

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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LISHAY LAVI, AYELET SAMERANO,  
 NOACH NEWMAN, ADIN GESS, MAYA  
 PARIZER, NATALIE SANANDAJI, YONI  
 DILLER, HAGAR ALMOG, DAVID  
 BROMBERG, LIOR BAR OR, and ARIEL EIN-  
 GAL,  
  

*Plaintiffs,*  
  
 v.  
  
 UNITED NATIONS WORKS AND RELIEF  
 ADMINISTRATION (“UNRWA”) and  
 UNRWA USA NATIONAL COMMITTEE, INC.)  
 (“UNRWA USA”),  
  

*Defendants.*

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**JURY TRIAL DEMANDED**

C.A. No. 1:24-cv-00312-RGA

**PLAINTIFFS’ ANSWERING BRIEF IN OPPOSITION TO DEFENDANT  
UNRWA USA’S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

Dated: November 14, 2025

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	iii
INTRODUCTION .....	1
STANDARD OF REVIEW .....	4
ARGUMENT .....	5
I.    U.S. Plaintiffs Have Properly Pleaded a Claim under the ATA. ....	5
A. General Awareness .....	6
1. UNRWA USA Relies on Standard for “General Awareness” Not Applicable Here.....	6
2. UNRWA USA and UNRWA Are One and the Same .....	7
3. UNRWA USA Misstates Hamas’s Infiltration of UNRWA.....	8
4. UNRWA USA Knew of Hamas’s Infiltration of UNRWA Prior to October 7.....	9
5. UNRWA USA’s Continued Funding of UNRWA Speaks to Its Comfortability with Hamas’s Intertwinement with UNRWA .....	16
6. Foreign Sovereigns Funding UNRWA Does Not Mean that UNRWA Faces No Liability under the ATA.....	18
7. UNRWA USA Obfuscates the U.S. Government’s Decision to Halt Funding by Introducing New Facts Not Present in the Complaint.....	19
8. Legitimate Operations Do Not Absolve UNRWA USA of Needing to Maintain Oversight over Recipient Organization .....	20
9. UNRWA’s Employment of Terrorists Makes Support of Terrorism a Foreseeable Consequence .....	23
B. Knowing and Substantial Assistance .....	23
1. Applying the <i>Halberstam</i> Test.....	24
2. Applying the <i>Twitter</i> Test .....	26
II.   U.S. Plaintiffs Have Properly Pleaded a Conspiracy Claim under the ATS.....	28

III. Israeli Plaintiffs Have Properly Pleaded a Claim under the ATS .....30

    A. Crimes against Humanity Is a Recognized Cause of Action under the  
        ATS .....31

    B. Aiding-and-Abetting Liability under International Law Is Well-Established  
        and Broad in Scope .....31

    C. Israeli Plaintiffs’ Claims “Touch and Concern” the United States.....33

CONCLUSION.....34

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b><u>Cases</u></b>	
<i>Averbach v. Cairo Amman Bank</i> , 2020 U.S. Dist. LEXIS 10902 (S.D.N.Y. Jan. 21, 2020) .....	22
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	4
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	4
<i>Bernhardt v. Islamic Republic of Iran and Owens v. BNP Paribas, S.A.</i> , 897 F.3d 266 (D.C. Cir. 2018).....	13, 22
<i>Doe v. Cisco Sys.</i> , 73 F.4th 700 (9th Cir. 2023) .....	31
<i>Doe v. Nestle USA, Inc.</i> , 766 F.3d 1013 (9th Cir. 2014) .....	33
<i>Estate of Arturo Giron Alvarez v. Johns Hopkins Univ.</i> , 275 F. Supp. 3d 670 (D. Md. 2017).....	33
<i>Flores v. S. Peru Copper Corp.</i> , 414 F.3d 233 (2d Cir. 2003).....	31
<i>Halberstam v. Welch</i> , 705 F.2d 472 (D.C. Cir. 1983).....	<i>passim</i>
<i>Harrison v. Arctic Glacier U.S.A., Inc.</i> , 2025 U.S. Dist. LEXIS 188317 (D. Del. Sep. 24, 2025) .....	4
<i>Holder v. Humanitarian Law Project</i> , 561 U.S. 1 (2010).....	22
<i>Holy Land Found. for Relief &amp; Dev. v. Ashcroft</i> , 219 F. Supp. 2d 57 (D.D.C. 2002).....	5
<i>Honickman v. BLOM Bank SAL</i> , 6 F.4th 487 (2d Cir. 2021) .....	6-7, 25
<i>In re Ins. Brokerage Antitrust Litig.</i> , 618 F.3d 300 (3d Cir. 2010).....	

*Jan v. People Media Project*,  
783 F. Supp. 3d 1300 (W.D. Wash. 2025)..... *passim*

*Jesner v. Arab Bank, PLC*,  
584 U.S. 241 (2018).....31

*Kaplan v. Lebanese Bank, SAL*,  
999 F.3d 842 (2d Cir. 2021).....24, 26

*Keren Kayemeth LeIsrael-Jewish Nat’l Fund v. Educ. For a Just Peace in the Middle E.*,  
66 F.4th 1007 (D.C. Cir. 2023).....21

*Khulumani v. Barclay Nat’l Bank Ltd.*,  
504 F.3d 254 (2d Cir. 2007).....32

*Kiobel v. Royal Dutch Petroleum Co.*,  
569 U.S. 108 (2013).....33

*Licci v. Lebanese Canadian Bank, SAL*,  
834 F.3d 201 (2d Cir. 2016).....5, 31

*Nahimana v. Prosecutor*,  
Case No. ICTR-99-52-A, Appeals Judgment (Nov. 28, 2007).....32

*Nye & Nissen v. U.S.*,  
336 U. S. 613 (1949)) .....27

*Ofisi v. BNP Paribas, S.A.*,  
77 F.4th 667 (D.C. Cir. 2023).....13, 14

*Prosecutor v. Ayyash*,  
Case No. STL-11-01/I, Interlocutory Decision in the Applicable Law: Conspiracy,  
Homicide, Perpetration, Cumulative Charging (Feb. 16, 2011).....32

*Prosecutor v. Bemba (Bemba Case)*,  
Case No. ICC-01/05-01/13(Oct. 19, 2016).....32

*Prosecutor v. Blaškić*,  
Case No. IT-95-14-A, Appeals Judgment (Int’l Crim. Trib. for the Former Yugoslavia  
July 29, 2004).....32

*Prosecutor v. Kalimanzira*,  
ICTR-05-88-A, Appeals Judgment (Oct. 20, 2010) .....32

*Prosecutor v. Mrkšić*,  
Case No. IT-95-13/1-A, Appeals Judgment (Int’l Crim. Trib. for the Former Yugoslavia  
May 5, 2009).....32

*Prosecutor v. Popovic*,  
 Case No. IT-05-88-A, Appeals Judgment (Int’l Crim. Trib. for the Former Yugoslavia  
 Jan. 30, 2015).....32

*Siegel v. HSBC N. Am. Holdings, Inc.*,  
 933 F.3d 217 (2d Cir. 2019).....25

*Sosa v. Alvarez-Machain*,  
 542 U.S. 692 (2004).....31, 32

*Twitter, Inc. v. Taamneh*,  
 598 U.S. 471 (2023)..... 24-28

*United States v. All Star Indus.*,  
 962 F.2d 465 (5th Cir. 1992) .....29

*Wildman v. Deutsche Bank Aktiengesellschaft*,  
 2022 U.S. Dist. LEXIS 233172 (E.D.N.Y. Dec. 29, 2022) .....25

*Zogenix, Inc. v. Apotex Inc.*,  
 2023 U.S. Dist. LEXIS 159127 (D. Del. Sep. 8, 2023) .....4

**Statutes and Rules**

18 U.S.C. § 2333(d)(2) .....5, 28

18 U.S.C. § 2337.....19

22 U.S.C. § 2221(c) .....18

Fed. R. Civ. P. 8(a)(2).....7

**Other Authority**

IRS Revenue Ruling 63-252 .....8

IRS Publication 4221 PC .....8



## INTRODUCTION

This case arises out of the terror attacks of October 7, 2023, during which Hamas, and other terrorist organizations, invaded Israel, slaughtering over 1,200 people and kidnapping over 200 more. Plaintiffs are American and Israeli victims who seek to hold Defendant UNRWA USA, a Delaware non-profit corporation, responsible for its systematic funding of a Hamas employer. The employer in question—Defendant UNRWA<sup>1</sup>—has hundreds of terrorists on its payroll and has done little to distinguish its organization and operations from Hamas.

