

No. 21-1496

IN THE
Supreme Court of the United States

TWITTER, INC.,
Petitioner,

v.

MEHIER TAAMNEH, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for The Ninth Circuit**

**BRIEF OF AMICI CURIAE INTERACTION AND
CHARITY & SECURITY NETWORK
IN SUPPORT OF PETITIONER**

TIMOTHY P. HARKNESS
Counsel of Record
LINDA H. MARTIN
KIMBERLY H. ZELNICK
DAVID Y. LIVSHIZ
SCOTT A. EISMAN
REBECCA L. CURWIN
NATHAN A. HEMBREE
NOELLE L. WILLIAMS
FRESHFIELDS BRUCKHAUS
DERINGER US LLP
601 Lexington Avenue
31st Floor
New York, NY 10022
(212) 277-4000
timothy.harkness@
freshfields.com
Counsel for Amici Curiae

December 6, 2022

TABLE OF CONTENTS

Interest of Amici Curiae	1
Summary of argument.....	2
Argument	6
I. NGOs provide vast and important support in war-torn countries.	6
A. Consistent with U.S. foreign policy, humanitarian and development NGOs provide relief to people in need, regardless of where they reside.	6
B. NGOs provide vital funding and implement programs that help build stable and peaceful communities in fragile states.....	7
II. Affirming the Ninth Circuit’s interpretation of liability risks crippling the vital humanitarian aid that NGOs provide.	12
A. Despite NGOs’ robust controls, they must sometimes deal with terrorist-controlled governments.	12
B. Affirming the Ninth Circuit’s decision would risk creating liability for NGOs’ vital work.	16
1. The Ninth Circuit eliminated any meaningful knowledge requirement. ...	16
2. The Ninth Circuit extends aiding-and-abetting liability to entities that do not assist terrorist acts.	20

III. Affirming the Ninth Circuit decision would cause NGOs to cease operating in fragile states, frustrating the ATA's underlying purpose and harming the NGOs themselves.....	24
Conclusion	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	24
<i>Bernhardt v. Islamic Republic of Iran</i> , 47 F.4th 856 (D.C. Cir. 2022)	18, 19
<i>Camp v. Dema</i> , 948 F.2d 455 (8th Cir. 1991).....	17, 20
<i>Halberstam v. Welch</i> , 705 F.2d 472 (D.C. Cir. 1983)	<i>passim</i>
<i>Kaplan v. Lebanese Canadian Bank</i> , 999 F.3d 842 (2d Cir. 2021)	18
<i>Linde v. Arab Bank, PLC</i> , 882 F.3d 314 (2d Cir. 2018)	25
<i>Nye & Nissen v. United States</i> , 336 U.S. 613 (1949).....	17
<i>People v. Terman</i> , 40 P.2d 915 (Cal. Dist. Ct. App. 1935)	17
<i>United States v. Peoni</i> , 100 F.2d 401 (2d Cir. 1938)	17
<i>Waldman v. Palestine Liberation Org.</i> , 835 F.3d 317 (2d Cir. 2016)	25

<i>Weiss v. National Westminster Bank, PLC</i> , 993 F.3d 144 (2d Cir. 2021), <i>cert. denied</i> , 142 S. Ct. 2866 (2022).....	18
------------------------------------------------------------------------------------------------------------------------------------	----

Statutes

18 U.S.C. § 2333	4, 16, 21
18 U.S.C. § 2333 Statutory Note (Findings and Purpose § 5).....	16
Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 852 (2016).....	16

Other Authorities

Alexis de Tocqueville, <i>Democracy in America</i> (Gerald E. Bevan trans., Penguin Books 2003) (1840)	6
Amanda Macias, <i>Secretary of State Blinken Calls Taliban ‘The de Facto Government of Afghanistan,’</i> CNBC (Sept. 13, 2021), https://cnb.cx/3VKEDTJ	14
Amended Complaint, <i>Cabrera v. Black & Veatch Special Projects Corp.</i> , No. 19 Civ. 03833 (D.D.C. June 5, 2020)	22
Aspen Inst., <i>The Nonprofit Sector and Government: Clarifying the Relationship</i> (2002), https://bit.ly/3OXWRPo	6

Breana Stanski, Borgen Project, <i>Télécoms Sans Frontières: Fighting Poverty with Technology</i> (Aug. 22, 2019), https://bit.ly/3OYF7Dx	22
Catholic Relief Services, <i>Policy Note: Saving Lives Through Cash Transfer Programs</i> (2017), https://bit.ly/3Vun36x	8
Charity & Sec. Network, <i>About</i> , https://bit.ly/3FrGOX3 (last visited Dec. 3, 2022)	27
Charity & Sec. Network, <i>Peacebuilding Fact Sheet</i> (2010), https://bit.ly/3rQOOY9	9, 10
Consortium for Fin. Access, <i>Banking Nonprofit Organizations</i> (2019), https://bit.ly/3VuGBaU	12, 28
Corinne Graff, Brookings Inst., <i>Poverty, Development, and Violent Extremism in Weak States</i> (2010), https://brook .gs/3Uqx4Ar	11
Department of State, <i>Non- Governmental Organizations (NGOs) in the United States</i> (2021), https://bit.ly/3P0tGuX	6, 8
Department of State, <i>Refugee and Humanitarian Assistance</i> , https://bit.ly/3Vt1xPI (last visited Dec. 2, 2022)	7

Department of Treasury, General License No. 11, https://bit.ly/3Uu7CKu	15
Department of Treasury, General License No. 19, https://bit.ly/3Fl6bcY	15
Department of Treasury, General License No. 20, https://bit.ly/3gPJpRa	15
Emilie Jelinek, Agency Coordination Body for Afghan Relief, <i>A Study of NGO Relations with Government and Communities in Afghanistan</i> (2006), https://bit.ly/3VCPHMe	10, 11
H.R. Rep. No. 115-858 (2018).....	26
InterAction, <i>InterAction Membership Application</i> (2020), https://bit.ly/ 3VuOzB4	27
InterAction, <i>New Annual Values and Principles</i> , https://bit.ly/3XQf31s (last visited Dec. 1, 2022).....	27
InterAction, <i>NGO Standards</i> (2018), https://bit.ly/3H3q3lZ	27
InterAction, <i>Standards Compliance Certification Form for Prospective New Members</i> (2019), https://bit.ly/3OWyi5f	27

