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

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2015

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

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

EVA WALDMAN, REVITAL BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER AND YEHUDA BAUER, SHAUL MANDELKORN, NURIT MANDELKORN, OZ JOSEPH GUETTA, MINOR, BY HIS NEXT FRIEND AND GUARDIAN VARDA GUETTA, VARDA GUETTA, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFF OZ JOSEPH GUETTA, NORMAN GRITZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID GRITZ, MARK I. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAMIE A. SOKOLOW, RENA M. SOKOLOW, INDIVIDUALLY AND AS A NATURAL GUARDIAN OF PLAINTIFF JAIME A. SOKOLOW, JAMIE A. SOKOLOW, MINOR, BY HER NEXT FRIENDS AND GUARDIAN MARK I. SOKOLOW AND RENA M. SOKOLOW, LAUREN M. SOKOLOW, ELANA R. SOKOLOW, SHAYNA EILEEN GOULD, RONALD ALLAN GOULD, ELISE JANET GOULD, JESSICA RINE, SHMUEL WALDMAN, HENNA NOVACK WALDMAN, MORRIS WALDMAN, ALAN J. BAUER, INDIVIDUALLY AND AS NATURAL GUARDIAN OF PLAINTIFFS YEHONATHON BAUER, BINYAMIN BAUER, DANIEL BAUER AND YEHUDA BAUER, YEHONATHON BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, BINYAMIN BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, DANIEL BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, YEHUDA BAUER, MINOR, BY HIS NEXT FRIEND AND GUARDIANS DR. ALAN J. BAUER AND REVITAL BAUER, RABBI LEONARD MANDELKORN, KATHERINE BAKER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, REBEKAH BLUTSTEIN, RICHARD BLUTSTEIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN BLUTSTEIN, LARRY CARTER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DIANE ("DINA") CARTER, SHAUN COFFEL, DIANNE COULTER MILLER, ROBERT L COULTER, JR., ROBERT L. COULTER, SR., INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JANIS RUTH COULTER, CHANA BRACHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND

GUARDIAN KAREN GOLDBERG, ELIEZER SIMCHA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, ESTHER ZAHAVA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, KAREN GOLDBERG, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STUART SCOTT GOLDBERG/NATURAL GUARDIAN OF PLAINTIFFS CHANA BRACHA GOLDBERG, ESTHER ZAHAVA GOLDBERG, YITZHAK SHALOM GOLDBERG, SHOSHANA MALKA GOLDBERG, ELIEZER SIMCHA GOLDBERG, YAAKOV MOSHE GOLDBERG, TZVI YEHOSHUA GOLDBERG, SHOSHANA MALKA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, TZVI YEHOSHUA GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, YAAKOV MOSHE GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, YITZHAK SHALOM GOLDBERG, MINOR, BY HER NEXT FRIEND AND GUARDIAN KAREN GOLDBERG, NEVENKA GRITZ, SOLE HEIR OF NORMAN GRITZ, DECEASED,

Plaintiffs - Appellees - Cross-Appellants,

—v.—

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

Defendants - Appellants - Cross-Appellees,

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

Defendants.

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

1 The defendants-appellants-cross-appellees ("defendants")
2 appeal from a judgment of the United States District Court for
3 the Southern District of New York (Daniels, *J.*) in favor of the
4 plaintiffs-appellees-cross-appellants ("plaintiffs"). A jury
5 found the defendants---the Palestine Liberation Organization and
6 the Palestinian Authority---liable under the Anti-Terrorism Act
7 ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in
8 Israel that killed or wounded United States citizens. The jury
9 awarded the plaintiffs damages of $218.5 million, an amount that
10 was trebled automatically pursuant to the ATA, 18 U.S.C.
11 § 2333(a), bringing the total award to $655.5 million. The
12 defendants appeal, arguing that the district court lacked
13 general and specific personal jurisdiction over the defendants,
14 and, in the alternative, seek a new trial because the district
15 court abused its discretion by allowing certain testimony by two
16 expert witnesses. The plaintiffs cross-appeal, asking this
17 Court to reinstate claims the district court dismissed.
18 We vacate the judgment of the district court and remand the
19 case with instructions to dismiss the action because the federal
20 courts lack personal jurisdiction over the defendants with

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

1 respect to the claims in this action. We do not reach the
2 remaining issues.
3 ______________

4 KENT A. YALOWITZ, Arnold & Porter, LLP, for Plaintiffs-
5 Appellees-Cross-Appellants.
6
7 GASSAN A. BALOUL (Mitchell R. Berger, Pierre H. Bergeron, John
8 A. Burlingame, Alexandra E. Chopin, on the brief), Squire Patton
9 Boggs (US), LLP, for Defendants-Appellants-Cross-Appellees.
10
11 David A. Reiser, Zuckerman Spaeder, LLP, and Peter Raven-Hansen,
12 George Washington University Law School, on the brief for Amici
13 Curiae Former Federal Officials in Support of Plaintiffs-
14 Appellees-Cross-Appellants.
15
16 James P. Bonner, Stone, Bonner & Rocco, LLP, and Steven R.
17 Perles, Perles Law Firm, on the brief for Amici Curiae Arthur
18 Barry Sotloff, Shirley Goldie Pulwer, Lauren Sotloff, and the
19 Estate of Steven Joel Sotloff in Support of Plaintiffs-
20 Appellees-Cross-Appellants.
21
22 ______________

23 John G. Koeltl, District Judge:
24
25 In this case, eleven American families sued the Palestine
26 Liberation Organization ("PLO") and the Palestinian Authority
27 ("PA") (collectively, "defendants")[1] under the Anti-Terrorism Act
28 ("ATA"), 18 U.S.C. § 2333(a), for various terror attacks in
29 Israel that killed or wounded the plaintiffs-appellees-cross-
30 appellants ("plaintiffs") or their family members.[2]

[1] While other defendants, such as Yasser Arafat, were named as defendants in the case, they did not appear, and the Judgment was entered only against the PLO and the PA.
[2] The plaintiffs are United States citizens, and the guardians, family members, and personal representatives of the estates of

1 The defendants repeatedly argued before the District Court
2 for the Southern District of New York that the court lacked
3 personal jurisdiction over them in light of their minimal
4 presence in, and the lack of any nexus between the facts
5 underlying the plaintiffs' claims and the United States. The
6 district court (Daniels, *J.*) concluded that it had general
7 personal jurisdiction over the defendants, even after the
8 Supreme Court narrowed the test for general jurisdiction in
9 Daimler AG v. Bauman, 134 S. Ct. 746 (2014). See Sokolow v.
10 Palestine Liberation Org., No. 04-cv-397 (GBD), 2014 WL 6811395,
11 at *2 (S.D.N.Y. Dec. 1, 2014); see also Sokolow v. Palestine
12 Liberation Org., No. 04-cv-397 (GBD), 2011 WL 1345086, at *7
13 (S.D.N.Y. Mar. 30, 2011).
14 After a seven-week trial, a jury found that the defendants,
15 acting through their employees, perpetrated the attacks and that
16 the defendants knowingly provided material support to
17 organizations designated by the United States State Department
18 as foreign terrorist organizations. The jury awarded the
19 plaintiffs damages of $218.5 million, an amount that was trebled
20 automatically pursuant to the ATA, 18 U.S.C. § 2333(a), bringing
21 the total award to $655.5 million.

United States citizens, who were killed or injured in the terrorist attacks.

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

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

19 **I.**

20 **A.**

21 The PA was established by the 1993 Oslo Accords as the
22 interim and non-sovereign government of parts of the West Bank
23 and the Gaza Strip (collectively referred to here as
24 "Palestine"). The PA is headquartered in the city of Ramallah

1 in the West Bank, where the Palestinian President and the PA's
2 ministers reside.
3 The PLO was founded in 1964. At all relevant times, the
4 PLO was headquartered in Ramallah, the Gaza Strip, and Amman,
5 Jordan. Because the Oslo Accords limit the PA's authority to
6 Palestine, the PLO conducts Palestine's foreign affairs.
7 During the relevant time period for this action, the PLO
8 maintained over 75 embassies, missions, and delegations around
9 the world. The PLO is registered with the United States
10 Government as a foreign agent. The PLO has two diplomatic
11 offices in the United States: a mission to the United States in
12 Washington, D.C. and a mission to the United Nations in New York
13 City. The Washington, D.C. mission had fourteen employees
14 between 2002 and 2004, including two employees of the PA,
15 although not all at the same time.[3] The Washington, D.C. and New
16 York missions engaged in diplomatic activities during the
17 relevant period. The Washington, D.C. mission "had a
18 substantial commercial presence in the United States." Sokolow,
19 2011 WL 1345086, at *4. It used dozens of telephone numbers,
20 purchased office supplies, paid for certain living expenses for
21 Hassan Abdel Rahman, the chief PLO and PA representative in the

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

United States, and engaged in other transactions. Id. The PLO also retained a consulting and lobbying firm through a multi-year, multi-million-dollar contract for services from about 1999 to 2004. Id. The Washington, D.C. mission also promoted the Palestinian cause in speeches and media appearances. Id.