Plaintiffs brought their original complaint (D.I. 1) in March of 2024, alleging UNRWA USA violated the Anti-Terrorism Act (“ATA”) and Alien Tort Statute (“ATS”) by providing material support to Hamas through its funding of UNRWA. Oral arguments were heard on June 18, 2025, and the Court issued its opinion granting without prejudice UNRWA USA’s motion to dismiss on August 8, 2025 (the “MTD Opinion”) (D.I. 50). Plaintiffs were granted leave to amend and filed the First Amended Complaint (the “FAC”) (D.I. 52), adding UNRWA itself as a defendant. UNRWA USA filed its renewed Motion to Dismiss (D.I. 60) and its opening brief in support thereof (“Renewed MTD”) (D.I. 62) on October 10, 2025. Plaintiffs’ response follows here.

The Court’s MTD Opinion granting UNRWA USA’s motion to dismiss the original Complaint without prejudice set the goal line for Plaintiffs to plead claims for aiding and abetting under the ATA and ATS. Plaintiffs heeded the Court’s guidance, and the FAC far surpasses the relevant notice pleading standard.

The MTD Opinion found two elements of the *Halberstam*<sup>2</sup> framework—UNRWA USA’s

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<sup>1</sup> As of the filing of this Answering Brief, Defendant UNRWA has been served, but UNRWA has not responded to the FAC.

<sup>2</sup> *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

“General Awareness” and its “Knowing and Substantial Assistance”—insufficiently supported in the original complaint. In response, the FAC provides a torrent of additional specific, non-conclusory factual allegations demonstrating not only that UNRWA USA was aware of UNRWA’s intertwinement with Hamas—and had a *legal* obligation to understand UNRWA’s operations—but also that UNRWA USA’s assistance was both knowing and substantial in nature.

UNRWA USA—as its name, website, logo, and branding would suggest—operates as an extension of UNRWA. It is *more* plausible than not that UNRWA USA was familiar with UNRWA’s operations and hiring practices. As UNRWA’s U.S.-based “charity” arm, it closely collaborates with UNRWA on messaging, programming, and funding. It also has a duty and responsibility under the Internal Revenue Code to understand how its charitable funds are deployed. UNRWA USA cannot claim ignorance in the face of such a responsibility, given the degree of intertwinement between UNRWA and Hamas.

And such intertwinement *remains* deep, so much so that the U.S. Government recently referred to UNRWA as a “subsidiary” of Hamas. One in every eight UNRWA employees in Gaza is a member of Hamas or another terrorist organization. One in every seven principals or deputy principals in UNRWA schools are members of Hamas. No one gets hired at UNRWA without Hamas’s say-so, insofar as the Gaza employee union is controlled by Hamas, a fact that had been asserted by a U.S. Government official publicly in 2014. It is a public secret in Gaza that UNRWA schools are riddled with Hamas.

This intertwinement between UNRWA and Hamas didn’t happen overnight. The FAC chronicles a long history of public red flags from the U.S. Government and others, dating back to 2003, revealing that Hamas members had infiltrated UNRWA and that its facilities were appropriated to store weapons. During this time, UNRWA leadership continued to hold fawning

meetings with members of various terrorist organizations throughout Gaza and Lebanon. While courts are loathe to infer culpable intent of humanitarian or financial organizations with broad reach and activities, the FAC establishes why, especially at this stage, the Court cannot infer UNRWA USA's plausible ignorance of Hamas entanglement, given UNRWA USA's own entanglement with UNRWA.

The support provided by UNRWA USA to Hamas was substantial in nature, insofar as UNRWA USA and UNRWA operated as effectively one entity, with UNRWA USA handling the charitable contributions front and UNRWA, the operations. The FAC details that UNRWA chose to pay its Gaza employees in U.S. dollars and cash, thereby compelling them to use Hamas moneychangers who got a "sizeable cut of every UNRWA employee's paycheck." FAC ¶¶ 135–136, 140. The FAC alleges that UNRWA provided Hamas with essential, non-humanitarian infrastructure by connecting the subterranean Hamas data center to UNRWA's electricity supply. FAC ¶ 216. This direct logistical link between defendant aid provider and the Foreign Terror Organization's military operations is unlike anything ever alleged (much less adjudicated) in prior precedents. The FAC demonstrates pervasive and systemic aid since UNRWA effectively provides all of Hamas's administrative governmental responsibilities, thus letting Hamas focus its energies on terrorism-related activities. UNRWA also furnishes Hamas with financial support via an extensive money laundering operation (FAC ¶¶ 131-42); employment (*id.* at ¶¶ 65-66, 73-79, 89-104, 258); infrastructure (*id.* at ¶¶ 129, 215-16); and direct access to Gaza's youth for the purposes of recruitment (*id.* at ¶¶ 91-111).

Lastly, the Renewed MTD concedes the FAC's viability. Indeed, rather than seek to establish why the FAC as plead is insufficient, UNRWA USA's brief demands that this Court make factual determinations concerning highly contested matters wholly outside the FAC's

confines and take judicial notice of *over thirty* documents. UNRWA USA asks the Court to weigh extrinsic evidence about UNRWA's entanglement with Hamas, accept the sincerity of UNRWA USA's corporate proclamations, and speculate on UNRWA's humanitarian intent.

In sum, unable to justify dismissal of the FAC, UNRWA USA ask this Court to commit reversible error. The Court should decline this invitation. UNRWA USA raises and provides funds to one recipient, UNRWA, which publicly and knowingly made the fatal choice to deeply enmesh its own supposed humanitarian activities with the broader genocidal objectives of Hamas, a designated Foreign Terrorist Organization ("FTO"). There is nothing unjust about holding Defendants liable for financing and supporting of the October 7 crimes against humanity. The ATA compels it.

#### **STANDARD OF REVIEW**

When considering a Rule 12(b)(6) motion to dismiss, the court "must accept as true all factual allegations in the complaint and view them in the light most favorable to the plaintiff." *Harrison v. Arctic Glacier U.S.A., Inc.*, 2025 U.S. Dist. LEXIS 188317, at \*2 (D. Del. Sep. 24, 2025). Rule 8(a) merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The factual allegations do not have to be detailed, but they must provide more than labels, conclusions, or a 'formulaic recitation' of the claim elements." *Zogenix, Inc. v. Apotex Inc.*, 2023 U.S. Dist. LEXIS 159127, at \*4 (D. Del. Sep. 8, 2023) (quoting *Twombly*). The pleading standard—"facial plausibility"—is satisfied "when the complaint's factual content 'allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Zogenix*, 2023 U.S. Dist. LEXIS 159127, at \*4 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

## ARGUMENT

### I. U.S. Plaintiffs<sup>3</sup> Have Properly Pleaded a Claim under the ATA.

The U.S. Plaintiffs have properly pleaded an aiding-and-abetting claim under Section 2333(d) of the ATA, insofar as the U.S. Plaintiffs have demonstrated that UNRWA USA aided the party that committed the wrongful act, that UNRWA USA was generally aware of UNRWA's role in illegal and tortious activity, and that UNRWA USA knowingly assisted the bad actor. *See Halberstam*, 705 F.2d at 478.

As a threshold matter, UNRWA USA disputes the specific factual allegation that UNRWA employed Hamas members who partook in the October 7 terror attacks, asserting it is “only ... an Israeli charge.”<sup>4</sup> Renewed MTD at 8. The Court cannot accept UNRWA USA's word and reject facts accepted by the United States Government and widely reported in *The Wall Street Journal*, *The New York Times*, and elsewhere. Regardless, at this stage of the proceedings, the Court must accept the well-pled allegations contained in the FAC.

In light of the clear indictment in the FAC, UNRWA USA no longer disputes that its aid ultimately went to Hamas. This concession is critical. Now, UNRWA USA merely argues that it was not “generally aware of [its] role as part of an overall illegal or tortious activity at the time [it] provide[d] the assistance” and disputes that it “knowingly and substantially assist[ed] the principal violation.” Renewed MTD at 23; *see also Halberstam*, 705 F.2d at 477. The FAC more than

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<sup>3</sup> The U.S. Plaintiffs are Noach Newman, Adin Gess, Maya Parizer, Natalie Sanandaji, Yoni Diller, David Bromberg, and Lior Bar Or. FAC ¶ 8.

<sup>4</sup> To be sure, federal courts traditionally have relied on Israel intelligence in counterterrorism cases, despite Defendant's own derogatory attitude towards Israel. *See, e.g., Licci v. Lebanese Canadian Bank*, SAL, 834 F.3d 201, 219 (2d Cir. 2016) (finding declaration from Israeli intelligence official “provides context to Plaintiffs' allegations that [defendant bank] aided and abetted Hezbollah's alleged violations of the law of nations”); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 71 (D.D.C. 2002) (finding it “reasonable” for administrative agencies, such as OFAC, to rely on Israeli intelligence reports).

satisfies these two prongs: (A) General Awareness, and (B) Knowing and Substantial Assistance.