InterAction, <i>What We Do</i> , https://bit.ly/3B9aOEn (last visited Dec. 2, 2022)	27
InterAction, <i>Who We Are</i> , https://bit.ly/3EXTsLR (last visited Dec. 2, 2022)	7
International Civil Soc’y Action Network, <i>Pakistan’s PAIMAN: Peace Networks of Women Leaders to Combat Violent Extremism</i> (Nov. 19, 2020), https://bit.ly/3B69wdd	10
Jon Kurtz et al., Mercy Corp., <i>Can Economic Interventions Reduce Violence?</i> (2018), https://bit.ly/3XM1oIN	11
Jonathan Goodhand, <i>Aiding Peace?: The Role of NGOs in Armed Conflict</i> (2006)	10, 13, 28
Lara Jakes & Ben Hubbard, <i>U.S. Rush to Declare Houthis Terrorists Threatens to Halt Aid to Yemen</i> , N.Y. Times (Jan. 11, 2021), https://nyti.ms/3cyKIOe	14
Letter from Defendant, <i>Linde v. Arab Bank, PLC</i> , No. 04 Civ. 2799 (E.D.N.Y. May 10, 2015), ECF No. 1214	23

- Mercy Corp., *Critical Choices: Assessing the Effects of Education and Civic Engagement on Somali Youths' Propensity Toward Violence* (2016), <https://bit.ly/3Fpjo4B> 11
- Michelle Dowst, INTRAC, *Working with Civil Society in Fragile States* (2009), <https://bit.ly/3Fkixls>..... 8
- National Museum of Am. Dipl., *What Are the Key Policies of the U.S. Department of State?* (Oct. 11, 2022), <https://bit.ly/3uiVukX> 11
- Office of U.S. Foreign Assistance Res., Dep't of State, *The Strategic Prevention Project* (2019), <https://bit.ly/32LTZwl>..... 8, 11
- Press Release, Department of Treasury, *Treasury Issues Additional General Licenses and Guidance in Support of Humanitarian Assistance and Other Support to Afghanistan* (Dec. 22, 2021), <https://bit.ly/3B5ISRE>..... 14, 15
- Press Release, USAID, *USAID Helps Syrians Create Infrastructure Investment Plans for a Better Future in Raqqa* (May 23, 2019), <https://bit.ly/3H60wbS> 9

Press Release, World Bank, <i>Eliminating Extreme Poverty Requires Urgent Focus on Fragile and Conflict-Affected Countries</i> (Feb. 27, 2020), https://bit.ly/3ixBx7f	7
Save the Children, <i>Reversing Gains</i> (2020), https://bit.ly/3cKdvPT	9
Save the Children, <i>Save Our Education</i> (2020), https://bit.ly/3uo9CcB	9
Shukri Muhomed et al., Charity & Sec. Network, <i>NGOs' Due Diligence and Risk Mitigation: A Holistic Approach</i> (2021), https://bit.ly/3XPWLNH	13, 25
Sue E. Eckert et. al., Charity & Sec. Network, <i>Financial Access for U.S. Nonprofits</i> (2017), https://bit.ly/3iAD50p	26
Thaki, <i>Education Is a Human Right—We Believe Digital Literacy Is, Too</i> , https://bit.ly/3ulaYop (last visited Dec. 2, 2022)	22
Tony Proscio, Atlantic Philanthropies, <i>The Foundations of Civil Society</i> (2003), https://bit.ly/3VvMTXW	6
U.N. Peacebuilding Supp. Off., <i>UN Peacebuilding: An Orientation</i> (2010), https://bit.ly/2LJ1ZYZ	9

USAID, *Dollars to Results: USAID Investments and Illustrative Results*, <https://bit.ly/3B8ByFf> (last visited Dec. 4, 2022) 7

USAID, *NGO Portal Overview*, <https://bit.ly/3FjPizl> (last visited Dec. 2, 2022) 12

USAID, *Paving Roads to Local Government—Activist Partnerships in Ukraine* (Feb. 7, 2020), <https://bit.ly/3UreiJo> 21

USAID, *Syria Vetting Standard Operating Procedures* (2016), <https://bit.ly/3iA4lMn>; 12

USAID, *Yemen Vetting Process* (2019), <https://bit.ly/3Pc8Wkh> 13

INTEREST OF AMICI CURIAE¹

Amicus Curiae Charity & Security Network advocates to reduce the barriers for operating charitable programs, both abroad and in the United States. Those barriers can prevent charities and donors from engaging in critical, lifesaving work in disaster and conflict areas. Charity & Security Network was founded in 2008 as a resource center for nonprofit organizations to promote and protect their ability to carry out effective programs that foster peace and human rights, aid civilians in areas of disaster and armed conflict, and build democratic governance. Charity & Security Network is composed of a broad cross-section of nonprofit organizations, including charities working on humanitarian aid, development, peacebuilding, human rights, and civil liberties, along with grant-makers, donors, and faith-based groups.

Amicus Curiae InterAction: The American Council for Voluntary International Action, Inc., is the largest existing alliance of U.S.-based international development and humanitarian nongovernmental organizations (NGOs). With 179 member organizations operating in every developing country, and from its headquarters in the United States, InterAction is a convener, thought leader, and voice for NGOs working to eliminate extreme poverty, strengthen human rights and citizen participation, safeguard a sustainable planet, promote peace, and ensure dignity for all

¹ All parties consent to the filing of this brief. Counsel for Amici Curiae certify under Rule 37.6 that they authored this brief. No counsel for a party in this case authored this brief in whole or in part. Only Amici Curiae or their counsel contributed monetarily to the preparation and submission of this brief.

people. InterAction convenes and coordinates its members to improve their practices and to influence policy and debate on issues affecting vulnerable communities worldwide.

Both faith-based and secular, InterAction member organizations foster economic and social development, provide relief to those affected by disaster and war, assist refugees, advance human rights, support gender equality, protect the environment, and press for more equitable and effective policy.

SUMMARY OF ARGUMENT

Plaintiffs in this case, relatives of a victim of the 2017 terrorist attack at the Reina nightclub, asserted an aiding-and-abetting claim under the Anti-Terrorism Act (ATA) against three defendants that maintain online social-media platforms, including Twitter, Inc. Plaintiffs claim that ISIS and its members, affiliates, and supporters generally—but not the perpetrator of the Reina attack specifically—used those platforms to spread propaganda and issue threats over a number of years. The Ninth Circuit agreed with plaintiffs’ sweeping legal theory, holding that a defendant may be liable under the ATA for “knowingly” assisting an “act of international terrorism,” even though the perpetrator did not use the defendant’s services to plan or carry out the attack, the defendant lacked terrorist intent, and the defendant took efforts to prevent terrorists from using its service.

