullah al Rajhi, and Saleh al-Hussayen -- suffice to support the assertion of personal jurisdiction, based on their use of Al Rajhi Bank to assist al-Qaeda and bin Laden, as well as on their other activities in providing financial support to al-Qaeda.

Sulaiman Abdul Aziz Al Rajhi was the Managing Director of Al Rajhi Bank, and exercised control over the bank's operations. In addition to his sponsorship of al-Qaeda through al Rajhi Bank, Sulaiman al Rajhi is additionally linked to al-Qaeda through his identification on the Golden Chain as a principal al-Qaeda financier, *see supra* at p. 43, his position on the Board of Directors of al-Qaeda front charity IIRO, *see* JA4466-67, 5207; *see also* JA1084; his involvement in the terrorist financing activities of

SDGTs Akida Bank and Bank al Taqwa (in relation to which he worked in concert with SDGT Youseff Nada), JA3717-18, 4465, 5208; and his role in establishing and funding the SAAR Network of ostensible charities. *See* JA, 1084, 3716, 4468-69, 5207-08; R.1048; R.780, Ex. A (quoting Professor Michael Waller's testimony).

Taken together, these allegations, and the evidence supporting them, show (1) that Sulaiman al Rajhi provided material support to al-Qaeda in the form of financial assistance; (2) that he did so knowingly and intentionally; (3) that he established a network of entities *in the United States* to assist him in providing that material support; and (4) that in so doing, Sulaiman al Rajhi purposefully directed his conduct at the United States, because he provided funds to bin Ladin for the purpose of carrying out terrorist attacks against the United States. Moreover, and significantly, plaintiffs allege that Sulaiman al Rajhi provided assistance *directly* to al-Qaeda and bin Laden, not merely indirectly. That is to say, this defendant did not merely give money to charities that would funnel the money to al-Qaeda; he *created* some of the charities so that others could do this. Moreover, as a member of the Golden Chain, Sulaiman al Rajhi provided

financial support for al-Qaeda directly to bin Laden. These acts are sufficient to subject him to jurisdiction in the United States.

Like his brother, Saleh al Rajhi also is subject to personal jurisdiction. During the relevant time, he was the Chairman of Al Rajhi Bank. As Chairman, he was one of a small group of individuals who can reasonably be charged with responsibility for Al Rajhi Bank's persistent and direct support for al-Qaeda. Further reflecting his direct ties to al-Qaeda, Saleh al Rajhi's phone number was found in the possession of convicted African embassies bomber Wadi el-Hage. [131] Again, his conduct is sufficient to subject him to jurisdiction here.

Similarly, Abdullah al Rajhi was the General Manager of Al Rajhi Bank and a member of its executive committee. JA2533, 4465. In addition, he was President of Aradi, Inc., one of the SAAR entities located at 555 Grove Street. JA2533, 4465. His role in Al Rajhi Bank's senior management, familial ties to the other bank officials linked to al-Qaeda, and involvement with the SAAR Network serve to establish that he is subject to jurisdiction in the United States.

---

[131] *See* R.1036, Ex. 1; JA2536

Finally, the district court had jurisdiction over Sheik Saleh al-Hussayen. Sheik al-Hussayen spent five years as a member of the Sharia Board at Al Rajhi Bank, the committee at the bank charged with ensuring compliance with Islamic law, and ultimately responsible for approving al Rajhi Bank's own zakat contributions, including those al Rajhi Bank channeled to al-Qaeda through IIRO. As a result, he was one of the individuals at the bank with authority to pass on the conduct of the bank. JA3339, 4097; *see also* JA4336-38.

Sheik al Hussayen's active participation in providing knowing support to al-Qaeda was not limited to his role with al Rajhi bank, however, as reflected by his relationship to the Islamic Association of North America ("IANA"), a radical Islamic organization in Ypsilanti, Michigan. IANA used a number of media outlets to spread its intolerant, often violent, Wahhabist message and solicited donations widely throughout the United States and abroad. IANA came under a great deal of scrutiny and investigation for its clear advocacy of militant Islamic jihad and its funneling of money to al Qaida and affiliated organizations. *See* JA3339-40, 4095-96.

Sheik al-Hussayen traveled to the United States on an IANA fundraising mission in the weeks leading up to the September 11, 2001 attack. In August 2001, he arrived in New York City and was given a tour of the city, including the vicinity of the World Trade Center Towers. He then traveled to Chicago, Detroit and Canada, meeting with IANA officials and with officials from other charities. On September 6, 2001, Sheik al-Hussayen arrived in Herndon, VA. Then, just days before the September 11th attack, Sheikh al-Hussayen switched from his original hotel to the Marriott Residence Inn in Herndon, just a few miles away. The Marriott Residence Inn in Herndon is the same hotel where at least three of the American Airlines Flight 77 hijackers stayed before September 11, 2001. The following morning these men hijacked Flight 77 and crashed the airliner into the Pentagon. Following the attacks, the FBI attempted to interview Sheik al-Hussayen in his hotel room. According to the FBI, the interview came to an abrupt end when he feigned a seizure, prompting the agents to take him to a hospital where the attending physicians "found nothing wrong with him." JA3339, 4095-96.

Thus, Sheik al-Hussayen not only directed his conduct at the United States by providing support to al-Qaeda, but he even travelled to the

United States as part of his efforts to provide that support. He, too, is properly subject to the jurisdiction of the federal courts in the United States.

(b) The NCB Defendants Are Subject to Jurisdiction in the United States

Following limited jurisdictional discovery,[132] the district court also incorrectly held that the NCB was not subject to jurisdiction in the United States.[133] The court had similarly concluded that the remainder of the NCB Defendants - Khalid bin Mahfouz, Abdulrahman bin Mahfouz, and Yassin al Kadi - also were not subject to jurisdiction. But these rulings simply disregarded the substantial facts and evidence that plaintiffs submitted showing how each of these Defendants knowingly provided extensive assistance to al-Qaeda.

---

[132] As discussed *infra*, at p. 128 n.134, the district court denied Plaintiffs the discovery they sought concerning al Qaeda fronts Muwafaq, IIRO and SJRC. Those relationships formed the predicate for Plaintiffs' specific jurisdiction theories as to NCB.

[133] Because NCB itself is a sovereign instrumentality, it lacks due process rights and should not have been dismissed on personal jurisdiction grounds. *See* Companion Brief at V (seeking reversal of dismissal of NCB, based upon post-judgment Second Circuit decision overruling decision setting forth construction of the Foreign Sovereign Immunities Act relied upon by the district court).

In connection with their opposition to NCB's renewed Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2), plaintiffs filed a lengthy statement ("Jurisdictional Statement") of the facts, allegations, and evidence showing the extensive involvement of the NCB Defendants in terror financing JA7863-94. The Jurisdictional Statement augmented the already robust allegations in the pleadings about the NCB Defendants.