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

While the United States does not recognize Palestine or the PA as a sovereign government, see Sokolow v. Palestine Liberation Org., 583 F. Supp. 2d 451, 457-58 (S.D.N.Y. 2008)

1 ("Palestine, whose statehood is not recognized by the United
2 States, does not meet the definition of a 'state,' under United
3 States and international law . . . .") (collecting cases), the
4 PA is the governing authority in Palestine and employs tens of
5 thousands of security personnel in Palestine. According to the
6 PA's Minister of Finance, the "PA funds conventional government
7 services, including developing infrastructure; public safety and
8 the judicial system; health care; public schools and education;
9 foreign affairs; economic development initiatives in
10 agriculture, energy, public works, and public housing; the
11 payment of more than 155,000 government employee salaries and
12 related pension funds; transportation; and, communications and
13 information technology services."

14 **B.**

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

[4] The district court found claims relating to an attack on January 8, 2001 that wounded Oz Guetta speculative and did not allow those claims to proceed to the jury. The plaintiffs argue that this Court should reinstate the Guetta claims. Because we

1 **i. January 22, 2002: Jaffa Road Shooting**

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

12 **ii. January 27, 2002: Jaffa Road Bombing**

13 On January 27, 2002, a PA intelligence informant named Wafa
14 Idris detonated a suicide bomb on Jaffa Road in Jerusalem,
15 killing herself and an Israeli man and seriously wounding four
16 of the plaintiffs, including two children. Evidence presented
17 at trial showed that the bombing was planned by a PA
18 intelligence officer who encouraged the assailant to conduct the
19 suicide bombing, even after the assailant had doubts about doing
20 so.
21
22

conclude that there is no personal jurisdiction over the defendants for the ATA claims, it is unnecessary to reach this issue.

1 **iii. March 21, 2002: King George Street Bombing**

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

11 **iv. June 19, 2002: French Hill Bombing**

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

21 **v. July 31, 2002: Hebrew University Bombing**

22 On July 31, 2002, military operatives of Hamas---a United
23 States-designated FTO---detonated a bomb hidden in a black cloth
24 bag that was packed with hardware nuts in a café at Hebrew

1 University in Jerusalem. The explosion killed nine, including
2 four United States citizens, whose estates bring suit here.

3 **vi. January 29, 2004: Bus No. 19 Bombing**

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

11 **C.**
12
13 In 2004, the plaintiffs filed suit in the Southern District
14 of New York. The defendants first moved to dismiss the claims
15 for lack of personal jurisdiction in July 2007. The district
16 court denied the motion, subject to renewal after jurisdictional
17 discovery. After the close of jurisdictional discovery, the
18 district court denied the defendants' renewed motion, holding
19 that the court had general personal jurisdiction over the
20 defendants. See Sokolow, 2011 WL 1345086, at *7.

21 The district court concluded, as an initial matter, that
22 the service of process was properly effected by serving the
23 Chief Representative of the PLO and the PA, Hassan Abdel Rahman,
24 at his home in Virginia, pursuant to Federal Rule of Civil
25 Procedure 4(h)(1)(B) (providing that a foreign association "must

1 be served[ ] . . . in a judicial district of the United States .
2 . . by delivering a copy of the summons and of the complaint to
3 an officer, a managing or general agent . . . ."); see also 18
4 U.S.C. § 2334(a) (providing for nationwide service of process
5 and venue under the ATA); Sokolow, 2011 WL 1345086, at *2.
6 The district court then engaged in a two-part analysis to
7 determine whether the exercise of personal jurisdiction
8 comported with the due process protections of the United States
9 Constitution. First, it determined whether the defendants had
10 sufficient minimum contacts with the forum such that the
11 maintenance of the action did not offend traditional notions of
12 fair play and substantial justice. Sokolow, 2011 WL 1345086, at
13 *2 (citing Frontera Res. Azerbaijan Corp. v. State Oil Co. of
14 Azerbaijan Republic, 582 F.3d 393, 396 (2d Cir. 2009)).
15 The district court distinguished between specific and
16 general personal jurisdiction---specific jurisdiction applies
17 where the defendants' contacts are related to the litigation and
18 general jurisdiction applies where the defendants' contacts are
19 so substantial that the defendants could be sued on all claims,
20 even those unrelated to contacts with the forum---and found that
21 the district court had general jurisdiction over the defendants.
22 Id. at *3. The court considered what it deemed the defendants'
23 "substantial commercial presence in the United States," in
24 particular "a fully and continuously functional office in

1 Washington, D.C.," bank accounts and commercial contracts, and
2 "a substantial promotional presence in the United States, with
3 the D.C. office having been permanently dedicated to promoting
4 the interests of the PLO and the PA." Id. at *4.
5 The district court concluded that activities involving the
6 defendants' New York office were exempt from jurisdictional
7 analysis under an exception for United Nations' related activity
8 articulated in Klinghoffer, 937 F.2d at 51-52 (UN participation
9 not properly considered basis for jurisdiction); see Sokolow,
10 2011 WL 1345086, at *5. The district court held that the
11 activities involving the Washington, D.C. mission were not
12 exempt from analysis and provided "a sufficient basis to
13 exercise general jurisdiction over the Defendants." Id. at *6
14 ("The PLO and the PA were continuously and systematically
15 present in the United States by virtue of their extensive public
16 relations activities.").
17 Next, the district court considered "'whether the assertion
18 of personal jurisdiction comports with "traditional notions of
19 fair play and substantial justice"---that is, whether it is
20 reasonable under the circumstances of the particular case.'"
21 Id. (quoting Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84
22 F.3d 560, 568 (2d Cir. 1996)). The court found that the
23 exercise of jurisdiction did not offend "traditional notions of
24 fair play and substantial justice," pursuant to the standard

1 articulated by International Shoe Co. v. Washington, 326 U.S.
2 310, 316 (1945), and its progeny. See Sokolow, 2011 WL 1345086,
3 at *6-7. The district court concluded that "[t]here is a strong
4 inherent interest of the United States and Plaintiffs in
5 litigating ATA claims in the United States," and that the
6 defendants "failed to identify an alternative forum where
7 Plaintiffs' claims could be brought, and where the foreign court
8 could grant a substantially similar remedy." Id. at *7.
9 In January 2014, after the Supreme Court had significantly
10 narrowed the general personal jurisdiction test in Daimler, 134
11 S. Ct. 746, the defendants moved for reconsideration of the
12 denial of their motion to dismiss.
13 On April 11, 2014, the district court denied the
14 defendants' motions for reconsideration, ruling that Daimler did
15 not compel dismissal. The district court also denied the
16 defendants' motions to certify the jurisdictional issue for an
17 interlocutory appeal. See Sokolow, 2014 WL 6811395, at *1. The
18 defendants renewed their jurisdictional argument in their
19 motions for summary judgment, arguing that this Court's decision
20 in Gucci America, Inc. v. Weixing Li, 768 F.3d 122 (2d Cir.
21 2014), altered the controlling precedent in this Circuit,
22 requiring dismissal of the case. See Sokolow, 2014 WL 6811395,
23 at *1. The district court concluded that it still had general
24 personal jurisdiction over the defendants, describing the action

1 as presenting "'an exceptional case,'" id. at *2, of the kind
2 discussed in Daimler, 134 S. Ct. at 761 n.19, and Gucci, 768
3 F.3d at 135.