**A. General Awareness.**

When alleging that a defendant aided an FTO through an intermediary, the plaintiff must plead (1) that the defendant “was aware of the [intermediary’s] connections with [the FTO] before the relevant attacks” and (2) that the intermediary was sufficiently “intertwined with [the FTO’s] violent terrorist activities that one can reasonably infer that [the alleged aider and abettor defendant] was *generally aware* of [the intermediary’s] role in unlawful activities from which the attacks were foreseeable while it was providing [support to the intermediary].” *Honickman v. BLOM Bank SAL*, 6 F.4th 487, 501 (2d Cir. 2021). This standard is akin to a “generalized red flag” standard that the FAC easily meets: UNRWA USA knew that UNRWA deeply enmeshed itself with the day-to-day operations of Hamas, including indoctrination, recruitment, paying salaries to Hamas members, and providing infrastructure and resources that have no humanitarian purpose, making the use of UNRWA USA funds to support terror activities not only foreseeable, but inevitable.

**1. UNRWA USA Relies on Standard for “General Awareness” Not Applicable Here.**

Recognizing that the FAC now surpasses the “general awareness” test set in the MTD Opinion, UNRWA USA introduces new requirements into the pleading stage that are not borne from the case law. UNRWA USA insists that, despite the fact its money went exclusively to an organization actively (a) employing hundreds of terrorists, including members of Hamas; (b) funneling cash to Hamas moneychangers; (c) embedding its school system with Hamas recruiters; and (d) allowing Hamas to use the organization’s buildings and power sources to store weapons and power its military operations, Plaintiff has not satisfied its pleading burden. UNRWA USA turns the pleading standard on its head—positing that that Plaintiffs must detail at the pleading

stage the amount and entire life cycle of every penny in order to plead intermediary liability. *Cf. Jan v. People Media Project*, 783 F. Supp. 3d 1300, 1306-07 (W.D. Wash. 2025) (“Even though Jan did not allege specific amounts of money, the Court concluded that the timing and extent of Aljamal’s [Hamis member’s] employment [with 501(c)(3)] supported the reasonable inference that the payments provided assistance with substantial effect on Jan’s captivity.”).

There is no such obligation. All that must be pleaded at this stage are “factual allegations that permit a reasonable inference that the defendant recognized the money it transferred to its customers would be received by the FTO would suffice.” *Honickman v. BLOM Bank SAL*, 6 F.4th at 500. Thus, “if a plaintiff plausibly alleges the general awareness element, she does not need to also allege the FTO actually received the funds.” *Id.* And under the general awareness prong, Plaintiffs need only to “plausibly allege ... [that UNRWA was] so closely intertwined with [Hamis’s] violent terrorist activities that one can reasonably infer that [UNRWA USA] was generally aware while it was providing [funds to UNRWA] ... that it was playing a role in unlawful activities from which [Hamis’s] attacks were foreseeable.” *Id.* at 499.

In short, UNRWA USA seeks to require particularized pleading for general awareness that contravenes Rule 8 and the realities of terrorism financing more generally. Terrorism financing, by virtue of involving illicit actors and networks, is not easily traceable prior to discovery.

## **2. UNRWA USA and UNRWA Are One and the Same.**

Requiring a plaintiff to particularize how every last penny of a defendant’s money made it into the final terrorist act contravenes Rule 8, which requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). UNRWA USA exists solely for the purposes of fundraising for UNRWA. Not a single other entity receives its funds. In short, there is no question about which entity received millions of dollars each year from

UNRWA USA. The FAC pleads: “UNRWA USA exists solely for the purpose of fundraising for UNRWA and to promote UNRWA’s programs in the United States.” FAC ¶ 219. The two organizations use “the same logo, font and font color ... creating the perception that the two organizations are one-[and]-the-same.” FAC ¶ 56. Additionally, UNRWA USA and UNRWA coordinate and collaborate on a wide variety of events, podcasts, and other programming in order to promote UNRWA’s mission because, as stated previously, UNRWA USA exists in service of UNRWA as UNRWA’s U.S.-based fund-raising arm. To that point, “UNRWA USA gives grants solely to UNRWA.” FAC ¶ 57. UNRWA USA even hosted a 37-episode podcast series titled “Let’s Talk UNRWA” where it mostly interviews UNRWA staff members or leaders in order to market UNRWA’s work. FAC ¶ 59.

As legally mandated under IRS Revenue Ruling 63-252, IRS Publication 4221PC, and Department of Treasury anti-terrorism guidance, UNRWA USA, as a 501(c)(3) non-profit providing foreign grants, is *legally required* to, among other things: (i) conduct diligence on Hamas to ensure funds are used only for legitimate purposes; (ii) investigate potential misuse of funds and withhold funds until and unless questions about the use of funds are resolved; and (iii) report potential terrorist activities to the relevant authorities. FAC ¶ 224. In short, UNRWA USA has a specific legal obligation to understand the activities of the organization receiving all of its grants.

### **3. UNRWA USA Misstates Hamas’s Infiltration of UNRWA.**

Despite UNRWA USA’s efforts to downplay Hamas’s infiltration of UNRWA, the FAC alleges that an astonishing 12% of UNRWA’s entire employee base—one out of every eight employees—in Gaza are members of Hamas or another terrorist organization operating in Gaza. FAC ¶ 66. Moreover, as the Renewed MTD is forced to admit, “some dozen” of UNRWA

employees participated in the October 7 attacks. Renewed MTD at 4. Based on Israeli intelligence—and as alleged in the FAC—UNRWA was overrun with Hamas members and other terrorist organizations well before the October 7 terror attacks. FAC ¶ 66. Presumably, UNRWA did not go on a Hamas hiring spree post-October 7.

#### **4. UNRWA USA Knew of Hamas's Infiltration of UNRWA Prior to October 7.**

UNRWA USA, by virtue of its extremely close financial relationship to UNRWA, had an obligation to know *more* about UNRWA than Plaintiffs and the general public just recently became privy to. UNRWA USA asks this Court to trust it when it says that, despite its legal obligation to understand the operations of its fund recipient and despite its status as the fundraising arm of UNRWA, it somehow had access to the *very same* information *and not an ounce more* than the entire public. *See* Renewed MTD at 9. Given UNRWA USA's intimate relationship with UNRWA and its legal obligations, Plaintiffs have plausibly plead the opposite, and it is appropriate for discovery to demonstrate that UNRWA USA had knowledge of Hamas's takeover of UNRWA but continued to funnel money to the organization, anyway.

Still, even accepting the outlandish premise that UNRWA USA had no more knowledge of UNRWA's operations than an uninvolved third-party observer does not permit UNRWA USA to claim ignorance. Plaintiffs plausibly plead that UNRWA USA had received specific warnings about Hamas's infiltration of UNRWA for decades. *See, e.g.*, FAC ¶¶ 232-236 (identifying events between 2004 and 2018 unequivocally indicating to UNRWA USA that UNRWA was actively supporting Hamas); FAC ¶¶ 123-30 (Hamas and other terrorist organizations usage of UNRWA schools to store weapons and make military plans); FAC ¶¶ 65-88 (public statements discussing Hamas's control over UNRWA's hiring practices). Indeed, as pled, a number of the Hamas members/UNRWA employees who partook in the October 7 terror attacks—based on available

data—had been employed at UNRWA *for decades*. FAC ¶ 202.

UNRWA USA contends that any allegations after October 7 showing UNRWA’s intertwinement with Hamas are ineligible for consideration at the pleading stage. Yet such allegations are critical: they show the *level of intertwinement* that preceded October 7 that UNRWA USA, as the charity arm of UNRWA, plausibly knew about. To that point, the FAC details the unique level of collaboration between UNRWA and UNRWA USA who share finances, branding, missions, and names. FAC ¶ 56. The two collaborate closely and coordinate on messaging, materials, and events in order to promote UNRWA. FAC ¶¶ 59-60. Under these conditions, UNRWA USA’s claimed ignorance cannot be assumed where the stronger—and surely plausible—inference is willful blindness.

In that vein, Plaintiffs pled that since at least 2014, UNRWA’s employee union is overseen by Hamas and that it is public knowledge in Gaza that Hamas controls the UNRWA employee union. FAC ¶¶ 78, 67. Far from limiting the FTO’s involvement in UNRWA activities, UNRWA affirmatively mandates Hamas endorsement of any employee UNRWA hires, thus inviting and exacerbating the number of Hamas members receiving paychecks via UNRWA USA. *See* FAC ¶¶ 74-76. Specifically, the FAC alleges, *inter alia*, that UNRWA hires Gazans *only* if they pass a Hamas “background check” and “provide a ‘clean record’ from local authorities, also known as Hamas.” FAC ¶ 74. Hamas is “permitted by UNRWA to ‘vet and approve’ candidates for employment in the Gaza Strip.” FAC ¶ 75. As alleged, Hamas caused UNRWA to retain known Hamas members and supporters even after receiving notice of their Hamas employment or breaches of neutrality obligations. FAC ¶¶ 83-84, 86. In the year prior to the October 7 terror attack and in the months after, UNRWA investigated just 66 staff members out of 30,000 for ties to a terrorist organization, despite being notified of hundreds of its employees either celebrating

Hamas, having ties to Hamas, or being a member of Hamas. FAC ¶ 86. At one point, UNRWA refused to take into consideration video evidence of UNRWA workers actively supporting terrorism on October 7. FAC ¶ 88. UNRWA was repeatedly informed that the head of its teachers' union in Lebanon, overseeing 65 schools and 40,000 students, was the head of Hamas in Lebanon, yet they refused to take action. FAC ¶ 85. As *The New York Times* explained, "In several cases, educators remained employed by UNRWA even after Israel provided written warnings that they were militants." FAC ¶ 86.