As set forth in detail in the Jurisdictional Statement, NCB's support for al-Qaeda was carried out largely through its connections with three al-Qaeda charity fronts, Muwafaq, IIRO and SJRC. Although plaintiffs were denied the opportunity to conduct any discovery relative to NCB's relationships with these entities,[134] the Jurisdictional Statement nonetheless presented facts and extrinsic evidence developed by plaintiffs through their independent investigations, documenting NCB's extensive role in providing material support and resources to al-Qaeda via those

[134] The district court concluded that the discovery Plaintiffs sought in order to demonstrate that NCB knowingly channeled resources to al Qaeda through Muwafaq "would not be of any evidentiary value in establishing specific jurisdiction over NCB," reasoning that [m]erely helping an organization that is hostile to the United States, by providing financial support, does not suffice to confer specific jurisdiction over a foreign defendant, even when it used the received funds to continue to engage in violence." SPA487-88 (*Terrorist Attacks IV*).

organizations. JA7882-85. For example, supplementing the previously submitted Congressional testimony of former CIA Counter-terrorism Chief Cannistraro, identifying NCB as a "conduit" for financing al-Qaeda, , JA7883, plaintiffs presented a German Internal Intelligence Service investigation report which concluded that "one route [for the sponsorship] of al-Qaeda was the transfer of large funds from the National Commercial Bank to Islamic (charities). These included Muwafaq el Kheiriya and Islamic Relief [IIRO]. There are institutional links between Muwafaq and Usama bin Laden's network." JA7883. Plaintiffs also provided the Court with *INTERPOL* intelligence reports, filed of record by the U.S. government in legal proceedings pending in the United States District Court for the District of Columbia in support of Yassin al Kadi's continued designation pursuant to E.O.13224, detailing a single transaction in which NCB transferred $2 million to Dr. Salim bin Mahfouz, an official of Muwafaq in Europe, who in turn transferred $500,000 to Chafiq Ayadi, the Specially Designated Global Terrorist whom al Kadi appointed to head Muwafaq's European operations at the suggestion of Wa'el Jelaidan, and an additional $1.4 million to an apparent shell company with ties to another designated al-Qaeda front. JA7884.

This Jurisdictional Statement and supporting exhibits further documented NCB's longstanding institutional relationships with IIRO and SJRC, confirming that NCB knowingly provided financial services to both, and that NCB had transferred its own funds to IIRO. JA7884-85. In addition, NCB established several joint accounts with Defendant al Rajhi Bank for the benefit of IIRO and SJRC. JA7885. The SJRC accounts were managed by Defendant Suleiman al Rajhi, who has served as a Board Member of IIRO and was an active sponsor of al-Qaeda through his own bank. JA7882.

Besides establishing the relationships between the NCB Defendants on the one hand, and Muwafaq, IIRO, and SJRC on the other, the evidence that plaintiffs submitted detailed how these charities supported al-Qaeda.[135] The Jurisdictional Statement established that Muwafaq provided resources through offices located around the world to support al-Qaeda's

---

[135] As to Muwafaq, the evidentiary submissions included the Treasury Department's Evidentiary Memorandum for al Kadi, al Kadi's own Statement to the Office of Foreign Assets Control, U.S. government filings in the civil litigation captioned *Yassin Abudullah Kadi v. Timothy Geithner, et al.*, Civil Action No. 09-0108 (JDB), a 1996 CIA Report concerning the involvement of Muwafaq and other Islamic purported charities in terrorist activities, and the testimony of a former member of Muwafaq before the International Criminal Tribunal for the former Yugoslavia. JA7867-71.

jihad against the United States, served as a front for laundering contributions for wealthy al-Qaeda sympathizers, permitted al-Qaeda fighters to use ostensible employment with Muwafaq as a vehicle for gaining access to conflict regions, funded al-Qaeda training camps in Afghanistan and Bosnia, and directly participated in al-Qaeda operations. JA7867-71. Consistent with the findings of the U.S. government, the Jurisdictional Statement further asserted that Muwafaq merged directly into al-Qaeda in 2001, shortly before the September 11th Attacks. JA7867.

The Jurisdictional statement and supporting exhibits also supplemented the record before the Court concerning the terrorist activities of IIRO and SJRC, again on the basis of extensive evidentiary materials submitted of record for the district court's consideration. JA7871-72. These supplemental facts and evidentiary materials included FBI 302 Statements and related testimony of former al-Qaeda financial chief Jamal al Fadl, who testified that the IIRO office in Peshawar, Pakistan provided false identification cards to al-Qaeda members to facilitate their travel to Afghanistan, facilitated weapons purchases for al-Qaeda, and provided funds for salary, travel and health benefits for al-Qaeda members. JA7872-73. Plaintiffs also provided the Court with substantial materials relating to

the U.S. government's 2006 designations of the Philippine and Indonesian branches of the IIRO, and a senior official of the IIRO in Saudi Arabia known within al-Qaeda as the "Million Dollar Man," based on the IIRO's longstanding role in supporting al-Qaeda and affiliated terrorist organizations. JA7873, 7875. (Summarizing August 3, 2006 IIRO Designations). The materials supporting the Jurisdictional Statement included, in addition, a 1996 CIA Report (already of record in the MDL) connecting the IIRO to the Manila-based plots to assassinate the Pope and bomb U.S. airlines, and stating that the "IIRO helps funds six militant training camps in Afghanistan." JA7874. In addition, the Jurisdictional Statement summarized, and included as exhibits, extensive documentation relating to Khalifa's arrest in the United States in 1994, and State Department cables and communications concerning the U.S. government's investigations into the terrorist activities of Khalifa and IIRO. JA7874-75 (attaching 33 exhibits).

Confirming that NCB was not merely a passive conduit providing routine banking services to apparently legitimate organizations, but rather a knowing collaborator with Muwafaq, IIRO, SJRC and al-Qaeda, the Jurisdictional Statement and pleadings of record presented facts

demonstrating that NCB's sponsorship of al-Qaeda was orchestrated at the highest levels of the bank, and that the NCB Defendants were specifically aware of the terrorist activities of Muwafaq, IIRO, and SJRC. This direct involvement and knowledge is evident from the individual NCB Defendants' positions in NCB; their corresponding roles in founding, funding, and controlling the terrorist operations of Muwafaq; their direct ties to senior al-Qaeda leaders and known terrorists, including Osama bin Laden and al-Qaeda co-founder Wa'el Jelaidan; Khaled bin Mahfouz's inclusion on the Golden Chain and acknowledged contribution of $270,000 to bin Laden around the time of al-Qaeda's formation; Kadi's designation by the US government based on his extensive sponsorship of al-Qaeda through businesses and purported charities under his control; as well as the widespread public reporting of the charities' terrorist activities. JA2669-73, 2891-99, 3441-42, 3451-55, 4478-82, 4485-89, 6175, 6188-94, 7885-93. In view of that evidence, the Jurisdictional Statement asserted that the NCB Defendants "necessarily were aware through a variety of channels of the terrorist activities of Muwafaq Foundation, IIRO, and SJRC."