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

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

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

1 At the conclusion of plaintiffs' case in chief, the
2 defendants moved for judgment as a matter of law under Federal
3 Rule of Civil Procedure 50(a), arguing, among other grounds,
4 that the district court lacked personal jurisdiction over the
5 defendants. The Court denied the motion. The defendants
6 renewed that motion at the close of all the evidence and again
7 asserted that the court lacked personal jurisdiction.
8 During and immediately after trial, the District Court for
9 the District of Columbia issued three separate decisions
10 dismissing similar suits for lack of personal jurisdiction by
11 similar plaintiffs in cases against the PA and the PLO. See
12 Estate of Klieman v. Palestinian Auth., 82 F. Supp. 3d 237, 245-
13 46 (D.D.C. 2015), *appeal docketed*, No. 15-7034 (D.C. Cir. Apr.
14 8, 2015); Livnat v. Palestinian Auth., 82 F. Supp. 3d 19, 30
15 (D.D.C. 2015), *appeal docketed*, No. 15-7024 (D.C. Cir. Mar. 18,
16 2015); Safra v. Palestinian Auth., 82 F. Supp. 3d 37, 47-48
17 (D.D.C. 2015), *appeal docketed*, No. 15-7025 (D.C. Cir. Mar. 18,
18 2015).
19 In light of these cases, on May 1, 2015, the defendants
20 renewed their motion to dismiss for lack of both general and
21 specific personal jurisdiction. The defendants also moved, in
22 the alternative, for judgment as a matter of law or for a new
23 trial pursuant to Federal Rules of Civil Procedure 50(b) and 59.
24 The district court reviewed the decisions by the District Court

1 for the District of Columbia, but, for the reasons articulated
2 in its 2014 decision and at oral argument, concluded that the
3 district court had general personal jurisdiction over the
4 defendants. The district court did not rule explicitly on
5 whether it had specific personal jurisdiction over the
6 defendants.
7 The jury found the defendants liable for all six attacks
8 and awarded the plaintiffs damages of $218.5 million, an amount
9 that was trebled automatically pursuant to the ATA, 18 U.S.C.
10 § 2333(a), bringing the total award to $655.5 million.
11 The parties engaged in post-trial motion practice not
12 relevant here, the defendants timely appealed, and the
13 plaintiffs cross-appealed.

14 **II.**

15 **A.**

16 "We review a district court's assertion of personal
17 jurisdiction *de novo*." Dynegy Midstream Servs. v. Trammochem,
18 451 F.3d 89, 94 (2d Cir. 2006).[5]

[5] The standard of review in this case is complicated because the issue of personal jurisdiction was raised initially on a motion to dismiss, both before and after discovery, and as a basis for Rule 50 motions at the conclusion of the plaintiffs' case and after all the evidence was presented. This Court typically reviews factual findings in a district court's decision on personal jurisdiction for clear error and its legal conclusions *de novo*. See Frontera Res., 582 F.3d at 395. In this case, the parties agree that this Court should review *de novo* whether the district court's exercise of personal jurisdiction was

1 To exercise personal jurisdiction lawfully, three
2 requirements must be met. "First, the plaintiff's service of
3 process upon the defendant must have been procedurally proper.
4 Second, there must be a statutory basis for personal
5 jurisdiction that renders such service of process
6 effective. . . . Third, the exercise of personal jurisdiction
7 must comport with constitutional due process principles." Licci
8 ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 59-60
9 (2d Cir. 2012) (footnotes and internal citations omitted),
10 *certified question accepted sub nom.* Licci v. Lebanese Canadian
11 Bank, 967 N.E.2d 697 (N.Y. 2012), *and certified question*
12 *answered sub nom.* Licci v. Lebanese Canadian Bank, 984 N.E.2d
13 893 (N.Y. 2012).

14 Constitutional due process assures that an individual will
15 only be subjected to the jurisdiction of a court where the
16 maintenance of a lawsuit does not offend "traditional notions of
17 fair play and substantial justice." Int'l Shoe, 326 U.S. at 316
18 (internal quotation marks omitted). Personal jurisdiction is "a
19 matter of individual liberty" because due process protects the
20 individual's right to be subject only to lawful power. J.
21 McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011)

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constitutional. See Pls.' Br. at 27; Defs.' Br. at 23. In any event, the issues relating to general jurisdiction are essentially legal questions that should be reviewed *de novo*. Assuming without deciding the question, we review the district court's assertion of personal jurisdiction *de novo*.

1 (plurality opinion) (quoting Ins. Corp. of Ir. v. Compagnie des
2 Bauxites de Guinee, 456 U.S. 694, 702 (1982)).

3 The ATA provides that process "may be served in any
4 district where the defendant resides, is found, or has an agent
5 . . . ." 18 U.S.C § 2334(a). The district court found that the
6 plaintiffs properly served the defendants because they served
7 the complaint, pursuant to Federal Rule of Civil Procedure
8 4(h)(1)(B) (providing that service on an unincorporated
9 association is proper if the complaint is served on a "general
10 agent" of the entity), on Hassan Abdel Rahman, who "based upon
11 the overwhelming competent evidence produced by Plaintiffs, was
12 the Chief Representative of the PLO and the PA in the United
13 States at the time of service." Sokolow, 2011 WL 1345086, at *2.[6]

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

20 **B.**

21 Before we reach the analysis of constitutional due process,
22 the plaintiffs raise three threshold issues: First, whether the

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

1 defendants waived their objections to personal jurisdiction;
2 second, whether the defendants have due process rights at all;
3 and third, whether the due process clause of the Fifth Amendment
4 to the Constitution and not the Fourteenth Amendment controls
5 the personal jurisdiction analysis in this case.

6 First, the plaintiffs argue that the defendants waived
7 their argument that the district court lacked personal
8 jurisdiction over them. The plaintiffs contend that the
9 defendants could have argued that they were not subject to
10 general jurisdiction under the "at home" test before Daimler was
11 decided because the "at home" general jurisdiction test existed
12 after Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S.
13 915 (2011). This argument is unavailing because this Court in
14 Gucci looked to the test in Daimler as the appropriate test for
15 general jurisdiction over a corporate entity. See Gucci, 768
16 F.3d at 135-36. The defendants did not waive or forfeit their
17 objection to personal jurisdiction because they repeatedly and
18 consistently objected to personal jurisdiction and invoked
19 Daimler after this Court's decision in Gucci. Furthermore, the
20 district court explicitly noted that the "Defendants' motions
21 asserting lack of personal jurisdiction are *not* denied based on
22 a theory of waiver." Sokolow, 2014 WL 6811395, at *2 n.2
23 (emphasis added).

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

18 While sovereign states are not entitled to due process
19 protection, see id. at 399, neither the PLO nor the PA is
20 recognized by the United States as a sovereign state, and the
21 executive's determination of such a matter is conclusive. See
22 Zivotofsky v. Kerry, 135 S. Ct. 2076, 2088 (2015); see also
23 Ungar, 315 F. Supp. 2d at 177 ("The PA and PLO's argument must
24 fail because Palestine does not satisfy the four criteria for

1 statehood and is not a State under prevailing international
2 legal standards."); Knox, 306 F. Supp. 2d at 431 ("[T]here does
3 not exist a state of Palestine which meets the legal criteria
4 for statehood. . . ."); accord Klinghoffer, 937 F.2d at 47 ("It
5 is quite clear that the PLO meets none of those requirements
6 [for a state]."). Because neither defendant is a state, the
7 defendants have due process rights. See O'Neill v. Asat Trust
8 Reg. (In re Terrorist Attacks on Sept. 11, 2001), 714 F.3d 659,
9 681-82 (2d Cir. 2013) ("O'Neill") (dismissing for lack of
10 personal jurisdiction claims against charities, financial
11 institutions, and other individuals who are alleged to have
12 provided support to Osama Bin Laden and al Qaeda); Livnat, 82 F.
13 Supp. 3d at 26 (due process clause applies to the PA (collecting
14 cases)).

15 Third, the plaintiffs and *amici curiae* Former Federal
16 Officials argue that the restrictive Fourteenth Amendment due
17 process standards cannot be imported into the Fifth Amendment
18 and that the due process clause of the Fifth Amendment to the
19 Constitution,[7] and not the Fourteenth Amendment,[8] applies to the

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

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

1 ATA and controls the analysis in this case. The argument is
2 particularly important in this case because the defendants rely
3 on the standard for personal jurisdiction set out in Daimler and
4 the Daimler Court explained that it was interpreting the due
5 process clause of the Fourteenth Amendment. Daimler, 134 S. Ct.
6 at 751.

