UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AUGUST CABRERA, *et al.*, Plaintiffs, v. BLACK & VEATCH SPECIAL PROJECTS CORPORATION, *et al.*, Defendants.	Case No. 19-cv-03833 (EGS) ORAL ARGUMENT REQUESTED

MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS AMENDED COMPLAINT BY DEFENDANTS G4S AND CENTERRA

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INTRODUCTION AND SUMMARY

In this sprawling First Amended Complaint ("FAC"), nearly 700 Plaintiffs bring claims under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333, arising from armed attacks that tragically resulted in the injuries and deaths of 238 individuals during the war in Afghanistan. Plaintiffs sue eight unrelated groups of companies that provided a variety of services in Afghanistan over the course of two decades on the theory that "Defendants" directly caused or substantially assisted the attacks by making so-called "protection payments" to the Taliban.

Most of the 500-page FAC, however, has nothing at all to do with G4S Holdings International (AG) Limited and G4S Risk Management Limited (collectively, "G4S") or Centerra Group, LLC ("Centerra"). It generalizes allegations about all "Defendants" in an attempt to hold them collectively responsible for hundreds of attacks by a "syndicate" of terrorist organizations led by al-Qaeda—not the Taliban—over an 11-year period. The only specific allegations against G4S and Centerra in the 2,617-paragraph FAC can be found among 38 paragraphs describing activities performed in Afghanistan by a group of Defendants identified by Plaintiffs as the so-called "ArmorGroup Defendants." *See* FAC ¶¶ 18–20, 145–79. Those paragraphs, however, assert no facts whatsoever about "protection payments" and fail to tie any act by G4S or Centerra either to the "syndicate" of terrorist organizations or to the harms suffered by Plaintiffs.

At its core, the FAC attempts to hold G4S and Centerra responsible for attacks based merely on the fact that former related companies of those Defendants provided security services in Afghanistan on behalf of the United States and other international organizations between 2007 and 2008. Plaintiffs identify eight separate contracts, but for six of these contracts, Plaintiffs allege nothing more than a business presence in Afghanistan. Indeed, Plaintiffs allege no specifics at all for defendant G4S Holdings, which only appears in the FAC in connection with two such contracts

for which no activity, much less any misconduct, is alleged. For the remaining two contracts—the 2007 Shindand Airbase Contract and the 2008 UNOPS Mine Clearance Contract—Plaintiffs' entire allegation of wrongdoing is that the former companies, as required by their contracts, hired local Afghans to be security guards.

Importantly, the limited factual allegations related to G4S and Centerra are squarely contradicted by documents cited in the FAC. The Shindand Airbase and UNOPS Mine Clearance Contracts allegations are based entirely on a 2010 report by a U.S. Senate Committee (hereinafter, "Senate Report"). *See* U.S. S. Comm. on Armed Servs., *Inquiry Into The Role And Oversight Of Private Security Contractors In Afghanistan* (Oct. 26, 2010) ("S. Rep.") (Ex. 1). That report makes clear that G4S's and Centerra's former companies had no basis to reasonably conclude that hiring local guards amounted to paying the Taliban. Indeed, the report expressly states that the companies hired their guards for the Shindand Airbase and UNOPS Mine Clearance Contracts via sources recommended by ***the U.S. military***. Most strikingly, the Senate Report never mentions—or even suggests—that payments to these guards were Taliban "protection payments."

In other words, as to G4S and Centerra, the report that serves as the very basis for Plaintiffs' allegations actually refutes the FAC's essential claims, making it clear as a matter of law that the pleadings against those companies cannot survive a Rule 12(b)(6) challenge. Plaintiffs plead no facts to show that G4S, Centerra, or any related former entities participated in, caused, or financed a terrorist attack by the Taliban or any other terrorist organization, much less did so knowingly. Plaintiffs speculate that the wages paid to some of the security guards employed by G4S and Centerra—payments which ended eighteen months to two years before any Plaintiff was harmed—were funneled somehow to the Taliban organization, winding through multiple unnamed intermediaries ultimately to finance attacks throughout the next decade by a syndicate of terrorist

organizations led by al-Qaeda. Indeed, the very contracts about which Plaintiffs make any allegations ***ended entirely nearly one year before any Plaintiff was harmed in this case***, and even then, only were performed, when they were performed at all, at sites located hundreds of miles away from any harm alleged, in completely different provinces. This ostensible causal chain, as pleaded, is so conclusory, speculative, and attenuated that it cannot possibly allege the direct causation required to state a claim under the ATA.

The FAC fails to state a claim for other reasons as well. In addition to failing to plead any connection between G4S or Centerra and Plaintiffs' injuries, Plaintiffs also fail in Counts I, III, and IV to sufficiently plead primary liability against G4S or Centerra because they fail to identify acts of international terrorism, show G4S or Centerra acted with the requisite intent, or establish that the underlying criminal offenses occurred. Nor do Counts V and VI plead a claim for secondary ATA liability, as they do not identify an act of terrorism committed, planned, or authorized by a foreign terrorist organization ("FTO") or show that G4S or Centerra substantially assisted either an FTO or the person who committed the act of terrorism.

This case should also be dismissed as to all Defendants for lack of subject-matter jurisdiction because it uniquely requires this Court to define the very nature of the war in Afghanistan. And finally, the FAC does not establish personal jurisdiction over G4S Holdings or G4S Risk Management, both of which are based in the United Kingdom, because Plaintiffs have not shown sufficient contacts between G4S and the United States or established that those contacts have a causal relationship to the injuries alleged in this litigation.

For all of these reasons, the Court should dismiss the FAC in its entirety against G4S and Centerra—and do so with prejudice. Despite the opportunity to amend, Plaintiffs still cannot state a plausible claim. *See Rollins v. Wackenhut Servs., Inc.*, 703 F.3d 122, 131 (D.C. Cir. 2012)

(affirming dismissal with prejudice when "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency"). And, having waited for Defendants to file a first round of motions to dismiss, Plaintiffs were on notice of the deficiencies in their claims against G4S and Centerra and still failed to cure them. Further amendments would be futile and unjustified. *See Hourani v. Mirtchev*, 943 F. Supp. 2d 159, 172 (D.D.C. 2013) (dismissing First Amended Complaint with prejudice because "Plaintiffs have already had two bites at the proverbial apple"); *Cheeks v. Fort Myer Constr. Corp.*, 216 F. Supp. 3d 146, 169–70 (D.D.C. 2016) (dismissing case with prejudice, where "volume of legal memoranda" defendants were forced to file was "significant" and court could not "justify inflicting continuing costs on the defendants for what amounts to an exercise in futility").

FACTUAL BACKGROUND[1]

I. THE SO-CALLED "ARMORGROUP DEFENDANTS" AND THEIR CONTRACTS

According to Plaintiffs, "ArmorGroup Defendants" include three different companies: G4S Holdings, G4S Risk Management, and Centerra. FAC ¶¶ 18–20. Although they are filing a joint brief for purposes of judicial economy, these companies are separately owned and operated entities "with distinct legal rights and obligations." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 140 S. Ct. 2082, 2086 (2020) (reiterating the long-standing legal presumption of corporate separateness).

The FAC focuses on three former entities related to G4S and/or Centerra: ArmorGroup North America, Inc. ("AGNA"), ArmorGroup Services Limited, doing business as ArmorGroup Mine Action ("AGMA"), and ArmorGroup International plc ("AGI") (collectively, the "Former

[1] G4S and Centerra accept Plaintiffs' factual allegations as true only for the purposes of this motion and only to the extent they are well-pleaded and not contradicted by materials subject to judicial notice. *See Kaempe v. Myers*, 367 F.3d 958, 963 (D.C. Cir. 2004).

Entities"). FAC ¶¶ 18–20, 145. According to Plaintiffs, through a series of acquisitions, AGNA ultimately became Centerra, while AGI became G4S Holdings and AGMA became G4S Risk Management. *See id.*

Plaintiffs identify eight contracts through which the so-called "ArmorGroup Defendants" allegedly supported terrorist activities. Notably, Centerra is not alleged to have done anything under these contracts, while G4S is alleged only to have "sign[ed]" and "obtain[ed]" the 2015 British Embassy Contract and the 2010 U.K. FCO Contract. *See id.* ¶ 147.f. & h. The remaining six contracts allegedly involved the Former Entities, the conduct of which Plaintiffs allege may be imputed to G4S and Centerra: (1) the Shindand Airbase Contract (AGNA); (2) the Shindand Mine Clearance Contract (AGMA); (3) the Kabul Embassy Contract (AGNA); (4) the UNOPS Mine Clearance Contract (AGMA); (5) the PRT Security Contract (AGNA and AGI); and (6) the Local Guard Services Contract (AGNA). *See id.* ¶ 147 a.–e. & g. The FAC contains specific payment allegations with respect to only two of those contracts—the Shindand Airbase and UNOPS Mine Clearance Contracts.

II. 2007 SHINDAND AIRBASE AND 2008 UNOPS MINE CLEARANCE CONTRACTS

The Senate Report forms the basis of the FAC's allegations regarding the Shindand Airbase and UNOPS Mine Clearance Contracts. That Report marked the culmination of a years-long investigation into the hiring of feuding local tribal leaders to provide security services, and their role in a tragic U.S. military strike that resulted in the deaths of Afghan civilians. The Senate Committee reviewed hundreds of thousands of pages of documents, conducted more than 30 interviews, and received numerous responses to written questions. S. Rep. at i.

The Report, however, never once mentions protection payments or even more generally

payments by the Former Entities to the Taliban.[2] Instead, it describes the use of local Afghan guards to provide security services nearly a year before any Plaintiff was injured or killed. *See* S. Rep. at 10–11 ("ArmorGroup initially needed approximately 30 guards to meet security demands at the airbase. . . . ArmorGroup paid wages directly to the men performing the security work."). Local Afghan guards were merely paid their wages for the guard services they provided. As such, many of the FAC's allegations actually conflict with the Senate Report. Indeed, even after amending their complaint, Plaintiffs still fail to allege ***any*** facts supporting the claim that the Taliban threatened the Former Entities or presented the Former Entities with "a choice" between saving their own financial interests or American lives. *See* FAC ¶¶ 2–3, 63–64.

A. The U.S. Military Directs AGNA To Hire Mr. White And Mr. Pink For The Shindand Airbase Contract

In or around April 2007, Environmental Chemical Corporation ("ECC") subcontracted with AGNA to provide security services on a U.S. Air Force construction project at the Shindand Airbase in Herat Province. *Id.* ¶ 147.a.; S. Rep. at 8. The subcontract required AGNA to hire locals to staff the security operations. *See* S. Rep. at 8.

When ECC entered into its subcontract with AGNA, AGNA initially relied on two influential local tribal leaders—Timor Shah (known as "Mr. White") and Nadir Khan (known as "Mr. Pink")—to provide local guards for the project. FAC ¶ 150; S. Rep. at 5. Critically, White and Pink were both "referred" to AGNA and ECC ***by the U.S. military***. S. Rep. at 8–9 (ECC's

[2] In deciding a Rule 12(b)(6) motion, a court may consider not only "the facts alleged in the complaint," but also "documents attached as exhibits or incorporated by reference in the complaint," or "documents upon which the plaintiff's complaint necessarily relies even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss." *Ward v. D.C. Dep't of Youth Rehab. Servs.*, 768 F. Supp. 2d 117, 119 (D.D.C. 2011) (internal citations and quotations omitted). Relatedly, a court need not credit any of the plaintiff's allegations "insofar as they contradict exhibits to the complaint or matters subject to judicial notice." *Kaempe v. Myers*, 367 F.3d 958, 963 (D.C. Cir. 2004).

Security Manager testified that "U.S. Military personnel had actually referred him to White and Pink" and that "U.S. Military personnel told him: 'let's throw [White and Pink] a bone and hire some of their people, and kind of take care of them a little bit.'").

Thus, when AGNA hired White and Pink under the U.S. military's direction, it was understood that White, far from being associated with the Taliban, was "cooperating with American forces." S. Rep. at 8 (quotation marks and alteration omitted). Moreover, Pink "was the person that [the U.S. military] felt comfortable with," and the U.S. military's team leader had ensured that the Shindand governor and elders "had no issues" with recommending Pink. *Id.* at 9. The U.S. military "did not suspect that Pink had Taliban ties or was working against Coalition interests." *Id.*

Similarly, AGNA submitted a list of guard personnel's names to the U.S. military for background checks and was "advised that no derogatory information was found on any individual the company proposed to hire at Shindand." *Id.* at 10. Thus, at the U.S. military's direction, AGNA retained the services of Pink and White, who would, at least for a period of time beginning in June 2007, each provide half of the approximately 30 local guards needed for the project. *Id.* at 8, 10. AGNA "paid wages directly to the men performing the security work." *Id.* at 11.