Together, these allegations, and the evidence supporting them, were sufficient to show that the NCB Defendants knowingly provided financial

support to al-Qaeda sufficient to support the assertion of personal jurisdiction over them in the Unites States as a result of the September 11 Attacks.

(c) The Binladin Brothers Are Subject to Personal Jurisdiction

Five of Osama bin Laden's brothers - Abdullah, Bakr, Omar, Tariq, and Yeslam -- are also subject to jurisdiction, based on their active and knowing support of their brother and of al-Qaeda. It should be noted that, although Osama Bin Laden had approximately 50 siblings and numerous nieces and nephews, only eight individuals named Bin Laden were named as defendants in the district court. The relatives who were named were those who actively supported al-Qaeda and its terrorist agenda against the United States.

Abdullah Binladin[136] ("ABL") is subject to specific jurisdiction, based on his conduct while he lived in the U.S., as well as his conduct directed at the United States from abroad.[137] This conduct includes his establishment

---

[136] Although Osama bin Laden generally transliterated his name "bin Laden," other members of the family use "Binladin." Plaintiffs refer to the Binladin defendants by the latter version of their name.

[137] As discussed below, *see infra* Point II, ABL is subject to general jurisdiction in the United States.

of the U.S. branches of al-Qaeda front charities Taibah and World Assembly of Muslim Youth ("WAMY"). As reflected in the record, WAMY has extensive and longstanding ties to al-Qaeda, *see* JA866-68, 4139-56,5157-71, and plaintiffs expressly alleged that the U.S. office of WAMY was "established to provide funding, money laundering and other material support to terrorist organizations, including al Qa[e]da." JA2929-31, 3800. Taibah's support for al-Qaeda is similarly reflected by the designation of its Bosnia branch, which had its personnel appointed by, and operated under the control of, the US office. *See* JA3677-81 .

ABL's leadership role with the U.S. branch of WAMY, along with the founding of Taibah U.S., are sufficient contacts with the United States, and are sufficiently connected to al-Qaeda and the September 11 attacks, for the assertion of personal jurisdiction based on that conduct. Separate and apart from the fact that these activities took place *in* the United States, ABL's involvement with both organizations shows that he directed his conduct *at* the United States.

Three more of Osama Bin Laden's brothers, Bakr Binladin ("BBL"), Omar Binladin ("OBL"), and Tarek Binladin ("TBL") directed their conduct at the United States by providing support to Osama and al-Qaeda through

two family companies, the Mohammad Bin Ladin Company ("MBLC") and the Saudi Bin Ladin Group ("SBG"). BBL was the President of SBG; OBL and TBL were on the Board of Directors. All three were officers of MBLC.

Like many of al-Qaeda's principal sponsors, the involvement of BBL, OBL and TBL in supporting their brother Osama's jihadist activities dated to the Afghan jihad, when they assisted in the recruitment and movement of mujahideen fighters for Osama from their office in Cairo. JA2865. Following the Afghan jihad, Osama went back to work for the family firm in Saudi Arabia, JA890, 4394, until his extremist and anti-American activities compelled him to move to Sudan in 1991, under the protection of Hassan al Turabi, who offered Sudan as a safehaven for building al-Qaeda. JA823, 1788-90, 3607-08, 3256, 4394, 5968, 5982, 6010; R.1562, Ex.A", p. 6.[138]

After Osama settled in Sudan and began establishing al-Qaeda's headquarters there, BBL, OBL, and TBL found several ways to assist him through SBG and MBLC. JA4394-96. For example, under the control of BBL, OBL and TBL, SBG and MBLC provided financial assistance and engineering and technical support for Sudanese construction projects

[138] *See also* JA4332, 4353-54.

undertaken by Osama, including the construction of major roads and the Port of Sudan airport . JA3606-07, 4395-96. Those projects fostered and secured al-Qaeda's symbiotic relationship with the Sudanese government, ensuring al-Qaeda's continued safehaven in Sudan. JA4395-96.

Plaintiffs have also alleged that BBL, OBL, and TBL used another entity, Cambridge Engineering Systems, Ltd., to provide support to Osama. *See* JA2863-64. Following the September 11 attacks, the U.S. government determined that Osama bin Laden had received funding from an account at Deutsche Bank in Geneva, Switzerland, in the name of Cambridge Engineering. *See* JA2863-64. The government believed that the Cambridge Engineering account was the account through which SBG conducted its private banking. *See* JA2863-64. BBL and SBG were listed as 100 percent beneficial owners of Cambridge Engineering. Thus, it appears that SBG and its officers, including Omar, Bakr, and Tarek Bin Laden, had ultimate control over the funds in these accounts which were used to divert large sums of covert funding to Osama Bin Laden throughout the 1990s after it was widely known that he was sponsoring terrorist attacks.

Indeed, BBL, OBL, and TBL permitted Osama bin Laden himself to remain an SBG principal and shareholder from its founding, after the

organization of his global jihadist army in 1988, after his speech announcing "[The Americans] won't stop until we do jihad against them" at his family mosque in 1990, after his terrorist strikes against the United States in Yemen and Somalia. JA4396. Although BBL, OBL, and TBL claimed, in their motion to dismiss in the district court, that the Binladin family had disowned Osama, in fact, SBG directors and Binladin family members kept a financial lifeline open to Osama throughout the decade leading into the September 11 attack long after being well aware of his terrorist intent towards America.

While BBL claimed that both SBG and MBLC removed Osama from their shareholder lists, *see* R.1645, the "Shareholder Resolutions" submitted in support of this claim state only that Osama, via his lawyer, "wishes to assign all of his shares ... to Ghaleb Muhamad Awadh Binladin [another Bin Laden brother] who has accepted this assignment together with all the rights and obligations pertaining thereto." R.1645, Exs. C, p. 2, I, pp. 2-3. There were a number of anomalies in the transfer documents, calling into question their legitimacy. Both Shareholder Resolutions of the SBG and MBLC cite a Power of Attorney issued by Bin Laden, but the date of the Power of Attorney is later than that of the Shareholder Resolutions. R.1645,

Exs. C, pp. 1-2, I, pp. 1-2. The error appears to be in both the English translation and the Arabic versions. Moreover, four of the ten signatures on the resolutions appear to be the same and Omar Bin Ladin appeared to sign for Zeenat M. Binladin but not for himself. Certainly, these documents do not resolve the question of the extent to which Osama's brothers continued to fund and support him, nor for how long.