7 The plaintiffs and amici argue that the Fourteenth
8 Amendment due process clause restricts state power but the Fifth
9 Amendment should be applied to the exercise of federal power.
10 Their argument is that the Fourteenth Amendment imposes stricter
11 limits on the personal jurisdiction that courts can exercise
12 because that Amendment, grounded in concepts of federalism, was
13 intended to referee jurisdictional conflicts among the sovereign
14 States. The Fifth Amendment, by contrast, imposes more lenient
15 restrictions because it contemplates disputes with foreign
16 nations, which, unlike States, do not follow reciprocal rules
17 and are not subject to our constitutional system. See, e.g., J.
18 McIntyre Mach., 564 U.S. at 884 (plurality opinion) ("Because
19 the United States is a distinct sovereign, a defendant may in
20 principle be subject to the jurisdiction of the courts of the
21 United States but not of any particular State. This is
22 consistent with the premises and unique genius of our
23 Constitution."). To conflate the due process requirements of
24 the Fourteenth and Fifth Amendments, the plaintiffs and *amici*

1 argue, would impose a unilateral constraint on United States
2 courts, even when the political branches conclude that personal
3 jurisdiction over a defendant for extraterritorial conduct is in
4 the national interest.[9]

5 This Court's precedents clearly establish the congruence of
6 due process analysis under both the Fourteenth and Fifth
7 Amendments. This Court has explained: "[T]he due process
8 analysis [for purposes of the court's *in personam* jurisdiction]
9 is basically the same under both the Fifth and Fourteenth
10 Amendments. The principal difference is that under the Fifth
11 Amendment the court can consider the defendant's contacts
12 throughout the United States, while under the Fourteenth
13 Amendment only the contacts with the forum state may be
14 considered." Chew v. Dietrich, 143 F.3d 24, 28 n.4 (2d Cir.
15 1998).

16 Indeed, this Court has already applied Fourteenth Amendment
17 principles to Fifth Amendment civil terrorism cases. For

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

1 example, in O'Neill, 714 F.3d at 673-74, this Court applied
2 Fourteenth Amendment due process cases to terrorism claims
3 brought pursuant to the ATA in federal court. See In re
4 Terrorist Attacks on Sept. 11, 2001, 538 F.3d 71, 93 (2d Cir.
5 2008), *abrogated on other grounds by* Samantar v. Yousuf, 560
6 U.S. 305 (2010); see also Tex. Trading & Milling Corp. v. Fed.
7 Republic of Nigeria, 647 F.2d 300, 315 n.37 (2d Cir. 1981)
8 (declining to apply different due-process standards in a case
9 governed by the Fifth Amendment compared to one governed by the
10 Fourteenth Amendment), *overruled on other grounds by* Frontera
11 Res., 582 F.3d at 400; GSS Grp. Ltd v. Nat'l Port Auth., 680
12 F.3d 805, 816-17 (D.C. Cir. 2012) (applying Fourteenth Amendment
13 case law when considering minimum contacts under the Fifth
14 Amendment).

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

19 Accordingly, we conclude that the minimum contacts and
20 fairness analysis is the same under the Fifth Amendment and the

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

1 Fourteenth Amendment in civil cases and proceed to analyze the
2 jurisdictional question.

3 **III.**

4 Pursuant to the due process clauses of the Fifth and
5 Fourteenth Amendments, there are two parts to the due process
6 test for personal jurisdiction as established by International
7 Shoe, 326 U.S. 310, and its progeny: the "minimum contacts"
8 inquiry and the "reasonableness" inquiry. See Bank Brussels
9 Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 127 (2d
10 Cir. 2002) (Sotomayor, J.). The minimum contacts inquiry
11 requires that the court determine whether a defendant has
12 sufficient minimum contacts with the forum to justify the
13 court's exercise of personal jurisdiction over the defendant.
14 See Daimler, 134 S. Ct. at 754; Calder v. Jones, 465 U.S. 783,
15 788 (1984); Int'l Shoe, 326 U.S. at 316; Metro. Life Ins., 84
16 F.3d at 567-68. The reasonableness inquiry requires the court
17 to determine whether the assertion of personal jurisdiction over
18 the defendant comports with "'traditional notions of fair play
19 and substantial justice'" under the circumstances of the
20 particular case. Daimler, 134 S. Ct. at 754 (quoting Goodyear,
21 564 U.S. at 923); Burger King Corp. v. Rudzewicz, 471 U.S. 462,
22 476-78 (1985).

23 International Shoe distinguished between two exercises of
24 personal jurisdiction: general jurisdiction and specific

jurisdiction. The district court in this case ruled only on the issue of general jurisdiction. We conclude that general jurisdiction is absent; the question remains whether the court may nonetheless assert its jurisdiction under the doctrine of specific jurisdiction.

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

"Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Goodyear, 564 U.S. at 919 (alterations, internal quotation marks, and citation omitted). The exercise of specific

1 jurisdiction depends on in-state activity that "*gave rise to the*
2 *episode-in-suit*." Id. at 923 (quoting Int'l Shoe, 326 U.S. at
3 317) (emphasis in original). In certain circumstances, the
4 "commission of certain 'single or occasional acts' in a State
5 may be sufficient to render a corporation answerable in that
6 State with respect to those acts, though not with respect to
7 matters unrelated to the forum connections." Id. (quoting Int'l
8 Shoe, 326 U.S. at 318).

9 **A.**

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

14 In Daimler, the plaintiffs asserted claims under the Alien
15 Tort Statute and the Torture Victim Protection Act of 1991, see
16 28 U.S.C. §§ 1350 & note, as well as other claims, arising from
17 alleged torture that was committed in Argentina by the
18 Argentinian government with the collaboration of an Argentina-
19 based subsidiary of the German corporate defendant. See
20 Daimler, 134 S. Ct. at 750-52. The Supreme Court rejected the
21 argument that the California federal court could exercise
22 general personal jurisdiction over the German corporation based
23 on the continuous activities in California of the German
24 corporation's indirect United States subsidiary. See id. at

1 751. Daimler concluded that the German corporate parent, which
2 was not incorporated in California and did not have its
3 principal place of business in California, could not be
4 considered to be "at home in California" and subject to general
5 jurisdiction there. Id. at 762.
6 Daimler analogized its "at-home test" to that of an
7 individual's domicile. "[F]or a corporation, it is an equivalent
8 place, one in which the corporation is fairly regarded as at
9 home. With respect to a corporation, the place of incorporation
10 and principal place of business are paradigm bases for general
11 jurisdiction." Id. at 760 (alterations, internal quotation
12 marks, and citations omitted).
13 As an initial matter, while Daimler involved corporations,
14 and neither the PA nor the PLO is a corporation---the PA is a
15 non-sovereign government and the PLO is a foreign agent, and
16 both are unincorporated associations, see Part I.A---Daimler's
17 reasoning was based on an analogy to general jurisdiction over
18 individuals, and there is no reason to invent a different test
19 for general personal jurisdiction depending on whether the
20 defendant is an individual, a corporation, or another entity.
21 Indeed, in Gucci this Court relied on Daimler when it found
22 there was no general personal jurisdiction over the Bank of
23 China, a non-party bank that was incorporated and headquartered
24 in China and owned by the Chinese government. The Court

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

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

22 As the District Court for the District of Columbia
23 observed, "[i]t is common sense that the single ascertainable
24 place where a government such a[s] the Palestinian Authority

1 should be amenable to suit for all purposes is the place where
2 it governs. Here, that place is the West Bank, not the United
3 States." Livnat, 82 F. Supp. 3d at 30; see also Safra, 82 F.
4 Supp. 3d at 48. The same analysis applies equally to the PLO,
5 which during the relevant period maintained its headquarters in
6 Palestine and Amman, Jordan. See Klieman, 82 F. Supp. 3d at 245
7 ("Defendants' alleged contacts . . . do not suffice to render
8 the PA and the PLO 'essentially at home' in the United States.")
9 The activities of the defendants' mission in Washington,
10 D.C.---which the district court concluded simultaneously served
11 as an office for the PLO and the PA, see Sokolow, 2011 WL
12 1345086, at *3---were limited to maintaining an office in
13 Washington, promoting the Palestinian cause in speeches and
14 media appearances, and retaining a lobbying firm. See id. at
15 *4.
16 These contacts with the United States do not render the PA
17 and the PLO "essentially at home" in the United States. See
18 Daimler, 134 S. Ct. at 754. The commercial contacts that the
19 district court found supported general jurisdiction are like
20 those rejected as insufficient by the Supreme Court in Daimler.
21 In Daimler, the Supreme Court held as "unacceptably grasping" a
22 formulation that allowed for "the exercise of general
23 jurisdiction in every State in which a corporation 'engages in a
24 substantial, continuous, and systematic course of business.'"