The Ninth Circuit’s expansive interpretation risks crippling vital humanitarian and development work that NGOs perform in the world’s most fragile states. Adopting the Ninth Circuit’s law would hobble NGOs that carry out lifesaving work in many areas of the

world by supplying essential goods and services that would otherwise be inaccessible to vulnerable populations. That result would in turn frustrate U.S. foreign-policy objectives and the purpose of the ATA itself.

I. NGOs, primarily through private funding but also through support by the U.S. government, form the backbone of the American philanthropic tradition. The United States leads the world in volume of philanthropic outflows, both as a percentage of gross national income and as the gross sum of private philanthropy. NGOs perform particularly crucial services in “fragile states,” typically war-torn and poverty-stricken countries that either cannot or will not provide basic services to their people. This work—which includes providing infrastructure, education, healthcare, clean water and sanitation, agricultural and vocational training, and basic living necessities—helps to build stable and peaceful communities. The U.S. government relies on NGOs to deliver these services and support its peacebuilding efforts, and the stability and sustainable development that NGOs support play an important role in preventing terrorism.

II. The Ninth Circuit’s interpretation of aiding-and-abetting liability under the ATA poses serious risks to NGOs and their work.

A. The Ninth Circuit held that the plaintiffs adequately alleged that the defendants “knowingly” provided substantial assistance to terrorists because they were informed by third parties that some terrorists were among the billions of users on their social-media platforms, and they could have taken more “meaningful” efforts to prevent such use. This interpretation of

“knowingly” extends liability to entities that play no role in terrorist attacks, as long as the entities are alleged to be generally aware that terrorists or their affiliates, members, or supporters may be among their users. NGOs that provide lifesaving humanitarian aid to populations in fragile states are precisely the type of entity that will suffer from this interpretation of aiding-and-abetting liability under the ATA.

B. The ATA gives a cause of action to victims whose “injur[ies] aris[e] from an *act* of international terrorism.” 18 U.S.C. § 2333(d)(2) (emphasis added). Although the ATA uses the singular word “act,” the Ninth Circuit ruled that aiding-and-abetting liability can arise from *generalized assistance* to a terrorist organization. By adopting a reading unmoored from the ATA’s text, the Ninth Circuit expanded aiding-and-abetting liability far beyond what Congress intended and imperiled NGOs in the process. It is easy to see how. NGOs routinely perform their charitable missions by providing vital humanitarian aid through organizations and governments. And despite NGOs’ robust internal control systems to mitigate risks, NGOs’ aid sometimes may unintentionally end up in the hands of individuals associated with terrorist groups. And in some contexts—such as in Yemen and in Afghanistan, where the Houthis and the Taliban, respectively, control almost all aspects of government—that is the only way for aid to reach those in need. NGOs must engage in minimal, ordinary, and necessary transactions with the de facto governing authority to access civilians and provide needed aid to them. Without the “act” requirement, a plaintiff could plausibly allege that such support qualifies as aiding and abetting under the ATA, even if that support is limited to what is necessary to access civilian populations and

is provided in a manner consistent with international humanitarian law. The “act” requirement thus distinguishes general assistance intended to aid beneficiaries but that might be used for terrorism generally from support for specific terroristic acts.

III. For NGOs, which operate on tight budgets and rely on donations and grants to accomplish their humanitarian mission, the risk of ATA liability is an existential threat. To be clear, Amici do not claim that the nature or importance of their work exempts them from the Act. On the contrary, Amici take seriously NGOs’ obligations to comply with the law and to refrain from materially supporting or aiding and abetting terrorism. Those obligations are consistent with NGOs’ desire to see all aid reach its intended beneficiaries. What Amici oppose is the Ninth Circuit’s interpretation of ATA aiding-and-abetting liability—which stretches ATA liability well beyond what the Act’s text allows so that despite NGOs’ strongest controls and risk-mitigation efforts, they could face liability merely because they provide vital aid in the most dangerous places.

Were the Court to affirm the decision below, NGOs may well be forced to cease operating in the world’s most impoverished and war-torn areas to avoid the risk of liability. Curbing aid and development would serve only to impoverish these nations further. And in a cruel irony, lack of education and other basic needs can increase the likelihood that individuals will turn to violent extremism, thereby frustrating the ATA’s aims.

ARGUMENT

I. NGOs provide vast and important support in war-torn countries.

A. Consistent with U.S. foreign policy, humanitarian and development NGOs provide relief to people in need, regardless of where they reside.

The U.S. philanthropic tradition has centered on the work of private nonprofit organizations. Since the Founding, these organizations have helped America to “become a power seen from afar whose activities serve as an example and whose words are heeded.” Alexis de Tocqueville, *Democracy in America* 599 (Gerald E. Bevan trans., Penguin Books 2003) (1840). Indeed, these organizations have provided vital services to local communities—often in concert with government programs—including educational institutions, hospitals, and social-service agencies. Aspen Inst., *The Nonprofit Sector and Government: Clarifying the Relationship* 2 (2002), <https://bit.ly/3OXWRPo>.

Today, American NGOs compose an essential element of the “third sector”—that part of society that is distinct from governmental or commercial enterprises but supports and builds on the efforts of both. Tony Proscio, Atlantic Philanthropies, *The Foundations of Civil Society* 1–3 (2003), <https://bit.ly/3VvMTXW>. The United States is home to roughly 1.5 million NGOs, including volunteer organizations rooted in shared religious faith; groups that help vulnerable people, such as the poor or disabled; and groups that seek to empower youth or marginalized populations. Department of State, *Non-Governmental Organizations (NGOs) in the United States* (2021) (*NGOs in the*

United States), <https://bit.ly/3P0tGuX>. U.S.-based NGOs provide services in the United States and abroad, with many NGOs working to alleviate poverty around the world. *See, e.g.*, InterAction, *Who We Are*, <https://bit.ly/3EXTsLR> (last visited Dec. 2, 2022).

Strong government support for NGOs’ work abroad is a core tenet of U.S. foreign policy. The U.S. government is the largest single financial source of humanitarian and development aid worldwide, providing nearly \$13 billion for humanitarian crises in 2021. Department of State, *Refugee and Humanitarian Assistance*, <https://bit.ly/3Vt1xPI> (last visited Dec. 2, 2022). Grants funded by United States Agency for International Development (USAID) are a major source of some NGOs’ funding, and USAID funds those grants in response to on-the-ground needs and U.S. foreign-policy objectives. *See* USAID, *Dollars to Results: USAID Investments and Illustrative Results*, <https://bit.ly/3B8ByFf> (last visited Dec. 4, 2022). The U.S. government’s significant financial contribution to humanitarian aid shows its desire for—and reliance on—NGOs to provide relief to populations throughout the world.