UNRWA USA's argument that Israeli intelligence "only occasionally uncover[ed] evidence of Hamas's infiltration" is irrelevant even if considered. Renewed MTD at 13. Even putting aside the fact that "occasional" is more than problematic, UNRWA's failure to know the depth of its own infiltration by Hamas is incriminatory, not exculpatory. UNRWA's paltry investigations and general inability to police its own ranks stem from the fact that, as mentioned previously, its hiring practices are controlled by Hamas. To conduct such investigations might reasonably reveal the depth of Hamas's control.

Staffing decisions go to the heart of an organization—as clearly is the case here, where Hamas managed to ensure that roughly one in every eight UNRWA staffers in Gaza would be a terrorist and roughly one in every seven principals or deputy principals of an UNRWA school would be a Hamas member. FAC ¶¶ 66, 92. This statistic is not representative of merely a "few bad apples," but evidence of a systemic takeover of the organization's education system by Hamas. UNRWA and UNRWA USA alike are required to avoid providing such aid to terrorists, not to endorse and increase that aid. UNRWA USA argues that somehow this arrangement is to be expected, but if so, that does not mean that a 501(c)(3), subject to U.S. antiterrorism financing laws, can provide funds to an organization so controlled by Hamas. U.S.-based charities are not supposed to

knowingly support and cooperate with international designated terror organizations. Defendants may not like this outcome, but it is a reality of the U.S.’s antiterrorism financing laws.

UNRWA USA frames itself as a distant third party, asserting it learned of Hamas’s infiltration of UNRWA only from reporting on the October 7 terror attacks. But the FAC’s allegations must be accepted as true. The FAC strongly supports the inference that UNRWA USA could not help but appreciate UNRWA’s deep intertwinement with Hamas. The inference may be attenuated in a case involving an aid agency that spreads its grants far and wide. Here, UNRWA USA exists solely for the purposes of fundraising for UNRWA—as is clear from its website, its programming, and its messaging. FAC ¶¶ 56, 59-60. As mandated by the Internal Revenue Service (FAC ¶ 224), *nobody in the world has a greater duty to know more* about the way UNRWA operates than UNRWA USA. In response, UNRWA USA asks the Court to accept as fact an *entirely implausible* scenario: that UNRWA USA somehow raised millions for and worked integrally with a single organization for decades and yet had no knowledge of the organization’s basic hiring and employee compensation practices. This assertion defies logic.

A prime sticking point for Hamas and other terrorist groups operating in Gaza is ensuring that their members are able to hide terrorism infrastructure under schools and to proselytize their message of death and destruction in order to recruit in UNRWA schools amongst Gaza’s youngest Palestinians. FAC ¶ 111. It is unsurprising that a multitude of meetings between UNRWA and various terrorist organizations over the years have concerned employment in UNRWA schools that are supported by UNRWA USA or involved meetings with Hamas members also employed in UNRWA schools: UNRWA schools are Hamas’s primary recruitment mechanism. FAC ¶¶ 148, 152, 166, 181. The intertwinement between Hamas and UNRWA is most readily apparent in UNRWA schools, with UNRWA “hiring a multitude of Hamas terrorists to fill senior roles in

UNRWA schools.” FAC ¶ 5. Of the 546 principals and deputy-principals in UNRWA’s education facilities in Gaza, at least 80 or 15% are members of a terrorist organization. FAC ¶ 92. *The New York Times* reported in December 2024 that the presence of Hamas “operatives in UNRWA schools was an open secret. One educator ... was regularly seen after hours in Hamas fatigues carrying a Kalashnikov.” FAC ¶ 93. This degree of intertwinement would indeed amount to Hamas fighters “circulat[ing] openly” in UNRWA facilities. *See Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856, 869 (D.C. Cir. 2022). Many UNRWA teachers are fighters in Hamas’s military brigade, including Hamas leader Ismail Haniyeh. FAC ¶¶ 93-95. The FAC lists by name numerous other Hamas militants receiving UNRWA cover as school teachers. FAC ¶¶ 94-104. Even if the Court could take notice, as UNRWA USA urges, of about a dozen Hamas members being fired under pressure (*see* Renewed MTD at 29), the Court cannot thereby ignore that there remain hundreds more on the UNRWA payroll as of the filing of this Reply, given that 12% of UNRWA’s Gaza staff are terrorists, and UNRWA has not announced a mass firing of employees, Israeli intelligence has not reported such, and the U.S. Government has not reported such.

At least half a dozen Hamas terror tunnels in the last ten years have been discovered beneath UNRWA schools. FAC ¶ 129. Importantly, even if certain aspects of Hamas’s rule over Gaza could be characterized as dual-use or have some innocent purpose, there is no innocent inference when a terror organization is rampantly using UNRWA schools and other facilities to store weapons and build terror tunnels available only to Hamas members.

In sum, Plaintiffs describe a series of red flags preceding October 7, as well as a series of post-October 7 flags that UNRWA USA *plausibly knew prior due to its extremely close relationship with UNRWA*. Together, these red flags establish the requisite general awareness at the pleading stage of the ATA. The instant case is most readily distinguishably from *Ofisi v. BNP*

*Paribas*, insofar as the defendant there, a bank with millions of customers, did not know of the intermediary's relationship to Al-Qaeda since "it was not widely reported until after the 1998 embassy bombings." *Ofisi v. BNP Paribas, S.A.*, 77 F.4th 667, 675 (D.C. Cir. 2023). The court in *Ofisi* noted that the complaint did "not contain any detailed factual allegations that BNPP knew about [the intermediary's] supposed connections to al Qaeda." *Id.* We have the precise opposite situation here, where connections between UNRWA and Hamas have been reported for over a decade by *third-party observers*, who would presumably have *less* access than UNRWA USA to UNRWA's operations.

Despite the litany of evidence outlined in the FAC detailing the depth of Hamas's reliance on UNRWA—and UNRWA's role as a willing participant in the arrangement—UNRWA USA spins UNRWA's relationship with Hamas as "adversarial" and reframes UNRWA's engagement with various FTOs as routine meetings with "local political factions." Renewed MTD at 9, 13. The Court cannot accept UNRWA USA's spin on contested inferences.

*First*, the FAC alleges that numerous members of UNRWA's leadership attended Hamas's annual conference, where Hamas gives instructions to UNRWA and had a "joint committee to 'supervise the relationship with UNRWA and ensure it implements its obligations.'" FAC ¶ 146. The FAC provides a variety of instances of UNRWA managers meeting with known terrorists to ensure cooperation and support, including meetings for UNRWA "to enhance cooperation and coordination with Palestinian forces." FAC ¶¶ 147-186. While an alternative relationship—one on which UNRWA focuses strictly on providing humanitarian aid and avoids or clearly minimizes entanglement with a known FTO—could support an innocent inference, the specific facts of the FAC about the unique relationship of UNRWA USA to UNRWA and, in turn, to Hamas, does not permit any innocent inference. Nor is any such inference justified on a motion to dismiss.

*Second*, to the extent UNRWA (or any third party humanitarian organization) has some latitude to work with a problematic local government to a limited extent, Hamas, Palestine Liberation Front (“PLF”), Palestine Islamic Jihad (“PIJ”), Popular Front for the Liberation of Palestine (“PFLP”), PFLP-General Command (“PFLP-GC”), and the Democratic Front for the Liberation of Palestine (“DFLP”) are not mere “local political factions.” They are each known terrorist organizations, with the exception of DFLP, which was delisted in 1999. FAC ¶ 145. Again, the defendants in prior ATA claims minimized their interaction with terrorists, while UNRWA USA and UNRWA embraced and maximized it.

