

Nos. 05-1815, 05-1816, 05-1821, 05-1822 (consolidated)

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**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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STANLEY BOIM, individually and as the administrator of the estate  
of David Boim, deceased, and JOYCE BOIM,

Plaintiffs-Appellees,

v.

HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT, *et al.*,

Defendants-Appellants.

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*On Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division  
No. 00 C 2905  
The Honorable Alexander Keys, Magistrate Judge*

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**BRIEF OF WASHINGTON LEGAL FOUNDATION,  
JEWISH INSTITUTE FOR NATIONAL SECURITY AFFAIRS,  
AND ALLIED EDUCATIONAL FOUNDATION AS AMICI CURIAE  
IN SUPPORT OF PLAINTIFFS-APPELLEES URGING *EN BANC*  
REVERSAL OF PANEL'S OPINION**

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## IDENTITY AND INTERESTS OF AMICI CURIAE

The Washington Legal Foundation (WLF) is a national public interest law and policy center with supporters in all 50 states. Founded 30 years ago, WLF devotes a substantial portion of its resources to promoting America's national security. To that end, WLF has appeared in numerous other federal courts to ensure that the United States government is not deprived of the tools necessary to protect this country from those who would seek to destroy it and/or harm its citizens. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Rasul v. Bush*, 542 U.S. 466 (2004); *DeMore v. Kim*, 538 U.S. 510 (2003).

In particular, WLF has participated in cases over the years supporting government efforts to prevent those within the United States from providing support to organizations that engage in terrorism, whether overseas or within the United States, and to support the right of victims of terrorism to obtain compensation from those responsible for their injuries as intended by Congress. *See, e.g., United States v. Stewart*, No. 06-5015-cr(L) (2d Cir.) (appeal pending); *Acree v. Republic of Iraq*, 370 F.3d 41 (D.C. Cir. 2004); *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999); *Humanitarian Law Project v. Mukasey*, 509 F.3d 1122 (9th Cir. 2007).

The Jewish Institute for National Security Affairs (JINSA) is a national, non-profit, non-partisan educational organization based in Washington, D.C. JINSA is committed to explaining the need for a prudent national security policy for the United States, addressing the security requirements of both the U.S. and the State of Israel, and strengthening the strategic cooperative relationship between these two democracies.

The Allied Educational Foundation (AEF) is a non-profit charitable foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* with WLF in national security cases.

All amici support the goals expressed by Congress when it enacted the Anti-Terrorism Act, 18 U.S.C. 2333, namely, to punish and deter international terrorism and every point along the causal chain. Amici are concerned that an unduly narrow reading of that law will effectively nullify the law, frustrate the intent of Congress, and not serve the public interest.

Pursuant to Fed. R. App. P. 29(a), this brief is filed with the consent of all the parties.

## STATEMENT OF THE CASE

The history of this case is recounted by this Court in *Boim v. Holy Land Found. For Relief and Dev.*, 511 F.3d 707 (7th Cir. 2007) (*Boim II*). In brief, 17-year-old David Boim, a United States citizen living with his family in Israel, was gunned down in 1996 in a hail of bullets while waiting at a bus stop with his high school schoolmates by two gunmen who were members of the terrorist wing of Hamas. 511 F.3d at 711. His parents (hereinafter "Boims") brought suit against the Holy Land Foundation for Relief and Development ("HLF") and several other defendants under the Anti-Terrorism Act (ATA), 18 U.S.C. § 2333(a), which provides for civil remedies of treble damages to those injured by reason of an act of international terrorism.

In *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000 (7th Cir. 2002) (*Boim I*), this Court held that liability under the ATA attached not only to persons who committed the terrorist acts, but to all those individuals and organizations along the causal chain of command. On remand, the district court found the HLF and two defendants liable on summary judgment; another defendant, the Quranic Literacy Institute, was found liable by a jury after trial. The jury awarded damages of \$52 million, which was trebled by the court per the ATA.

On the second appeal, this Court vacated the judgment, ruling in *Boim II*

that the Boims failed to prove that the defendants were the cause in fact of their son's death. This Court granted the Boims' petition for rehearing *en banc* and ordered supplemental briefing.

### **SUMMARY OF ARGUMENT**

In its June 16, 2008 Order granting the petition for rehearing *en banc*, the Court asked the parties and potential amici the following question for *en banc* review: "[w]hether a donor to an organization that, the donor knows, practices terrorism, can be liable under 18 U.S.C. § 2333(a) in the absence of proof that the donor intended to advance the violent component of the recipient's activities." Amici submit that the answer is "yes." That is so because regardless of the donor's intent with respect to advancing the violent component of the terrorist organization, the support for the organization itself, even if earmarked for its non-violent activities, inherently advances the organization's violent component.