B. NGOs provide vital funding and implement programs that help build stable and peaceful communities in fragile states.

The greatest need for humanitarian and development aid is often in “fragile states.” *See*, Press Release, World Bank, *Eliminating Extreme Poverty Requires Urgent Focus on Fragile and Conflict-Affected Countries* (Feb. 27, 2020), <https://bit.ly/3ixBx7f>. “[F]ragile states”—often war-torn countries—are generally recognized as those lacking the capacity or

political will to provide basic services to their people.” Michelle Dowst, INTRAC, *Working with Civil Society in Fragile States* 1 (2009), <https://bit.ly/3Fkixls>. Aid to fragile states, the U.S. government has explained, “enable[s] the United States to better interrupt cycles of violence and fragility abroad, protect its long-term interests, and achieve better outcomes for the American taxpayer.” Office of U.S. Foreign Assistance Res., Dep’t of State, *The Strategic Prevention Project* 29 (2019) (*Strategic Prevention*), <https://bit.ly/32LTZwl>.

While NGOs help individuals, families, and communities in fragile states by providing much-needed goods and services, they also help to focus that aid on remedying specific ills. As the State Department has observed, “[t]he priorities, strategy, and quality of assistance matter[] at least as much as, if not more than, the volume of assistance.” *Id.* at 16. The State Department has thus praised NGOs for “develop[ing] and address[ing] new approaches to social and economic problems that governments cannot address alone.” *NGOs in the United States*. For example:

- Catholic Relief Services has supported cash-transfer programming, providing cash or vouchers in lieu of direct services, in over fifty countries in the Middle East, Latin America, Asia, Africa and Eastern Europe. Catholic Relief Services, *Policy Note: Saving Lives Through Cash Transfer Programs* 1–2 (2017), <https://bit.ly/3Vun36x>. Such programming helps achieve various development objectives, including access to food and medical care. *Id.*
- Save the Children has supported children and families in northwest Syria, many who have been displaced because of regional conflict that

has curtailed their access to education. Save the Children, *Reversing Gains* 1 (2020), <https://bit.ly/3cKdvPT>. To address the growing number of children out of school because of COVID-related school closures, the NGO helped develop cellphone-based distance-learning courses. Save the Children, *Save Our Education* 5 (2020), <https://bit.ly/3uo9CcB>.

- Two NGOs receiving USAID funds have helped repair drinking-water lines in a war-ravaged Syrian city. Press Release, USAID, *USAID Helps Syrians Create Infrastructure Investment Plans for a Better Future in Raqqa* (May 23, 2019), <https://bit.ly/3H60wbS>.

NGOs also implement peacebuilding programs. Charity & Sec. Network, *Peacebuilding Fact Sheet 2* (2010) (*Fact Sheet*), <https://bit.ly/3rQOOY9>. Peacebuilding “involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development.” U.N. Peacebuilding Supp. Off., *UN Peacebuilding: An Orientation* 5 (2010), <https://bit.ly/2LJ1ZYZ>. It is a lengthy, multi-faceted process that can involve several phases, including security, disarmament, political and electoral support, food stability, education, and public administration. *Id.* at 9.

In one particularly striking example of peacebuilding, an NGO operating in Pakistan “convince[d]” women who “sew[ed] suicide vests for [a terrorist organization]” to “end their support [for that organization] and instead participate in sewing and other projects that would uplift themselves, their families, and

their community.” International Civ. Soc’y Action Network, *Pakistan’s PAIMAN: Peace Networks of Women Leaders to Combat Violent Extremism* (Nov. 19, 2020), <https://bit.ly/3B69wdd>. While engaging women in these other projects, the NGO also taught the women “how to identify the early warning signs of violent extremism in an individual and in their communities.” *Id.*

Peacebuilding by NGOs can also be more subtle. Because they work on the ground in fragile states, NGOs are often uniquely positioned to understand local problems and regional politics. They can thus serve as neutral intermediaries between national and local interests—including those groups that local governments decline to recognize—to influence dialogue between parties with competing interests. *See* Jonathan Goodhand, *Aiding Peace?: The Role of NGOs in Armed Conflict* 115 (2006); *Fact Sheet* 1–2. Moreover, as NGOs work in and partner with local communities, they help local leaders to hone their managerial skills. And more broadly, NGOs help to promote civic discourse, increasing the proportion of the population that engages in local politics. *See* Goodhand 117–18; Emilie Jelinek, Agency Coordination Body for Afghan Relief, *A Study of NGO Relations with Government and Communities in Afghanistan* 19 (2006), <https://bit.ly/3VCPHMe>.

Through these programs, NGOs play an important role in both alleviating poverty and furthering peacebuilding, which may in turn help prevent terrorism and other political violence. Monetary and in-kind assistance provide basic goods and services that fragile-state governments could not offer without support. Indeed, some governments rely on NGO aid for “almost”

everything. Jelinek 16. That aid helps reduce poverty and political instability, both of which are shown to breed and sustain terrorism. See Corinne Graff, Brookings Inst., *Poverty, Development, and Violent Extremism in Weak States* 54 (2010), <https://brook.gs/3Uqx4Ar>. Other forms of aid, such as programming for economic growth, education, social services, and healthcare, often support peacebuilding and prevention goals that likewise help reduce extremism. *Strategic Prevention* 17.

These programs, as the State Department has recognized, are particularly effective in reducing extremism when they “focus on promoting political inclusion and social cohesion or strengthening pro-peace constituencies as secondary objectives.” *Id.* A program in Somaliland, for instance, provided young people with education and civic engagement, which decreased their self-reported desire to participate in and support political violence after five years. Mercy Corp., *Critical Choices: Assessing the Effects of Education and Civic Engagement on Somali Youths’ Propensity Toward Violence* (2016), <https://bit.ly/3Fpjo4B>. And a project in Afghanistan combined long-term aid, such as vocational training, with short-term direct aid, such as money, resulting in “a large reduction in willingness [of recipients] to engage in pro-armed opposition group actions.” Jon Kurtz et al., Mercy Corp., *Can Economic Interventions Reduce Violence?* 2–3 (2018), <https://bit.ly/3XM1oIN>. As these examples highlight, NGOs provide assistance that can contribute to economic growth and prosperity and improve democracy and human rights, all of which are consistent with U.S. foreign-policy goals. See National Museum of Am. Dipl., *What Are the Key Policies of the U.S. Department of State?* (Oct. 11, 2022), <https://bit.ly/3uiVukX>.