At some point, a rift developed between White and Pink, and on December 12, 2007, Pink murdered White and fled the area. FAC ¶ 151; S. Rep. at 14–16. "Once it became known that Mr. Pink was responsible for the shooting, Pink . . . was not seen again." *See* S. Rep. at 15–16. Not long after, on January 13, 2008, AGNA first "received reports that 'Pink has ***now*** aligned himself with the Taliban.'" *Id.* at 18 (emphasis added). In response to these reports, "AGNA removed all cell phones from the company's guards . . . as a precautionary measure[.]" *Id.* at 19 (internal quotation marks omitted). Just six days later, on January 19, 2008, AGNA learned "that Pink's

men [had] been sending [sensitive] information to [Pink]." *Id.* AGNA promptly fired all guards hired by Pink. *Id.* In other words, far from supporting the Taliban as Plaintiffs allege, the Senate Report documents that AGNA disassociated itself completely from Pink and his men when it learned that Pink might be aligned with the Taliban.

B. AGNA Hires Mr. White II

On or around December 13, 2007, shortly after White was killed, his younger brother, Reza Khan (known as "Mr. White II"), assumed White's role on the Shindand Airbase Contract. *Id.* at 17. According to the Senate Report, AGNA had every reason to believe that White II was not Taliban but rather an Afghan police officer: he wore a police uniform, drove a police car, and was seen with men in police uniforms. ECC employees—who also met with White II—believed that White II was a "businessman who owned electronics stores in Herat." S. Rep. at 17–18. After AGNA hired White II, AGNA did not pay White II directly—instead, White II's men "contributed to him." *Id.* at 18.

C. AGMA Hires White II For The UNOPS Mine Clearance Contract

AGMA entered into the UNOPS Mine Clearance Contract with the United Nations in early 2008. Like the Shindand Airbase Contract, the UNOPS Mine Clearance Contract required AGMA to hire locals. AGMA performed on that contract until December 2008. S. Rep. at iv.

Like AGNA, AGMA also retained White II's services. Although the FAC alleges that AGMA hired White II despite knowing about his Taliban ties, FAC ¶ 158, the Senate Report contradicts Plaintiffs' allegations, and instead states that AGMA thought White II was an Afghan government official. Indeed, the Senate Report offers no indication that AGMA knew about any of White II's alleged Taliban ties. S. Rep. at 22. Following an in-person meeting with White II, AGMA submitted its bid for the UNOPS Mine Clearance Contract, stating that it planned to subcontract with a "respected tribal elder." *Id.* at 22–23. AGMA Director David McDonnell noted

at the time that the United Nations regional mine action staff "will have known [White II]." *Id.* at 23 & 23 n.178.

In July 2008, the Afghan government confiscated White II's weapons and vehicles. *Id.* at 26; *see also* FAC ¶ 160. While the FAC attempts to portray this as evidence that AGMA was aware of White II having ties to the Taliban, here again the allegations are contradicted by the Senate Report, which concluded that AGMA understood the seizure to be due to a dispute between an Afghan official and White II regarding their "financial agreement." S. Rep. at 27. The FAC also attempts to connect a July 28, 2008 news report of the seizure of two caches of weapons in the Shindand region, which Afghan authorities suspected belonged to the Taliban, to White II. FAC ¶ 160. However, the Senate Report does not connect these caches to White II. And neither the FAC nor the Senate Report suggests that AGMA knew about this news report. The report is also not referenced in an AGMA consultant's project report covering this period. S. Rep. at 26.

D. The Azizabad Raid

On August 21, 2008, two of Pink's associates informed the U.S. military that White II was planning a Taliban shura—or meeting—at White II's house, at which Mullah Sadeq, a Taliban leader, would be present. S. Rep. at 28; *see also* FAC ¶ 154. There is no indication in the FAC or the Senate Report that AGNA or AGMA was aware of this event or White II's alleged association with it. That evening, the U.S. military and Coalition forces raided White II's house to kill or capture Mullah Sadeq. S. Rep. at 29. White II, one AGNA guard, and six AGMA guards were among those killed during the raid, along with several civilians. *Id.* at 30.

According to the Senate Report, even after multiple lengthy and detailed investigations, it is still significantly disputed whether this raid was correctly targeted by the U.S. military at a Taliban meeting or a civilian funeral gathering for White (following his murder by Pink). *Id.* at 31–33. Indeed, it was widely believed that Pink, through his associates, fed the U.S. military false

information to orchestrate a raid that would take out his personal rival, White II. *Id.* at 32. The record is also unclear whether Mullah Sadeq was even there, let alone killed, in the attack. Despite this conflicting information, AGNA still took decisive action immediately following the raid, firing all the guards affiliated with White II on August 22, 2008. *Id.* at 33. AGNA completed its subcontract at the Shindand Airbase a few months later in December 2008. *Id.* at 36. The UNOPS Mine Clearance Contract concluded around the same time in December 2008. S. Rep. at iv.[3]

III. ALLEGED CONNECTION BETWEEN THE FORMER ENTITIES AND PLAINTIFFS

Nowhere in the FAC do Plaintiffs assert that the Former Entities directly harmed Plaintiffs. Nor do Plaintiffs allege that the Former Entities had direct contact with Taliban leaders or authorities—much less any of the other terrorist organizations that allegedly worked with the Taliban—or that the specific money paid to local Afghan guards was used to harm Plaintiffs.

Instead, Plaintiffs' claims are based on the generalized theory that every dollar paid to a local Afghan guard wended its way through a complex chain of intermediaries to a central Taliban fisc, from which attacks against Americans were financed by a syndicate of terrorist organizations led by al-Qaeda. *See, e.g.*, FAC ¶¶ 104–05. According to Plaintiffs, those attacks did not begin until over one to two years after the Former Entities stopped paying any local Afghanis. *See id.* ¶¶ 743, 1954, 2526. The attacks then continued for the next decade all over the country, with only a single attack occurring in the Herat Province—where the Former Entities paid local Afghans—over almost four years after the Former Entities ceased performing on the Shindand Airbase and UNOPS Mine Clearance Contracts. *See id.* ¶ 1970. Plaintiffs allege that those attacks were authorized not by the Taliban—which was allegedly affiliated with the individuals with whom the

[3] On August 25, 2008, AGMA hired White II's younger brother—Gul Mohammed (known as "Mr. White III") for the UNOPS Mine Clearance Contract. S. Rep. at 33. There are no allegations in the FAC and nothing in the Senate Report indicating that White III had any affiliation with the Taliban whatsoever, other than "familial" ties to White and White II. *See* FAC ¶ 162.

Former Entities did business—but by al-Qaeda, *see id.* ¶¶ 478, 485–88, a distinct organization with which the Former Entities are not alleged to have had any contacts whatsoever. And Plaintiffs further allege that the attacks were carried out not only by the Taliban, but by various other members of the terrorist syndicate, including al-Qaeda, the Haqqani Network, and the Kabul Attack Network. *See id.* ¶¶ 427, 438, 459, 480.

ARGUMENT

Plaintiffs' FAC should be dismissed as to G4S and Centerra for at least three reasons. First, Plaintiffs have failed to state a claim under the ATA. Second, this Court lacks subject-matter jurisdiction because whether the "act-of-war" exception to ATA liability applies here implicates a political question. Finally, this Court lacks personal jurisdiction over G4S, foreign entities which allegedly performed non-U.S. contracts in a foreign country.

I. THE FAC SHOULD BE DISMISSED IN ITS ENTIRETY AS TO G4S AND CENTERRA BECAUSE PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE ATA.

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face[.]" *Levi v. Brown & Williamson Tobacco Corp.*, 851 F. Supp. 2d 8, 10 (D.D.C. 2012). A complaint "must plead factual matter that permits the court to infer more than the mere possibility of misconduct, . . . and a complaint which merely tenders naked assertion[s] devoid of further factual enhancement is . . . unavailing." *Id.* In determining plausibility, a court need not accept a plaintiff's legal conclusions as true, nor must the court presume the veracity of legal conclusions that are couched as factual allegations. *Id.*

A generalized pleading that simply directs allegations against a group of "Defendants"—particularly here, where the eight groups of Defendants have no alleged relation—does not satisfy this pleading standard. *See Jiggetts v. District of Columbia*, 319 F.R.D. 408, 417 (D.D.C. 2017) (A "shotgun pleading"—"one in which it is virtually impossible to know which allegations of fact

are intended to support which claim[s] for relief—does not comply with the [pleading] standards."). Indeed, "given the extreme nature of the charge of terrorism, fairness requires extra-careful scrutiny of plaintiffs' allegations as to any particular defendant, to ensure that he—or it—does indeed have fair notice of what the plaintiffs' claim is and the grounds upon which it rests[.]" *Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86, 103–04 (D.D.C. 2003).

The few specific, uncontradicted allegations against G4S and Centerra fail to state an ATA claim under Rule 12(b)(6). First, Plaintiffs have not raised a single allegation regarding payment to the Taliban (or al Qaeda) by G4S, Centerra, or the Former Entities in connection with six of the eight alleged contracts, including all of the contracts involving G4S Holdings. As such, all claims related to G4S Holdings and those contracts should be summarily dismissed. Second, with respect to the Shindand Airbase and UNOPS Mine Clearance Contracts, Plaintiffs fail to state a claim for primary ATA liability. That is, Plaintiffs have failed to plead that payments made by the Former Entities to their guards were either the but-for or proximate cause of the harm to Plaintiffs. Plaintiffs have also failed to plead an act of international terrorism, facts showing an intent by G4S or Centerra to commit one, or the elements of the necessary predicate offenses. Finally, Plaintiffs have failed to establish secondary ATA liability because they have not sufficiently alleged that a designated FTO committed, planned, or authorized the attacks or that G4S, Centerra, or the Former Entities provided substantial assistance to that FTO. Therefore, the FAC should be dismissed in its entirety for failure to state a claim.[4]

[4] Plaintiffs' theory of primary liability, which relies entirely on doing business with individuals allegedly affiliated with a terrorist organization, is also statutorily foreclosed by the Justice Against Sponsors of Terrorism Act ("JASTA"). Pub. L. No. 114-222, 130 Stat. 852 (2016) (codified at 28 U.S.C. § 1605B). Congress amended the ATA with JASTA in 2016 to provide for secondary—*i.e.*, aiding and abetting—liability. In this way, JASTA obviated the need to utilize predicate offenses as a basis for liability and was therefore intended to be victims' sole method of redress for claims where the defendant did not itself commit the international act of terrorism. The

A. The Court Should Dismiss All Claims Against G4S Holdings And All Other Claims Involving Contracts For Which No Facts Are Alleged.

As an initial matter, most of the claims against G4S and Centerra—and all of the claims against G4S Holdings—should be dismissed as they fail to meet the basic pleading requirements under Rule 8. *See* Fed. R. Civ. P. 8(b) (requiring a "short and plain statement of the claim").

1. Plaintiffs Fail To Allege Any Facts Supporting Protection Payments In Connection With Most Of The Contracts.

The FAC contains no allegations of payments to the Taliban in connection with six of the eight contracts identified: the Shindand Mine Clearance, PRT Security, U.K. FCO, Local Guard Services, British Embassy, and Kabul Embassy Contracts. *See* FAC ¶ 147. In fact, other than identifying their existence, the FAC musters no allegations at all regarding the first five of these contracts. And for the Kabul Embassy Contract, the FAC merely rehashes allegations from past lawsuits that had no bearing on allegations of payments to the Taliban. *See id.* ¶¶ 169–71.