Money is fungible. A dollar donated to Hamas ostensibly for humanitarian purposes allows Hamas to divert a dollar to buy bullets or explosives. In any event, donating money to Hamas supports its infrastructure, which, during the relevant time period in this case, inextricably provided support for the terrorist attacks against Israel. It is therefore impossible to support only

the humanitarian programs of Hamas without also supporting its “violent component.” This inescapable and unremarkable conclusion is reflected in numerous court decisions under the ATA, including *Boim v. Holy Land Found. For Relief and Dev.*, 511 F.3d 707 (7th Cir. 2007) (*Boim II*).

Amici further submit that as amply demonstrated by the evidence in this case, the Appellants’ significant support for the Hamas organization was a legal cause of David Boim’s murder.

## **ARGUMENT**

### **I. A DONOR CANNOT SUPPORT HAMAS WITHOUT ALSO SUPPORTING ITS VIOLENT COMPONENT**

In *Boim II*, this Court recognized that the fungibility of money would not require the Boims to prove that Appellants’ support for Hamas was directly linked to the particular terrorist attack that killed their son:

Nothing in *Boim I* demands that the Appellees establish a direct link between the Appellants' donations (or other conduct) and David Boim's murder--that they funded in particular the terrorists who killed David Boim, for example--in view of the fact that money is fungible and the victims of terrorism are often killed or injured at random, as he was.

511 F.3d 707, 741 (7th Cir. 2007). While amici strongly disagree with the ultimate ruling in that appeal, *Boim II* all but answered the question now posed for supplemental briefing when it stated, “If the evidence were to show that the



humanitarian undertakings of an organization like Hamas *in some way* facilitate its terrorist activities, then those who support such humanitarian activities potentially could be held liable for supporting terrorism.” *Id.* at 734 n.11 (emphasis added). As will be discussed, amici submit that the Boims provided more than sufficient evidence that Appellants’ support of Hamas “facilitate[d] its terrorist activities.”

**A. Support For Hamas's Infrastructure Facilitates Its Terrorist Activities**

Hamas “operates a network of social institutions known as Da’wa which provide medical care, schooling, and other services to Palestinians . . . . Hamas’s charitable endeavors have helped it to achieve a position of influence among the Palestinian people.” *Boim II*, 511 F.3d at 712. Without the Da’wa, Hamas’s ability to recruit terrorists and finance and launch terrorist attacks would have been severely compromised. The ability of Hamas to launch terrorist attacks in 1996, therefore, was heavily dependent upon its success in creating the Da’wa. This means that support for the Da’wa cannot be separated from support for Hamas violence.

One facet of the Da’wa is the annuity provided to the families of suicide bombers, which Hamas founder Sheikh Ahmed Yassin asserted in 2001

amounted to a \$2-3 million a month. Matthew Levitt, *Hamas: Politics, Charity and Terrorism in the Service of Jihad* 59 (Yale University Press, 2006)

("Levitt").<sup>1</sup> By taking care of the families of suicide bombers, Hamas created a powerful recruitment tool. "[B]y providing these annuities to families of Hamas members, the HLFRD [Holy Land Foundation for Relief and Development] assists Hamas by providing a constant flow of suicide volunteers and buttresses a terrorist infrastructure heavily reliant on moral support of the Palestinian populace." Levitt, at 57. Donations to support this aspect of the Da'wa directly facilitated suicide bombings and enabled Hamas to mount terrorist attacks.

Other aspects of the Da'wa also contribute to Hamas terrorist attacks. Large infrastructure projects, such as orphanages and hospitals, provide recruitment centers, enable the building of grass roots political support, and directly support terrorists and their families. Levitt, at 60. This is the support infrastructure for Hamas violence and it requires significant funding.

"According to the Treasury's Office of Foreign Asset Control, the support infrastructure critical for indoctrination, recruitment, training, logistical support,

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<sup>1</sup> Matthew Levitt, Ph.D., who formerly worked in counter-terrorism at posts with the Federal Bureau of Investigation and the U.S. Treasury, is now a director of Counter Terrorism Intelligence Studies and Senior Fellow at the Washington Institute of Near East Policy. Dr. Levitt testified as an expert for Plaintiffs in the district court below. He has given expert testimony in federal trials regarding the financing of terrorist groups.

the dissemination of propaganda, and other material support requires substantial funding.” U.S. GEN. ACCOUNTING OFFICE, *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms* 6 (2003). A report generated by the Palestinian Authority General Intelligence in 2000 found that Hamas leaders were transferring funds originally earmarked for social services to fund terrorist operations. Levitt, at 69. Thus, while any donation or support for Hamas, "in some way facilitates" (*Boim II*) its terrorist infrastructure, some of the donations earmarked for humanitarian efforts actually directly fund terrorist operations.

