

## The Anti-Terrorism Act and Potential Civil Liability for Nonprofits: A Growing Threat to Humanitarian, Peacebuilding, Development and Human Rights Organizations

Ongoing litigation based on the Anti-Terrorism Act threatens to dramatically expand the legal risk faced by nonprofit organizations (NPOs) that work to save lives and protect human rights in conflict areas around the world. Background information on the statute and pending lawsuits is provided below. Summaries of pending litigation discussed in this issue brief will be updated on [C&SN's litigation page](#) as the cases move through the judicial system.

### Introduction

Since 9/11 nonprofit organizations have faced potential severe legal penalties based on overly broad counterterrorism measures that go beyond their stated goal of protecting national security and holding terrorists accountable, impacting a broad swath of civil society activities that aid civilians in conflict zones and work to end armed conflict. Violations of counterterrorism sanctions or the criminal prohibition of material support of terrorism can result in fines, being listed as a terrorist supporter, or imprisonment for 20 years or more.

In recent years an additional threat has emerged: potential civil liability under the Anti-Terrorism Act (ATA) and the Justice Against Sponsors of Terrorism Act (JASTA). Depending on how federal courts interpret the law in pending cases, essential, life-saving programs could be curtailed due to the threat of expensive and extended civil litigation that, even if the defense prevails, has the potential to bankrupt NPOs.

### Background

Because a judgment in ATA cases can result in liability for triple financial damages owed to the parties bringing the case, [ATA cases](#) initially targeted deep pocket entities, such as banks that process transactions plaintiffs claim benefit terrorist groups. Some of these cases involve transactions between legal charities. Pharmaceutical companies have also been targeted and [one case](#) was brought against a U.S. charity that the Treasury Department listed as a supporter of terrorism. One recent case has expanded beyond deep pocket defendants to target an NPO working to defend human rights for Palestinians. All cases share common issues over the degree of separation between the defendants and terrorist organizations and the definition of what constitutes “knowingly” supporting them.

[The Antiterrorism Act](#) (ATA) [first passed in 1987](#) to prohibit financial transactions to the Palestine Liberation Organization. It was amended in 1992 to:

- 1) add criminal penalties for attacks on U.S. nationals that occur outside the U.S., and
- 2) create a civil cause of action for U.S. victims of international terrorism to sue those who carry out such attacks.

The law allows triple damages and attorneys' fees to be paid to successful plaintiffs.

In 2016, the [Justice Against Sponsors of Terrorism Act](#) (JASTA) amended the ATA to include liability for aiding and abetting. It [allows](#) victims of international terrorism, including their heirs and estates, to sue those who aid and abet acts of international terrorism by knowingly providing substantial assistance or conspiring with a person who committed, planned or authorized an act authorized by a Foreign Terrorist Organization.

To establish liability a plaintiff filing suit must show the following:

- An act of international terrorism that occurred outside the U.S. or transcended national boundaries. Domestic terrorism and acts of war are specifically excluded;
- Injury to a U.S. national or their survivors or estates;
- The defendant either caused the injury (direct liability) or aided and abetted acts of others that were the proximate cause of the injury (indirect or secondary liability);
- The defendant acted with knowledge the acts would cause injury or was reckless or willfully blind. The statute does not define the intent standard so it has been left to the courts, which have established standards based on tort law.

## **Pending Cases That Could Impact Humanitarian, Peacebuilding, Development and Human Rights Protection**

### *Jewish National Fund v. U.S. Campaign for Palestinian Rights*

In November 2019, the Jewish National Fund and 12 individual Americans living in Israel [filed an ATA suit](#) against Just Peace in the Middle East, a U.S. charity doing business as the U.S. Campaign for Palestinian Rights (USCPR). The suit makes claims for damages caused by incendiary devices launched into Israel from Gaza by unnamed persons during the "Great Return March" in 2018. JNF argued that USCPR was liable because it collects funds from U.S. donors for the BDS National Committee (BNC) in Palestine and one of BNC's more than two dozen members is a coalition that includes Hamas, which the State Department has designated a Foreign Terrorist Organization (FTO).