II. Affirming the Ninth Circuit’s interpretation of liability risks crippling the vital humanitarian aid that NGOs provide.

A. Despite NGOs’ robust controls, they must sometimes deal with terrorist-controlled governments.

Aware of the risks that can impede the provision of aid in fragile stages, NGOs adhere to a range of robust due-diligence and risk-mitigation mechanisms designed to ensure that aid is spent only toward charitable and nonprofit purposes. Consortium for Fin. Access, *Banking Nonprofit Organizations* 4 (2019) (*Banking Nonprofit*), <https://bit.ly/3VuGBaU>. Among other risk management approaches, NGOs host and attend training events for NGO leaders on compliance, financial controls, grant management, human resources, and operational efficacy; screen recipients of funds against sanctions lists; and assess the geographic location, type of activity, and the history of terrorist engagement in the areas where they provide aid. *Id.* at 12. In addition to NGOs’ own diligence efforts, USAID vets “individuals and directors, officers, and other ‘key individuals’” of organizations that apply for USAID contracts, grants, cooperative agreements, and other funding, against intelligence and law enforcement databases. USAID, *NGO Portal Overview*, <https://bit.ly/3FjPizl> (last visited Dec. 2, 2022). And, in certain high-risk countries, USAID also performs this vetting for second-tier recipients, requiring its grantees to screen their partners and subgrantees, participant trainees, organizations that receive cash or in-kind support, and others. *See, e.g.*, USAID, *Syria Vetting Standard Operating Procedures*

(2016), <https://bit.ly/3iA4lMn>; USAID, *Yemen Vetting Process* (2019), <https://bit.ly/3Pc8Wkh>.

NGOs maintain robust internal control systems to mitigate risk exposure. In particular, they develop written policies; facilitate regular audits and monitoring programs; visit field offices; rotate staff; and keep detailed records, including receipts, contracts, photographs, and other supporting documentation. See Shukri Muhomed et al., *Charity & Sec. Network, NGOs' Due Diligence and Risk Mitigation: A Holistic Approach* 23–24, 27 (2021), <https://bit.ly/3XPWLNH>. Moreover, to decrease the risk of illegitimate transfers, NGOs undergo detailed screening and approval procedures prior to transmitting funds. *Id.* at 23. For example, one large NGO with a presence in Somalia adheres to a 23-step procedure before releasing payments, which involves community engagement, collaboration between departments, auditing of recipient partners, and the review of photographic evidence. *Id.*

Despite these efforts, the situation on the ground is complex, and individuals and groups associated with terrorists may well be part of the landscape. Goods intended for populations in need can be stolen or otherwise diverted, even though NGOs employ robust controls. Moreover, to access populations in need, NGOs must interact with local authorities, whoever they may be, and engage in minimal, ordinary, and necessary transactions on a wide range of matters including taxes, customs, or the purchase of permits, licenses, or public utility services, and other operational and programmatic matters. Goodhand 104–05. The U.S. Office of Foreign Assets Control (OFAC) has recognized as much, issuing general licenses allowing certain essential transactions.

Yemen is a prime example. The Houthis, a Yemeni-based rebel group that was designated as a foreign terrorist organization (and soon after de-designated, given concerns such as those expressed here), are also “the de facto government in a swath of territory where the majority of Yemen’s population lives, including the capital city, Sana’a, and the country’s biggest port.” Lara Jakes & Ben Hubbard, *U.S. Rush to Declare Houthis Terrorists Threatens to Halt Aid to Yemen*, N.Y. Times (Jan. 11, 2021), <https://nyti.ms/3cyKIOe>. The Houthis thus “control” many “government institutions” on which “[m]illions of Yemenis rely” for “basic goods.” *Id.* What is more, “[s]hips bringing food” into the country “must pay port fees at a Houthi-controlled port,” and essentially all public-sector healthcare and education workers in Yemen “work for Houthi-controlled administrations, whether they support the group or not.” *Id.*

A similar situation exists in Afghanistan. When the U.S. military withdrew its forces from the country after 20 years of occupancy, the Taliban became the de facto government. Amanda Macias, *Secretary of State Blinken Calls Taliban ‘The de Facto Government of Afghanistan,’* CNBC (Sept. 13, 2021), <https://cnb.cx/3VKEDTJ>. NGOs seeking to deliver aid there must therefore deal with the Taliban and, in some cases, the Haqqani network, which is a designated foreign terrorist organization. *See* Press Release, Department of Treasury, *Treasury Issues Additional General Licenses and Guidance in Support of Humanitarian Assistance and Other Support to Afghanistan* (Dec. 22, 2021), <https://bit.ly/3B5ISRE>.

Because organizations with ties to terrorism had become the de facto governments in Yemen and

Afghanistan, OFAC issued several limited general licenses—which do not shield against civil ATA liability—to help allow critical aid to reach the Yemeni and Afghan populations.² As the Treasury Department stated when granting one of the Afghan licenses, these licenses are necessary to “ensure NGOs, international organizations, and the U.S. government can continue to provide relief to those in need.” *Id.* In fact, one of the Afghan general licenses expressly lets NGOs engage in transactions with the Taliban to provide humanitarian aid. *See, e.g.*, Department of Treasury, General License No. 19, <https://bit.ly/3Fl6bcY>.

As these licenses reflect, NGOs must engage with local authorities, whether or not they are associated with terrorist groups. While those interactions are necessary for NGOs to reach civilian populations under the control of these authorities, they do not signal any endorsement or support of terrorism. If local authorities have ties to a designated foreign terrorist organization, or if goods are unintentionally diverted, NGOs could be subject to billions of dollars in damages under the Ninth Circuit’s sweeping interpretation of ATA liability. Such an outcome would undermine the Act and its underlying goals, and would set a dangerous precedent that would jeopardize NGOs’ ability and willingness to deliver vital programming.

²*See* Department of Treasury, General License No. 11, <https://bit.ly/3Uu7CKu> (later decommissioned when the Houthis were de-designated as a terrorist organization); Department of Treasury, General License No. 19, <https://bit.ly/3Fl6bcY>; Department of Treasury, General License No. 20, <https://bit.ly/3gPJpRa>.

