

Case Name and Number: *Twitter, Inc. v. Taamneh, et al.*, No. 21-1496 & *Gonzalez, et al. v. Google LLC*, No. 21-1333

Introduction: Today, in *Taamneh*, the Supreme Court held in a unanimous decision that the plaintiffs, who were allegedly injured in an ISIS terrorist attack, failed to state a claim against Twitter for aiding and abetting the terrorist act that injured them. The Court held that, to prevail on an aiding-and-abetting claim, a plaintiff must prove, among other things, “conscious, voluntary, and culpable participation” by the defendant in the act of international terrorism that injured the plaintiff. It determined that the allegations here did not satisfy that standard. Separately, in *Gonzalez*, the Court declined to address the scope of the immunity conferred by 47 U.S.C. § 230, which provides in part that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by” a third party. Because *Gonzalez* involved claims very similar to those addressed in *Taamneh*, and, as a result of the Court’s holding in *Taamneh*, the Court “decline[d] to address the application of § 230 to a complaint that appears to state little, if any, plausible claim for relief.”

Taamneh

Background: The Anti-Terrorism Act creates a private civil cause of action for Americans injured “by reason of an act of international terrorism.” 18 U.S.C. § 2333(a). In 2016, Congress, in the Justice Against Sponsors of Terrorism Act (JASTA), expanded liability to include a person “who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such act of international terrorism.” *Id.* § 2333(d)(2). Aiding-and-abetting claims have been brought against a range of legitimate businesses, including energy companies, media outlets, banks, pharmaceutical companies, contractors, and internet businesses.

This case arose out of an ISIS attack in Turkey that injured the plaintiffs. They sued Facebook, Google, and Twitter, claiming that—by permitting ISIS to use their platforms to recruit adherents, raise money, and spread their views—those companies were liable for aiding and abetting the attack. The Ninth Circuit upheld the aiding-and-abetting claim.

Court’s Holding: In an opinion written by Justice Thomas, the Supreme Court unanimously held that the statutory aiding-and-abetting standard—“knowingly providing substantial assistance”—requires “conscious, voluntary, and culpable participation in another’s wrongdoing.”

The Court explained that a broad concept of “helping” in the commission of a tort “could sweep in innocent bystanders as well as those who gave only tangential assistance,” allowing “ordinary merchants [to] become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer.” To avoid that result, “truly culpable conduct” is required for imposition of aiding and abetting liability.

In applying this standard, the Court stated, the “knowingly” and “substantial assistance” requirements “work[] in tandem.” Thus, “less substantial assistance require[s] more scienter” to “infer conscious and culpable participation.” On the other hand, “if the assistance were direct and extraordinary then a court might more readily infer conscious participation in the underlying tort.”

When it enacted JASTA, Congress pointed to the decision in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), as “providing the proper legal framework” for assessing secondary liability claims. 130 Stat. 852. The Supreme Court observed that the Ninth Circuit in this case, like other lower courts, had interpreted that statutory reference as “requiring [them] to hew tightly to the precise formulations that

Halberstam used.” The Court rejected that approach, stating that *Halberstam* was “by its own terms a common-law case” and recognized “that its formulations should not ‘be accepted as immutable components’” but rather “‘adapted as new cases test their usefulness in evaluating vicarious liability.’” The touchstone for JASTA liability therefore is the “conceptual core that has animated aiding-and-abetting liability for centuries: that the defendant consciously and culpably ‘participate[d] in a wrongful act so as to help ‘make it succeed.’”

The Supreme Court went on to address a second question: *what* must a defendant aid and abet to be subject to liability. The Ninth Circuit had concluded that a defendant could be held liable for aiding a terrorist group generally; the plaintiff did not have to demonstrate that the defendant aided and abetted the specific “act of international terrorism” that injured the him.

The Supreme Court rejected that approach, holding that “aiding and abetting is inherently a rule of secondary liability for specific wrongful acts.” Accordingly, “it is not enough” to allege that the defendant gave “substantial assistance to a transcendent ‘enterprise’ separate from and floating above all the actionable wrongs that constitute it.” Rather, the defendant “must have aided and abetted . . . another person in the commission of the actionable wrong—here, an act of international terrorism.” The Court emphasized that “the focus must remain on assistance to the tort for which plaintiffs seek to impose liability.”

Applying these requirements to the facts alleged in the complaint, the Court concluded that the plaintiffs here did not plausibly allege that defendants knowingly provided assistance to the attack that injured them.

Justice Jackson filed a concurring opinion stating that “[o]ther cases presenting different allegations and different records may lead to different conclusions” with respect to the sufficiency of the claims.

Mayer Brown filed an *amicus* brief in support of the Petitioner on behalf of the U.S. Chamber of Commerce, National Foreign Trade Council, U.S. Council for International Business, and Business Roundtable.

Read the opinion [here](#).

Gonzalez

This case involves aiding-and-abetting claims under the Anti-Terrorism Act arising out of ISIS attacks in Paris. The plaintiffs alleged that ISIS’s use of YouTube subjected Google to liability for aiding and abetting. The Ninth Circuit held that 47 U.S.C. § 230 protected Google against most of the plaintiffs’ claims, with the exception of the claims alleging that Google approved ISIS videos for advertisements and shared proceeds with ISIS from those advertisements. The Supreme Court granted the plaintiffs’ certiorari petition seeking review of that determination.

Notwithstanding full briefing and oral argument, the Court declined to address the issue, because the *Gonzalez* plaintiffs had “concede[d]” that “the allegations underlying their secondary-liability claims are materially identical to those at issue” in *Taamneh*. Given the Court’s decision in that case, it “decline[d] to address the application of § 230 to a complaint that appears to state little, if any, plausible claim for relief.” The Court therefore issued a per curiam decision remanding the case for consideration by the Ninth Circuit in light of the holding in *Taamneh*.

Mayer Brown filed an *amicus* brief in support of the Respondent on behalf of the Product Liability Advisory Council.

Read the opinion here.