These kind of "naked assertion[s] devoid of further factual enhancement" and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" cannot survive scrutiny. *Levi*, 851 F. Supp. 2d at 10 (internal quotation marks omitted). In *Atchley v. AstraZeneca UK Ltd.*, this Court found

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practical effect is that plaintiffs pursuing a claim against an organization alleged to have itself committed an international act of terrorism may proceed under primary liability and plaintiffs pursuing a claim against an organization alleged to have only supported an act of international terrorism may proceed under secondary liability. To interpret JASTA's amendment differently would be contrary to the D.C. Circuit's understanding of the ATA and would render the addition of secondary liability superfluous. *See Mercy Hosp., Inc. v. Azar*, 891 F.3d 1062, 1068 (D.C. Cir. 2018) ("We presume that Congress did not include words that have no effect, and so we generally avoid a reading that renders some words altogether redundant.") (internal quotation marks omitted); *see also Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 278 (D.C. Cir. 2018) ("Congressional amendments make substantive changes to existing law"). JASTA, therefore, must have made conduct actionable that was not previously actionable. The D.C. Circuit held as much in *Owens*, 897 F.3d at 277–78. The addition of secondary liability would not be necessary if victims already had an effective vehicle to recover against entities that did not commit the international act of terrorism. As such, Plaintiffs' primary liability claims should be dismissed.

a similarly pleaded ATA complaint entirely lacking and dismissed the case with prejudice. *See* No. 17-2136 (RJL), 2020 WL 4040345, at *10 (D.D.C. July 17, 2020) ("For the remaining attacks—which constitute the vast majority—plaintiffs offer no concrete factual allegations . . . ."). The Court should do the same here.

At most, Plaintiffs assert a "standard practice" of protection payments by all companies in Afghanistan, which they repeat for every Defendant group, using facts and reports that are not specific to any Defendants. *See* FAC ¶ 148. Plaintiffs then ask this Court to assume that G4S, Centerra, and the Former Entities were engaged in a practice of making improper payments to the Taliban on every contract merely because of their presence in Afghanistan. *See id.* ¶ 149. But such a "guilt-by-association" theory, which states no "more than the mere possibility of misconduct," cannot survive a motion to dismiss. *Ridley v. VMT Long Term Care Mgmt., Inc.*, 68 F. Supp. 3d 88, 91 (D.D.C. 2014). Indeed, it would make every company that operated in Afghanistan liable for the deaths of all Americans at the hands of the Taliban.

Accordingly, the Court should summarily dismiss Plaintiffs' claims relating to the Shindand Mine Clearance, PRT Security, U.K. FCO, Local Guard Services, and British Embassy Contracts. *See United States ex. rel. Thomas v. Siemens AG*, 708 F. Supp. 2d 505, 515 (E.D. Pa. 2010) (dismissing as inadequately pled certain claims to the extent they were based on "seventeen contracts listed as an exhibit to the [complaint]" that contained no specific allegations); *cf. Miller v. Holzmann*, No. 95-cv-1231 (RCL), 2007 WL 778568, at *6 (D.D.C. Mar. 6, 2007) (dismissing "claims for relief based on contracts 07 and 29" after finding plaintiff's "guilt by association" allegations inadequate to establish the court's personal jurisdiction).

2. Because The FAC Still Fails To Allege Any Protection Payments By G4S Holdings, G4S Holdings Should Be Dismissed From The Case.

Because claims related to the U.K. FCO, British Embassy, and PRT Contracts are entirely lacking, Plaintiffs have failed to state any claim whatsoever against G4S Holdings. G4S Holdings is directly mentioned only in connection with the U.K. FCO and British Embassy Contracts. *See* FAC ¶ 147.f. & h. In addition to the FAC's complete failure to include any specific allegations regarding the performance of these contracts, the FAC fails even to definitively assert G4S Holdings was a party to these contracts, alleging only that G4S Holdings "***and/or***" G4S Risk Management "obtained" the U.K. FCO Contract and "signed" the British Embassy Contract. *Id.* (emphasis added). This is wholly inadequate. *See, e.g.*, *Barnes v. AstraZeneca Pharms. L.P.*, 253 F. Supp. 3d 1168, 1171 (N.D. Ga. 2017) (finding that a "fail[ure] to identify specific defendant(s) and thus to give them 'adequate notice of the claims against them and the grounds upon which each claim rests'" requires a dismissal); *cf. Magowan v. Lowery*, 166 F. Supp. 3d 39, 61 n.4 (D.D.C. 2016) (dismissal warranted when "the factual content pled by the plaintiff is inconsistent with the defendant's liability").

In addition, although the FAC alleges that G4S Holdings is the "successor" of AGI, FAC ¶ 19, and that AGI "obtained" the PRT Security Contract, *id.* ¶ 147.e., the FAC fails to allege any specific wrongdoing by AGI in connection with that contract. *See supra* pp.13–14. Again, as in *Atchley*, such conclusory allegations are insufficient. *See Atchley*, 2020 WL 4040345, at *6. G4S Holdings should be dismissed from the case.

B. <u>Plaintiffs Fail To State A Claim For Primary Liability (Counts I, III, and IV) Based On The Shindand Airbase And UNOPS Mine Clearance Contracts.</u>

Once the empty claims about six of the eight contracts are set aside, it becomes apparent that the FAC rests entirely on allegations related to the Shindand Airbase and UNOPS Mine Clearance Contracts. Yet, even the allegations related to these contracts fail to state a claim for

primary liability under the ATA. The Court should dismiss Counts I and III against G4S and Centerra, and Count IV against Centerra, because Plaintiffs fail to plead that the Former Entities (1) were the but-for cause of Plaintiffs' injuries; (2) were the proximate cause of Plaintiffs' injuries, (3) committed an act of international terrorism; (4) knowingly committed such an act; or (5) committed any of the alleged predicate offenses.

1. The Former Entities' Alleged Conduct Was Not The But-For Cause Of Plaintiffs' Injuries.

The ATA provides a private right of action to any U.S. national injured "***by reason of*** an act of international terrorism." 18 U.S.C. § 2333(a) (emphasis added). Generally, courts have not interpreted this language in the ATA to require a plaintiff to demonstrate "but-for" causation. *But see Owens v. BNP Paribas S.A.*, 235 F. Supp. 3d 85, 96 (D.D.C. 2017) ("[T]he 'by reason of' language has a well-understood meaning . . . [which] requires 'a showing that the defendant's violation not only was a "but for" cause of the injury, but was the proximate cause as well.'").

Twice this year, however, the Supreme Court has made clear that as a matter of statutory interpretation, the phrase "by reason of" ***requires*** a showing of but-for causation. *See Bostock v. Clayton Cnty*., 140 S. Ct. 1731, 1739 (2020); *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S.Ct. 1009, 1015–16 (2020); *see also Burrage v. United States*, 134 S. Ct. 881, 889 (2014) ("[T]he phrase, 'by reason of,' requires at least a showing of 'but for' causation."). And nothing in the plain language or legislative history of the ATA requires a different interpretation. In fact, but-for causation is a standard requirement for tort claims that is typically presumed to be part of tort statutes like the ATA. *See Comcast*, 140 S. Ct. at 1014 (emphasizing that the "ancient and simple 'but for' common law causation test . . . supplies the 'default' or 'background' rule against which Congress is normally presumed to have legislated when creating its own new causes of action"); *id.* at 1013 ("In the law of torts, . . . a plaintiff must first plead and then prove that its

injury would not have occurred 'but for' the defendant's unlawful conduct"); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346–47 (2013) (explaining that "[c]ausation in fact—*i.e.*, proof that the defendant's conduct in fact cause the plaintiff's injury—is a standard requirement of any tort claim" and recognizing that but-for causation is the default rule, "absent an indication to the contrary in the statute itself").

As a result of the Supreme Court's recent, consistent interpretation of the statutory phrase "by reason of," Plaintiffs must show that their alleged injuries would not have happened "but for" the Former Entities' payments to the guards. *Bostock*, 140 S. Ct. at 1739 ("[The but-for] form of causation is established whenever a particular outcome would not have happened 'but for' the purported cause."). And a but-for cause only exists "if the predicate act combines with other factors to produce the result, ***so long as the other factors alone would not have done so***—if, so to speak, it was the straw that broke the camel's back." *Burrage*, 571 U.S. at 211 (emphasis added). Plaintiffs plainly cannot satisfy this standard.

Plaintiffs do not—because they cannot—allege that ***any*** of the attacks (let alone all 238 of them) would not have happened absent the Former Entities' wage payments. Indeed, the FAC mentions multiple other sources of funds used for the attacks, including alleged payments by other Defendants and the opium trade. FAC ¶¶ 106–10. As the Supreme Court has explained, "[i]t makes little sense to say that an event resulted from or was the outcome of some earlier action if the action merely played a nonessential contributing role in producing the event." *See Burrage*, 571 U.S at 212. For this reason alone, Counts I, III, and IV should be dismissed.

2. The Former Entities' Alleged Conduct Did Not Proximately Cause Plaintiffs' Injuries.

Even if this Court were to interpret "by reason of" differently than the Supreme Court such that Plaintiffs need not establish "but-for" causation, Plaintiffs have still failed to plead proximate

causation. To establish proximate cause, an ATA plaintiff must allege that (1) the defendant's alleged wrongful conduct was a "substantial factor" in causing the plaintiff's injuries and (2) those injuries were "reasonably foreseeable" to the defendant. *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 273 (D.C. Cir. 2018). The "central question" for proximate cause is "whether the alleged violation led ***directly*** to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (emphasis added); *see also Linde v. Arab Bank, PLC*, 882 F.3d 314, 330–31 (2d Cir. 2018) (proximate causation inquiry "focuses on the relationship between an alleged act of international terrorism and a plaintiff's injury"). The FAC fails to establish either element of proximate cause.

a. <u>The Former Entities' Wage Payments Were Not A "Substantial Factor" In Causing Plaintiffs' Injuries.</u>

To satisfy the "substantial factor" prong of proximate cause, the plaintiff "must" demonstrate "some direct relation between the injury asserted and the injurious conduct alleged." *Owens*, 897 F.3d at 273 n.8. In a terrorist funding case, "the presence of an independent intermediary" makes a defendant "more than one step removed from a terrorist act or organization" and "create[s] a more attenuated chain of causation . . . than one in which a supporter of terrorism provides funds directly to a terrorist organization." *Id.* at 275. In those circumstances, plaintiffs must allege specific facts demonstrating that funds were actually received by the terrorist organization from the intermediary. *See id.* at 276. Plaintiffs have failed to do so here.

Plaintiffs' case rests on multiple intermediaries. The Former Entities are not alleged to have been present at the time of the attacks. They are not alleged to have participated in the attacks. They are not alleged to have known about the attacks before they occurred. And they are not alleged to have encouraged the attacks. Plaintiffs do not allege that the Former Entities provided funds directly to the Taliban as an organization. Plaintiffs do not even allege that the Taliban

authorized the attacks or conducted all of them. Rather, according to the FAC, the Former Entities paid individual guards, who in turn contributed funds to local tribal leaders, who in turn provided the funds to a central Taliban account, which in turn was allegedly shared with other organizations in a terrorist syndicate, which in turn funded individual terrorist cells, which finally committed the attacks on Plaintiffs after being authorized by al-Qaeda.

Plaintiffs fail to adequately plead that the Former Entities' wage payments even made it to the Taliban, let alone that they made it to the alleged terrorist syndicate led by al Qaeda. As an initial matter, there is no specific allegation that any of the guards themselves were Taliban. Moreover, even if Pink, White, or White III were Taliban—the FAC fails to allege with the requisite specificity that they were, *see supra* at pp. 6–10—there is no allegation that the guards paid them from their wages or that AGNA or AGMA paid them directly. As such, there is no connection between the Former Entities and the Taliban through the guards or these tribal leaders.

Moreover, although Plaintiffs do allege that White II was paid a salary by AGMA under the UNOPS Mine Clearance Contract, FAC ¶ 158, Plaintiffs nowhere allege that he or any of the other local Afghan guards or tribal leaders contributed wages to central Taliban authorities or into a central Taliban fisc. Instead, Plaintiffs speculate, based on generalizations about how the Taliban operated, that the guard payments somehow "flowed up" to such a fisc, where the money could be spent on attacks on Americans. *See* FAC ¶ 110; *see also id.* ¶ 99 ("Defendants' protection payments, which created an income stream overseen directly by Quetta leadership, gave the Taliban fungible resources that were vital to its ability to sustain its terrorist enterprise."); *id.* at ¶ 110 ("Unlike funding from other sources . . . that were more often spent locally, Defendants' protection payments generally flowed up the Taliban's organizational chain—or were made directly to top-level Taliban institutions—and supplied fungible U.S. dollars available for use by

leadership wherever it saw fit."). In other words, even if Plaintiffs have somehow established a connection between the Former Entities' payments and "Taliban cutouts," *id.* ¶ 6, they have failed to plead with the requisite level of specificity that those payments were directed to the Taliban organization.