Without donations for its support infrastructure, the violent component of Hamas could not have launched terrorist attacks such as the one that resulted in David Boim's murder in 1996. Thus, these donations were material support for subsequent Hamas terrorist attacks. As John Pistole, FBI Assistant Director, testified to the U.S. Senate Committee on Banking, Housing and Urban Affairs, “any contribution to Hamas, for any purpose, frees up other funds for its planned violence.” *See* Levitt, at 68. As this Court recently made clear:

*If you provide material support to a terrorist organization, you are engaged in terrorist activity even if your support is confined to the nonterrorist activities of the organization. Organizations that the statute, and indeed in this instance common parlance, describes as terrorist organizations, such as Hamas in Gaza and Hezbollah in*

Lebanon, often operate on two tracks: a violent one and a peaceful one (electioneering, charity, provision of social services). *If you give money (or raise money to be given) for the teaching of arithmetic to children in an elementary school run by Hamas, you are providing material support to a terrorist organization even though you are not providing direct support to any terrorist acts.* Singh-Kaur v. Ashcroft, 385 F.3d 293, 299-300 (3d Cir. 2004); Humanitarian Law Project v. Gonzales, 380 F. Supp. 2d 1134, 1137 (C.D. Cal 2005). As the Board of Immigration Appeals pointed out in In re S-K-, 23 I.&N. Dec. 936, 944 (BIA 2006), "Especially where assistance as fungible as money is concerned, [requiring] such a link would not be in keeping with the purpose of the material support provision, as it would enable a terrorist organization to solicit funds for an ostensibly benign purpose, and then transfer other equivalent funds in its possession to promote its terrorist activities."

*Hussain v. Mukasey*, 518 F.3d 534, 539 (7th Cir. 2008) (emphasis added). In

*Hussain*, this Court recognized and embraced the notion that a dollar for baby

formula allows Hamas to spend a dollar on bullets. Therefore, money ostensibly

donated for Hamas's humanitarian component supports its terrorist operations:

Congress explicitly incorporated a finding into the statute that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." AEDPA § 301(a)(7), 110 Stat. at 1247. *It follows that all material support given to such organizations aids their unlawful goals.* Indeed, as the government points out, terrorist organizations do not maintain open books. Therefore, when someone makes a donation to them, there is no way to tell how the donation is used. Further, as amicus Anti-Defamation League notes, even contributions earmarked for peaceful purposes can be used to give aid to the families of those killed while carrying out terrorist acts, thus making the decision to engage in terrorism more attractive. More fundamentally, money is fungible; giving

support intended to aid an organization's peaceful activities frees up resources that can be used for terrorist acts.

*Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1136 (9th Cir. Cal. 2000)

(footnote omitted) (emphasis added).

Accordingly, donations for Hamas's humanitarian programs provide material support for subsequent Hamas terrorist attacks.

### **B. Support for Hamas Causes Its Terrorist Attacks**

The issue of causation is implicitly raised by the liability question posed and was central to the *Boim II* panel's ruling with which amici strongly disagrees. While causation is admittedly a confusing legal concept in tort law, amici submit that because Hamas's humanitarian activities lends support for its terrorist infrastructure and its subsequent terrorist attacks, then support for Hamas's humanitarian activities would provide sufficient causation for liability for the subsequent terrorist attacks. As *Boim II* explained when discussing the facts of *Jerome B. Grubart v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536 (1995):

[A] 1992 flood in Chicago's Loop commercial district . . . briefly brought the city's downtown to a standstill and caused millions of dollars in losses to area businesses. The flood occurred after a dredging company replacing pilings in the Chicago River accidentally drove one or more of the new pilings too deep into the riverbed and weakened an old freight tunnel that ran below the river; when the tunnel collapsed months later, river water flooded the entire tunnel system and, along with it, basements throughout the

business district. . . . Because the pilings whose installation had resulted in the tunnel collapse had been placed in the riverbed using a crane perched upon a barge in the Chicago River, the Court had no difficulty concluding that the barge had caused the complained-of injuries.

511 F.3d at 744-45. Just as the barge in *Grubart* supported the crane that drove the pilings into the riverbed, and thereby caused the flooding, support and donations to Hamas's humanitarian organization programs provided the supporting infrastructure for Hamas's terrorist operations in 1996. The Da'wa was the barge upon which Hamas's pile-driving crane rested. Accordingly, anyone who donates funds to Hamas, even for humanitarian purposes, causes or facilitates any subsequent terrorist attacks by Hamas.