B. Affirming the Ninth Circuit’s decision would risk creating liability for NGOs’ vital work.

The Ninth Circuit held that a defendant can be secondarily liable under the ATA even when that defendant never sought to aid terrorists, was not involved in any terrorist attack, and even undertook efforts to combat terrorists’ use of its services. The Ninth Circuit’s sweeping interpretation of aiding-and-abetting liability, if accepted by this Court, would expose NGOs to lawsuits and even liability for providing legitimate aid around the world. This bar imposed by the Ninth Circuit would particularly affect NGOs—even if they adopt the strongest controls to prevent supporting terrorism—that work in the most dangerous places, with civilian populations who have the greatest need for aid.

1. The Ninth Circuit eliminated any meaningful knowledge requirement.

a. Congress expanded the ATA to include secondary liability—for aiding and abetting and conspiracy liability—in 2016. *See* Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 852 (2016). In doing so, Congress specified that aiding-and-abetting liability can be imposed only if a defendant “*knowingly* provid[ed] substantial assistance” to the act that caused the plaintiff’s injuries. 18 U.S.C. § 2333(d)(2) (emphasis added).

Halberstam v. Welch, which provides the proper framework for addressing aiding-and-abetting liability under the ATA, 18 U.S.C. § 2333 Statutory Note (Findings and Purpose § 5), requires plaintiffs proceeding on an aiding-and-abetting theory to plead and

prove the aider-abettor's knowledge. Canvassing decades of case law, *Halberstam* held that a defendant aids and abets the principal's "wrongful act" only if the defendant "knowingly and substantially assist[ed] the principal violation" and was "generally aware of [its] role as part of an overall illegal or tortious activity at the time that [it] provide[d] assistance" to the principal's violation. 705 F.2d 472, 477 (D.C. Cir. 1983).

The knowledge element of aiding-and-abetting liability, which derives from "the word 'abetting,'" has been critical throughout the doctrine's history. *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991). Indeed, "abet" "carr[ies] an implication of purposive attitude toward [the principal act]." *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (Hand, L., J.). This Court has thus explained that an aider-abettor must "in some sort associate himself with the venture, . . . participate in it as in something that he wishes to bring about, [and] . . . seek by his action to make it succeed." *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949) (quoting *Peoni*, 100 F.2d at 402).³

The knowledge element is what distinguishes merely "aid[ing]," which "does not imply guilty or felonious intent," from aiding and abetting, which "includes knowledge of the wrongful purpose of the perpetrator and counsel and encouragement of the crime [or tort]." *People v. Terman*, 40 P.2d 915, 346–47 (Cal. Dist. Ct. App. 1935) (quotation marks omitted). The knowledge element thus confines aiding and abetting to its historical role—imposing liability on those who

³ Although *Peoni* and *Nye & Nissen* are criminal cases, they are relevant here because they show what "abet" means in the aiding-and-abetting context generally.

knowingly help the wrongdoer, while sparing “innocent, incidental participants [from] harsh penalties or damages.” *Halberstam*, 705 F.2d at 485 n.14.

b. Consistent with these principles, many courts of appeals have applied *Halberstam* to ensure that innocent or incidental participants do not get branded as terrorists. The Second Circuit, for example, has held that a defendant acts “knowingly” only if it was “aware’ that, by assisting the principal, it [was] assuming a ‘role’ in terrorist activities.” *Weiss v. National Westminster Bank, PLC*, 993 F.3d 144, 165 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 2866 (2022). In *Weiss*, the court held that the plaintiffs failed to plead that, by transferring funds to charities that they knew were controlled by or alter egos of Hamas, the defendants were generally aware that they were assuming a role in terrorism. *Id.* at 166–67. Notably lacking, the court explained, was an allegation that the defendants knew “that the transfers were for any terroristic purpose.” *Id.* Applying that rubric, the Second Circuit in *Kaplan v. Lebanese Canadian Bank* showed one way to plead the scienter necessary for aiding-and-abetting liability: alleging that the defendants provided services to customers widely identified as terrorists and supported the terrorist group’s “goals.” 999 F.3d 842, 866 (2d Cir. 2021).

Other courts of appeals are in accord. The D.C. Circuit, for instance, affirmed the dismissal of a claim that HSBC aided and abetted al-Qaeda’s terrorist attack on Camp Chapman. *Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856 (D.C. Cir. 2022). The complaint alleged that HSBC was liable because HSBC helped certain OFAC-listed intermediary banks evade U.S. sanctions, and those banks in turn facilitated al-

Qaeda’s terrorist activities. *Id.* at 861–62. As the court explained, however, the claim failed because there was no allegation that HSBC knew that the intermediary banks were connected with al-Qaeda. *Id.* at 868.

The Ninth Circuit, by contrast, has altogether ignored *Halberstam*’s requirements that an aider-abetter “be generally aware of [its] role as part of an overall illegal or tortious activity at the time that [it] provides assistance” to the principal’s violation and must “knowingly and substantially assist” that violation. 705 F.2d at 477. In this regard, the Ninth Circuit ruled that the complaint alleged that Twitter “knowingly” assisted a foreign terrorist organization because third parties told Twitter that some terrorists and their members, affiliates, and supporters were among the billions of users on its platform. J.A. 78 (¶ 148). Far from suggesting that Twitter knew that it was assisting the terrorists’ illegal or tortious activities, the Ninth Circuit explicitly acknowledged that Twitter combatted the use of its platform for terroristic purposes: according to the complaint, Twitter promoted policies that prohibited terrorist activity and regularly removed terrorist-affiliated accounts and content. Pet. App. 64a–65a. The Ninth Circuit likewise explained that Twitter was not alleged to share the terrorists’ goals, nor did Twitter “inten[d] to further or aid . . . terrorist activities.” *Id.* at 65a. Yet the Ninth Circuit ruled that a defendant’s general awareness that the principal actor uses its platform—even if the defendant is unaware that the use is for “illegal or tortious” activities—suffices to state an aiding-and-abetting claim. *Id.* at 61a–62a.

c. The Ninth Circuit standard is particularly problematic for NGOs, whose primary purpose is “simply

aiding.” *Camp*, 948 F.2d at 459. Under the Ninth Circuit’s view, an NGO that is generally aware that supporters of a terrorist group use its service could face aiding-and-abetting liability—even if that service is intended for civilian populations in a manner consistent with international humanitarian law, and even if the NGO lacks intent or even knowledge that its charitable acts could translate to support for terrorism. An NGO could be sued and even held liable if goods given to a government entity and earmarked for legitimate aid purposes were sold to fund terrorism or freed up other resources for terrorism, so long as the NGO was merely aware of the government’s connections to terrorism.