1 134 S. Ct. at 761. The Supreme Court found that a court in
2 California could not exercise general personal jurisdiction over
3 the German parent company even though that company's indirect
4 subsidiary was the largest supplier of luxury vehicles to the
5 California market. Id. at 752. The Supreme Court deemed
6 Daimler's contacts with California "slim" and concluded that
7 they would "hardly render it at home" in California. Id. at
8 760.
9 Daimler's contacts with California were substantially
10 greater than the defendants' contacts with the United States in
11 this case. But still the Supreme Court rejected the proposition
12 that Daimler should be subjected to general personal
13 jurisdiction in California for events that occurred anywhere in
14 the world. Such a regime would allow entities to be sued in
15 many jurisdictions, not just the jurisdictions where the
16 entities were centered, for worldwide events unrelated to the
17 jurisdiction where suit was brought. The Supreme Court found
18 such a conception of general personal jurisdiction to be
19 incompatible with due process. The Supreme Court explained:

20 General jurisdiction . . . calls for an appraisal of a
21 corporation's activities in their entirety, nationwide
22 and worldwide. A corporation that operates in many
23 places can scarcely be deemed at home in all of them.
24 Otherwise, "at home" would be synonymous with "doing
25 business" tests framed before specific jurisdiction
26 evolved in the United States. Nothing in
27 International Shoe and its progeny suggests that "a
28 particular quantum of local activity" should give a

1 State authority over a "far larger quantum of . . .
2 activity" having no connection to any in-state
3 activity.
4
5 Id. at 762 n.20 (internal citations omitted). Regardless of the
6 commercial contacts occasioned by the defendants' Washington,
7 D.C. mission, there is no doubt that the "far larger quantum" of
8 the defendants' activities took place in Palestine.
9 The district court held that the record before it was
10 "insufficient to conclude that either defendant is 'at home' in
11 a particular jurisdiction other than the United States."
12 Sokolow, 2014 WL 6811395, at *2. That conclusion is not
13 supported by the record. The evidence demonstrates that the
14 defendants are "at home" in *Palestine*, where these entities are
15 headquartered and from where they are directed. See Daimler,
16 134 S. Ct. at 762 n.20.[11]
17 The district court also erred in placing the burden on the
18 defendants to prove that there exists "an alternative forum
19 where Plaintiffs' claims could be brought, and where the foreign
20 court could grant a substantially similar remedy." Sokolow,
21 2011 WL 1345086, at *7. Daimler imposes no such burden. In
22 fact, it is the plaintiff's burden to establish that the court
23 has personal jurisdiction over the defendants. See Koehler v.

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

1 Bank of Bermuda Ltd., 101 F.3d 863, 865 (2d Cir. 1996) ("[T]he
2 plaintiff bears the ultimate burden of establishing jurisdiction
3 over the defendant by a preponderance of evidence . . . .");
4 Metro. Life Ins., 84 F.3d at 566-67; see also Klieman, 82 F.
5 Supp. 3d at 243; Livnat, 82 F. Supp. 3d at 30; Safra, 82 F.
6 Supp. 3d at 49.[12]

7 Finally, the district court did not dispute the defendants'
8 ties to Palestine but concluded that the court had general
9 jurisdiction pursuant to an "exception" that the Supreme Court
10 alluded to in a footnote in Daimler. In Daimler, the Supreme
11 Court did not "foreclose the possibility that in an exceptional
12 case, a corporation's operations in a forum other than its
13 formal place of incorporation or principal place of business may
14 be so substantial and of such a nature as to render the
15 corporation at home in that State." 134 S. Ct. at 761 n.19
16 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437,
17 447-48 (1952)).

[12] The district court's focus on the importance of identifying an alternative forum may have been borrowed inappositely from *forum non conveniens* jurisprudence, pursuant to which a court considers (1) the degree of deference to be afforded to the plaintiff's choice of forum; (2) whether there is an adequate alternative forum for adjudicating the dispute; and (3) whether the balance of private and public interests tips in favor of adjudication in one forum or the other. See Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005). However, that is not the test for general jurisdiction under Daimler, 134 S. Ct. at 762 n.20.

1 Daimler analyzed the 1952 Perkins case, "'the textbook case
2 of general jurisdiction appropriately exercised over a foreign
3 corporation that has not consented to suit in the forum.'" Id.
4 at 755-56 (quoting Goodyear, 564 U.S. at 928). The defendant in
5 Perkins was a company, Benguet Consolidated Mining Company
6 ("Benguet"), which was incorporated under the laws of the
7 Philippines, where it operated gold and silver mines. During
8 World War II, the Japanese occupied the Philippines, and
9 Benguet's president relocated to Ohio, where he kept an office,
10 maintained the company's files, and oversaw the company's
11 activities. Perkins, 342 U.S. at 447-48. The plaintiff, a
12 nonresident of Ohio, sued Benguet in a state court in Ohio on a
13 claim that neither arose in Ohio nor related to the
14 corporation's activities in Ohio, but the Supreme Court
15 nevertheless held that the Ohio courts could constitutionally
16 exercise general personal jurisdiction over the defendant. Id.
17 at 438, 440. As the Supreme Court later observed: "'Ohio was
18 the corporation's principal, if temporary, place of business.'"
19 Daimler, 134 S. Ct. at 756 (quoting Keeton v. Hustler Magazine,
20 Inc., 465 U.S. 770, 780 n.11 (1984)).
21 Such exceptional circumstances did not exist in Daimler,
22 id. at 761 n.19, or in Gucci. In Gucci, this Court held that,
23 while a nonparty bank had branch offices in the forum, it was
24 not an "exceptional case" in which to exercise general personal

1 jurisdiction where the bank was incorporated and headquartered
2 elsewhere, and its contacts were not "'so continuous and
3 systematic as to render [it] essentially at home in the forum.'"
4 768 F.3d at 135 (quoting Daimler, 134 S. Ct. at 761 n.19).
5 The defendants' activities in this case, as with those of
6 the defendants in Daimler and Gucci, "plainly do not approach"
7 the required level of contact to qualify as "exceptional."
8 Daimler, 134 S. Ct. at 761 & n.19. The PLO and PA have not
9 transported their principle "home" to the United States, even
10 temporarily, as the defendant had in Perkins. See Brown v.
11 Lockheed Martin Corp., 814 F.3d 619, 628-30 (2d Cir. 2016).
12 Accordingly, pursuant to the Supreme Court's recent
13 decision in Daimler, the district court could not properly
14 exercise general personal jurisdiction over the defendants.
15 **B.**
16 The district court did not rule explicitly on whether it
17 had specific personal jurisdiction over the defendants, but the
18 question was sufficiently briefed and argued to allow us to
19 reach that issue.
20 "The inquiry whether a forum State may assert specific
21 jurisdiction over a nonresident defendant focuses on the
22 relationship among the defendant, the forum, and the litigation.
23 For a State to exercise jurisdiction consistent with due
24 process, the defendant's suit-related conduct must create a

1 substantial connection with the forum State." Walden v. Fiore,
2 134 S. Ct. 1115, 1121 (2014) (internal quotation marks and
3 citations omitted). The relationship between the defendant and
4 the forum "must arise out of contacts that the 'defendant
5 *himself'* creates with the forum." Id. at 1122 (citing Burger
6 King, 471 U.S. at 475) (emphasis in original). The "'minimum
7 contacts' analysis looks to the defendant's contacts with the
8 forum State itself, not the defendant's contacts with persons
9 who reside there." Id. And the "same principles apply when
10 intentional torts are involved." Id. at 1123.

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

22 The ATA provides:

23 Any national of the United States injured in his or
24 her person, property, or business by reason of an act
25 of international terrorism, or his or her estate,

1 survivors, or heirs, may sue therefor in any
2 appropriate district court of the United States and
3 shall recover threefold the damages he or she sustains
4 and the cost of the suit, including attorney's fees.
5
6 18 U.S.C. § 2333(a)

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

12 To establish an "unlawful action," the plaintiffs must show
13 that their injuries resulted from an act of "international
14 terrorism." The ATA defines "international terrorism" as
15 activities that, among other things, "involve violent acts or
16 acts dangerous to human life that are a violation of the
17 criminal laws of the United States or of any State, or that
18 would be a criminal violation if committed within the
19 jurisdiction of the United States or of any State." 18 U.S.C.
20 § 2331(1)(A). The acts must also appear to be intended "(i) to
21 intimidate or coerce a civilian population; (ii) to influence
22 the policy of a government by intimidation or coercion; or
23 (iii) to affect the conduct of a government by mass destruction,
24 assassination, or kidnapping." 18 U.S.C. § 2331(1)(B)(i)-(iii).

