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SCOTUS: Social Media Companies Not Liable For Aiding and Abetting ISIS

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In *Twitter, Inc. v. Taamneh*, the Supreme Court unanimously held that social media companies are not liable for aiding and abetting the Islamic State of Iraq and Syria (ISIS) in its terrorist acts that victims claimed resulted from promoting terrorist content on social media platforms absent proof of "knowing and substantial assistance."

In *Taamneh*, the family of Nawras Alassaf, who was killed at the Reina nightclub in Turkey in a terrorist attack carried out on behalf of ISIS, brought a suit under 18 U.S.C. §2333, that permits U.S. nationals who have been "injured. . . by reason of an act of international terrorism" to file a civil suit for damages. Instead of suing ISIS directly under §2333(a), plaintiffs invoked §2333(d)(2) to sue the three largest social media companies: Facebook, Twitter, and Google, for "*aiding and abetting by knowingly providing substantial assistance"* to ISIS by allowing it and its supporters to use their platforms and benefit from their "recommendation" algorithms, enabling ISIS to connect with the broader public, fundraise, and radicalize new recruits. The District Court dismissed plaintiffs' complaint for failure to state a claim, but the Ninth Circuit reversed.

Writing for the unanimous Court, Justice Thomas explained that because tort law imposes liability only

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when someone commits an actual tort under §2333(d)(2), a defendant must have aided and abetted (by knowingly providing substantial assistance) another person in the commission of the actionable wrong—here, an act of international terrorism. The Court relied on the elements of aiding and abetting established by the D.C. Circuit's 1983 ruling in *Halberstam v. Welch* and the common law principles and concluded that "aids and abets" in §2333(d)(2) refers to ***conscious, voluntary, and culpable*** participation in another's wrongdoing.

The Court then determined that while plaintiffs showed that ISIS committed a wrong and the social media companies played some role in that wrong by making the platforms available with hardly any screening and having matching algorithms, plaintiffs failed to show that the social media companies provided "knowing and substantial assistance to ISIS necessary to show that the social media companies culpably participated in the Reina attack. Indeed, the Court noted that although the complaint rests heavily on the defendants' failure to act, it does not identify any duty requiring the defendants (or other communication-providing services, for that matter) to terminate customers after discovering that they were using the service for illicit ends.

The Court reasoned that the only affirmative "conduct" defendants allegedly undertook was creating their platforms and setting up their algorithms to display content relevant to user history. As the Court explained, plaintiffs never allege that, after the defendants established their platforms, they gave ISIS any special treatment. Indeed, the Court pointed out that by plaintiffs' allegations, the opposite is true because these platforms appear to transmit most content without inspecting it. The Court concluded that the mere creation of those platforms is not culpable. The Court reasoned that while some bad actors, like ISIS, use those platforms for illegal ends; the same could be said of cell phones, email, or the internet generally, yet, we generally do not think that those providers

incur culpability merely for providing their services to the public at large. Further, the Court noted that the fact that the algorithms matched some ISIS content with some users does not convert defendants' passive assistance into active abetting, especially because once the platform and sorting-tool algorithms were up and running, defendants, at most, allegedly stood back and watched.

The Court further reasoned that plaintiffs failed to make the strong showing of assistance and scienter that is required to demonstrate that defendants' failure to stop ISIS from using the platforms made defendants culpable for the Reina attack. The Court also contrasted the Ninth Circuit's opinion, which (i) focused on defendants' assistance to ISIS's activities in general, (ii) misapplied the "knowing" half of "knowing and substantial assistance," and (iii) concentrated primarily on the value of defendants' platforms to ISIS, rather than whether defendants culpably associated themselves with ISIS's actions.

In sum, the Court concluded that because plaintiffs failed to allege that defendants intentionally provided any substantial aid to the Reina attack or otherwise consciously participated in the Reina attack, the nexus between the defendants and the Reina attack is too far removed to impose liability on aiding and abetting grounds. Accordingly, the Court held that plaintiffs failed to state a claim under §2333(d)(2).

Justice Jackson wrote a short concurring opinion. It observed, in full:

> "I join the opinion of the Court with the understanding that today's decisions are narrow in important respects. In this case and its companion, *Gonzalez* v. *Google*, 598 U. S. ___ (2023) (*per curiam*), the Court has applied 18 U. S. C.§2333(d)(2) to two closely related complaints, filed by the same counsel. Both cases came to this Court at the motion-to-dismiss stage, with no

> factual record. And the Court's view of the facts—including its characterizations of the social-media platforms and algorithms at issue—properly rests on the particular allegations in those complaints. Other cases presenting different allegations and different records may lead to different conclusions."
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> "The Court also draws on general principles of tort and criminal law to inform its understanding of §2333(d)(2). General principles are not, however, universal. The common-law propositions this Court identifies in interpreting §2333(d)(2) do not necessarily translate to other contexts."

In light of *Taamneh*, the Court remanded *Reynaldo Gonzalez, et al. v. Google, LLC* to the Ninth Circuit for reconsideration of the plaintiffs' complaint. In *Gonzalez*, relatives of Nohemi Gonzalez, a U.S. citizen killed in a 2015 ISIS terrorist attack in Paris, sued Google under 18 U.S.C. §2333(a) and (d)(2), alleging that Google was both directly and secondarily liable for the terrorist attack that killed Gonzalez. The Court concluded:

> "We need not resolve either the viability of plaintiffs' claims as a whole or whether plaintiffs should receive further leave to amend. Rather, we think it sufficient to acknowledge that much (if not all) of plaintiffs' complaint seems to fail under either our decision in *Twitter* or the Ninth Circuit's unchallenged holdings below. We therefore decline to address the application of §230 to a complaint that appears to state little, if any, plausible claim for relief. Instead, we vacate the judgment below and remand the case for the Ninth Circuit to consider plaintiffs' complaint in light of our decision in *Twitter*."