For instance, U.S.-based NGOs routinely partner with local entities that help deliver supplies to those in need. Under the Ninth Circuit’s decision, allegations against such an NGO would meet the Act’s knowledge requirements if ISIS or another foreign terrorist organization came to possess those supplies and then sold them on the black market, if the plaintiffs merely allege that ISIS had known ties to the local entity to which the NGO provided the supplies. This is likely so whether the NGO knew of those ties or not. The NGO in that example can hardly be described as supporting terrorism. Quite the contrary, the NGO was trying to support vulnerable people whose lives are made worse by terrorism. Yet that distinction would not matter under Ninth Circuit law.

2. The Ninth Circuit extends aiding-and-abetting liability to entities that do not assist terrorist acts.

Aside from deflating the scienter requirements, the Ninth Circuit unduly expanded the meaning of

“act of international terrorism.” According to *Halberstam*, a defendant aids and abets when it substantially assists the “principal violation.” 705 F.2d at 477. The ATA defines the principal violation as “an act of international terrorism.” 18 U.S.C. § 2333(a). And it provides secondary liability for “any person who aids and abets . . . such an act of international terrorism.” § 2333(d)(2). By repeatedly using the singular phrase “an act,” Congress showed that the “principal violation” refers to the *specific* act of terrorism that injured the plaintiff—in other words, a discrete attack.

Despite the statutory language, the Ninth Circuit construed “an act of international terrorism” much more broadly. Pet’r’s Br. 18. Instead of assessing whether Twitter aided and abetted an *act* of international terrorism—here, the Reina attack—the Ninth Circuit evaluated whether Twitter somehow assisted a years-long, sprawling terrorism campaign by ISIS. The resulting standard directs courts to consider whether there is a connection between a defendant and *any* individual who affiliates with a terrorist group that may, at some point in time, claim responsibility for an attack—rather than whether there is a connection between the defendant and the attack at issue.

The implications of this holding are troubling, particularly for NGOs. Under the Ninth Circuit’s view of aiding-and-abetting liability under the ATA, an NGO could be liable even if the NGO played no role in the attack in question. Consider, for example, an NGO that supports infrastructure by helping to pave roads in impoverished countries. *See, e.g., USAID, Paving Roads to Local Government—Activist Partnerships in Ukraine* (Feb. 7, 2020), <https://bit.ly/3UreiJo>.

Terrorist groups use roads to move around fragile states, and an NGO that paves the roads would be hard-pressed to halt that movement. Of course, that NGO should not be subject to aiding-and-abetting liability if a terrorist group uses the road to transport weapons to its headquarters and a member of the terrorist group later conducts an attack on Americans. But the Ninth Circuit’s decision creates that risk.⁴

Similar arguments could be made by plaintiffs seeking to hold liable NGOs that provide communication services to populations in need. Télécoms Sans Frontières (TSF), for example, provides wireless internet access to migrants and refugees in Bihać, Bosnia. *See, e.g.*, Breana Stanski, Borgen Project, *Télécoms Sans Frontières: Fighting Poverty with Technology* (Aug. 22, 2019), <https://bit.ly/3OYF7Dx>. The benefits of this program are self-evident: the internet access allows refugees to obtain information and maintain contact with the outside world. Yet if TSF knows that one in a thousand refugees is using the WiFi network to re-post terrorist propaganda on social media, and an affiliate of that terrorist group later conducts an attack on Americans, TSF could be exposed to ATA liability. The same concerns may affect NGOs such as Thaki, which provides secondhand electronic devices to education centers that work with refugees. *See, e.g.*, Thaki, *Education Is a Human Right—We Believe Digital Literacy Is, Too*, <https://bit.ly/3ulaYop> (last visited Dec. 2, 2022). If a few secondhand devices distributed

⁴ In fact, plaintiffs have alleged that private companies have violated the ATA based on claims relating to the forms of aid that NGOs provide, such as financing “road- and school-construction.” *E.g.*, Amended Complaint ¶ 189, *Cabrera v. Black & Veatch Special Projects Corp.* 19 Civ. 03833 (D.D.C. June 5, 2020).

by Thaki are used to film terrorist propaganda and post threats online, Thaki could be liable under the ATA.

As these examples show, the Ninth Circuit's interpretation creates exposure to aiding-and-abetting liability under the ATA for NGOs that provide basic and necessary services to entire populations. A plaintiff need only allege that the NGO's service imparts an incidental benefit on a terrorism campaign and that the NGO did not do enough to prevent the terrorist group's use of its service.

Liability aside, the Ninth Circuit's vast interpretation creates uncertainty and risks instability. Under the Ninth Circuit's rule, motivated plaintiffs could easily make their way to costly and extensive discovery, simply by alleging that an NGO is generally aware that individuals use its service—however incidentally—in a way that benefits a terrorism campaign.

The enormity of discovery in ATA cases is not theoretical. Consider *Linde v. Arab Bank, PLC*, an ATA case filed by more than 50 plaintiffs. Conscious of the difficulties presented by a trial on behalf of dozens of plaintiffs, the court ordered the parties to proceed to a bellwether trial on damages for just seventeen of the plaintiffs. Even with the number of plaintiffs narrowed, defense counsel described the vast scope of discovery, which included deposing *135 fact witnesses*—a number that excluded medical, psychological, and economic experts, as well as additional witnesses who might be identified in interrogatories that had yet to be served. See Letter from Defendant at 1, *Linde v.*

Arab Bank, PLC, No. 04 Civ. 2799 (E.D.N.Y. May 10, 2015), ECF No. 1214.

This type of discovery would be unsustainable for most NGOs, which typically operate on lean budgets. Indeed, “proceeding to . . . discovery can be [so] expensive” that the mere “threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching those proceedings.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 546, 559 (2007). Thus, NGOs whose motions to dismiss are denied may well be forced to sacrifice their day in court and settle early, with donor funds intended to help the poor, to avoid the extensive discovery that ATA cases often entail.

Beyond the cost of the litigation itself, NGOs—who rely in great part on private donations—may be sensitive to negative press, and resolve to settle even the most meritless cases. This diversion of valuable resources would impair the contributions that NGOs make around the world.

III. Affirming the Ninth Circuit decision would cause NGOs to cease operating in fragile states, frustrating the ATA’s underlying purpose and harming the NGOs themselves.

A. Construing the ATA to cover NGOs’ legitimate activities in fragile states would have grave consequences for peacebuilding and democracy building, which can help curb extremism. As explained above (at 7–11), NGOs operating in fragile states provide many forms of relief, including development and peacebuilding programs, that contribute to economic prosperity and improve health and education, in turn helping to mitigate the spread of violent extremism.