Lastly, when arguing against UNRWA’s intertwinement with Hamas, UNRWA USA minimizes the importance of the money laundering operation detailed at length in the FAC (*see* FAC ¶¶ 131-42) by arguing that the U.S. dollar is the second-most popular currency in Gaza, *after the shekel*. Regardless, UNRWA pays its employees in the less popular currency. UNRWA USA then misrepresents the cited UN report by suggesting that the risk of “leakage” or the misallocation of cash payments is non-existent. Meanwhile, here is how the issue of leakage is *actually* presented in the report:

The risks of leakage and unintended expenses is consistently perceived high across households, UNRWA staff and donors. This perceived risk is magnified by the lack of existing control mechanism on how assistance is used.<sup>5</sup>

The report then defines “leakage” as “misappropriation, fraud, corruption, double-counting and any irregularity considered as a diversion of cash grants or vouchers from legitimate uses.” *Id.* at 59. The report notes that “[s]hrinking budgets for humanitarian assistance and the increased importance given by Western donors to anti-terrorism and money laundering policies further

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<sup>5</sup> KEY AID CONSULTING, *Social Transfers in the Gaza Strip*, 58 (Nov. 2018), [https://www.unrwa.org/sites/default/files/unrwa\\_social\\_transfers\\_study\\_in\\_the\\_gaza\\_strip.pdf](https://www.unrwa.org/sites/default/files/unrwa_social_transfers_study_in_the_gaza_strip.pdf).

amplify these concerns” and that “[t]his is particularly sensitive in environments such as the Gaza Strip.” *Id.*

Lastly, UNRWA USA argues that the payment system must be legitimate because Israel has authorized it. Again, there may be numerous reasons *why* a government approves such actions. Given UNRWA is one of the largest employers in Gaza ( Hamas is, as well), there exists a host of political reasons for why Israel might determine that the cost of the “leakage”—otherwise known as Hamas’s laundering operation—is outweighed by the large-scale unrest threatened by the non-payment of UNRWA salaries.

#### **5. UNRWA USA’s Continued Funding of UNRWA Speaks to Its Comfortability with Hamas’s Intertwinement with UNRWA.**

UNRWA USA implies that had there been a general awareness of intertwinement prior to the October 7 terror attacks—repeatedly emphasizing that some discoveries of Hamas intertwinement were revealed publicly after October 7, 2023—it may have halted funding to UNRWA. Renewed MTD at 28. Yet, this implication rings hollow—especially in the context of a motion to dismiss. Despite the litany of evidence indicating that Hamas was well-embedded in UNRWA prior to, during, and after October 7, 2023—and that UNRWA USA had a responsibility to know such, insofar as Hamas’s influence was so *pervasive*—UNRWA USA has not shut off funding to UNRWA. A general awareness of Hamas’s infiltration bothers the U.S. Government, insofar as the U.S. Government has shut off funding to UNRWA, but UNRWA USA has not. Plaintiffs further support their theory by alleging that UNRWA USA continued to fund UNRWA in the face of increasing, substantiated allegations of a unique and malignant intertwinement. For example:

- In early 2024, Israeli intelligence reported that of the 12,521 UNRWA employees operating in Gaza, at least 12% are a member of Hamas or another terrorist organization. FAC ¶ 66. UNRWA USA never paused funding to UNRWA, despite the U.S. Government doing so.

- In December 2024, *The New York Times* provided an in-depth examination of the degree to which Hamas had thoroughly embedded itself into UNRWA: “Residents of Gaza said in interviews that the idea that Hamas had operatives in UNRWA schools was an open secret. One educator ... was regularly seen after hours in Hamas fatigues carrying a Kalashnikov.” FAC ¶ 93. UNRWA USA never paused funding to UNRWA, despite the U.S. Government doing so.
- In April 2025, Israeli intelligence provided detailed biographies of individual UNRWA employees who partook in the October 7 terror attacks. FAC ¶ 202. UNRWA USA never paused funding to UNRWA, despite the U.S. Government doing so.

UNRWA USA’s refusal to terminate funding signals its acceptance of UNRWA’s entanglement with Hamas, which includes UNRWA employing members of Hamas (including those that took part in the October 7 terror attacks), to the point that (1) one in eight UNRWA employees in Gaza are a member of a terrorist organization (FAC ¶ 66); one in seven principals or deputy principals in UNRWA schools is a Hamas member (FAC ¶ 258); Hamas controls the UNRWA employee union in Gaza (FAC ¶¶ 65, 73-79, 89-104); Hamas hides tunnels under UNRWA infrastructure (FAC ¶¶ 129, 215-16); and Hamas relies on UNRWA paychecks for its money laundering operation (FAC ¶¶ 131-42).

The organization’s apparent comfort with financing terrorism is an important component of demonstrating material support: this goes directly to *why* a general awareness of UNRWA’s intertwinement with Hamas would not serve as a deterrence to UNRWA USA’s transferring of funds to UNRWA. This also goes to why continued funding cannot be used as a data point to suggest ignorance of Hamas infiltration. To this point, FAC alleges the degree to which anti-Israel sentiment pervades the board of UNRWA USA to support the inference that those individuals would support their organization funneling money to Hamas—or in the very least, would find little issue with it. FAC ¶¶ 239-45. Statements like “May the entity [Israel] and its genocidal rapist forces be wiped from the earth,” reposted by one board member, is indistinguishable from the position of Hamas. FAC ¶ 243. Working for or financially supporting groups explicitly opposed

to the existence of the State of Israel also would suggest that the leadership of UNRWA USA has few tangible issue with its own funds landing in the hands of Hamas. FAC ¶ 241.

**6. Foreign Sovereigns Funding UNRWA Does Not Mean that UNRWA Faces No Liability under the ATA.**

UNRWA USA repeats the MTD Opinion’s observation that the U.S. Government and other governments funded UNRWA. Renewed MTD at 6. Those political and foreign policy judgments cannot excuse the private provision of support to Hamas. Behaving in lockstep with governments not subjected to U.S. terrorism financing laws is simply irrelevant for determining whether Defendants violated U.S. terrorism financing laws, as the nation states cited by UNRWA USA are not subject to U.S. law. Renewed MTD at 6.

UNRWA USA argues that certifications applied to U.S. Government contributions to UNRWA somehow can be applied incidentally to contributions from UNRWA USA. Renewed MTD at 16-17. The yearly reports submitted by the U.S. Government Accountability Office (“GAO”) certify that the Executive must take “all possible measures to assure that no part of the United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of ... any other guerilla type organization or who has engaged in any act of terrorism.” 22 U.S.C. § 2221(c). But UNRWA USA provides no legal or factual basis for its reliance on those or any other certifications: there is no affidavit asserting such (which would in all events be improper hearsay). Reliance on the Framework Agreement between the United States and UNRWA is similarly misplaced, insofar as it was concluded between UNRWA and the United States, a party that is exempted from liability under the ATA. Renewed MTD at 17. UNRWA USA fails to provide any legal basis suggesting that GAO certifications or the Framework Agreement may be reasonably relied upon by non-government actors in the context of anti-terrorism financing suits.

No such law or principle exists, and for good reason. In the interest of pursuing foreign policy initiatives, the U.S. Government preserves the discretion to make the strategic foreign policy decision to fund individuals and entities without regard for antiterrorism financing laws in the United States, and exercising the judgment to do so does not thereby render such laws toothless with respect to third parties who would otherwise support terrorist activities. Accordingly, the ATA has a safe harbor provision that prohibits suits under the ATA against either the U.S. Government or any officials, predicting the exact quagmire present here. *See* 18 U.S.C. § 2337. To claim that this safe harbor extends to non-governmental actors because these actors donated to the same group as the U.S. Government—which is not liable under the ATA—would represent a fundamental broadening and misapplication of the safe harbor provision that is not born from the case law.

UNRWA USA wishes to piggyback off of UNRWA's faulty vetting procedures and assurances to the U.S. Government as if UNRWA USA and UNRWA were the same organization, while insisting UNRWA USA is not, in fact, closely tied to UNRWA and has no knowledge of UNRWA's employment practices concerning Hamas and long-term support of Hamas. This seems contradictory at best. Still, if these two avenues are indeed the basis of UNRWA USA's continued support of UNRWA, UNRWA USA should have ceased funding this year, since both documents are no longer current. Yet, UNRWA USA has not ceased its support for UNRWA, continuing to funnel millions to the organization employing hundreds of terrorists. Meanwhile, non-government actors are responsible for conducting their own thorough due diligence when it comes to evaluating fund recipients.

**7. UNRWA USA Obfuscates the U.S. Government's Decision to Halt Funding by Introducing New Facts Not Present in the Complaint.**

To demonstrate UNRWA remains in good standing after the October 7 terror attacks both

in the United States and globally, UNRWA USA impermissibly introduces new facts not presented in the FAC, as demonstrated by its inclusion of five additional non-legal citations just to address this point alone. Renewed MTD 19-22. Moreover, the several bills cited by UNRWA USA calling for the resumption of funding to UNRWA (*see* Renewed MTD at 21) failed to garner sufficient support for passage for the very reason Plaintiffs bring the FAC. As U.S. Secretary of State Marco Rubio announced on October 24, 2025, “UNRWA’s not going to play any role in [humanitarian aid] .... The United Nations is here. They’re on the ground. We’re willing to work with them if they can make it work, but not UNRWA. UNRWA became a subsidiary of Hamas.”