25 The plaintiffs asserted that the defendants were
26 responsible on a *respondeat superior* theory for a variety of

1 predicate acts, including murder and attempted murder, 18 U.S.C.
2 §§ 1111, 2332, use of a destructive device on a mass
3 transportation vehicle, 18 U.S.C. § 1992, detonating an
4 explosive device on a public transportation system, 18 U.S.C.
5 § 2332f, and conspiracy to commit those acts, 18 U.S.C. § 371.
6 See Sokolow, 60 F. Supp. 3d at 515. They also asserted that the
7 defendants directly violated federal and state antiterrorism
8 laws, including 18 U.S.C. § 2339B, by providing material support
9 to FTO-designated groups (the AAMB and Hamas) and by harboring
10 persons whom the defendants knew or had reasonable grounds to
11 believe committed or were about to commit an offense relating to
12 terrorism, see 18 U.S.C. § 2339 *et seq.*; see also Sokolow, 60 F.
13 Supp. 3d at 520-21, 523.

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

21 The bombings and shootings here occurred *entirely* outside
22 the territorial jurisdiction of the United States. Thus, the
23 question becomes: What other constitutionally sufficient

connection did the commission of *these* torts by *these* defendants have to *this* jurisdiction?

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

In addition, the jury found that in five of the attacks---the January 22, 2002 Jaffa Road Shooting, the January 27, 2002 Jaffa Road Bombing, the March 21, 2002 King George Street Bombing, the July 31, 2002 Hebrew University Bombing, and the January 29, 2004 Bus No. 19 Bombing---the PA was liable because an employee of the PA, acting within the scope of the employee's employment and in furtherance of the activities of the PA, either carried out, or knowingly provided material support or resources that were used in preparation for, or in carrying out, the attack.

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

Finally, the jury found that in three attacks---the June 19, 2002 French Hill Bombing, the July 31, 2002 Hebrew

1 University Bombing, and the January 29, 2004 Bus No. 19 Bombing-
2 --the PA and PLO knowingly provided material support to an FTO-
3 designated group (the AAMB or Hamas).
4 But these actions, as heinous as they were, were not
5 sufficiently connected to the United States to provide specific
6 personal jurisdiction in the United States. There is no basis
7 to conclude that the defendants participated in these acts in
8 the United States or that their liability for these acts
9 resulted from their actions that did occur in the United States.
10 In short, the defendants were liable for tortious
11 activities that occurred outside the United States and affected
12 United States citizens only because they were victims of
13 indiscriminate violence that occurred abroad. The residence or
14 citizenship of the plaintiffs is an insufficient basis for
15 specific jurisdiction over the defendants. A focus on the
16 relationship of the defendants, the forum, and the defendants'
17 suit-related conduct points to the conclusion that there is no
18 specific personal jurisdiction over the defendants for the torts
19 in this case. See Walden, 134 S. Ct. at 1121; see also
20 Goodyear, 564 U.S. at 923.
21 In the absence of such a relationship, the plaintiffs argue
22 on appeal that the Court has specific jurisdiction for three
23 reasons. First, the plaintiffs argue that, under the "effects
24 test," a defendant acting entirely outside the United States is

1 subject to jurisdiction "if the defendant expressly aimed its
2 conduct" at the United States. Licci ex rel. Licci v. Lebanese
3 Canadian Bank, SAL, 732 F.3d 161, 173 (2d Cir. 2013). The
4 plaintiffs point to the jury verdict that found that the
5 defendants provided material support to designated FTOs---the
6 AAMB and Hamas---and that the defendants' employees, acting
7 within the scope of their employment, killed and injured United
8 States citizens. They also argue that the defendants' terror
9 attacks were intended to influence United States policy to favor
10 the defendants' political goals. Second, the plaintiffs argue
11 that the defendants purposefully availed themselves of the forum
12 by establishing a continuous presence in the United States and
13 pressuring United States government policy by conducting terror
14 attacks in Israel and threatening further terrorism unless
15 Israel withdrew from Gaza and the West Bank. See Banks Brussels
16 Lambert, 305 F.3d at 128. Third, the plaintiffs argue that the
17 defendants consented to personal jurisdiction under the ATA by
18 appointing an agent to accept process.

19 Walden forecloses the plaintiffs' arguments. First, with
20 regard to the effects test, the defendant must "expressly aim[]"
21 his conduct at the United States. See Licci, 732 F. 3d at 173.
22 Pursuant to Walden, it is "insufficient to rely on a defendant's
23 'random, fortuitous, or attenuated contacts' or on the
24 'unilateral activity' of a plaintiff" with the forum to

1 establish specific jurisdiction. Walden, 134 S. Ct. at 1123
2 (quoting Burger King, 471 U.S. at 475). While the killings and
3 related acts of terrorism are the kind of activities that the
4 ATA proscribes, those acts were unconnected to the forum and
5 were not expressly aimed at the United States. And "[a] forum
6 State's exercise of jurisdiction over an out-of-state
7 intentional tortfeasor must be based on intentional conduct by
8 the defendant that creates the necessary contacts with the
9 forum." Id. That is not the case here.
10 The plaintiffs argue that United States citizens were
11 targets of these attacks, but their own evidence establishes the
12 random and fortuitous nature of the terror attacks. For
13 example, at trial, the plaintiffs emphasized how the "killing
14 was indeed random" and targeted "Christians and Jews, Israelis,
15 Americans, people from all over the world." J.A. 3836.
16 Evidence at trial showed that the shooters fired
17 "indiscriminately," J.A. 3944, and chose sites for their suicide
18 bomb attacks that were "full of people," J.A. 4030-31, because
19 they sought to kill "as many people as possible," J.A. 3944; see
20 also J.A. 4031.
21 The plaintiffs argue that "[i]t is a fair inference that
22 Defendants *intended to* hit American citizens by continuing a
23 terror campaign that continuously hit Americans . . . ." Pls.'
24 Br. at 37 (emphasis in original). But the Constitution requires

1 much more purposefully directed contact with the forum. For
2 example, the Supreme Court has "upheld the assertion of
3 jurisdiction over defendants who have purposefully 'reach[ed]
4 out beyond' their State and into another by, for example,
5 entering a contractual relationship that 'envisioned continuing
6 and wide-reaching contacts' in the forum State," Walden, 134 S.
7 Ct. at 1122 (alteration in original) (quoting Burger King, 472
8 U.S. at 479-80), or "by circulating magazines to 'deliberately
9 exploi[t]' a market in the forum State." Id. (alteration in
10 original) (quoting Keeton, 465 U.S. at 781). But there was no
11 such purposeful connection to the forum in this case, and it
12 would be impermissible to speculate based on scant evidence what
13 the terrorists intended to do.

14 Furthermore, the facts of Walden also suggest that a
15 defendant's mere knowledge that a plaintiff resides in a
16 specific jurisdiction would be insufficient to subject a
17 defendant to specific jurisdiction in that jurisdiction if the
18 defendant does nothing in connection with the tort in that
19 jurisdiction. In Walden, the petitioner was a police officer in
20 Georgia who was working as a deputized Drug Enforcement
21 Administration ("DEA") agent at the Atlanta airport. He was
22 informed that the respondents, Gina Fiore and Keith Gipson, were
23 flying from San Juan, Puerto Rico through Atlanta en route to
24 their final destination in Las Vegas, Nevada. See Joint

1 Appendix, Walden v. Fiore, 2013 WL 2390248, *41-42 (U.S.) (Decl.
2 of Anthony Walden). Walden and his DEA team stopped the
3 respondents and searched their bags in Atlanta and examined
4 their California drivers' licenses. Id.; Walden, 134 S. Ct. at
5 1119. Walden found almost $100,000 in cash in the respondents'
6 carry-on bag and seized it, giving rise to a claim for an
7 unconstitutional search under Bivens v. Six Unknown Named Agents
8 of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). See
9 Walden, 134 S. Ct. at 1119-20. The Supreme Court found that the
10 petitioner's contacts with Nevada were insufficient to establish
11 personal jurisdiction over the petitioner in a Nevada federal
12 court, even though Walden knew that the respondents were
13 destined for Nevada. See id. at 1119.
14 In this case, the plaintiffs point us to no evidence that
15 these indiscriminate terrorist attacks were specifically
16 targeted against United States citizens, and the mere knowledge
17 that United States citizens might be wronged in a foreign
18 country goes beyond the jurisdictional limit set forth in
19 Walden.
20 The plaintiffs cite to several cases to support their
21 argument that specific jurisdiction is warranted under an
22 "effects test." Those cases are easily distinguishable from
23 this case. Indeed, they point to the kinds of circumstances