Finally, there is no allegation that the Former Entities had any contact whatsoever with al-Qaeda or any of the other terrorist organizations that allegedly used Taliban funds to lead and participate in the attacks. Instead, Plaintiffs allege generally that the Taliban participated in a "syndicate" of terrorist organizations formed by al-Qaeda—not the Taliban—which "authorized" the Taliban to spend its funds on attacks on Americans, some of which were conducted by other terrorist organizations. *See, e.g.*, *id.* ¶¶ 441, 445–47 (alleging involvement of Haqqani Network in overseeing Taliban terrorist attacks on U.S. forces in Afghanistan and running day-to-day military operations for the Taliban); *id.* ¶ 459 (alleging involvement of Kabul Attack Network); *id.* ¶ 476 (describing web of terrorist organizations in which al-Qaeda is at the "center" or "head of the table" or providing an "umbrella" for the other organizations); *see also id.* ¶¶ 480–87 (discussing al-Qaeda's authorization of attacks by Taliban); ¶¶ 456–58 (alleging attacks by Haqqani Network); ¶ 463 (alleging attacks by the Kabul Attack Network); *id.* ¶ 498 (alleging joint execution of suicide bombings by al-Qaeda and Taliban); *id.* ¶ 513 (alleging attacks by al-Qaeda).

All of these are "conclusory allegations that do not meet *Twombly*'s plausibility standard with respect to the need for a proximate causal relationship between the cash transferred by [the Former Entities] to [the intermediaries] and the terrorist attacks by [the organization] that injured plaintiffs." *Owens*, 897 F.3d at 276. And even if the allegations are specific enough to be sufficient, the Former Entities are too many steps removed from the attacks to show that their wage payments were directly related. The Former Entities' payments, therefore, could not have been a

substantial factor in the attacks.

b. Plaintiffs' Injuries Were Not "Reasonably Foreseeable."

The FAC also fails to include any plausible allegations that Plaintiffs' injuries were a "reasonably foreseeable" consequence of the Former Entities' actions. *Id.* at 273; *see also Rothstein v. UBS AG*, 708 F.3d 82, 91 (2d Cir. 2013) (explaining that a plaintiff's injuries must be "reasonably foreseeable or anticipated as a natural consequence" of the defendant's actions (citation omitted)). The foreseeability requirement of proximate cause serves "to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Paroline v. United States*, 572 U.S. 434, 445 (2014). That is precisely the case here, as the Senate Report makes clear.

Foremost, the lack of any temporal connection between the guard payments and the attacks rendered those attacks unforeseeable as a matter of law. "[***T***]***he greater the time*** between the payments and the attack, the more attenuated the foreseeability of the attack, and the weaker the likelihood that the support played a significant role in facilitating the attacks." *In re Chiquita Brands Int'l, Inc.*, 284 F. Supp. 3d 1284, 1313 (S.D. Fla. 2018) (emphasis added); *see also In re Terrorist Attacks on Sept. 11, 2001*, 740 F. Supp. 2d 494, 517 (S.D.N.Y. 2010) ("Where . . . there is a ***remoteness in time***, there must be sufficient factual allegations of a connection between the material support provided and the acts of terrorism that caused plaintiffs' injuries, such that a reasonable trier of fact could conclude that it was more likely than not that the support provided by the defendant assisted the terrorists in the commission of the terrorist act." (emphasis added)).

Here, the Former Entities completed performance of the Shindand Airbase and UNOPS Contracts in December 2008. *See* S. Rep. at iv, 5; *see also* FAC ¶ 147. However, the first Plaintiff death or injury did not occur until December 30, 2009—*i.e.*, 12 months ***after*** those contracts were terminated. *See* FAC ¶¶ 743, 1954, 2526. And most of the attacks alleged in the FAC occurred

many years later. This alone demonstrates that Plaintiffs cannot establish foreseeability.

In addition, this conclusion is bolstered by the fact that the terrorist attacks of which Plaintiffs cite lack any meaningful geographical connection between the Former Entities' payments and the attacks. The Former Entities paid guards from local tribes in the Herat Province. *Id.* ¶ 147. However, only one of the 238 injuries alleged occurred in the Herat Province and not until July 22, 2012—several years after the Former Entities' performance had ceased. *Id.* ¶ 1970. Thus, not only did the attacks occur at least a year after performance terminated on the Shindand Airbase and UNOPS Mine Clearance Contracts, but also, nearly all of the attacks occurred in entirely different parts of the country. To the extent the lack of a temporal relationship between the payments and the attacks does not make the attacks unforeseeable as a matter of law—and in the absence of specific allegations that the Former Entities' payments "flowed up" to a central Taliban fisc—the additional lack of a geographical connection plainly does. *See In re Terrorists Attacks on Sept. 11, 2001*, 298 F. Supp. 3d 631, 659 (S.D.N.Y. 2018).

Finally, regardless of these temporal and geographic gaps, it was not foreseeable that payments to guards associated with local tribal leaders would be used to fund terrorist attacks by the Taliban. According to the Senate Report, the U.S. military recommended to AGNA that it hire Pink and White, so there was every reason to believe that those individuals—and, more importantly, the guards who were actually performing the work and receiving wages from AGNA—were not affiliated with the Taliban. *See* S. Rep. at 8–9. As discussed above, White was never connected to the Taliban, *see supra* p. 7; *see also* FAC ¶¶ 150–53; S. Rep. at 8, and AGNA had ceased any direct relationship with Pink by the time he became affiliated with the Taliban, *see* S. Rep. at 16. Moreover, as soon as AGNA learned that Pink had become affiliated with the Taliban, it terminated its relationship with his men. *Id.* at 19.

Likewise, Plaintiffs fail to establish that any terrorist attacks were foreseeable from the Former Entities' business relationship with White II or White III. White II was known as a respected tribal leader, *id.* at 22–23, and the Former Entities reasonably believed that he was an Afghan National Police Commander because he wore a police uniform, drove a police car, and was seen with men in police uniforms. *Id.* at 17, 22. And regardless of the circumstances of White II's death, there is no allegation that the Former Entities were aware of the shura or any supposed Taliban connections before the Azizabad raid. *Id.* at 33. That one U.S. Army sergeant allegedly believed he was Taliban, FAC ¶ 158, does not give rise to a reasonable inference that the Former Entities were aware of that sergeant's understanding or otherwise had reason to believe he was Taliban. As for White III, there are no allegations in the FAC or other indications in the Senate Report that he was Taliban. Put simply, it was not foreseeable that payments to the individuals identified in the FAC would be used by the Taliban and other terrorist organization to fund attacks against Americans years later.

* * *

At bottom, Plaintiffs allege that compensation paid to local Afghan guards one or two years before any Plaintiffs were killed or injured (in a province where only a single alleged attack occurred four years later) somehow makes the Former Entities liable for every death or injury thereafter caused by the Taliban or any of the other terrorist organizations in the alleged syndicate anywhere in Afghanistan. "[T]his is 'precisely the kind of unlimited, sprawling, and speculative liability that proximate cause forbids.'" *Zapata v. HSBC Holdings PLC*, 414 F. Supp. 3d 342, 357 (E.D.N.Y. 2019). Indeed, courts have acknowledged that under the ATA, "a defendant's liability cannot . . . go forward to eternity." *Crosby v. Twitter, Inc.*, 921 F.3d 617, 623 (6th Cir. 2019). Were Plaintiffs' allegations enough to support liability under the ATA, "the [C]ourt would be left

without an intelligible basis to distinguish between the specific attacks that form the basis of the complaint and . . . horrific and often terroristic violence inflicted upon others." *Zapata*, 414 F. Supp. 3d at 357.

Plaintiffs' position amounts to a theory of strict liability for any payments for any reason to anyone who ever becomes affiliated with a terrorist organization. But as the D.C. Circuit has explained in an analogous context, if Congress had wanted to establish such strict liability, it would have done so. *Cf. Owens*, 897 F.3d at 275–76 ("If Congress intended that 'any provider of U.S. currency to a state sponsor of terrorism would be strictly liable for injuries subsequently caused by a terrorist organization associated with that state,' it would have done so explicitly."). That Congress did not do so makes clear that a plaintiff must meet the ATA's "traditionally rigorous proximate cause requirement" for direct liability. *Shatsky v. PLO*, No. 02-2280, 2017 WL 2666111, at *7 (D.D.C. June 20, 2017), *vacated on other grounds*, No. 17-7168, 2020 WL 1856490 (D.C. Cir. Apr. 14, 2020). Plaintiffs have failed to do so as a matter of law. Counts I, III, and IV should therefore be dismissed for this additional reason.

3. Plaintiffs Have Not Sufficiently Alleged That The Former Entities Committed An Act Of International Terrorism Under The ATA.

In addition to their failure to sufficiently plead causation, Plaintiffs have also failed to plead that the Former Entities committed an act of international terrorism. The ATA defines an "act of international terrorism" as:

> (A) Activities which are violent acts or acts dangerous to human life which are crimes in the United States or another State;
> (B) Activities which appear to be intended to:
> (i) Intimidate or coerce a civilian population;
> (ii) Influence the policy of a government by intimidation or coercion; or
> (iii) Affect the conduct of a government by mass destruction, assassination, or kidnapping; and
> (C) Activities which occur primarily outside the U.S. or transcend national boundaries in terms of the means by which they are accomplished.

18 U.S.C. § 2331(1). Plaintiffs' allegations are deficient as a matter of law in two respects. First, they have failed to plead sufficient facts showing that the Former Entities' activities were either "violent" or "dangerous to human life." *Id.* § 2331(1)(A). Second, they have failed to adequately allege that those activities "appear[ed] to be intended to intimidate or coerce a population[,] influence the policy of a government through intimidation or coercion[,] or affect a government's conduct through mass destruction, assassination or kidnapping," *id.* § 2331(B).[5]

As a threshold matter, courts have repeatedly rejected claims that doing business with an individual or company that may be affiliated with a terrorist organization constitutes an activity that is "violent" or "dangerous to human life." *See Linde*, 882 F.3d at 327–28 (providing "routine financial services" to members of terrorist organizations does not "compel a finding that as a matter of law, the services were violent or life-endangering acts that appeared intended to intimidate or coerce civilians or to influence or affect governments"); *O'Sullivan v. Deutsche Bank AG*, No. 17-cv-8709, 2019 WL 1409446, at *7–8 (S.D.N.Y. 2019) (bank's financial services to companies "with connections to terrorist organizations" to avoid U.S. sanctions did not satisfy § 2331(1)'s requirement that defendant's acts be "dangerous to human life" and intended to coerce or intimidate); *Weiss v. Nat'l Westminster Bank PLC*, 381 F. Supp. 3d 223, 235 (E.D.N.Y. 2019) ("Plaintiffs offer no evidence that Defendant's banking services directly involved strong physical force, or intense force, or vehement or passionate threats."); *Stutts v. De Dietrich Grp.*, No. 3-cv-4058, 2006 WL 1867060, at *1–2 (E.D.N.Y. June 30, 2006) (issuing letters of credit to companies that supplied chemicals to Saddam Hussein's regime in Iraq was not dangerous to human life and did not appear to be designed to coerce civilians or government entities).

[5] Plaintiffs have also failed to show that the Former Entities' activities constituted a crime in the United States. The discussion of how each count fails to plead the elements of the respective offenses is in Argument Section I.B.5 below.

Many of those courts have likewise held that doing business with a terrorist organization does not reflect an intent to "intimidate or coerce." *See, e.g.*, *Linde*, 882 F.3d at 327–28; *see also Kemper v. Deutsche Bank AG*, 911 F.3d 383, 390 (7th Cir. 2018) (bank's facilitation of Iran's transactions, which financed terrorist attacks on Americans, did "not appear intended to intimidate or coerce any civilian population or government"). Instead, courts have rightly recognized that such business transactions are "motivated by economics, not by a desire to 'intimidate or coerce.'" *Kemper*, 911 F.3d at 390; *see also Freeman v. HSBC Holdings PLC*, 413 F. Supp. 3d 67, 90–92 (E.D.N.Y. 2019) (plaintiffs failed to allege the elements of § 2331(1) because they could not identify a direct connection between the financial services and the terrorist organization, and defendants appear to have been "purely motivated by the opportunity to make money"); *Zapata*, 414 F. Supp. 3d at 358–59 ("[W]hile the court must draw all inferences in [plaintiffs'] favor in deciding this motion, it is not required to disregard 'alternative explanations so obvious that they render the plaintiff's inferences unreasonable.' . . . [T]o an objective observer, HSBC's conduct appeared to be 'motivated by economics[.]'").[6]

Here, Plaintiffs allege only that the Former Entities paid the Taliban. Even if the Former Entities had made protection payments to the Taliban—and there are no facts pleaded in the FAC or contained in the Senate Report to support this naked assertion—that alone does not constitute a

[6] Plaintiffs rely on one case, *Wultz v. Islamic Republic of Iran*, to support their claim that such conduct constitutes a violation of the ATA. 755 F. Supp. 2d 1, 44 (D.D.C. 2010); FAC ¶ 2573 n.605. However, in that case, which was decided before JASTA, the plaintiffs alleged that a defendant bank was specifically warned by officials from two governments that a terrorist organization was making money transfers "for the purpose of carrying out terrorist attacks" and that the transfers "enhanced [the terrorists'] ability to plan, prepare for[,] and carry out such attacks[.]" *Wultz*, 755 F. Supp. 2d at 51. The bank, however, "ignored this demand and continued to carry out further [terrorist organization] Transfers." *Id.* Based on these facts, the Court concluded that the plaintiffs plausibly alleged the bank's terrorist intent because it did more than merely provide funds to a terrorist organization; it ***knew*** that its assistance was being used to carry out terrorist attacks, and it continued to provide that assistance anyway. *Id.* at 53.