But the Ninth Circuit’s capacious reading of the ATA would create a chilling effect, forcing NGOs to substantially curb or cease their efforts in those states.

One reason for that chilling effect is simple: NGOs cannot afford to pay ATA judgments. Those judgments can total hundreds of millions of dollars. *See, e.g., Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 322 (2d Cir. 2016) (\$655.5 million judgment, vacated on appeal on grounds unrelated to damages); *Linde v. Arab Bank, PLC*, 882 F.3d 314, 318 (2d Cir. 2018) (\$100 million judgment, vacated on appeal on grounds unrelated to damages). For many NGOs, these amounts far exceed their annual budgets. And insurance for such liability is either nonexistent or exorbitantly expensive. ATA liability would thus pose an existential threat to those NGOs, which would be forced to close if hit with an ATA judgment. Even the threat or possibility of such a judgment would force NGOs to reassess their work and may cause them to scale back or withdraw from the most dangerous areas of the world, where aid is most needed, and contrary to humanitarian principles.⁵

⁵ Beyond the direct threat of ATA liability, NGOs also are affected by the Act’s systemwide implications, including bank de-risking, where financial institutions shed rather than manage the risks of terrorist financing or money laundering by terminating or restricting business relationships with entities that they perceive as high-risk. Shukri Muhomed et al., *Charity & Sec. Network, NGOs’ Due Diligence and Risk Mitigation: A Holistic Approach* 14 (2021), <https://bit.ly/3XPWLNH>. The two-thirds of U.S.-based NGOs that work abroad and face bank de-risking—including account closures and canceled or delayed wire transfers that can last weeks or months—are often forced to postpone

This concern is substantiated by the State Department’s swift reversal of the decision to designate the Houthis as a foreign terrorist organization. That reversal was reportedly driven by a concern that the designation would exacerbate an already tragic humanitarian situation by restricting delivery of aid from NGOs that feared legal liability. *See supra* p. 14.

Such reductions of humanitarian aid have ripple effects. NGOs provide humanitarian, development, and peacebuilding aid to fragile states. Without NGO support, war-torn countries would lose out on aid and development programs that help to reduce poverty and increase social cohesion, often in tandem. Suspending that programming would almost certainly cause a rise in violent extremism. *See supra* pp. 9–11.

That outcome is at odds with the ATA itself. Congress enacted the ATA “to reduce global terrorism and thus protect Americans here and abroad.” H.R. Rep. No. 115-858, at 3–4 (2018). Decreasing NGO support to fragile states—the effect of the Ninth Circuit’s decision—does the opposite.

B. Amici and their member organizations will be harmed if this Court affirms the Ninth Circuit decision. The mission of both InterAction and Charity & Security Network is to support NGOs that assist

or cancel vital programming. Sue E. Eckert et. al., Charity & Sec. Network, *Financial Access for U.S. Nonprofits* 38 (2017), <https://bit.ly/3iAD50p>. For instance, bank de-risking delayed an NGO program that intended to provide tents, blankets, and other non-food items during the winter. The funds were held up past the end of winter, meaning that the items did not reach the intended recipients in time, and some of them suffered severe health complications as a result. *Id.* at 81–82.

people affected by crisis, disasters, and armed conflicts. Both organizations go to great lengths to abide by and promote the law while fulfilling this mission. *See, e.g.*, InterAction, *What We Do*, <https://bit.ly/3B9aOEn> (last visited Dec. 2, 2022); Charity & Sec. Network, *About*, <https://bit.ly/3FrGOX3> (last visited Dec. 3, 2022).

Prospective InterAction members, for instance, must complete numerous application materials, including letters of recommendation and a Standards Compliance Form that attests that the member complies with InterAction’s rigorous NGO standards, and they must undergo an intensive vetting process and, ultimately, board approval. *See* InterAction, *InterAction Membership Application* (2020), <https://bit.ly/3VuOzB4>; InterAction, *Standards Compliance Certification Form for Prospective New Members* (2019), <https://bit.ly/3OWyi5f>. InterAction members must also adhere to standards that cover “governance, financial reporting, fundraising, public relations, management practice, human resources, public policy, and program services.” InterAction, *NGO Standards 2* (2018), <https://bit.ly/3H3q3lZ>. These standards guide member NGOs in implementing comprehensive risk reduction systems and security protocols, complying with all relevant U.S. export laws, adopting policies against terrorism, and opposing “illegal acts under U.S. law in any of its activities.” *Id.* §§ 3.4, 7.5, 7.6, 7.12.8. InterAction’s standards are updated to reflect best practices, and its members are asked to certify compliance with the standards every five years and annually commit to member values and principles. *Id.*; InterAction, *New Annual Values and Principles*, <https://bit.ly/3XQf31s> (last visited Dec. 1, 2022).

InterAction is not alone in these efforts. The non-profit sector has created a variety of due-diligence programs intended to prevent abuse by terrorists and criminals, including training events, advisory services, and risk assessment tools. *Banking Nonprofit* 4, 12.

But these efforts are not an absolute safeguard. In violent conflicts, “[i]ntervention by aid actors inevitably affects the calculus of those involved in conflict; there is always an impact.” Goodhand 6. Despite their risk-reduction efforts, “no [NGO] or government can guarantee that charitable aid handled by [NGOs] will never be diverted.” *Id.* at 5. If this Court affirms the Ninth Circuit’s decision, NGOs will face increased risk of liability despite their diligent and good-faith efforts to prevent terrorism and their lack of terroristic intent. If the ATA is interpreted to mean that an NGO’s impact “helps” terrorists within the meaning of the ATA, then NGOs will be unable to fulfill their missions, which include feeding the hungry, caring for the sick and afflicted, and building peace—not just in areas free from strife, but throughout the world.

Adopting the Ninth Circuit decision as the law of the land would deter NGOs that aid some of the world’s most vulnerable people, many who are themselves victims of terrorism.

CONCLUSION

The Court should reverse the Ninth Circuit's decision.

Respectfully submitted,

Timothy P. Harkness
Counsel of Record
Linda H. Martin
Kimberly H. Zelnick
David Y. Livshiz
Scott A. Eisman
Rebecca L. Curwin
Nathan A. Hembree
Noelle L. Williams
Freshfields Bruckhaus
Deringer US LLP
601 Lexington Avenue, 31st
Floor
New York, NY 10022
(212) 277-4000

Counsel for Amici Curiae

December 6, 2022