1 that would give rise to specific jurisdiction under the ATA,
2 which are not present here.
3 For example, in Mwani v. Bin Laden, 417 F.3d 1 (D.C. Cir.
4 2005), the Court of Appeals for the District of Columbia Circuit
5 found that specific personal jurisdiction over Osama Bin Laden
6 and al Qaeda was supported by allegations that they
7 "orchestrated the bombing of the *American* embassy in Nairobi,
8 not only to kill both American and Kenyan employees inside the
9 building, but to cause pain and sow terror in the embassy's home
10 country, *the United States*," as well as allegations of "an
11 ongoing conspiracy to attack the United States, with overt acts
12 occurring *within* this country's borders." Id. at 13 (emphasis
13 added). The plaintiffs pointed to the 1993 World Trade Center
14 bombing, as well as the plot to bomb the United Nations, Federal
15 Plaza, and the Lincoln and Holland Tunnels in New York. Id.
16 Furthermore, the Court of Appeals found that bin Laden and al
17 Qaeda "'purposefully directed' [their] activities at residents"
18 of the United States, and that the case "result[ed] from
19 injuries to the plaintiffs 'that arise out of or relate to those
20 activities,'" id. (quoting Burger King, 471 U.S. at 472).
21 "[E]xercising specific jurisdiction because the victim of a
22 foreign attack happened to be an American would run afoul of the
23 Supreme Court's holding that '[d]ue process requires that a
24 defendant be haled into court in a forum State based on his own

1 affiliation with the State, not based on the "random,
2 fortuitous, or attenuated" contacts he makes by interacting with
3 other persons affiliated with the State.'" Klieman, 82 F. Supp.
4 3d at 248 (quoting Walden, 134 S. Ct. at 1123); see Safra, 82 F.
5 Supp. 3d at 52 (distinguishing Mwani); see also In re Terrorist
6 Attacks on Sept. 11, 2001, 538 F.3d at 95-96 (holding that even
7 if Saudi princes could and did foresee that Muslim charities
8 would use their donations to finance the September 11 attacks,
9 providing indirect funding to an organization that was openly
10 hostile to the United States did not constitute the type of
11 intentional conduct necessary to constitute purposeful direction
12 of activities at the forum); Livnat, 82 F. Supp. 3d at 33.

13 The plaintiffs also rely on O'Neill, 714 F.3d at 659, which
14 related to the September 11 attacks. In that case, this Court
15 first clarified that "specific personal jurisdiction properly
16 exists where the defendant took 'intentional, and allegedly
17 tortious, actions . . . expressly aimed' at the forum." Id. at
18 674 (quoting Calder, 465 U.S. at 789). This Court also noted
19 that, "the fact that harm in the forum is foreseeable . . . is
20 insufficient for the purpose of establishing specific personal
21 jurisdiction over a defendant." Id. This Court then held that
22 the plaintiffs' allegations were insufficient to establish
23 personal jurisdiction over about two dozen defendants, but that
24 jurisdictional discovery was warranted for twelve other

1 defendants whose "alleged support of al Qaeda [was] more
2 direct." Id. at 678; see also id. at 656-66. Those defendants
3 "allegedly controlled and managed some of [the front]
4 'charitable organizations' and, through their positions of
5 control, they allegedly sent financial and other material
6 support *directly* to al Qaeda when al Qaeda allegedly was known
7 to be *targeting the United States*." Id. (second emphasis
8 added).

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

1 that al Qaeda was "known to be targeting the United States"---
2 and not simply that it and other defendants were "terrorist
3 organizations." Id. at 678.[13]

4 The plaintiffs also cite Calder v. Jones, 465 U.S. at 783.
5 In that case, a California actress brought a libel suit in
6 California state court against a reporter and an editor, both of
7 whom worked for a tabloid at the tabloid's Florida headquarters.
8 Id. at 784. The plaintiff's claims were based on an article
9 written and edited by the defendants in Florida for the tabloid,
10 which had a California circulation of about 600,000. Id. at
11 784-86. The Supreme Court held that California's assertion of
12 personal jurisdiction over the defendants for a libel action was
13 proper based on the effects of the defendants' conduct in
14 California. Id. at 788. "The article was drawn from California
15 sources, and the brunt of the harm, in terms both of
16 respondent's emotional distress and the injury to her
17 professional reputation, was suffered in California," the
18 Supreme Court held. Id. at 788-89. "In sum, California is the

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

1 *focal point* both of the story and of the harm suffered." Id. at
2 789 (emphasis added); see also Walden, 134 S. Ct. at 1123
3 (describing the contacts identified in Calder as "ample" to
4 support specific jurisdiction). As the Supreme Court explained
5 in Walden, the jurisdictional inquiry in Calder focused on the
6 relationship among the defendant, the forum, and the litigation.
7 Walden, 134 S. Ct. at 1123.
8 Unlike in Calder, it cannot be said that the United States
9 is the focal point of the torts alleged in this litigation. In
10 this case, the United States is not the nucleus of the harm---
11 Israel is. See Safra, 82 F. Supp. 3d at 51.
12 Finally, the plaintiffs rely on two criminal cases, United
13 States v. Yousef, 327 F.3d 56 (2d Cir. 2003) (per curiam), and
14 United States v. Al Kassar, 660 F.3d 108 (2d Cir. 2011), for
15 their argument that the "effects test" supports jurisdiction.
16 In both cases, this Court applied the due process test for
17 asserting jurisdiction over extraterritorial criminal conduct,
18 which differs from the test applicable in this civil case, see
19 Al Kassar, 660 F.3d at 118; Yousef, 327 F.3d at 111-12, and does
20 not require a nexus between the specific criminal conduct and
21 harm within the United States. See also United States v.
22 Murillo, No. 15-4235, 2016 WL 3257016, at *3 (4th Cir. June 14,
23 2016)("[I]t is not arbitrary to prosecute a defendant in the
24 United States if his actions affected significant American

1 interests---even if the defendant did not mean to affect those
2 interests." (internal citation and quotation marks omitted)).
3 In order to apply a federal criminal statute to a defendant
4 extraterritorially consistent with due process, "'there must be
5 a sufficient nexus between the defendant and the United States,
6 so that such application would not be arbitrary or fundamentally
7 unfair.' For non-citizens acting entirely abroad, a
8 jurisdictional nexus exists when the aim of that activity is to
9 cause harm inside the United States *or* to U.S. citizens *or*
10 interests." Al Kassar, 660 F.3d 108, 118 (emphasis added)
11 (quoting Yousef, 327 F.3d at 111).

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

15 Even setting aside the fact that both Yousef and Al Kassar
16 applied the more expansive due process test in criminal cases,
17 the defendants in both cases had more substantial connections
18 with the United States than the defendants have in the current
19 litigation. Yousef involved a criminal prosecution for the
20 bombing of an airplane traveling from the Philippines to Japan.
21 See 327 F.3d at 79. The Yousef defendants "conspired to attack
22 a dozen United States-flag aircraft in an effort to inflict
23 injury on this country and its people and influence American
24 foreign policy, and their attack on the Philippine Airlines

1 flight was a 'test-run' in furtherance of this conspiracy." Id.
2 at 112.
3 In Al Kassar, several defendants were convicted of
4 conspiring to kill United States officers, to acquire and export
5 anti-aircraft missiles, and knowingly to provide material
6 support to a terrorist organization; two were also convicted of
7 conspiring to kill United States citizens and of money
8 laundering. 660 F.3d at 115. On appeal, the defendants
9 challenged their convictions on a number of grounds, including
10 that the defendants' Fifth Amendment due process rights were
11 violated by prosecuting them for activities that occurred
12 abroad. Id. at 117-18. This Court rejected that argument
13 because the defendants conspired to sell arms to a group "with
14 the understanding that they would be used to kill Americans and
15 destroy U.S. property; the aim therefore was to harm U.S.
16 citizens and interests and to threaten the security of the
17 United States." Id. at 118.
18 In this case, the defendants undertook terror attacks
19 within Israel, and there is no evidence the attacks specifically
20 targeted United States citizens. See Safra, 82 F. Supp. 3d at
21 53-54; see also Livnat, 82 F. Supp. 3d at 34.
22 Accordingly, in the present case, specific jurisdiction is
23 not appropriate under the "effects test."