UNRWA USA also refers at length to an independent review of UNRWA’s operations conducted in April 2024—a report not included in the FAC—where even the UN acknowledges “neutrality-related issues persist.”<sup>6</sup> *See* Renewed MTD at 22. “Neutrality-related issues” is the euphemism for entanglement with local terrorist factions which the UN regards as “political” actors. Even if the Court were to take judicial notice of such a report—and it should not, Plaintiffs would note that the U.S. Government did not resume funding to UNRWA following the publication of such a report.

#### **8. Legitimate Operations Do Not Absolve UNRWA USA of Needing to Maintain Oversight over Recipient Organization.**

The Court should unequivocally reject UNRWA USA’s arguments that it lacked general awareness because UNRWA performed *some* legitimate operations and therefore UNRWA USA should be shielded from liability. The FAC specifically illustrates why and how UNRWA became

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<sup>6</sup> Independent Review Group on the UN Relief and Works Agency for Palestinian Refugees in the Near East, *Final Report for the UN Secretary-General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality*, at 5 (Apr. 20, 2024), [https://www.un.org/unispal/wpcontent/uploads/2024/04/unrwa\\_independent\\_review\\_on\\_neutrality.pdf](https://www.un.org/unispal/wpcontent/uploads/2024/04/unrwa_independent_review_on_neutrality.pdf).

a Hamas “organ” that provides critical, non-humanitarian support for Hamas’ terroristic military infrastructure. FAC ¶¶ 4, 7, 215–216, 256. UNRWA “very systematically and cynically incorporated the Hamas terrorist entity into every aspect of UNRWA's operations. The two became functionally indistinguishable” (FAC ¶ 4), as has been recently asserted by the present U.S. Secretary of State and pled in the FAC.

The case law concerning intermediary liability presented by UNRWA USA similarly is unavailing. See Renewed MTD at 25. *Keren Kayemeth LeIsrael-Jewish Nat’l Fund v. Educ. For a Just Peace in the Middle E.*, 66 F.4th 1007 (D.C. Cir. 2023) (“KKL”), concerned an alleged aider and abettor funneling money to a host of different organizations, many of which were non-violent, while a minority were infected by Hamas. Here, in contrast, we have a defendant who funnels all of its money to just one recipient organization, which knowingly employs members of Hamas and allows Hamas to vet each and every one of its new hires, while making its schools, power grid and other facilities bases for Hamas weapons, tunnels and other operations. *KKL* is inapposite.

This case is more akin to the recent *Jan v. People Media Project*, where a group of rescued Israeli hostages brought an aiding-and-abetting claim under the ATS against the Washington-based 501(c)(3) People Media Project (otherwise known as “Palestine Chronicle”) for employing just *one* member of Hamas who held the three Israelis hostage in his home for eight months. *Jan v. People Media Project*, 783 F. Supp. 3d at 1306-07 (“Even though Jan [Israeli hostage] did not allege specific amounts of money [from Palestine Chronicle] ... the timing and extent of Aljamal’s employment support[s] the reasonable inference that the payments provided assistance with substantial effect on Jan's captivity.”). Here, we have a 501(c)(3) effectively operating as the fundraising arm of an organization employing *hundreds* of members of Hamas, PIJ, and other Gaza-based terrorist organizations.

Meanwhile, both *Bernhardt v. Islamic Republic of Iran* and *Owens v. BNP Paribas, S.A.*, 897 F.3d 266 (D.C. Cir. 2018), concerned financial transactions with state sponsors of terror, which “Congress affirmatively chose to permit ... so long as the prospective funder obtains a license from the Department of State. *See* 50 U.S.C. § 4605(j).” *Id.* at 276. In contrast, there is no indication that Congress intended for intermediaries to be shielded from liability for funding terrorism so long as the recipient non-government organization happened to be engaged in some humanitarian activities while employing Hamas members.

No case shields from liability an American entity that earmarks funds to an organization whose on-site employees are allegedly 12% terrorists, provides Hamas with infrastructure and supplies, and launders Hamas money. *See id.* (“Congress found that money earmarked for peaceful activities donated directly to a terrorist organization nevertheless furthers the organization’s violent ends enough to justify a prohibition on all financial support for such an organization.”) (citing *Holder v. Humanitarian Law Project*, 561 U.S. 1, 29 (2010)).

Lastly, UNRWA USA’s citation to *Averbach v. Cairo Amman Bank*, 2020 U.S. Dist. LEXIS 10902 (S.D.N.Y. Jan. 21, 2020), is unconvincing insofar as none of the account holders of Cairo Amman Bank later tied to the terrorist attack at issue took part in the attack or were identified as terrorists at the time of fund transfer. *See* Renewed MTD at 25. Here, UNRWA, UNRWA USA’s sole recipient of funding (FAC ¶¶ 56-60) took part in the October 7 terror attack (*id.* at ¶¶ 200-04); and UNRWA USA had been sufficiently put on notice of UNRWA’s intertwinement with Hamas. *See, e.g., id.* at ¶¶ 65-88, 123-130, 232-236. Indeed, a number of the Hamas members/UNRWA employees who partook in the October 7 terror attacks—based on available data—had been employed at UNRWA for decades. *Id.* at ¶ 202.

### **9. UNRWA’s Employment of Terrorists Makes Support of Terrorism a Foreseeable Consequence.**

UNRWA USA next bizarrely argues that Plaintiffs fail to properly allege how “mere employment of Hamas members foreseeably led to terrorism.” Renewed MTD at 27. Employment of Hamas members is probably the most standard and straightforward form of material support that could possibly be provided to an FTO. Employment with UNRWA not only subsidizes terrorist activities—but employment *with UNRWA specifically* gives hundreds of terrorists a valence of legitimacy, as well as access to Gaza’s thousands of children via UNRWA schools, making recruitment a straightforward endeavor. As mentioned previously, in *Palestine Chronicle*, the District Court for the Western District of Washington found that employing just *one* Hamas member could constitute the basis of an aiding-and-abetting claim under the ATS. *See generally Jan v. People Media Project*, 783 F. Supp. 3d 1300 (W.D. Wash. 2025). UNRWA USA then argues that funding to schools could not foreseeably lead to terrorism (*see* Renewed MTD at 27) despite the allegations presented by Plaintiffs showing that UNRWA schools remain the epicenter of Hamas employment and recruitment (and provide cover for weapons caches and tunnels). FAC ¶¶ 92-111, 123-30. UNRWA USA is not entitled to the benefit of the doubt in this context.

#### **B. Knowing and Substantial Assistance.**

Under *Halberstam*’s next and final prong, a plaintiff must provide sufficient allegations to render it plausible that “the defendant ... knowingly and substantially assist[ed] the principal violation.” 705 F.2d at 477. UNRWA USA does not argue that the provision of cash to UNRWA was accidental or incidental. Plaintiffs plausibly assert that the provision of cash was not innocent, insofar as “it defies credulity that [UNRWA USA] did not know that something illegal was afoot” (*Halberstam* at 486) given the plethora of information regarding the deep connection between UNRWA and Hamas.

When evaluating whether “substantial assistance” was knowingly provided, the Court may turn to both *Halberstam*, as well as *Twitter v. Taamneh*, a recent Supreme Court decision delineating a more flexible standard of interpreting knowing and substantial support. *See Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023). Each is evaluated in turn below.

### 1. Applying the *Halberstam* Test.

When applying the *Halberstam* test for knowing and substantial assistance, the Court weighs six factors: (i) the nature of the act assisted; (ii) the amount and kind of assistance; (iii) the defendants’ presence at the time of the tort; (iv) the defendants’ relationship to the tortious actor; (v) the defendants’ state of mind; and (vi) the duration of assistance. *See Halberstam*, 705 F.2d at 483-84.

With regard to the **nature of the act assisted**, this particular factor “requires assessing whether the alleged aid (providing millions of dollars to the [intermediaries]) would be important to the nature of the injury-causing act ( Hamas's terrorist attacks).” *Id.* Given the years-long relationship between UNRWA and Hamas and the degree to which Hamas relies on U.S. dollars in particular to finance its operations, any financial assistance provided to the FTO would be invaluable, especially if passed through its primary lifeline in Gaza, UNRWA.

With regard to the **amount and kind of assistance**, UNRWA USA has provided tens of millions of dollars over the past five years alone, as UNRWA USA is UNRWA’s largest private donor. *See* FAC ¶¶ 55-58. Because Plaintiffs properly allege that UNRWA USA had a general awareness of UNRWA’s intertwinement with Hamas, this factor weighs in Plaintiffs’ favor. *See Kaplan v. Lebanese Bank, SAL*, 999 F.3d 842, 865 (2d Cir. 2021). Even *one* regular payment to *one* Hamas member is sufficient to sustain a material support claim. *See, e.g., Jan v. People Media Project*, 83 F. Supp. 3d 1300 (W.D. Wash. 2025).