Moreover, according to defendants, the "removal" of Bin Laden from the list of shareholders of SBG and MBLC took place on June 16, 1993. R.1645, Ex. C. A few months later, in late 1993, Ghaleb Bin Ladin and BBL jointly invested with Yousef Nada's Bank al Taqwa, an SDGT; one could easily infer that Ghaleb and BBL were now investing Osama's money for him. *See* JA3709-10; R.1773, ¶ 3.

BBL's support of his brother Osama and al-Qaeda was not limited to the assistance provided by the family companies. He made substantial contributions to many of the charities operating within al-Qaeda's infrastructure. JA2866, 2883, 3870-71. These contributions were made with full knowledge that the contributed funds would be used to support al-Qaeda's operations and terrorist attacks. *Id.* Indeed, BBL was one of the largest single donors to a 1992 fundraiser for the IIRO, which raised 19

million Saudi Riyals for Bosnian relief efforts. JA3870-71. BBL is also identified in the Golden Chain as one of al-Qaeda's principal sponsors. JA3870-71.

Similarly, TBL was the general supervisor of the IIRO, which, as discussed above, materially supported al-Qaeda. JA2875, 3714-15.

All of these activities supported Osama and al-Qaeda in their jihad against the United States. Because the intended target of the activities was the U.S., BBL, TBL and OBL all directed their conduct at the United States such that assertion of personal jurisdiction over them is appropriate.

Another Binladin brother, Yeslam Binladin ("YBL"), also had extensive ties to the United States, such that the assertion of both general and specific jurisdiction is appropriate. The basis for general jurisdiction over YBL is set forth below, *see infra* Point II. But YBL is also subject to specific jurisdiction, based on his knowing support of Osama bin Laden and al-Qaeda.

Specifically, YBL acted as Osama's Swiss banker. YBL was a co-signatory with Osama Bin Laden on a Swiss bank account at UBS that YBL managed and that benefited Osama. R.1665, Ex. B, ¶¶ 50-59; *cf.* R.1452, Ex. A, ¶¶ 11-14. The account was maintained from 1990 until 1997, *see* R.1665

at Exhibit B - ¶ 54, the crucial years during which Osama was building al-Qaeda and training operatives to commit terrorist attacks against the United States. YBL also managed two accounts at Deutsche Bank in Geneva, Switzerland, from which U.S. investigators determined that Osama Bin Laden received funds. (One of these was the Cambridge Engineering account discussed above; the other was in the name of SBG.) *See* JA2512, 2647, 4025-26; R.756-2, Exhibit 1, pg 4. Nearly $300 million was transferred through those accounts. *Id.*

YBL's role in providing money from these Swiss bank accounts to Osama Bin Laden sufficiently demonstrates YBL's involvement with al-Qaeda to allow the Court to conclude that YBL purposefully directed his conduct at the United States and should be subject to jurisdiction here.

(d) The Remaining Defendants Are Subject to Jurisdiction in the United States

The district court also misapplied specific jurisdictional principles and failed to properly credit and draw inferences from the pleadings with respect to ten other Defendants.

*(i) Yousef Jameel*

Defendant-Appellant Yousef Jameel is subject to jurisdiction in the United States based on his long-standing and detailed history of sponsoring Osama bin Laden and al-Qaeda. JA4528-45

Jameel is identified as a primary al-Qaeda financier in the Golden Chain, and has longstanding ties to al-Qaeda. JA4529; R. 977 at Exhibit 1. Beginning in the 1980s and continuing through 9/11, Jameel contributed money and equipment to a number of extremist groups and organizations known to be Osama bin Laden supporters, including the Saudi Red Crescent Society, Saudi High Commission for Relief of Bosnia & Herzegovina ("SHC"), WAMY, and SDGT al HaramainJA1360-74, 2767-84, 4522-48. The pervasive sponsorship of al-Qaeda by those organizations is well documented in the record. JA588-993 at ¶¶ 64-66, 48, 49, 62, 76, 85, 147, 150, 154-179, 229-233, 244, 353, 359, 362, 382, 401, 418, 420, 423, 426, 462, 551, 552; JA1843-45, 1849-50, 1860 at ¶¶ 60-69, 89, 95, 132; JA2435-47, 2919-54, 3094-3114,3793-3809, 4133-58, 4171-93, 4532-43, 4904-14, 5150-71.

Plaintiffs allege, moreover, that Jameel knew and intended that the funds he directed to WAMY, SHC, Saudi Red Crescent, and al Haramain, both personally and through the companies he controlled, would be used

to support al-Qaeda's global jihad. His inclusion on the Golden Chain reveals that he was a central figure in the conspiracy to channel funds to al-Qaeda through ostensible charities from the early years of al-Qaeda's formation. JA1366-67, 4529 Further, during the time period that Jameel provided the foregoing support and services to those ostensible charities, numerous media reports and statements by government officials implicated those organizations in al-Qaeda activities, plots and attacks in Pakistan, Afghanistan, Egypt, India, Kenya, Tanzania, the Philippines and elsewhere. JA1367-74, 4532-45.

Jameel had other connections to al-Qaeda and its plots against the United States. In 1996, a fax was sent to Jameel's company regarding the provision of bomb-making materials identical to those that were used in the 1993 WTC Bombing. JA1373-74. In 2001, Jameel's name and contact information were found in a phone book seized by Swiss authorities from S.D.G.T. Yousef Nada. FBI Informant and former top al-Qaeda member Jamal Al-Fadl identified Jameel as having purchased a satellite phone for Osama bin Laden. JA1368. Al-Fadl had a specific conversation with the treasurer of al-Qaeda (Madani Al Tayyib) in which the treasurer identified Jameel as donating funds to al-Qaeda. JA1368. In addition, Jameel

maintained close business and personal relationships with central figures in the al-Qaeda organization, including Adel Batterjee, one of al Qaida's primary fundraisers. JA1367-69.

Together, these activities show that Jameel knowingly and actively participated in continuous efforts to advance al-Qaeda's terrorist ambitions, and used his financial position as an effective mechanism for raising funds for, and providing other forms of material support to, al-Qaeda. In so doing, he purposefully directed his conduct at the United States and may appropriately be subject to jurisdiction here.