1 Second, Walden undermines the plaintiffs' arguments that
2 the defendants met the "purposeful availment" test by
3 establishing a continuous presence in the United States and
4 pressuring United States government policy. The emphasis on the
5 defendants' Washington, D.C. mission confuses the issue: Walden
6 requires that the "suit-related conduct"---here, the terror
7 attacks in Israel---have a "substantial connection with the
8 forum." 134 S. Ct. at 1121. The defendants' Washington mission
9 and its associated lobbying efforts do not support specific
10 personal jurisdiction on the ATA claims. The defendants cannot
11 be made to answer in this forum "with respect to matters
12 unrelated to the forum connections." Goodyear, 564 U.S. at 923;
13 see also Klieman, 82 F. Supp. 3d at 247 ("Courts typically
14 require that the plaintiff show some sort of causal relationship
15 between a defendant's U.S. contacts and the episode in suit.").
16 The plaintiffs argue on appeal that the defendants intended
17 their terror campaign to influence not just Israel, but also the
18 United States. They point to trial evidence---specifically
19 pamphlets published by the PA---that, the plaintiffs argue,
20 shows that the defendants were attempting to influence United
21 States policy toward the Israel-Palestinian conflict. The
22 exhibits themselves speak in broad terms of how United States
23 interests in the region are in danger and how the United States
24 and Europe should exert pressure on Israel to change its

1 practices toward the Palestinians. It is insufficient for
2 purposes of due process to rely on evidence that a political
3 organization sought to influence United States policy, without
4 some other connection among the activities underlying the
5 litigation, the defendants, and the forum. Such attenuated
6 activity is insufficient under Walden.

7 The plaintiffs cite Licci, 732 F.3d 161, to support their
8 argument that the defendants meet the purposeful availment test.
9 But the circumstances of that case are distinguishable and
10 illustrate why the defendants here do not meet that test. In
11 Licci, American, Canadian, and Israeli citizens who were injured
12 or whose family members were killed in a series of terrorist
13 rocket attacks by Hizbollah in Israel brought an action under
14 the ATA and other laws against the Lebanese Canadian Bank, SAL
15 ("LCB"), which allegedly facilitated Hizbollah's acts by using
16 correspondent banking accounts at a defendant New York bank
17 (American Express Bank Ltd.) to effectuate wire transfers
18 totaling several million dollars on Hizbollah's behalf. Id. at
19 164-66. This Court concluded that the exercise of personal
20 jurisdiction over the defendants was constitutional because of
21 the defendants' "repeated use of New York's banking system, as
22 an instrument for accomplishing the alleged wrongs for which the
23 plaintiffs seek redress." Id. at 171. These contacts
24 constituted "'purposeful[] avail[ment] . . . of the privilege of

1 doing business in [New York],' so as to permit the subjecting of
2 LCB to specific jurisdiction within the Southern District of New
3 York . . . ." Id. (quoting Bank Brussels Lambert, 305 F.3d at
4 127).
5 "It should hardly be unforeseeable to a bank that selects
6 and makes use of a particular forum's banking system that it
7 might be subject to the burden of a lawsuit in that forum for
8 wrongs *related to*, and *arising from*, *that use*." Id. at 171-72
9 (emphasis added) (footnote omitted).
10 In Licci, this Court also distinguished the "effects test"
11 theory of personal jurisdiction which is "typically invoked
12 where (*unlike here*) the conduct that forms the basis for the
13 controversy occurs entirely out-of-forum, and the only relevant
14 jurisdictional contacts with the forum are therefore in-forum
15 effects harmful to the plaintiff." Id. at 173 (emphasis added)
16 (footnote omitted). The Court held that the effects test was
17 inappropriate because "the constitutional exercise of personal
18 jurisdiction over a foreign defendant" turned on conduct that
19 "occur[ed] *within* the forum," id. (emphasis in original), namely
20 the repeated use of bank accounts in New York to support the
21 alleged wrongs for which the plaintiffs sued.
22 In this case, there is no such connection between the
23 conduct on which the alleged personal jurisdiction is based and
24 the forum. And the connections the defendants do have with the

1 United States---the Washington, D.C. and New York missions---
2 revolve around lobbying activities that are not proscribed by
3 the ATA and are not connected to the wrongs for which the
4 plaintiffs here seek redress.

5 At a hearing before the district court, the plaintiffs also
6 cited Bank Brussels Lambert, 305 F.3d 120, as their "best case"
7 for their purposeful availment argument. See J.A. 1128. But
8 that case, too, is distinguishable. There, a client bank sued
9 its lawyers for legal malpractice that occurred in Puerto Rico.
10 Bank Brussels Lambert, 305 F.3d at 123. This Court held that
11 the Puerto Rican law firm defendant had sufficient minimum
12 contacts with the New York forum and purposely availed itself of
13 the privilege of doing business in New York, because, although
14 the law firm did not solicit the bank as a client in New York,
15 the firm maintained an apartment in New York partially for the
16 purpose of better servicing its New York clients, the firm faxed
17 newsletters regarding Puerto Rican legal developments to persons
18 in New York, the firm had numerous New York clients, and its
19 marketing materials touted the firm's close relationship with
20 the Federal Reserve Bank of New York. Id. at 127-29. "The
21 engagement which gave rise to the dispute here is not simply one
22 of a string of fortunate coincidences for the firm. Rather, the
23 picture which emerges from the above facts is that of a law firm
24 which seeks to be known in the New York legal market, makes

1 efforts to promote and maintain a client base there, and profits
2 substantially therefrom." Id. at 128. This Court held that
3 there was "nothing fundamentally unfair about requiring the firm
4 to defend itself in the New York courts when a dispute arises
5 from its representation of a New York client---a representation
6 which developed in a market it had deliberately cultivated and
7 which, after all, the firm voluntarily undertook." Id. at 129.
8 In short, the defendants' contacts with the forum were
9 sufficiently related to the malpractice claims that were at
10 issue in the suit.

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

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

1 Third, the plaintiffs' argue that the defendants consented
2 to personal jurisdiction under the ATA by appointing an agent to
3 accept process. It is clear that the ATA permitted service of
4 process on the representative of the PLO and PA in Washington.
5 See 18 U.S.C. § 2334(a). However, the statute does not answer
6 the constitutional question of whether due process is satisfied.
7 The plaintiffs contend that under United States v. Scophony
8 Corp. of America, 333 U.S. 795 (1948), meeting the statutory
9 requirement for service of process suffices to establish
10 personal jurisdiction. But Scophony does not stand for that
11 proposition. The defendant in Scophony "was 'transacting
12 business' of a substantial character in the New York district at
13 the times of service, so as to establish venue there," and so
14 that "such a ruling presents no conceivable element of offense
15 to 'traditional notions of fair play and substantial justice.'"
16 Id. at 818 (quoting Int'l Shoe, 326 U.S. at 316). Thus,
17 Scophony affirms the understanding, echoed by this Court in
18 Licci, 673 F.3d at 60, and O'Neill, 714 F.3d at 673-74, that due
19 process analysis---considerations of minimum contacts and
20 reasonableness---applies even when federal service-of-process
21 statutes are satisfied. Simply put, "the exercise of personal
22 jurisdiction must comport with constitutional due process
23 principles." Licci, 673 F.3d at 60; see also Brown, 814 F.3d at
24 641. As explained above, due process is not satisfied in this

1 case, and the courts have neither general nor specific personal
2 jurisdiction over the defendants, regardless of the service-of-
3 process statute.
4 In sum, because the terror attacks in Israel at issue here
5 were not expressly aimed at the United States and because the
6 deaths and injuries suffered by the American plaintiffs in these
7 attacks were "random [and] fortuitous" and because lobbying
8 activities regarding American policy toward Israel are
9 insufficiently "suit-related conduct" to support specific
10 jurisdiction, the Court lacks specific jurisdiction over these
11 defendants. Walden, 134 S. Ct. at 1121, 1123.
12 ***
13 The terror machine gun attacks and suicide bombings that
14 triggered this suit and victimized these plaintiffs were
15 unquestionably horrific. But the federal courts cannot exercise
16 jurisdiction in a civil case beyond the limits prescribed by the
17 due process clause of the Constitution, no matter how horrendous
18 the underlying attacks or morally compelling the plaintiffs'
19 claims.
20 The district court could not constitutionally exercise
21 either general or specific personal jurisdiction over the
22 defendants in this case. Accordingly, this case must be
23 dismissed.
24

1 **CONCLUSION**

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