With regard to UNRWA USA's **presence at the time of the tort**, while UNRWA USA was not physically present at the time of the attacks in question, it certainly was present insofar as it was transacting business with UNRWA at the time a number of UNRWA employees invaded Israel on October 7, 2023. *Cf. Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 225 (2d Cir. 2019) (“HSBC was not ‘present’ at the time of the November 9 Attacks. Indeed, HSBC had ceased transacting any business with [the intermediary] ten months prior.”).

With regard to UNRWA USA's **relationship to Hamas**, the Court performs “an evaluation of how attenuated the relationship is between the defendant and the FTO.” *Wildman v. Deutsche Bank Aktiengesellschaft*, 2022 U.S. Dist. LEXIS 233172, at \*31 (E.D.N.Y. Dec. 29, 2022) (internal quotation marks removed). As UNRWA's largest private donor, UNRWA USA fills UNRWA's coffers, which includes, as of the filing of the FAC, paying the salaries of hundreds of terrorists, including a number of school principals. FAC ¶¶ 92-104. Furthermore, since UNRWA is one of the largest employers in Gaza, UNRWA paychecks serve as the basis of Hamas's money laundering operation, enabling the group to collect much-needed U.S. dollars for its operations and weapons. *Id.* at ¶¶ 131-42. Unlike in *Twitter*, where the defendant provided services to billions of users, making the relationship arms-length and passive in nature, UNRWA USA here provides services to strictly *one* client—UNRWA. *See Twitter, Inc.*, 598 U.S. at 500 (“[T]here are no allegations that [Twitter] treated ISIS any differently from anyone else. Rather, [Twitter's] relationship with ISIS and its supporters appears to have been the same as [its] relationship with [its] billion-plus other users: arm's length, passive, and largely indifferent.”).

With regard to UNRWA USA's **state of mind**, “[t]he defendant need not be generally aware of its role in the specific act that caused the plaintiff's injury; instead, it must be generally aware of its role in an overall illegal activity from which the act that caused the plaintiff's injury

was foreseeable.” *Honickman*, 6 F.4th at 496; *see also Halberstam*, 705 F.2d at 488 (aider and abettor held liable despite having no knowledge of the murder—knowledge of the property crimes was sufficient to establish general awareness because violence was a foreseeable risk). A complaint need only contain “general allegations as to a defendant’s knowledge” because “a plaintiff realistically cannot be expected to plead a defendant’s actual state of mind.” *Kaplan*, 999 F.3d at 864 (internal quotation marks and citations omitted). Given the fact that UNRWA USA had a legal obligation to know the activities of its recipient, of whom roughly one in eight employees in Gaza were members of a terrorist organization (FAC ¶ 66), it existed solely for the purposes of funding UNRWA (*id.* at ¶¶ 55-58), and it collaborated closely and routinely with UNRWA staff (*id.* at ¶¶ 56-60), it is entirely plausible, and even likely, that Plaintiffs knew what was afoot. Plausibility is the standard at the pleading stage (the inverse being highly implausible), and Plaintiffs plausibly plead the requisite “state of mind” for material support for terrorism.

With regard to duration of assistance provided, UNRWA USA has provided financial support to UNRWA for two decades, with only one pause of 30 days. Under *Halberstam*, “[t]he length of time an alleged aider-abettor has been involved with a tortfeasor almost certainly affects the quality and extent of their relationship and probably influences the amount of aid provided as well; additionally, it may afford evidence of the defendant’s state of mind.” *Halberstam*, 705 F.2d at 484. UNRWA USA has funded UNRWA for 20 years and continued to fund UNRWA, despite the United States’ decision to halt funding due to UNRWA’s intertwinement with Hamas.

## **2. Applying the *Twitter* Test.**

The *Halberstam* framework is not the totality of the analysis. The Supreme Court in its recent case *Twitter, Inc. v. Taamneh*, held that “those elements and factors [in *Halberstam*] should not be taken as inflexible codes; rather, they should be understood in light of the common law and

applied as a framework designed to hold defendants liable when they *consciously and culpably* ‘participate[d] in’ a tortious act in such a way as to help ‘make it succeed.’” *Twitter, Inc.*, 598 U.S. at 497 (quoting *Nye & Nissen v. U.S.*, 336 U. S. 613, 619 (1949)) (emphasis added). The Court in *Twitter* noted that a plaintiff must show a “concrete nexus” between the support provided by a defendant and the act of terrorism at issue unless a defendant “so systemically and pervasively assisted [the FTO] that defendant[] could be said to aid and abet every single [FTO] attack.” *Twitter*, 598 U.S. at 501. The standard put forth in *Twitter* has much in common with the *Halberstam* factors: conscious and culpable participation goes to Defendants’ state of mind and the “concrete nexus” test touches about the nature of the act assisted. “Both JASTA and *Halberstam*’s elements and factors rest on the same conceptual core that has animated aiding-and-abetting liability for centuries: that the defendant consciously and culpably ‘participate[d]’ in a wrongful act so as to help ‘make it succeed.’” *Twitter, Inc.*, 598 U.S. at 493 (quoting *Nye & Nissen*, 336 U. S. at 619).

Plaintiffs’ pleadings similarly survive under *Twitter*. UNRWA USA argues that Plaintiffs fail to demonstrate a “concrete nexus” between UNRWA USA’s support and Plaintiffs’ injuries. Renewed MTD at 31. This is incorrect. It would be hard to imagine a more concrete form of material support to an FTO than providing the employer of hundreds of terrorists with millions of dollars each year. While “a close nexus between the assistance and the tort might help establish that the defendant aided and abetted the tort ... even more remote support can still constitute aiding and abetting in the right case.” *Twitter*, 598 U.S. at 496. Relevant to the analysis here is the fact that systematic, routine assistance over a long period of time lessens the degree to which a plaintiff must tie the support provided to the specific terror attack at issue. Indeed, “[i]n appropriate circumstances, a secondary defendant’s role in an illicit enterprise can be so systemic that the

secondary defendant is aiding and abetting every wrongful act committed by that enterprise—as in *Halberstam* itself.” *Id.* In *Halberstam*, Linda Hamilton merely provided bookkeeping services over several years to Bernard Welch, who killed Michael Halberstam during a burglary. Hamilton did not know of the specific burglary in question that resulted in Halberstam’s death, yet she nonetheless was held liable for his death. *Halberstam*, 705 F.2d at 487. Analogously, UNRWA USA has provided financial assistance for years to an employer of Hamas terrorists, including those who partook in the October 7 terror attacks. This form of systematic, routine, and unflinching support to an enterprise over a long period of time was precisely the support contemplated by the Supreme Court in *Twitter*.

## **II. U.S. Plaintiffs Have Properly Pleaded a Conspiracy Claim under the ATS.**

Section 2333(d) stipulates that “anyone who conspires with the person who committed such an act of international terrorism” may be held liable.” 18 U.S.C. § 2333(d)(2). A well-pleaded conspiracy claim includes “(1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme.” *Halberstam*, 705 F.2d at 477.

UNRWA USA disputes the existence of an agreement between UNRWA and Hamas. Within the JASTA context, “[p]roof of a tacit, as opposed to explicit, understanding is sufficient to show agreement.” *Halberstam*, 705 F.2d at 47. Because UNRWA was the intermediary between UNRWA USA and Hamas, at this stage of the pleadings and absent discovery, it is not possible to demonstrate direct communications between UNRWA USA and the FTO Hamas. However, Plaintiffs detail a long list of instances in which Hamas and UNRWA have communicated directly, as well as the degree to which Hamas members roam freely through

UNRWA facilities as employees (an arrangement which obviously demands communication). *See* FAC ¶¶ 150, 152-57, 159-62, 164-67, 170, 172-73, 175, 178, 181, 183, 185 (direct communications in public meetings); 65-66, 73-79, 89-104, 258 (general employment of Hamas at UNRWA). In turn, U.S. Plaintiffs make it clear that their conspiracy allegations apply to both “direct[.]” and “indirect[.]” communications between the three entities—UNWRA USA, UNRWA, and Hamas—because Hamas was so close to UNRWA and UNRWA was so close to UNRWA USA. *See* FAC ¶ 279; *see also Halberstam*, 705 F.2d 472, 481 (Because “the court will have to infer a conspiracy from indirect evidence, it must initially look to see if the alleged joint tortfeasors are pursuing the same goal—although performing different functions—and are in contact with one another.”). Here, where there is *intermediary* liability, it would make sense that UNRWA would serve as the intermediate communicator.