*(ii) Asat Trust*

The district court also erred in dismissing Defendant Asat Trust ("Asat"). The court acknowledged that Asat had been "designated by the United States government as a 'Specially Designated Global Terrorist,'" SPA194, and that plaintiffs had alleged that it was part of a network of businesses that worked in concert to "raise, launder, transfer, distribute and hide funds for bin Laden and al-Qaeda in order to support and finance their terrorist activities, including but not limited to, the September 11th Attacks." *Id.* Disregarding additional facts of record reflecting Asat's central role in the al-Qaeda money laundering network, the district court

concluded that Asat's designation as an SDGT was an insufficient basis for the assertion of jurisdiction.

The district court was wrong in concluding that Asat's designation by the U.S. government for its role in sponsoring al-Qaeda was insufficient to give rise to a reasonable inference that it had directed its conduct at the United States. Such a designation requires, as a prerequisite, a finding by the government that the designee has committed, or poses a significant risk of committing, "acts of terrorism that threaten the security and interest *of the United States.*" Executive Order 13224 (emphasis added). Thus, Asat's designation establishes, in combination with the other factual allegations presented against it, that its collaboration with al-Qaeda was directed at the United States.[139]

Nor, in any event, did plaintiffs rely solely on Asat's designation as an SDGT. The pleadings presented to the district court also established that Asat is owned by Youssef Nada, who also has been designated by the U.S. government based on his role in sponsoring al-Qaeda. JA3971-72,

[139] For the additional reasons discussed in Point I.A, it is self-evident from al Qaeda's declared mission that any material sponsorship of that terrorist organization constitutes tortious conduct directed at the United States.

4866, 5518, 6329. The Treasury Department press release concerning the designation of Nada specifically indicated that Nada used the entities under his control to provide financial services and other forms of material support to a number of terrorist organizations, including "Osama bin Laden and his al Qaeda organization" and that "as of late September 2001, Osama bin Laden and his al Qaeda organization received financial assistance from Youssef M. Nada." JA1246-47.

Nor does Asat's role in channeling material support and resources to other terrorist organizations insulate it from jurisdiction for its material sponsorship of al-Qaeda, as the district court appeared to believe. The fact that Asat also provided material support to other terrorist organizations, several of which are closely affiliated with al-Qaeda, does not serve to negate the significance for purposes of the jurisdictional analysis of the specific allegations concerning Asat Trust's knowing sponsorship of al-Qaeda.

*(iii) Liechtenstein Defendants*

Similarly, the district court erred in dismissing certain Liechtenstein financial entities and individuals, Schreiber and Zindel Treuhand Anstalt, Frank Zindel, Engelbert Schreiber, Sr. and Engelbert Schreiber, Jr.

(collectively, "S&Z") and Sercor Treuhand Anstalt ("Sercor"), as well as Martin and Erwin Wachter (together, "Wachter").[140] The pleadings amply meet the required burden of alleging that these defendants directed their conduct at the United States, and were knowing participants in a conspiracy targeting the United States.

The pleadings allege that the Leichtenstein Defendants conspired with Osama bin Laden and al-Qaeda "in order to support and finance their terrorist activities including, but not limited to, the September 11 attacks," by assisting al-Qaeda "to raise, launder, transfer, distribute and hide funds" in furtherance of its terrorist activities." JA4674-75, 4927-32, 4937-42, 4947-52, 4958-63.[141] The pleadings further describe the intimate ties

---

[140] These defendants are named only in the following cases: *Estate of John Patrick O'Neill, Sr., et al. v. The Republic of Iraq, et al.*, Second Circuit No. 11-3294; *Estate of John P. O'Neill, Sr., et al. v. Al Baraka Investment and Development Corporation, et al.*, Second Circuit No. 11-3407. They were dismissed in the June 2010 decision at 43-45.

[141] *See* JA5370-5408, ¶¶ 1, 7, 23, 38, 41, 63, 71-4, 75 (fatwas stating that attacks on the US were both proper and necessary), 76, 77 (fatwa regarding the killing of Americans), 78-82, 83 (conspiracy to murder and injure US citizens throughout the world, including the US), 95, 97 (fatwa regarding the killing of Americans)

between these defendants and other al-Qaeda financiers and supporters. JA4688-92.[142]

The pleadings specifically allege that Martin Wachter served as a director, and Erwin Wachter as the head of SDGT Asat Trust. JA4943, 4933. The Wachters also owned and managed Sercor Treuhand Anstalt. JA4943, 4933. In these capacities, the Wachters and Sercor oversaw the activities of entities at the center of the al-Qaeda support network, and had knowledge of the support flowing through those organizations to al-Qaeda. JA4934, 4944, 4965.

The pleadings additionally allege that the Wachters are directly linked to Bank "Al Taqwa and its executives, Youssef M. Nada, Ali Ghaleb Himmat, Nasreddin, and Albert Friedrich Armand Huber" co-defendants in the litigation who also played central roles in al-Qaeda's support network. JA4934-44. Al Taqwa, Nada, and Nasreddin are all SDGTs.

With respect to the S&Z defendants, the pleadings specifically allege that

> [f]or many years, the firm of Schreiber and Zindel has been used to launder money for Abdullah Omar Naseef, an

[142] *See id.* ¶¶43-50, 54, 55.

> individual associated with the SAAR Foundation and Rabita Trust, both of which are co-defendants in the above-referenced actions. Laundering the money occurred through the Al Taqwa Bank . . . . All three entities, SAAR, Rabita Trust and Al Taqwa Bank have been sanctioned by the U.S. Government.

JA4954.

The pleadings describe them as "gatekeepers" for laundering funds through Al Taqwa for terrorist recipients, including al-Qaeda, and that they were instrumental in establishing and running Al Taqwa Bank as a shell for that purpose. *Id.* The pleadings also document their ties to SDGT Nasreddin and companies under his control, including their status as trustees of Nasreddin Group, another SDGT, and the German Intelligence Service's description of Engelbert Schreiber as a "significant money launderer" who was arrested in 1997 for money laundering activities. JA4954.

Accordingly, there was a more than ample basis to assert personal jurisdiction based upon the allegations contained in the pleadings.

*(iv) Dallah Avco*

In dismissing the claims against Defendant Dallah Avco, the district court failed not only to credit plaintiffs' factual allegations, but recast plaintiffs' theories of specific jurisdiction in a manner that was inconsistent

with the allegations and facts of record. According to the district court, Dallah Avco "is alleged to subject to specific jurisdiction based on the acts of its employee who directly provided material aid to two of the 9/11 hijackers." SPA192. Reasoning that the pleadings failed to present "facts from which it can be reasonably inferred that the employee...committed the alleged wrongful acts in furtherance of Dallah Avco's business interest or at its discretion," SPA193, the district court concluded that the employees acts were not attributable to Dallah Avco for due process purposes and dismissed Dallah Avco for lack of personal jurisdiction.