"violent" or "dangerous" act. Moreover, those alleged protection payments "would not lead an objective observer to conclude Defendants intended to achieve any one of the results listed in § 2331(1)(B)." *Stansell v. BGP, Inc.*, No. 8:09-CV-2501-T-30AEP, 2011 WL 1296881, at *9 (M.D. Fla. Mar. 31, 2011) (payment of protection money to the FARC to allow defendants to conduct oil exploration did not sufficiently allege acts dangerous to human life or terrorist intent). Indeed, the FAC admits that the Former Entities were driven to pay the Afghans not by an intent to intimidate, coerce, or affect a government, but by a "financial motive[]"—the local guards were simply less expensive than U.S. guards. *See* FAC ¶ 164 ("[A]t the core of this strategy was cost—lowering cost to perform the task, while maximizing profits."). Accordingly, as a matter of law, the FAC fails to plead that the Former Entities committed an "act of international terrorism," and Plaintiffs' primary liability claims fail.

4. Plaintiffs Do Not Adequately Plead That The Former Entities Knowingly Committed A Terrorist Act.

Plaintiffs also fail to sufficiently allege that the Former Entities knowingly committed a terrorist act. Specifically, the FAC asserts that the Former Entities knew or recklessly disregarded whether their payments would benefit the Taliban. *See* FAC ¶¶ 145–79. As discussed below, the individual counts in this case require a higher intent level because they plead criminal offenses with specific intent requirements. Nevertheless, Plaintiffs have failed to plead facts that would make even a showing of recklessness plausible, much less meet any of the higher intent standards.

Recklessness is "equivalent to . . . wantonness," which "approaches the degree of moral blame attached to intentional harm, since the defendant deliberately inflicts a highly unreasonable risk of harm upon others in conscious disregard of it." *Boim v. Holy Land Found. ("Boim III")*, 549 F.3d 685, 693 (7th Cir. 2008) (citations and quotations omitted); *see also Owens*, 235 F. Supp. 3d at 90 ("[T]he statute requires . . . something more than mere negligence, in light of the treble

damages provision."). In the ATA context, recklessness requires a plaintiff to make "a connection . . . between the defendant's mental state and the potential for harm to American nationals." *Gill v. Arab Bank, PLC*, 893 F. Supp. 2d 474, 506 (E.D.N.Y. 2012). In other words, the defendant must have known "that there was a ***substantial*** probability that Americans would be injured as a result of its support of the terrorist organization, but [] did not care." *Id.* at 506 (emphasis added); Trial Tr., at 32, ECF No. 879, *Sokolow v. PLO, No. 1:*04-cv-00397 (S.D.N.Y. Mar. 4, 2015) (instructing the jury that plaintiffs must prove that "the defendants were aware of the ***high probability*** of the fact in question" and "that the defendants consciously and deliberately avoided learning of that fact" (emphasis added)).

Here, Plaintiffs fail to meet this high burden. Hiring and paying wages to individuals for legitimate services does not rise to the level of "deliberately indifferent" conduct. In *Hussein v. Dahabshiil Transfer Services Ltd.*, the Southern District of New York held that the families of two U.S. citizens killed by al-Shabaab, a terrorist organization in East Africa, failed to state a claim against two Somalian money-transfer businesses. 230 F. Supp. 3d 167, 171 (S.D.N.Y. 2017). The court rejected the plaintiffs' allegations that the defendants directly supported al-Shabaab's terrorist causes "through financial contributions and by hiring individuals associated with terrorist groups," because the court could not infer from these facts that the defendants "were aware of, or deliberately indifferent to, transfers of money to al-Shabaab[.]" *Id.* The court stated:

> [The FAC] does not allege any instance in which any of the Defendants transferred money to al-Shabaab while on notice of the customer's or transferee's terrorist affiliations or under other suspicious circumstances that would raise 'red flags.' The four transfers identified . . . were not sent to recipients who were publicly identified as associated with al-Shabaab[.]

Id. at 177; *see also Abecassis v. Wyatt*, 704 F. Supp. 2d 623, 656–66 (S.D. Tex. 2010) (allegation that defendant companies had illegally purchased oil from Iraq—and that the funds were used by Iraq's government to finance terrorism—insufficient to plead scienter under the ATA).

This case is analogous to *Hussein*. Plaintiffs have not alleged any facts showing that the Former Entities paid wages to guards ***knowing*** (1) that those guards were Taliban members, and (2) that those wages would be used to fund attacks on U.S. nationals. *See* 230 F. Supp. 3d at 177. Moreover, Plaintiffs fail to allege any facts which would have put the Former Entities on notice of a substantial or high probability that its wages to Afghan guards would be used to fund terrorist attacks on U.S. nationals. *See Gill*, 893 F. Supp. 2d at 506. Accordingly, Plaintiffs have failed to allege that the Former Entities, by paying wages to Afghan guards, acted recklessly, let alone with knowledge or intent.

At worst, the alleged facts here put the Former Entities on notice that they were providing wages to individuals affiliated with feuding warlords. Even these facts, however, fail to show the intent necessary under the ATA. As explained above, the FAC is devoid of any allegations regarding White's ties to terrorism. *See* FAC ¶¶ 150–52; S. Rep. at 8. The FAC merely alleges that (1) in June of 2007, White and his men were hired to work on the Shindand Airbase Contract, FAC ¶ 150; S. Rep. at 11; and (2) on December 12, 2007, White was murdered by Pink, FAC ¶ 151. On these facts alone, the Former Entities could not have possibly known, or even recklessly disregarded, that wages paid to White and his guards would lead to terrorist attacks on U.S. victims.

As to Pink, Plaintiffs rely on two facts from the Senate Report: (1) Pink murdered White, and (2) after White's death, Pink went into hiding and allegedly joined the Taliban. *Id.* However, for several reasons, these facts are also not enough to establish that the Former Entities knew Pink was affiliated with the Taliban or that the Former Entities were reckless about doing business with

Pink and his guards.

First, Pink (and White) were recommended to AGNA in 2007 by its client: ***the U.S. military***. *See* S. Rep. at 8–9. This fact alone ought to dispel any notion that the Former Entities intentionally or recklessly engaged in a terrorist act by paying them contractually mandated wages approved and authorized by the U.S. government. Second, there is no allegation that the Former Entities worked with Pink after he went into hiding. *See id.* at 16 ("Pink . . . was not seen again."). Third, once the Former Entities learned of Pink's alleged association with the Taliban, they promptly addressed the risk and disassociated with the guards recruited by Pink. According to the Senate Report, the Former Entities received word that Pink may have joined the Taliban on January 13, 2008—over a month after White's death. *Id.* at 16–17. Within a few days, the Former Entities had "removed all cell phones from the company's local guards" as a "precautionary measure." *Id.* at 19. And, by January 19, 2008, just six days after discovering that Pink was affiliated with the Taliban, the Former Entities terminated all of Pink's guards. *Id.* In short, nothing alleged in the FAC would have reasonably put the Former Entities on notice—either before Pink was hired or during his tenure—that Pink might be affiliated with the Taliban.

Much like Pink, Plaintiffs' allegations regarding White II also did not place the Former Entities on notice of potential terrorist activity. Plaintiffs allege that White II offered to assume White's role after his death, and that the Former Entities knew or should have known about White II's alleged ties to the Taliban at that time. *See* FAC ¶¶ 153–54. The Senate Report, however, leads a reasonable observer to reach the opposite conclusion: White II did not have terrorist ties. In fact, White II wore a police uniform, drove a police car, and was seen with men in police uniforms. S. Rep. at 17, 22. Additionally, when White II was hired, the Former Entities knew that Pink killed White II's brother and that Pink joined the Taliban. Therefore, it defies logic

for the Former Entities to conclude that White II—Pink's enemy—was part of the same organization. This Court is under no obligation to accept as true Plaintiffs' factual allegations related to White II's ties to the Taliban, when other facts in the Senate Report directly contradict those allegations. *See Kaempe*, 367 F.3d at 963.

Nor are there any facts suggesting that the Former Entities did business with White II while on notice of his possible ties to the Taliban. According to the FAC, a July 19, 2008 report put AGMA on notice that the Afghan government confiscated White II's weapons. *See* FAC ¶¶ 159–160. However, the Senate Report makes clear that this confiscation was due to a "financial disagreement" between White II and the Afghan Ministry of Defense—not White II's connection to the Taliban. *See* S. Rep. at 26–27. Although Plaintiffs further allege that "media accounts from this time linked weapons confiscated in the Shindand area to those belonging to the Taliban," *see* FAC ¶ 160, the Senate Report confirms that these media accounts were "not referenced" in the July 19, 2008 report, S. Rep. at 26. Therefore, Plaintiffs' bare allegation of publicly available sources tying the confiscation to the Taliban is not equivalent to an allegation of knowledge. *See, e.g.*, *Kaplan v. Lebanese Canadian Bank, SAL*, 405 F. Supp. 3d 525, 535 (S.D.N.Y. 2019) (holding that the complaint did not sustainably allege bank's knowledge of payees' affiliations with the FTO based on publicly available sources when "Plaintiffs nowhere allege [] that Defendant read or was aware of such sources").

The only fact, if true, which even arguably could have provided the Former Entities with notice of White II's ties to the Taliban is his presence during the Azizabad raid in August 2008. FAC ¶ 154. However, White II was killed during that raid, and thus, his wage payments were

discontinued. *Id.* ¶ 155.[7] Furthermore, although Plaintiffs allege that this was a "Taliban meeting," *id.* ¶ 154, the Senate acknowledged—after an extensive investigation involving "hundreds of thousands of pages of documents" and "more than 30 interviews"—that the raid was a highly controversial event for U.S.-Afghan relations, and that there are ***still*** contradictory conclusions on whether this raid even involved the Taliban, S. Rep. at 6 n.29, 32. Thus, even the Azizabad raid is insufficient to establish the Former Entities' requisite knowledge.

With respect to White III and "the rest of Mr. White II's men," FAC ¶ 162, the FAC is again utterly lacking. The allegations about these individuals are less than three paragraphs and focus entirely on their association with White II. *See* FAC ¶¶ 161–63. However, there are no facts even suggesting that White III, or the remaining guards, were violent, feuding warlords—much less members of the Taliban. Plaintiffs' allegations amount to nothing more than "guilt by association" which falls short of the ATA pleading requirements. *See In re DDVAP Direct Purchaser Antitrust Litig.*, 585 F.3d 677, 695 (2d. Cir. 2009) ("[G]uilt by association is impermissible."); *Tyson v. New York City Hous. Auth.*, 369 F. Supp. 513, 518 (S.D.N.Y. 1974) ("[G]uilt by association is antithetical to the concepts of personal guilt and individual responsibility which are touchstones of the Anglo-American system of law[.]").

Finally, in an attempt to deflect from their threadbare allegations about Pink, White, White II, and White III, Plaintiffs allege that the U.S. government had knowledge of their Taliban affiliations, *see* FAC ¶¶ 150, 158, and the Former Entities should have vetted the guards before

[7] Plaintiffs allege that the Former Entities made a $1,000 discretionary payment to White II's family after White II's death. FAC ¶ 157. However, Plaintiffs have not alleged in any way that White II's family was associated with or supported the Taliban. *Cf. Sokolow v. PLO*, 60 F. Supp. 3d 509, 517 n.11 (S.D.N.Y. 2014) ("A showing of support—even post-attack financial support to the families of terrorists—is not sufficient to demonstrate that Defendants were somehow responsible for the attacks."). Therefore, such a payment cannot form the basis for ATA liability.

hiring them, *see id.* ¶ 166. Neither of these allegations salvages Plaintiffs' scienter allegations. Allegations about a third party's knowledge are irrelevant to the knowledge inquiry. And allegations that the Former Entities should have done more vetting fails to establish reckless disregard. *See Cabello-Rondón v. Dow Jones & Co., Inc.*, No. 16-CV-3346 (KBF), 2017 WL 3531551, at *9 (S.D.N.Y. Aug. 16, 2017) ("Mere allegations that defendant 'fail[ed] to investigate before publishing, even when a reasonably prudent person would have done so[,]' is not sufficient to establish reckless disregard.").