[USCPR's motion to dismiss](#), filed March 5, 2020, argued that the plaintiffs did not allege adequate facts to support their conclusions, that USCPR's activities are lawful, that plaintiffs relied on guilt by association and did not allege facts that would "bridge the gap between these lawful, peaceful and protected acts and the damage caused..." The motion was granted by the U.S. District Court for the District of Columbia on March 29, 2021. [The court said](#) the plaintiff's arguments "are, to say the least, not persuasive," noting that plaintiffs' claims "do not plausibly allege that defendants caused their injuries" and did not offer facts to show USCPR's financial support to the BNC Committee and the Great Return March was a "substantial factor in the sequence of events that led to their injuries" or that the injuries were "reasonably foreseeable or anticipated as a natural consequence." JNF has appealed to the Court of Appeals for the District of Columbia.

[Find a detailed summary of the case here.](#)

### *Tzvi Weiss, et al. v. National Westminster Bank PLC*

In 2021 a group of about 200 U.S. nationals that are victims of attacks by Hamas [asked the Supreme Court](#) to review dismissal of their ATA suit against a UK bank that provided financial services to a UK

charity that the U.S. listed as a terrorist supporter in 2003 (but that has been [investigated and cleared](#) by the Charity Commission of England and Wales). The legal issue is what level of knowledge a defendant must have regarding alleged terrorist associations of parties to transfers that it processes in order to be held liable for aiding and abetting terrorist attacks under the ATA, as amended by JASTA.

The suit was filed in 2005 against National Westminster Bank (NatWest), claiming that it is liable for injuries plaintiffs suffered in terrorist attacks by Hamas, a U.S.-listed Foreign Terrorist Organization (FTO). The basis for the claim is that Nat West provided financial services to a UK charity, the Palestinian Relief and Development Fund (Interpal) when it made transfers from Interpal to 13 Palestinian charities that plaintiffs claim are associated with Hamas. The case was brought in the U.S. District Court for the Eastern District of New York, which, after several rounds of litigation, [granted summary judgment](#) dismissing the case on March 31, 2019, citing due diligence efforts by the bank to avoid transactions that would support Hamas. [The decision was affirmed](#) by the U.S. Court of Appeals for the Second Circuit on April 7, 2021. The plaintiffs' petition for certiorari to the Supreme Court is pending and the court has asked the U.S. Solicitor General to weigh in on whether it should take the case.

[Find a detailed summary of the case here.](#)

### *Joshua Atchley et al. v. AstraZeneca UK et al.*

This ATA suit was filed in the U.S. District Court for the District of Columbia in 2017 by veterans of the Iraq war and their families (plaintiffs) for injuries and deaths suffered in the war. The defendants are several major pharmaceutical and health sector companies that responded to a U.S. government request to provide lifesaving medicines to the Iraqi Ministry of Health (Ministry) during the war. After the District Court [dismissed the case](#) in July 2020, the plaintiffs appealed to the Court of Appeals for the District of Columbia Circuit. They argued that the companies aided and abetted terrorism by doing business with the Ministry when it was supposedly controlled by a Shia militia, Jaysh al-Mahdi, a group that the U.S. government chose not to designate as a terrorist entity. They allege that the militia used the Ministry as a front to fund attacks on U.S. troops. Although the Court of Appeals [reversed the lower court decision and remanded the case](#) for further proceedings, it stated that its interpretation of the law would not extend to aid that is provided to non-sanctioned organizations and later "stolen, diverted, or extorted" by terrorists. The defendants' petition for rehearing is pending.

The Charity & Security Network (C&SN) and InterAction filed a ["friend of the court" brief](#) explaining that if the court were to accept the plaintiffs' arguments, the result would cripple the important work of NPOs that operate in areas where terrorist groups are present.

[Find a detailed summary of the case here.](#)

## **Conclusion**

Overly broad standards of civil liability under the Anti-Terrorism Act pose unreasonable and unacceptable legal risks for nonprofit organizations working to save lives and promote human rights. Such standards have opened the door to politically-motivated attacks against NPOs, particularly those working to support Palestinian needs and human rights. The cases outlined here have the potential to move the goalposts even farther and create untenable circumstances for civil society. C&SN will continue to track and report on these cases and their potential impacts on civil liability standards under the ATA on [our litigation page](#).