Indeed, in this Circuit, the concept of a “middle man” at the center of a conspiracy claim is not unusual. For instance, in *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300 (3d Cir. 2010), the Third Circuit upheld a conspiracy claim at the motion to dismiss stage where the only allegations of contact concerned communications between the broker and individual insurers with whom he “masterminded” a bid-rigging scheme. The Third Circuit held that “[o]n a motion to dismiss ... we must assume the truth of the complaint’s statement of facts, and the complaint here sets forth a plausible basis for inferring that each bid-rigging defendant’s decision not to compete was conditioned on an expectation of reciprocity from its competitors.” *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d at 37; *see also United States v. All Star Indus.*, 962 F.2d 465, 473 (5th Cir. 1992) (“[D]efendants cannot escape the per se rule [for certain horizontal restraints of trade] simply because their conspiracy depended upon the participation of a ‘middle-man,’ even if that middleman conceptualized the conspiracy, orchestrated it ... and collected most of the booty.”).

Plaintiffs have pleaded the same plausible basis here, where UNRWA had frequent and unrelenting communications with Hamas based on its public meetings and employment rolls, and UNRWA maintained continuous communications with UNRWA USA due to its status as UNRWA's charitable arm.

Lastly, the object of the conspiracy was to provide material support to Hamas, as pleaded in the FAC, not the October 7 terror attacks. *See* FAC ¶ 281. As established in *Halberstam*, Linda Hamilton did not conspire with her employer Bernard Welch to commit the burglary that killed Michael Halberstam; nonetheless, she was held liable for conspiring to do so because Halberstam's death was a foreseeable consequence of her systematic and continuous bookkeeping services for Welch. *See Halberstam*, 705 F.2d at 487 (“[T]he district court’s findings that Hamilton agreed to participate in an *unlawful course of action* and that Welch's murder of Halberstam was a reasonably foreseeable consequence of the scheme are a sufficient basis for imposing tort liability on Hamilton according to the law on civil conspiracy.”) (emphasis added). Here, the October 7 terror attacks, as well as the ensuing acts of terror, were foreseeable consequences of UNRWA and UNRWA USA's systematic, continuous support of Hamas.

In sum, Plaintiffs have properly pleaded at the motion to dismiss stage that UNRWA USA, UNRWA, and Hamas, either directly or indirectly, had a “tacit . . . understanding” to provide material support to Hamas.

### **III. Israeli Plaintiffs Have Properly Pleaded a Claim under the ATS.**

Israeli Plaintiffs<sup>7</sup> properly plead an aiding and abetting claim under the ATS because they plead a violation of the laws of nation and demonstrate UNRWA USA's ongoing aiding-and-

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<sup>7</sup> The Israeli Plaintiffs are Lishay Lavi, Ayelet Samerano, Hagar Almog, and Ariel Ein-Gal. FAC at ¶ 9.

abetting role before, during, and after the October 7 terror attacks.

The ATS asserts that “[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. “On its face, the statute specifies that, to state a claim, plaintiffs must (i) be ‘aliens,’ (ii) claiming damages for a ‘tort only,’ (iii) resulting from a violation ‘of the law of nations’ or of ‘a treaty of the United States.’” *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 242 (2d Cir. 2003). In order for Israeli Plaintiffs to establish a claim under the ATS stemming from a violation “of the law of nations,” Plaintiffs must demonstrate that the alleged violation is “of a norm that is specific, universal, and obligatory” and that “allowing this case to proceed under the ATS is a proper exercise of judicial discretion.” *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018).

**A. Crimes against Humanity Is a Recognized Cause of Action under the ATS.**

As plead by Israeli Plaintiffs, crimes against humanity are recognized as violations of the law of nations for the purposes of establishing a claim under the ATS. *Licci v. Lebanese Canadian Bank, SAL*, 834 F.3d 201, 213 (2d Cir. 2016). Federal courts have recognized that systematic attacks against a civilian population in order to expel them from the territory are recognized as crimes against humanity. *See id.* Here, the October 7 terror attack, as well as the ongoing violence that continued after October 7, 2023—both of which injured Israeli Plaintiffs—constitute crimes against humanity for the purposes of the ATS.

**B. Aiding-and-Abetting Liability under International Law Is Well-Established and Broad in Scope.**

As the Court noted in its August 8 Opinion, aiding-and-abetting liability is well-established under international law. In that vein, U.S. federal courts rely on international law for determining the contours of aiding and abetting liability under the ATS. *See Doe v. Cisco Sys.*, 73 F.4th 700, 717 (9th Cir. 2023) (“Questions as to the scope of liability under the ATS, including accomplice

liability, are determined under international law and so are subject to *Sosa*'s two-part test. *Sosa* directed courts to international law to determine 'the scope of liability for a violation of a given norm.'" (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 n.20 (2004)); *Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 268-69 (2d Cir. 2007) (Katzmann, J., concurring) ("The district court's conclusion that its jurisdiction under the [ATS] should depend on whether international law specifically recognizes liability for aiding and abetting violations of the law of nations is consistent with our prior case law. We have repeatedly emphasized that the scope of the [ATS's] jurisdictional grant should be determined by reference to international law.").

Under international law, the scope of aiding-and-abetting liability is broad: the relevant *actus reus* of aiding and abetting may take place before, during, or after the principal crime. *See, e.g., Prosecutor v. Popovic*, Case No. IT-05-88-A, Appeals Judgment, ¶ 1783 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 30, 2015); *Prosecutor v. Mrkšić*, Case No. IT-95-13/1-A, Appeals Judgment, ¶ 81 (Int'l Crim. Trib. for the Former Yugoslavia May 5, 2009); *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeals Judgment, ¶ 48 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004); *Prosecutor v. Kalimanzira*, ICTR-05-88-A, Appeals Judgment, n.238 (Oct. 20, 2010); *Nahimana v. Prosecutor*, Case No. ICTR-99-52-A, Appeals Judgment, ¶ 482 (Nov. 28, 2007); *Prosecutor v. Bemba* (Bemba Case), Case No. ICC-01/05-01/13, ¶ 96 (Oct. 19, 2016); *Prosecutor v. Ayyash*, Case No. STL-11-01/I, Interlocutory Decision in the Applicable Law: Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶ 219 (Feb. 16, 2011).

Here, UNRWA USA provided financial assistance before, during, and after the October 7 terror attacks to UNRWA in the manner described herein. The post-October 7 assistance is particularly relevant for Plaintiffs Samerano and Lavi, whose loved ones remained trapped in Gaza for an extended period of time. More specifically, Hamas held the body of Plaintiff Samerano's

son, Yonatan, for 20 months after October 7, 2023, after an UNRWA employee kidnapped her son's body into Gaza. Hamas used the human remains of Mr. Samerano as a bargaining chip, another example of the ongoing crimes against humanity Hamas continued and continues to commit in the wake of October 7, 2023. Plaintiff Lavi's husband Omri Miran was held hostage by Hamas for two years. Statements from released and rescued hostages reveal conditions of physical and sexual abuse, starvation, and psychological torture. As explained in detail, both UNRWA USA's Board Members and Hamas share a strong hatred of Israel and therefore "obtained a direct benefit from the commission of the violation[s] of international law" committed by Hamas on October 7, 2023. *Estate of Arturo Giron Alvarez v. Johns Hopkins Univ.*, 275 F. Supp. 3d 670, 699 (D. Md. 2017) (quoting *Doe v. Nestle USA, Inc.*, 766 F.3d 1013, 1024 (9th Cir. 2014)).

The FAC demonstrates that UNRWA USA aided and abetted Hamas and other terrorist groups prior to, during, and after October 7 by providing and continuing to provide substantial financial assistance to an organization employing hundreds of terrorists (FAC ¶¶ 65-66, 73-79, 89-104, 258); hiding Hamas infrastructure beneath its own (*id.* ¶¶ 129, 215-16); facilitating a money laundering operation, (*id.* ¶¶ 131-42); and enabling recruitment to Hamas (*id.* ¶¶ 91-111).

### **C. Israeli Plaintiffs' Claims "Touch and Concern" the United States.**

Lastly, ATS claims must "touch and concern" activities that occur in the United States. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124-25 (2013). UNRWA USA, while in the United States, fundraised in the United States and benefited from its Delaware tax-exempt status in order to provide financial and practical assistance to an employer of hundreds of terrorists. This assistance, to the tune of millions of dollars per year, has substantially affected Hamas' ability to carry out its crimes against humanity, including the kidnapping of the body of Plaintiff Samerano's

son and the kidnapping and torture of Plaintiff Lavi's husband. *See Jan v. People Media Project*, 2025 U.S. Dist. LEXIS 86499, at \*22 (W.D. Wash. May 6, 2025) ("The conduct relevant to the focus of the ATS claims is the action that Plaintiffs allege aided and abetted their kidnapping," namely support provided in the United States for such kidnapping abroad).

Therefore, for all the reasons outlined above, Israeli Plaintiffs have plausibly pled a claim for aiding-and-abetting liability under the ATS.

### **CONCLUSION**

For the reasons stated above, Plaintiffs have more than satisfied their pleading burdens under Fed. R. Civ. P. 12(b)(6). The Renewed Motion must be denied.

Dated: November 14, 2025

Respectfully submitted,

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