In sum, Plaintiffs fail to allege that the Former Entities had any reason to believe that their wage payments to Afghan guards would fund terrorist attacks on U.S. nationals (let alone that they in fact did). Accordingly, Plaintiffs have failed to establish primary ATA liability for this additional reason.

5. Each One Of The Counts Suffers From Its Own Deficiencies.

Plaintiffs must also sufficiently plead that the Former Entities' alleged activities underlying their primary liability claims constitute crimes in the United States. They have failed entirely to do so. In Counts I and III, Plaintiffs fail to meet the knowledge requirement in 18 U.S.C. § 2339A and 18 U.S.C. § 2339C. Moreover, in Count IV, which applies only to Centerra, Plaintiffs fail to allege a violation of 50 U.S.C. § 1705. As such, Plaintiffs' primary liability claims should be dismissed for these additional reasons.

a. Plaintiffs Fail To Allege That The Former Entities Knew Or Intended That Their Funds Would Be Used To Carry Out Terrorism.

With respect to Counts I and III, Plaintiffs insufficiently plead the requisite *mens rea—i.e.*, knowledge.

Count I alleges that Defendants violated the ATA by both providing and concealing material support or resources for terrorist activities by the Taliban and/or the Haqqani Network, in

violation of 18 U.S.C. § 2339A.[8] FAC ¶ 2571. Section 2339A criminalizes the provision of "material support or resources . . . knowing or intending that they are to be used in preparation for, or in carrying out," a violation of one or more terrorism-related crimes enumerated in the statute. The statute further criminalizes the concealment of material support or resources. 18 U.S.C. § 2339A. As a threshold matter, a plaintiff must allege: (1) the specific terrorist organization or individual who carried out the attack, and (2) that the defendant provided material support to that organization or individual. *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 585 (E.D.N.Y. 2005) (plaintiffs must prove that the defendant provided material support "to the particular group responsible for the attacks giving rise to their injuries"); *Est. of Parsons v. Palestinian Auth.*, 715 F. Supp. 2d 27, 31 (D.D.C. 2010) ("Central to the material support predicate… is the requirement that the plaintiffs prove who committed the attacks. This is where plaintiffs' case falters."). Additionally, a plaintiff must show that the defendant acted with the requisite mental state when providing support to that entity or individual. That is, the defendant must have acted with either ***knowledge*** or ***intent*** that the support would be used in preparation for, or in carrying out, specific terror-related crimes. *United States v. Mehanna*, 735 F.3d 32 (1st Cir. 2013).

Count III likewise alleges that Defendants violated the ATA by providing funds to the Taliban that financed the Taliban's terrorist attacks, in violation of 18 U.S.C. § 2339C. FAC ¶ 2585. Section 2339C criminalizes "willfully" providing or collecting funds with either the knowledge or intention that the funds will be used for the following: (1) "an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States" (here, Plaintiffs allege that the Taliban committed terrorist offenses under the

[8] Here, Plaintiffs list eleven underlying terrorist offenses that they claim were committed by the Taliban. *See* FAC ¶ 2572.

International Convention for the Suppression of Terrorist Bombings, *see* FAC § 2585); or (2) "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act[.]" 18 U.S.C. § 2339C(a)(1)(A) & (B). Notably, under § 2239C, a defendant must provide funds ***willfully***, "but the . . . required knowledge is that the funds will be used for terrorism." *Abecassis*, 704 F. Supp. 2d at 664.

Thus, under both § 2339A and § 2339C, the provider of material support or the provider/collector of funds must know that his or her assistance will be used in preparation for or to carry out terrorism. 18 U.S.C. §§ 2339A & 2339C; *Mehanna*, 735 F.3d at 43; *Owens*, 235 F. Supp. 3d at 98. This effectively destroys strict liability or liability for negligent conduct. *Linde*, 384 F. Supp. 2d at 586 n. 9 (observing that § 2339A and § 2339C "require knowledge or intent that the resources given to terrorists are to be used in the commission of terrorist acts").

Here, Plaintiffs fail to allege either predicate offense. First, as to § 2339A, Plaintiffs fail to allege that the Former Entities provided material support to the individuals responsible for the terrorist attacks. In fact, Plaintiffs do not allege that the Afghan guards committed ***any*** terrorist attacks; they only allege that the Former Entities paid Afghan guards who worked on security contracts at least a year before any Plaintiff was killed or injured in a terrorist attack. Similarly, Plaintiffs make no allegations whatsoever that the Former Entities provided material support to the Haqqani Network, al-Qaeda, or any of the other organizations that committed these attacks.[9]

[9] Plaintiffs effectively concede this point because, in amending their original Complaint, they dismissed the Former Entities from Count Two (Providing Material Support to the Haqqani Network in violation of 18 U.S.C. § 2339B).

The FAC is also devoid of allegations showing that the Former Entities concealed their payments to Pink, White, White II, White III, or any of their guards.

Second, as to both § 2339A and § 2339C, Plaintiffs fail to allege that the Former Entities knew or intended that their payments would be used to carry out the eleven alleged underlying crimes. As discussed in detail above, since Plaintiffs failed even to establish that the Former Entities acted recklessly, they certainly cannot meet the higher knowledge requirements under § 2339A or § 2339C. *See Hussein*, 230 F. Supp. 3d at 171 ("Because the material support statutes require the same (or a greater) showing of *mens rea* than does Section 2333(a), a plausible allegation of a violation of the material support provisions establishes both 'unlawful action' and scienter for purposes of Section 2333(a)."). Therefore, Counts I and III should be dismissed for this additional reason.

b. Plaintiffs Fail To Allege That Centerra Committed An IEEPA Violation.

Finally, Count IV fails for several reasons. In that count, Plaintiffs allege that the U.S. Defendants, including Centerra, willfully violated, attempted to violate, conspired to violate, or caused a violation of regulations issued pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705(a) & (c). Such regulations prohibit U.S. persons from "transfer[ing], pa[ying], export[ing], withdraw[ing] or otherwise deal[ing] in" property within the United States or that comes within the United States if that property belongs to a Specially Designated Global Terrorist ("SDGT"). 31 C.F.R. § 594.201.[10] Moreover, the regulations prohibit U.S. persons "[from] engag[ing] in any transaction or dealing in property of . . . [SDGTs]." 31 C.F.R. § 594.204. The latter provision expressly prohibits U.S. persons from "making [] any

[10] As Plaintiffs allege, "[o]n July 2, 2002, the United States designated the Taliban as a[n] [SDGT] under Executive Order 13224." FAC ¶ 2592.

contribution or provision of funds, goods, or services by, to, or for the benefit of [SDGTs]." *Id.*

Therefore, to state a claim, a plaintiff must allege sufficient facts to demonstrate that (1) the defendants are U.S. persons; (2) who dealt in property in the U.S. and belonging to a SDGT; (3) who knew or had reason to know that the funds they provided were intended for the SDGT; (4) who also knew that these actions were prohibited by the law; and (5) knowing these things, the defendants did one or more of the following: (a) tried to evade or avoid the requirements of the law, *see* 31 C.F.R. § 560.203, (b) attempted to engage in conduct that would violate the law, *see* 50 U.S.C. § 1705(b); (c) succeeded in violating the law, *see id.;* or (d) aided or abetted another person in doing one of the foregoing, *see* 18 U.S.C. § 2. *United States v. Quinn*, 401 F. Supp. 2d 80, 104 (D.D.C. 2005).

Plaintiffs fail to satisfy several of these elements. As a threshold matter, none of the allegations involve any "property" of the Taliban, much less any property that was ever in the United States. 31 C.F.R. §§ 594.201, 594.204. Additionally, the FAC fails to allege that Centerra violated IEEPA, as the FAC contains no facts demonstrating that the Former Entities knew the wages were prohibited or that it was intentionally violating a "known legal duty."

As to the knowledge element, a "'willful' act is one undertaken with a 'bad purpose.'" *Bryan v. United States*, 524 U.S. 184, 191 (1998). Said otherwise, to establish willfulness, one "must prove that the defendant acted with knowledge that his conduct was unlawful." *Id.* at 191–92. And, in a context involving "highly technical statutes that present[] the danger of ensnaring individuals engaged in apparently innocent conduct," *id.* at 194—such as IEEPA—willfulness requires proof that the defendant acted with the "specific intent to violate a known legal duty[.]" *Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47*, 58 n. 9 (2007); *United States v. Quinn*, 403 F. Supp. 2d 57, 60 (D.D.C. 2005) (explaining that "IEEPA's criminal provision 'demands proof

that a defendant acted with knowledge of the illegality of his actions'" or in other words the "voluntary, intentional violation of a known legal duty").

Under these standards, Plaintiffs fail to allege that Centerra violated IEEPA. *See Quinn*, 403 F. Supp. at 60. In fact, just the opposite is true: the Former Entities not only had contractual duties to hire locals to staff the security operations, *see* S. Rep. at 8, but they were also instructed by the U.S. military to hire ***specific*** locals, *id.* at 8–9. Regardless, IEEPA and its regulations are highly technical statutes that include a wide range of designations, licensing requirements, and associated prohibitions. Plaintiffs fail to plead any of these requirements, and conclusory allegations that Centerra "willfully" violated IEEPA simply will not suffice. Accordingly, Count IV should also be dismissed for this additional reason.

C. Plaintiffs Fail To State A Claim For Secondary Liability (Counts V-VI) Based On The Shindand Airbase And UNOPS Contracts.

The FAC also fails to state a claim for secondary ATA liability. To state a claim for secondary liability, Plaintiffs must allege that (1) an act of international terrorism was "committed, planned, or authorized" by an FTO; (2) the Former Entities assisted "the person who committed" that act; and (3) that assistance to the FTO was "substantial." *See* 18 U.S.C. § 2333(d)(2); *Halberstam v. Welch*, 705 F.2d 472, 477 (D.D.C. 1983). Plaintiffs fail to plausibly allege any of these three elements. The Court should, therefore, dismiss Counts V and VI.

1. Plaintiffs Fail To Allege That The Attacks Were "Committed, Planned, Or Authorized" By An FTO.

First and foremost, Plaintiffs have not sufficiently pleaded secondary liability under Count V or VI because they fail to allege that an FTO "committed, planned, or authorized" any Taliban attacks. 18 U.S.C. § 2333(d)(2). Plaintiffs' entire case is based on alleged protection payments ***to the Taliban***. The Taliban, however, has ***never been designated as an FTO***. *See* Bureau of

Counterterrorism, *Foreign Terrorist Organizations*, U.S. Dep't of State (Last visited Sept. 10, 2020) ("State Dep't FTO List"), https://www.state.gov/foreign-terrorist-organizations/.[11] Realizing this fundamental deficiency, Plaintiffs attempt to plead around the problem by alleging that (1) the Haqqani Network, a designated FTO with which the Former Entities are not alleged to have had any contact, is actually part of the Taliban, such that ***every*** attack committed by the Haqqani Network is also an attack committed by the Taliban, *see* FAC ¶¶ 438; and (2) al-Qaeda, another designated FTO with which the Former Entities are not alleged to have contacted, planned and authorized ***every single*** Taliban attack, *id.* ¶ 477.

As the *Atchley* court recently held, such a "workaround" is insufficient. Secondary liability is limited to situations where "an FTO ***itself*** had a significant role in a particular attack." *Atchley*, 2020 WL 4040345, at *11. In *Atchley*, plaintiffs attempted to satisfy the FTO requirement by alleging that Jaysh al-Mahdis ("JAM")—a non-FTO alleged to have committed terrorist attacks against plaintiffs in Iraq—was supported by Hezbollah, an FTO. *Id.* at *2. The Court rejected the plaintiffs' theory for three reasons. First, the complaint did not allege that Hezbollah planned or authorized most of the attacks. *Id.* at *10. Second, the plaintiffs offered "no ***concrete*** factual allegations" that Hezbollah "planned" or "authorized" any of the remaining attacks. And third, as to the allegations that Hezbollah provided general support to JAM, the court concluded that "[g]eneral support or encouragement is not enough." *Id.* at *10–11 (emphasis added). The Court concluded that "[u]nder plaintiffs' logic, 'a plaintiff could bring an ATA aiding-and-abetting claim for any attack committed by a non-FTO merely because it had in the past received "material support and resources" from a designated FTO.'" *Id.* at *11.