Requiring the Boims or other terrorist victims to trace Appellants' support for Hamas to a specific murder or attack would fail to recognize this inescapable and unremarkable truth about the indivisibility between support for Hamas's humanitarian programs and Hamas's violent components. More importantly, it would contravene Congress's intent behind the enactment of the ATA -- to punish and deter international terrorism and every point along the causal chain -- and thereby effectively nullify the law. "Because money is fungible, it is not generally possible to say that a particular dollar caused a particular act or paid for a particular gun. If Appellees were required to make such a showing,

2333(a) enforcement would be difficult that the stated purpose would be eviscerated.” *Strauss v. Credit Lyonnais*, S.A., CA 06-702, 2006 U.S. Dist. LEXIS 72649 at \*60-59 (E.D.N.Y. Oct. 5, 2006) (citing *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 584 (E.D.N.Y. 2005); *Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp. 2d 609, 631 (E.D.N.Y. 2006). As the D.C. Circuit stated in *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, “[m]oney, after all, is fungible, and terrorist organizations can hardly be counted on to keep careful bookkeeping records.” 376 F.3d 1123, 1130 (D.C. Cir. 2004). *Boim II* explicitly recognized this when it stated “the statute does not demand . . . specific tracing of donations to Hamas or to the assassins.” 511 F.3d at 756. *Boim II* further explained that “[a]nother avenue would be to demonstrate that money from the Appellant organizations went to Hamas for its charitable endeavors, and thereby freed up funds that Hamas could use for terrorist activities during the time period when David Boim was killed.” *Id.* The Boims have done this and more by providing ample evidence that Appellants supported Hamas and its overall goals.

## **II. APPELLANTS SUPPORTED HAMAS TO FURTHER HAMAS’S GOALS**

As will be discussed in this section, even though the Boims need not prove

intent to prevail under 18 U.S.C. § 2333(a), amici submit that the evidence in this case overwhelmingly proves that the Holy Land Foundation not only provided significant support to Hamas, but also clearly intended to support its goals. Thus, a proper and sensible reading of the statute would not, as Amicus OMB Watch argues, infringe on non-governmental organizations' (NGOs) ability or freedom to provide international aid.

In its brief, OMB Watch describes the well-known group, Doctors Without Borders, “an organization that provides medical care to individuals in crises prompted by war, poverty, or natural disaster, operates . . . in territories considered ‘hostile’ to the U.S. Government and must cooperate or coordinate with local paramilitary organizations,” as an example of a group whose activities could be circumscribed if this Court were to adopt Boims’ arguments regarding the reach of the ATA. OMB Watch Br. at 15-16. OMB Watch's suggestion that donor organizations will face civil liability for “associating with unsavory groups or individuals, when doing so is critical to furthering the organization’s civil or charitable goals” is grossly exaggerated and misreads the law. OMB Watch Br. at 16.

First of all, Appellants' direct support of Hamas clearly distinguishes them from humanitarian groups such as Doctors Without Borders. Such groups



usually provide support directly to the civilians in need of humanitarian care rather than to or through groups such as Hamas. Accordingly, such NGOs do not (nor should not) provide support to the infrastructure of terrorist groups. Unlike Hamas's charitable fronts such as HLF, which help to create the hostile environment that produced innocent victims, bona-fide NGOs, such as Doctors Without Borders and the International Red Cross, help to alleviate the suffering. In *Boim I*, this Court required Plaintiffs to “show knowledge of and intent to further the payee's violent criminal acts.” *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1011 (7th Cir. 2002). The trial court found that the Boims produced evidence of Salah, HLF and AMS/IAP’s knowledge and intent to “help Hamas’ activities succeed.” *Boim v. Quranic Literacy Inst.*, 340 F. Supp. 2d 885, 898, 908, 923 (N.D. Ill. 2004). And as discussed, *supra*, support even for Hamas’s humanitarian activities is support for Hamas and its violent component.

While Doctors Without Borders may be sometimes forced to work alongside with or to seek authorization from criminal or terrorist organizations in order to serve a greater humanitarian good, they do not support those organizations; hence, there is no evidence of any desire to help these organizations succeed in their goals. Seeking authorization from a terrorist group that controls a region in order to provide medical or charitable assistance

directly to civilians in need of humanitarian care clearly does not constitute the provision of material support to a terrorist organization.