Contrary to the district court's characterization, plaintiffs' theories against Dallah Avco were not predicated solely on attribution of an employee's actions, unrelated to his work, but rather on Dallah Avco's own conduct in providing material support and resources to a direct participant in the September 11th Attacks. As reflected in the pleadings, Dallah Avco provided ostensible employment and a regular salary to Omar al Bayoumi from 1995 through the date of the September 11th Attacks. JA6158-66. Although the project to which Bayoumi was assigned was based in Saudi Arabia, Bayoumi was stationed in San Diego throughout the course of his work. *Id.* The pleadings further documented that Bayoumi performed no

actual work for Dallah Avco in consideration for his salary and that he "had access to seemingly unlimited funding from Saudi Arabia," according to Joint Congressional Inquiry into the terrorist attacks on September 11, 2001. JA6158-59.

Bayoumi's activities in the San Diego area first caught the attention of federal authorities in September of 1998, when the FBI opened a counter-terrorism investigation of Bayoumi and discovered that he was in contact with several other targets of terrorism investigations and that "Bayoumi is providing guidance to young Muslims and some of his writings can be interpreted as jihadist." JA6159. Beginning in early 2000, Bayoumi began providing direct assistance to two of the 9/11 hijackers, Nawaf al Hazmi and Khalid al Mihdhar. After meeting the two hijackers in a restaurant in Los Angeles shortly after their plane landed in that city, Bayoumi brought them to San Diego, where he proceeded to assist them, logistically and financially, in obtaining a rental home. JA6159-60. Bayoumi provided additional funding to them in the months leading up the September 11th Attacks, and provided assistance to them relative to translations and other issues. JA6160.

On the basis of those facts, the pleadings specifically assert that "Dallah Avco served as a front for al Bayoumi, an al-Qaeda conspirator who participated directly in the preparation for the September 11th Attack and materially assisted two of the September 11th hijackers. Al Bayoumi used his ostensible employment with Dallah Avco as a cover for his illicit activities, and employed the funding he received from Dallah Avco to advance al Qaeda's conspiracy to attack America." JA6161. The pleadings further assert that Dallah Avco was specifically aware of Bayoumi's terrorist activities, and that senior officials of the organization quickly tramped down internal inquiries from Bayoumi's immediate supervisor concerning the nature and propriety of his employment with the company. *Id.*

Consistent with the foregoing, the jurisdictional theories advanced as to Dallah Avco rest on Dallah Avco's own role in providing material support to a member of the September 11th conspiracy, in the form of both false employment and financing. Those resources provided cover and funding necessary for Bayoumi's participation in the September11th Attacks, and subject Dallah Avco to jurisdiction in U.S. Courts.

## II. THE COURT HAS GENERAL JURISDICTION OVER THE DEFENDANTS

Plaintiffs alleged facts in the district court sufficient to establish a prima facie showing of general personal jurisdiction over defendants Yeslam bin Laden, Abdullah bin Laden and NCB. In dismissing each of these Defendants for lack of general jurisdiction, the district court – as in its specific jurisdiction analysis – disregarded allegations in the pleadings, and misapplied governing legal standards

### A. The Legal Standard For General Jurisdiction

General jurisdiction exists when the defendant's minimum contacts arise through "'continuous and systematic'" contacts with the forum. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 & n.9 (1984). Thus, to survive a 12(b)(2) motion to dismiss for lack of general jurisdiction, plaintiffs must plead facts that, if true, would show the defendant had continuous and systematic contacts with the United States. *Porina v. Marward Shipping Co.*, 521 F.3d 122, 128 (2d Cir. 2008) (citing *Metro. Life Ins.*, 84 F.3d at 568). As in the court's specific jurisdiction analysis, at the Rule 12(b)(2) dismissal stage, plaintiffs only need to make a *prima facie* showing of general jurisdiction. *Chloe*, 616 F.3d at 163. The

district court was required to accept plaintiffs' factual allegations as true and to "construe the pleadings and affidavits in the light most favorable to plaintiffs, resolving all doubts in their favor," *id.* (internal quotation marks omitted), and drawing "all factual inferences" from the complaint. *Daventree*, 349 F. Supp. 2d at 757.[143]

The district court repeatedly failed to credit allegations supporting general jurisdiction. *See infra* at 158, 159, 161. And beyond its failure to accept the allegations in the pleadings and construe them in plaintiffs' favor, the district court's general jurisdiction analysis was flawed by two key misapplications of the governing legal principles.

*First*, the district court analyzed the facts supporting general jurisdiction in a piecemeal fashion, rather than collectively. *See, e.g., infra* at 164-65. As this Court has made clear, however, allegations supporting general jurisdiction should be evaluated as a whole, not piecemeal. "[D]etermining the existence of personal jurisdiction does not ... involve an

[143] Plaintiffs did conduct general jurisdictional discovery with respect to NCB. But where, as here, "the defendant is content to challenge only the sufficiency of the plaintiff's factual allegation, in effect demurring by filing a Rule 12(b)(2) motion, the plaintiff need persuade the court only that its factual allegations constitute a *prima facie* showing of jurisdiction." *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990).

examination of each of [the defendant's] contacts with [the forum state] viewed in isolation from one another." *Metro. Life Ins.*, 84 F.3d at 571 (internal quotation marks omitted). Instead, the court is "required to examine [the defendant's] contacts *in toto* to determine whether they constitute the kind of continuous and systematic contacts required to satisfy due process." *Id.* (internal quotation marks omitted).

*Second*, the district court improperly applied a categorical rule concerning the relevant period of time for establishing a defendant's general jurisdictional contacts, requiring that such contacts continue all the way until "the time the initial complaint was filed." SPA163; *see infra* pp. 159-60, 160-61. This Court has held, however, that the appropriate time period for evaluating the sufficiency of a defendant's contacts is a "fact-intensive" question. *Metro. Life Ins.*, 84 F.3d at 569. Although this Court has indicated in *dictum* that general jurisdiction must be based at least in part on contacts at the time of the complaint, *see Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 937 F.2d 44, 52 (2d Cir. 1991), the Court later recognized that, far from following any hard-and-fast rule, the relevant time period for evaluating the defendant's contacts will "vary in individual cases" and is

"left to the court's discretion." *Metro. Life Ins.*, 84 F.3d at 569-70 & 570 n.9; *cf. Pecoraro v. Sky Ranch for Boys, Inc.*, 340 F.3d 558, 562 (8th Cir. 2003) (finding that the defendant's substantial contacts with the District of Nebraska 37 years before the lawsuit were sufficient for general jurisdiction). The district court's categorical rule, moreover, makes no practical sense in the terrorism context, where wrongdoers, after availing themselves of the host forum – in some cases for years while planning their attacks – have every incentive to flee after achieving their purposes. This Court's fact-specific approach avoids these kinds of problems and the district court should have followed it.