[11] The State Department list is properly subject to judicial notice as it is a public document that is publicly available, and the content of the list is not subject to a reasonable dispute. *See Citizens for Resp. & Ethics in Wash. v. Trump*, 924 F.3d 602, 607 (D.C. Cir. 2019).

This case is analogous to *Atchley*. As an initial matter, Plaintiffs do not allege that an FTO committed, planned, or authorized ***all*** of the attacks at issue. Indeed, most of the attacks in the FAC—132 of the 238 attacks—are alleged to have been committed ***only by the Taliban,*** which is not an FTO. *See, e.g.*, FAC ¶¶ 665, 937, 1040, 2296; *see Atchley*, 2020 WL 4040345, at *10 ("[P]laintiffs contend they were injured by attacks carried out by JAM, which the Secretary of State has *never* designated as an FTO . . . . That fact is fatal to plaintiffs' aiding-and-abetting claims."). Accordingly, at the very least, the Court should dismiss all Plaintiffs alleging Taliban attacks ***with no FTO involvement***.

Similarly, this Court should dismiss any Plaintiffs alleging attacks committed by FTOs—either the Haqqani Network and/or al-Qaeda—***with no Taliban involvement***. As stated above, Plaintiffs' entire case against the Former Entities rests on the allegation that they made payments to guards affiliated with Pink, White, White II, and White III, who then "funneled [those payments] up" to ***the Taliban***—not the Haqqani Network or al-Qaeda. FAC ¶ 165. There is no allegation that the Former Entities ever made payments to the Haqqani Network or al-Qaeda or that Pink, White, White II, or White III were members of these FTOs. Notably, the Senate Report on which Plaintiffs so heavily rely never even mentions these FTOs.

With respect to the remaining attacks—those where Plaintiffs allege both Taliban ***and*** al-Qaeda involvement—the conclusory allegations are woefully deficient.[12] As in *Atchley*, Plaintiffs here "offer no concrete factual allegations" that al-Qaeda "planned" or "authorized" the attacks at issue. *Compare* FAC ¶ 1647 ("The attack was committed by the Taliban and al-Qaeda… acting together in a joint al-Qaeda-Taliban cell."), *with Atchley*, 2020 WL 4040345, at *10 (characterizing

[12] There are roughly 45 attacks alleged to have been committed by the Taliban and al-Qaeda acting jointly. There are no attacks alleged to have been committed by the Taliban jointly with another FTO, such as the Haqqani Network.

the plaintiffs' allegations as "[t]hreadbare recital[s]" because they merely allege that the "attacks 'committed or proximately caused by [JAM]… [were] planned authorized and/or carried out… by Hezbollah.'"). Similarly, Plaintiffs' allegations regarding al-Qaeda's "general support or encouragement" of Taliban attacks is "not enough." *Atchley*, 2020 WL 4040345, at *10. Indeed, to support their conclusory allegations that the Taliban and al-Qaeda jointly committed attacks, *see, e.g.*, FAC ¶¶ 1647, 1998, 2048, Plaintiffs engage in nothing more than a general discussion about the historical association between the Taliban and al-Qaeda. *See, e.g.*, *id.* ¶¶ 464–521. But as the Court concluded in *Atchley*, merely alleging some general connection between two entities does not—and cannot—demonstrate the requisite level of coordination required under the ATA. Indeed, courts demand more than such tenuous connections, *see Crosby*, 921 F.3d at 625–26 (rejecting the plaintiffs' attempt to create "a tenuous connection" between the attacker and the FTO in order to fulfill this element), and the Court should demand no less here.

Finally, even if Plaintiffs' general allegations about the Taliban's relationship to al-Qaeda are enough, Plaintiffs' conclusions about this relationship are simply implausible. Indeed, Plaintiffs conclude that, in the mid-2000s, al-Qaeda "planned" or "authorized" ***every single*** Taliban attack on U.S. forces in Afghanistan. FAC ¶ 477. This Court should not entertain such a broad and unwarranted conclusion. Clearly, the Taliban and al-Qaeda are distinct entities with distinct goals. *See Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp. 2d 609, 623 (E.D.N.Y. 2006) ("Merely providing financial support and supporting the terrorist objective of an FTO does not suffice to show that an organization is so dominated and controlled so as to have lost its independent identity."). The Executive Branch acknowledges this separateness, s*ee supra* State Dep't FTO List, ***as do Plaintiffs,*** *see* FAC ¶¶ 145–79 (discussing the Former Entities' protection payments only to the Taliban, *not* to the Taliban and al-Qaeda). Counts V and VI should be

dismissed for this reason alone.

2. Plaintiffs Fail To Allege That The Former Entities Assisted The Person Who Committed The Act Of Terrorism.

Counts V and VI should also be dismissed because Plaintiffs fail to allege that the Former Entities aided or abetted ***the specific*** "person who committed such an act of international terrorism." 18 U.S.C. § 2333(d)(2); *Strauss v. Crédit Lyonnais, S.A.*, Nos. 06-cv-702, 07-cv-914, 2017 WL 4480755, at *4 (E.D.N.Y. Sept. 30, 2017) ("By the plain language of the statute, § 2333(d) does not create liability against a person who aids and abets or conspires with the person who merely authorized (***rather than committed***) the terrorist act[.]" (emphasis added)). That is, none of the alleged recipients of payments from the Former Entities actually committed the attacks. White and White II were killed more than a year ***before*** any of the attacks that killed or injured Plaintiffs. FAC ¶¶ 151, 161, 162. Pink fled and "was not seen again" following White's death in December 2007. S. Rep. at 16. Similarly, White III is not alleged to have committed any of the attacks that caused Plaintiffs' injuries or deaths. Nor are any of the guards.

Plaintiffs' secondary liability claims should therefore be dismissed for this additional reason. *See, e.g.*, *Linde*, 882 F.3d at 329 ("[A]iding and abetting an *act* of international terrorism requires more than the provision of material support to a designated terrorist *organization*[.]"); *Taamneh v. Twitter, Inc.*, 343 F. Supp. 3d 904, 916 (N.D. Cal. 2018) ("Congress chose to refer to aiding/abetting or conspiring with a person who committed 'an act of international terrorism,' not aiding and abetting or conspiring with a foreign terrorist organization."); *Crosby v. Twitter, Inc.*, 303 F. Supp. 3d 564, 571 (E.D. Mich. 2018) (no facts alleged "that plausibly suggest that any of the defendants 'aided or abetted' the person (Mateen) who committed the night club attack").

3. Plaintiffs Fail To Allege That The Former Entities Substantially Assisted An FTO.

Even if the Former Entities had made payments to an FTO (they did not), Plaintiffs'

secondary liability claims still fail because the FAC does not allege that any such payments "substantially assisted" the FTO "in an international act of terrorism." 18 U.S.C. § 2333(d)(2). Substantial assistance "requires more than the provision of material support"; Plaintiffs must allege that the Former Entities "assum[ed] a 'role' in terrorist activities." *Linde*, 882 F.3d at 329 (quoting *Halberstam*, 705 F.2d at 477). The so-called *Halberstam* factors inform "how much encouragement or assistance is substantial enough" to qualify as "substantial assistance": (1) the nature of the acts encouraged, (2) the amount of assistance given by defendant, (3) defendant's presence or absence at the time of the tort, (4) defendant's relation to the principal, (5) defendant's state of mind, and (6) the period of defendant's assistance. *Halberstam*, 705 F.2d at 483–84. Each factor favors dismissal. Indeed, Plaintiffs have failed to establish substantial assistance for secondary liability for the same general reasons they failed to sufficiently allege causation for primary liability. *See Linde*, 882 F.3d at 331 (recognizing that some evidence bears on both proximate causation and substantial assistance).

The Nature of the Acts Encouraged. This factor addresses whether Plaintiffs plausibly allege encouragement of the ***specific*** attacks at issue. *See, e.g.*, *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 225 (2d Cir. 2019) ("The plaintiffs here have not plausibly alleged that HSBC encouraged the heinous November 9 Attacks or provided any funds to AQI."); *Averbach v. Cairo Amman Bank*, No. 19-CV-0004-GHW-KHP, 2020 WL 486860, at *16 (S.D.N.Y. Jan. 21, 2020) ("There is no allegation that CAB encouraged the Attacks or any of Hamas's terrorist activities."); *Honickman for Estate of Goldstein v. BLOM Bank SAL*, No. 19-cv-9 (KAM) (SMG), 2020 WL 224552, at *11 (E.D.N.Y. Jan. 14, 2020) ("Plaintiffs have not plausibly alleged that BLOM encouraged the attacks which injured Plaintiffs or knowingly provided any funds to Hamas for its violent activities."); *Kaplan v. Lebanese Canadian Bank, SAL*, 405 F. Supp. 3d 525, 536 (S.D.N.Y.

2019) ("Plaintiffs do not advance any factual, non-conclusory allegations that Defendant knowingly and intentionally supported Hizbollah in perpetrating the rocket attacks.").

As explained above, Plaintiffs have not alleged any facts to show that the Former Entities encouraged the specific attacks alleged in the FAC. The Former Entities hired the local Afghan guards to provide security services—not to commit any acts of terror. None of the individuals with whom the Former Entities did business are alleged to have been involved in the terrorist attacks at issue. The Former Entities paid wages to the guards hired under the Shindand Airbase and UNOPS Mine Clearance Contracts many months and, in some cases, several years before Plaintiffs were injured or killed. Indeed, several of the individuals to whom the Former Entities allegedly made payments (White, Pink, and White II) were killed, went into hiding, or were apprehended by the Afghan government at least a year ***before*** the first terrorist attack identified in the FAC. *See supra* p. 7; S. Rep. at 32. Plaintiffs fail to satisfy this factor. *See Freeman v. HSBC Holdings PLC*, No. 19-CV-2146, 2020 WL 3035067, at *10 (E.D.N.Y. June 5, 2020) (finding that the nature of the act encouraged was violating US sanctions, not committing acts of terrorism, where defendant banks helped Iranian entities avoid sanctions).

The Amount of Assistance Given by Defendant. To show that "the amount of assistance given by defendant" favors a finding of "substantial assistance," Plaintiffs must sufficiently allege that the funds paid were actually received by an FTO and that the Former Entities knew or intended that an FTO would receive the funds. *See, e.g.*, *Siegel*, 933 F.3d at 225 ("[P]laintiffs did allege that HSBC provided hundreds of millions of dollars to ARB, but they did not advance any non-conclusory allegation that AQI received any of those funds or that HSBC knew or intended that AQI would receive the funds."); *Kaplan*, 405 F. Supp. 3d at 536 ("[A]lthough Plaintiffs assert that Defendant processed millions of dollars' worth of wire transfers through the LCB Accounts,

Plaintiffs do not plausibly allege that Hizbollah received any of those funds or that Defendant knew or intended that Hizbollah would receive the funds."); *Freeman*, 2020 WL 3035067, at*10 ("[T]hough involving substantial amounts of money, [the assistance] was not given to the organizations or individuals who committed the acts of terrorism that injured Plaintiffs.").

Here, Plaintiffs have not plausibly alleged that any of the wages paid were actually received by the Taliban organization, let alone an FTO. Nor is there any allegation that the Former Entities knew or intended that an FTO would receive the funds. To the contrary, the Senate Report does not even mention the FTOs identified in the FAC (*i.e.*, the Haqqani Network and al Qaeda). Plaintiffs fail to satisfy this factor as well.

Defendant's Presence or Absence at the Time of the Tort. A defendant's physical absence from the scene of the terrorist attack weighs against a finding of substantial assistance. *See Halberstam*, 705 F.2d at 484. Such is the case here. Simply put, Plaintiffs have not alleged that the Former Entities were anywhere near the attacks, let alone physically present when they happened. Even if "presence" were interpreted broadly, as explained above, the attacks were distant in time and place from the Former Entities' alleged assistance. *See supra* pp. 21–22; *see also, e.g. Siegel,* 933 F.3d at 225 ("[A]s the plaintiffs themselves allege, HSBC was not 'present' at the time of the November 9 Attacks. Indeed, HSBC had ceased transacting any business with ARB ten months prior."). This factor weighs heavily against Plaintiffs' claims.