In this case, the Boims produced testimony from Mr. Abu-Baker, HLF's President and Chief Executive Officer since 1989, who stated that “HLF frequently received donations from people who wanted their money to go to the family or children of a ‘shaheed’ or ‘martyr,’ and that HLF made it a practice to try to accommodate the requests of those donors.” *Id.* at 897.<sup>2</sup> Mr. Abu-Baker also testified that, in 1992, HLF received a \$ 210,000 contribution from Mr. Marzook, who served for many years as the head of Hamas' political bureau and was designated as an SDT [specially designated terrorist] on August 25, 1995. *Id.* The Boims also produced “a videotape from a 1989 IAP conference that shows, among other things, a veiled speaker who is identified as a Hamas terrorist and who specifically thanks the Occupied Land Fund (the entity now known as HLF) for its support,” a conference that Mr. Abu-Baker admitted that he attended. *Id.* This is ample evidence that HLF knew of Hamas’s violent ideology and goals, desired to aid Hamas, and gave support despite HLF’s knowledge regarding Hamas.

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<sup>2</sup> A “shaheed” or “martyr” is someone who dies while serving Hamas’s agenda, whether in a suicide bombing or some other terrorist attack, or at the hands of an Israeli soldier. 340 F. Supp. 2d at 897.

The Boims provided videotape and print evidence of Appellant AMS/Islamic Association for Palestine's ("IAP") advocacy for Hamas and its violence. IAP conceded that Hamas "has used political and violent means, including terrorism, to pursue its goal of establishing an Islamic Palestinian state in Israel, the West Bank, and Gaza". *Id.* at 906. This included a videotape of a Hamas military leader openly thanking IAP and HLF for their support of Hamas's violent component. *Id.* at 909. There was evidence of IAP funding and solicitation of funding of HLF, which the trial court found to be evidence of support for Hamas considering the ties between HLF and Hamas. *Id.* at 910-11.

In 1997, "IAP National published documents designed to garner public support for Abu Marzook, who Mr. Jaber [Rafeeq Jaber]<sup>3</sup> knew at the time to be the head of the political bureau of Hamas." *Id.* at 911. There was evidence that "IAP held annual conferences or conventions, invited pro-Hamas speakers to present at those conferences or conventions, and paid for their travel expenses," including for a 1989 conference that featured a veiled Hamas terrorist. *Id.* at 911-12. Mr. Jaber testified that "IAP National, under his leadership, published articles and editorials characterizing suicide bombers and those who carried out

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<sup>3</sup> "Rafeeq Jaber testified that he has served as President of AMS from its inception in 1993 to the present; he also served as President of an entity referred to as 'IAP National' from 1996 to 1998, and then again from 1999 to the present." 340 F. Supp. 2d at 907.

bombing operations against Israeli targets as ‘martyrs’ and as ‘freedom fighters’”. *Id.* This is evidence that IAP knew of Hamas’s violent ideology and goals, desired to aid Hamas and gave support despite IAP’s knowledge regarding Hamas.

Appellant Salah confessed both to Israeli secret service officials and fellow Palestinians that he is a key Hamas leader who helped rebuild the Hamas terrorist organization in 1993 by distributing funds to Hamas terrorists. *Id.* at 918. This included a statement that shows “Mr. Salah met with Salah Arouri, a Hamas activist, and that he provided Mr. Arouri with money to buy weapons to be used in terrorist operations.” *Id.* This is evidence that Salah knew of Hamas’s violent ideology and goals, desired to aid Hamas, and gave support despite Salah’s knowledge regarding Hamas.

Accordingly, the work of NGOs such as Doctors Without Borders is clearly distinguishable from the activities of Appellants. The activities of such NGOs would be wholly independent of the terrorist organizations, even if it may be necessary to do their work alongside them. In short, these truly charitable and independent NGOs cannot seriously claim that their work would subject them to liability under the ATA.

## CONCLUSION

For the foregoing reasons and those provided by the Boims, this Court should affirm the judgment of the District Court.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH FRAP RULE 32(a)(7)(B)**

I hereby certify that this brief conforms to the rules contained in FRAP Rule 32(a)(7)(B) and Circuit Court Rule 32(d)(2) for a brief produced with a proportionally spaced font. According to the word processing program used to prepare this brief, the portion of the brief required to be counted under Circuit Rule 32(d)(2)(c) contains 3,893 words.

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August 21, 2008

## **CERTIFICATE OF SERVICE**

I hereby certify that two copies of the foregoing brief of Amici Curiae Washington Legal Foundation, et al., were served this 21st day of August, 2008, by first-class mail, postage pre-paid, and that on 22d day of August, 2008, an electronic copy was also served to the counsel of record on the attached service list.

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