### B. Plaintiffs Made *Prima Facie* Showings Of General Jurisdiction.

For a combination of reasons – including the district court's failure to credit allegations in the pleadings and its misapplication of the legal principles described above – the district court improperly dismissed several Defendants for lack of general personal jurisdiction.

#### *1. Yeslam Bin Laden.*

Plaintiffs' pleadings described how defendant Yeslam Binladin ("YBL") established extensive general contacts with the United States

through his company Saudi Investment Company ("SICO") and through a complex network of businesses that included U.S. corporations that he headed. Plaintiffs alleged that through SICO, YBL invested in U.S. real estate, that SICO advertised that it had a department that specialized in United States markets, and that SICO consummated a deal to give the company "unlimited access to the United States." R.1665-2, ¶¶16-17, quoting Ex.2. Plaintiffs further alleged that YBL set up a trust in New York to manage his real estate investments. R.1665-27, at 5-6.

Beyond SICO, plaintiffs alleged that YBL incorporated at least six U.S. companies to manage real estate development and investments, including the Delaware-incorporated, Alabama-based Daniel Realty Corporation; the Knutstorp Corporation and Kinnekule, both Delaware corporations; and Reflection Properties. R.1665-27, at 8-9. Real estate records for Daniel Realty Company show that it was a purchaser of U.S. real estate until 2002. R.1665-27, at 9, ¶24. Outside of the real estate business, plaintiffs further alleged, YBL engaged in business activities through an offshore Cayman Islands company with numerous U.S. subsidiaries called Falken Limited. R.1665-27, at 5, ¶11. Finally, plaintiffs alleged – and submitted evidence to support – that YBL was an FAA-

licensed pilot, with an FAA-registered private plane owned by a Delaware Corporation, Roxbury Technologies (US) Inc. R.1665-27, at 4, ¶8-9; *see also* R.1665-38. Taken together, these alleged contacts are more than sufficient for general jurisdiction over YBL. *Cf. Metro. Life Ins.*, 84 F.3d at 572-73 (finding minimum contacts where defendant owned no property in forum and had no direct control over independent dealers, but had established contacts through relationships with dealers, advertising and customer support in forum, and deliberate targeting of business in forum).

The district court made almost no mention of these allegations. The court merely made passing reference to YBL as one of a group of bin Laden half-brothers, alluded to the jurisdictional allegations based upon "contacts of certain business and other entities," and recited the undisputed proposition that jurisdiction over a corporation does not automatically confer jurisdiction upon its officers. SPA166. From that, the court concluded that sufficient contacts had not been alleged. The court drew no reasonable inference that YBL's extensive business relations with the United States reflect his own personal contact with that forum, because it gave no discernible consideration to the detailed allegations at all. That treatment constituted a failure to credit the plaintiffs' allegations.

*2. Abdullah Bin Laden.*

Plaintiffs alleged that Abdullah bin Laden ("ABL") was living in the United States at the time of the September 11 attacks. *See* JA4400; SPA167 n.8. Rather than accept this allegation as true and draw all reasonable inferences in plaintiffs' favor, the court accepted "the representations of Abdullah Binladen" that he and Omar bin Laden did not live together in the United States and that he had "moved back to Saudi Arabia, in September of 2000," as well as the statement by Omar that he "has not lived in this country since 1974." SPA165, 168 n.8. As for the facts pleaded in plaintiffs' complaint, the court concluded that these "unsupport [*sic*] allegation[s]" were "*of no evidentiary significance in determining personal jurisdiction.*" SPA168 n.8 (emphasis added). A defendant's presence or non-presence in the United States, however, is a vital factor in determining general jurisdiction. *Helicopteros*, 466 U.S. at 416. The court's disregard of plaintiffs' allegations was improper at this stage of the proceedings, and is grounds for reversal. *Magnetic Audiotape*, 334 F.3d at 208.

Moreover, in the course of accepting ABL's version of facts rather than plaintiffs', the court also applied its improper categorical timing rule, concluding that ABL's "contacts with the United States" were insufficient

because they ended "prior to the commencement of the cases against him" as well as the September 11 attacks. SPA165-66. Application of the correct rule calls for reversal of the district court's judgment.

*3. NCB*

As noted above, *supra* p. 127 n.133, because NCB is a sovereign instrumentality, it lacks due process rights and should not have been dismissed on personal jurisdiction grounds at all. *See* Companion Brief at V (seeking reversal of dismissal of NCB, based upon post-judgment Second Circuit decision overruling the construction of the Foreign Sovereign Immunities Act relied upon by the district court).

Even if that were not so, the district court erred in several respects in finding plaintiffs had not alleged a *prima facie* showing of general jurisdiction. First, the court applied its improper blanket rule on the timing of minimum contacts, declaring that allegations concerning NCB's former New York office and its subsidiary, SNBC, could not count as part of NCB's systematic and continuous contacts because "[n]either NCB's office or that of its claimed subsidiary was in existence at the time plaintiffs commenced their actions." SPA177. That was clearly erroneous. Even if the court was correct to require some minimum contacts at the time the

complaint was filed, it cannot "mechanically limit[] its jurisdictional inquiry to the year" the complaint was filed. *Metro. Life Ins.*, 84 F.3d at 569.

The court also gave no weight to plaintiffs' allegation that NCB ran an aviation division in the United States. Plaintiffs averred that NCB operated the aviation division throughout the 1990s and into at least 2002. JA7847-7852, 7861; R.2122-2,-3,-4, Ex.5-21. Consistent with that allegation, plaintiffs pointed to FAA Flight Tracking Data of flights with tail numbers of aircraft operated by NCB. JA7850; R.2122-2 and 2122-4, Ex.15. NCB aviation division pilots also were U.S. residents with FAA certifications. JA7850-51; R.2122-2,-3,-4, Exs.5, 16, 18-20. In response to these allegations and evidence—far more than plaintiffs were required to offer for their *prima facie* showing—the district court simply credited NCB's "deni[al] [of] the existence of an aviation division." SPA179. That violated the basic rules governing the review of a motion to dismiss.

The court also gave short shrift to plaintiffs' other extensive allegations supporting jurisdiction over NCB. For example, plaintiffs averred that NCB had done substantial business in the United States through correspondent bank accounts, *see* JA7830-31, 7841-45; R.2239, including business *directly* for NCB as opposed to business for NCB

customers. *See, e.g.*, JA7844-45; R.2239-2, Exs.66, 67, 68.[144] When NCB closed its New York office, it announced it would continue services "in the same manner through ... its correspondent banks worldwide," JA7830; R.2239-2, Ex.1. Moreover, plaintiffs showed that earlier cases that found correspondent accounts insufficient for jurisdiction were based on an outdated understanding of correspondent relationships that did not account for changes in the government regulatory framework and in the nature of the relationship itself. JA7841; R.2239-2, Exs.13, 63. The modern correspondent banking industry has evolved far beyond being simply a means of international wire transfers, JA7842-43; R.2239-2, Exs.13,63,64, and NCB identifies many of these newly facilitated services as part of its core financial, investment, and management services. JA7843-44; R.2239-2, Exs.1, 2, 65.

Plaintiffs likewise alleged that NCB has long carried out a core business - corporate banking services – in the United States. Since at least

---

[144] Plaintiffs requested, but were denied, jurisdictional discovery concerning the use of these accounts. R.1964. NCB's objection to the discovery - that the discovery sought "potentially millions of pages of documents" – reveals the extensive nature of NCB's use of correspondent account agreements. [Not docketed].

1992, NCB has made multiple loans to U.S. corporations, and has protected its investments by filing U.S. Uniform Commercial Code (UCC) filings. JA7846; R.2239-2, Exs. 1, 74, 77. As late as October 2002, NCB was still financing at least one of those loans. JA7846; R.2239-2, Ex.74.

Plaintiffs also alleged that NCB conducts business in the United States through its interactive website. JA45-46; R.2239-2, Exs.3, 72. NCB's English language website permits the exchange of information between the defendant and web site viewers, *id.*, and therefore supports personal jurisdiction. *See Hsin Ten Enter. USA, Inc. v. Clark Enters*, 138 F. Supp. 2d 449, 456 (S.D.N.Y. 2000) ("Generally, an interactive website supports a finding of personal jurisdiction over the defendant."). Use of the website in the United States is substantial—the U.S. generates the fourth greatest number of visits of any country. JA7846; R.2239-2, Ex.73, available at http://www.alexa.com/siteinfo/alahli.com.

Finally, as described above, plaintiffs alleged that NCB was active in the United States from 1993 to 2001 through its alter ego, SNCB. Indeed, corporate records show that SNCB maintained its corporate status in the U.S. through the time this action was filed. JA7839-41, R.2239-2, Exs.19, 55-62. SNCB was a "mere department" of NCB, and thus SNCB's

jurisdictional contacts are imputed to NCB. *Volksagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, 751 F.2d 117, 120-22 (2d Cir. 1984); *cf.* JA7833-7839, R.2239-2, Exs.16-54 (reviewing elements of "mere department" status); *see also D. Klein & Son, Inc. v. Good Decision, Inc.*, No. 04-1994, 2005 U.S. App. LEXIS 2764, at *2-3 (2d Cir. Feb. 15, 2005) ("exercise of personal jurisdiction over an alleged alter ego requires application of a 'less onerous standard' than that necessary for equity to pierce the corporate veil for liability purposes.") (citation omitted).

Plaintiffs averred that after SNCB dissolved, liability for its corporate activities persisted, JA7839-41; R.2239-2, Ex.55, and that NCB merely shifted from using SNCB to using the same personnel to perform the same tasks for NCB. JA7840-41; R.2239-2, Exs.19, 56, 60-61. Thus, liability continued to attach to SNCB for its continued operation as a *de facto* corporation. *See* N.Y. Bus. Corp. Law § 1005(a); *Intelligent Bank Mgmt. v. E. Coast Fin. Corp.*, 207 A.D.2d 760, 761 (N.Y. App. Div. 1994) ("[T]he fact that the respondent corporation was dissolved in another State is of no moment, as it continues as a *de facto* corporation."); *Nat'l Bank of N. Am. v. Paskow*, 75 A.D.2d 568, 569 (N.Y. App. Div. 1980) (same).

Even when the court did consider some of plaintiffs' allegations concerning NCB, it ignored their significance by examining them in piecemeal fashion. *E.g.*, SPA178 ("maintenance of such correspondent bank accounts . . . does not, *standing alone*, provide a basis upon which to exercise general jurisdiction"); SPA179 ("general jurisdiction" over NCB will not be "*based solely* on its operation of an interactive website") (emphases added). For all these reasons. the district court's dismissal of NCB should be vacated, even if it is not vacated on the ground that NCB is a sovereign instrumentality without due process rights

## CONCLUSION

The dismissals for lack of personal jurisdiction should be reversed and the cases remanded for further proceedings.

Dated: January 20, 2012

Respectfully submitted,

/s/ Stephen A. Cozen

Stephen A. Cozen, Esq.
Elliott R. Feldman, Esq.
Sean P. Carter, Esq.
J. Scott Tarbutton, Esq.
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000

Attorneys for *Federal Insurance* Plaintiffs-Appellants

Carter G. Phillips
Richard Klingler
Christian P. Huebner
Paul Perkins
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

Attorneys for *Federal Insurance* Plaintiffs-Appellants

Ronald L. Motley, Esq.
Robert T. Haefele, Esq.
MOTLEY RICE LLC
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465
(843) 216-9000

Attorneys for *Burnett* Plaintiffs-Appellants and *Euro Brokers* Plaintiffs-Appellants

Andrea Bierstein, Esq.
HANLY CONROY BIERSTEIN SHERIDAN FISHER & HAYES, LLP
112 Madison Avenue
New York, NY 10016
(212) 784-6400

Attorneys for *Burnett* Plaintiffs-Appellants and *Euro Brokers* Plaintiffs-Appellants

James P. Kreindler, Esq.
Justin T. Green, Esq.
KREINDLER & KREINDLER LLP
100 Park Avenue
New York, NY 10017-5590
(212) 687-8181

Attorneys for *Ashton* Plaintiffs-Appellants

Jerry S. Goldman, Esq.
ANDERSON KILL & OLICK, P.C.
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

Attorneys for *O'Neill* Plaintiffs-Appellants

Chris Leonardo, Esq.
ADAMS HOLCOMB LLP
1875 Eye Street NW
Suite 810
Washington, DC 20006
(202) 580-8803

Attorneys for *Cantor Fitzgerald* Plaintiffs-Appellants

Robert M. Kaplan, Esq.
FERBER CHAN ESSNER & COLLER, LLP
530 Fifth Avenue, 23rd Floor
New York, New York 10036-5101
(212) 944-2200

Attorneys for *Continental Casualty*
Plaintiffs-Appellants

## CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 32(A)(7)(A)

I, Andrea Bierstein, attorney for Plaintiffs, hereby certify that the preceding brief complies with the type-volume limitations set forth in the order of this Court dated January 9, 2012, permitting Appellants in these appeals to file two consolidated briefs of up to 35,000 words each. As indicated by the word-count function of Microsoft Word 2007, this brief, one of two filed by Appellants, contains 33,325 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B)(iii).

Dated: January 20, 2012

/s/ Andrea Bierstein
Andrea Bierstein