Defendant's Relation to the Principal. Plaintiffs must plausibly allege that the Former Entities had a ***direct*** connection to an FTO for this factor to weigh in their favor. *See, e.g.*, *Siegel*, 933 F.3d at 225 (determining that plaintiffs had not plausibly alleged that defendant bank had a relationship with the terrorist organization where plaintiffs only alleged the bank provided services to a Saudi bank with terrorist group ties). Plaintiffs allege no direct connection at all between the

Former Entities and an FTO. At most, they allege a remote, indirect connection based on a complex, speculative, and multi-party chain of events. Because Plaintiffs cannot plausibly connect the Former Entities even to the Taliban, let alone to an FTO, they fail to satisfy this factor as well.

Defendant's State of Mind. Plaintiffs must also adequately plead that the Former Entities ***knowingly*** assisted an FTO. *See, e.g., id.* ("[O]n the fifth factor—defendant's state of mind—the plaintiffs do not plausibly allege that HSBC knowingly assumed a role in AQI's terrorist activities or otherwise knowingly or intentionally supported AQI."). Here, however, the allegations do not even reach a "speculative possibility" that the Former Entities "might have known about a nexus between the [guards] and [an FTO]." *Honickman*, 2020 WL 224552, at *11. That is, Plaintiffs cannot show that the Former Entities "knowingly assumed a role in [the FTO's] terrorist activities or otherwise knowingly or intentionally supported [the FTO]." *Siegel*, 933 F.3d at 225; *see also supra* pp. 33–39.

To the contrary, there is no allegation that the Former Entities were aware of any connection between the local Afghan guards and an FTO (*i.e.*, either al Qaeda or the Haqqani Network). Nor have Plaintiffs even alleged that the Former Entities were aware of a Taliban connection. *See, e.g.*, S. Rep. at 8 (explaining that the Former Entities hired Pink and White at the U.S. military's behest). Indeed, the FAC plainly alleges that the Former Entities had a commercial purpose for paying the guards, FAC ¶ 164, which alone fails to satisfy this factor. *Freeman*, 2020 WL 3035067, *10 (finding that the plaintiffs failed to satisfy this factor where "the Complaints' non-conclusory allegations show that Defendants' intentions were to profit commercially by assisting the Iranian entities to evade U.S. sanctions."). Plaintiffs thus cannot show that the Former

Entities had "an intent to finance or otherwise promote or carry out terrorist acts[.]"[13] *Id.*

The Period of Defendant's Assistance. "The length of time an alleged aider-abettor has been involved with a tortfeasor almost certainly affects the quality and extent of their relationship and probably influences the amount of aid provided as well." *Halberstam*, 705 F.2d at 484. And even if the period of assistance was "lengthy," this factor is not satisfied if there are no allegations that the defendant "provided any services to or, had any dealings with, the 'principal,'" *i.e.*, the FTO. *Freeman*, 2020 WL 3035067, at *10. Here, there are no allegations that the Former Entities were involved with either the Taliban or an FTO during the period when torts were committed—all of the local Afghani guards were hired and paid a year (if not years) before any of the alleged terrorist attacks occurred. Plaintiffs thus fail to satisfy this factor as well.

* * *

In sum, Plaintiffs cannot show substantial assistance by the Former Entities, where the attacks occurred years after the Former Entities made wage payments to local Afghans, and there is no alleged connection between the Former Entities and the Taliban, let alone an FTO.

4. Plaintiffs Fail To Allege An Act of International Terrorism.

In Count VI, Plaintiffs allege that the "act of international terrorism" is a singular "Taliban-

[13] Another aiding-and-abetting element that Plaintiffs "must plausibly allege" is "that the defendant was 'aware that, by assisting the principal, it is itself assuming a role in terrorist activities.'" *Siegel*, 933 F.3d at 224; *accord Linde*, 882 F.3d at 329 ("[A]iding and abetting an act of international terrorism requires more than the provision of material support to a designated terrorist organization;" it requires the defendant's awareness that "it is itself assuming a 'role' in terrorist activities."). Because Plaintiffs have failed to adequately allege that the Former Entities played a role in any terrorist activities, it is not plausible that the Former Entities could have been aware of any such role. *See Siegel*, 933 F.3d at 224–25 (absent "any plausible, factual, non-conclusory allegations that HSBC knew or intended that those funds would be sent to [al-Qaeda] or to any other terrorist organizations," the plaintiffs' claim for secondary liability was foreclosed); *Averbach*, 2020 WL 486860, at *2, 12–13 (media sources and reports showing customers were affiliated with terrorist organizations were insufficient to establish bank's general awareness).

al-Qaeda Campaign" engaged in racketeering activity, rather than the specific attacks that caused Plaintiffs' respective injuries. FAC ¶ 2610. Specifically, Plaintiffs allege that "Mullah Omar and other terrorists employed by or associated with the Taliban and al-Qaeda… maintained interests in and conducted the affairs of" the Taliban enterprise "through a pattern of racketeering activity involving" various crimes, such as murder, kidnapping, and arson. *Id.* ¶¶ 2608 –2609. Plaintiffs further allege that such activity is punishable under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), which serves as the "act of international terrorism." *Id.* ¶ 2609. Simply put, Plaintiffs characterize the various attacks that injured them as part of a nine-year "pattern of racketeering activity," as opposed to separate acts of international terrorism. *Id.*

This RICO theory of liability fails under the plain meaning of the statute, which requires "an ***act***"—singular—"of international terrorism committed, planned, or authorized" by an FTO. 18 U.S.C. § 2333(d)(2) (emphasis added). Indeed, this Court recently rejected the theory that a criminal RICO violation can serve as an "act of international terrorism." *See Atchley*, 2020 WL 4040345, at *11 (stating that it is "quite unnatural" to read the ATA's statutory language "to mean that the 'act' causing injury was" the "Jaysh al-Mahdi-Hezbollah Campaign[,]" which engaged in a "16-year racketeering scheme," rather than "the particular attack in which a plaintiff was injured"). Count VI should be dismissed for this additional reason.[14]

II. THE FAC SHOULD ALSO BE DISMISSED IN ITS ENTIRETY BECAUSE WHETHER THE ACT-OF-WAR EXCEPTION APPLIES HERE RAISES A NONJUSTICIABLE POLITICAL QUESTION.

In addition to failing to state a claim, Plaintiffs have also failed to establish subject-matter jurisdiction. Because Rule 12(b)(1) concerns a court's ability to hear a particular claim, "the court

[14] For Count VI, G4S and Centerra also incorporate by reference arguments regarding the distinctness requirement of RICO, which is asserted by Defendants DAI Global LLC as well as Louis Berger Group, Inc. and Louis Berger Group International, Inc. Argument Section IV, Mem. of Points & Auths. In Supp. of DAI LLC's Mot. Dismiss; Argument Section II, Mem. of Points & Auths. In Supp. of Louis Berger Group, Inc.'s Mot. Dismiss; *see also* Fed. R. Civ. P. 10(c).

must scrutinize the plaintiff's allegations more closely when considering a motion to dismiss pursuant to Rule 12(b)(1) than it would under a motion to dismiss pursuant to Rule 12(b)(6)." *Johnson v. Paragon Sys., Inc.*, 305 F. Supp. 3d 139, 143–44 (D.D.C. 2018) (quoting *Schmidt v. U.S. Capital Police Bd.*, 826 F. Supp. 2d 59, 65 (D.D.C. 2011)). Plaintiffs ultimately bear the burden of establishing that the Court has jurisdiction. *Id.* at 143. They have failed to do so here.

Plaintiffs cannot state a claim under the ATA if they were injured "by reason of an act of war." 18 U.S.C. § 2336(a). The ATA defines an act of war as "any act occurring in the course of (A) declared war; (B) armed conflict, whether or not war has been declared, between two or more nations; ***or*** (C) armed conflict between military forces of any origin." *Id.* § 2331(4) (emphasis added). Whether subsection (B) applies raises a nonjusticiable and inextricable political question that deprives this Court of subject-matter jurisdiction.

More specifically, this case is unique among ATA cases because it requires this Court to define the very nature of the war in Afghanistan. It cannot be seriously disputed that the war began as an international armed conflict—*i.e.*, an "armed conflict . . . between two or more nations." *Id.* § 2331(4)(B). In 2002, President George W. Bush determined that "the relevant conflicts [in Afghanistan] are international in scope . . . ." *See* Mem. of President George W. Bush (Feb. 7, 2002), https://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf; *see also* Authorization for Use of Military Force ("AUMF"), Pub. L. 107-40, §§ 1–2, 115 Stat. 224 (authorizing the President to use "all necessary and appropriate force against ***those nations*** . . . he determines planned, authorized, committed, or aided the [9/11] terrorist attacks" (emphasis added)). "Acting pursuant to the AUMF, and having determined that the ***Taliban regime*** had supported al Qaeda, the President ordered the Armed Forces of the United States to ***invade Afghanistan***." *Hamdan v. Rumsfeld*, 548 U.S. 557, 568 (2006) (emphasis added); *see also*

Mousovi v. Obama, No. 05-1124 (RMC), 2016 WL 3771240, at *1 (D.D.C. July 11, 2016) ("[T]he Taliban [had] established the Islamic Emirate of Afghanistan and governed by a strict interpretation of Islamic Sharia law.").

As a result, the act-of-war exception, 18 U.S.C. § 2331(B), applies here unless the nature of the conflict changed after 2002.[15] But no President made that determination with respect to the time period relevant to the FAC. That is, no President determined whether the war in Afghanistan had become something other than an "armed conflict . . . between two or more nations" at the time Plaintiffs were killed or injured. And that question is a non-justiciable political question.

A non-justiciable political question exists where the issue involves:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962). "To find a political question, [the court] need only conclude that one [of these] factor[s] is present, not all." *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005). Several of the *Baker* factors weigh in favor of dismissal here.

[15] The war in Afghanistan was an armed conflict between nations at least until 2014. *See Hamdan*, 548 U.S. at 629 n.60 ("The President has stated that the conflict with the Taliban is a conflict to which the Geneva Conventions apply."); Dkt No. 75-3, Memorandum from the U.S. Department of Defense Deputy General Counsel for International Affairs on Request to Contract for Private Security Companies in Iraq, to the Staff Judge Advocate, U.S. Central Command, 2 (Jan. 10, 2006) ("[F]or purposes of addressing this question [of contracting private security companies to protect U.S. personnel], it may be assumed that military operations both in Afghanistan and Iraq began as international armed conflicts and continue to constitute international armed conflicts."). Thus, to the extent this Court decides the issue, the act of war exception applies here. *See also* Argument Section III, Mem. of Points & Auths. In Supp. of Black & Veatch Special Projects Corporation's Mot. Dismiss.

Foremost, the status of the war in Afghanistan must be determined by the Executive. Absent a declaration of war from Congress, the President possesses the sole power as Commander-in-Chief to recognize the existence of an armed conflict. *The Prize Cases*, 67 U.S. (2 Black) 635, 670 (1862) ("Whether the President in fulfilling his duties, as Commander-in-Chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted."); *Al-Bihani v. Obama*, 590 F.3d 866, 874 (D.C. Cir. 2010) ("The determination of when hostilities have ceased is a political decision, and we defer to the Executive's opinion on the matter, at least in the absence of an authoritative congressional declaration purporting to terminate the war."); *accord. Al-Alwi v. Trump*, 901 F.3d 294, 300 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 1893 (2019). The President also has the sole power to define the nature of an armed conflict. *See The Prize Cases*, 67 U.S. (2 Black) at 670 (declining to contradict President Lincoln's proclamation that a state of war existed by deciding whether the Civil War was an "insurrection" or a "war"); *see also Hamdan v. Rumsfeld*, 415 F.3d 33, 41–42 (D.C. Cir. 2005) ("[T]he President's decision to treat our conflict with the Taliban separately from our conflict with al-Qaeda is the sort of political-military decision constitutionally committed to him."), *rev'd on other grounds*, 548 U.S. 557, 628–29 (2006).

The President holds these powers because the determination regarding the status of an armed conflict is of paramount importance to a variety of issues that go to the heart of the President's ability to conduct war as Commander-in-Chief. For example, the rules for detaining enemy combatants turn on the nature of the armed conflict. *See Hamdan*, 548 U.S. at 628–29 (holding that because the President found that al-Qaeda was not a "High Contracting Party,"

Common Article 3 of the Geneva Convention applied). Similarly, determining the status of an armed conflict implicates the President's "exclusive" "power to recognize foreign nations and governments." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2086 (2015). Put differently, it is critical that the Executive, and only the Executive, determine the status of an armed conflict because the decision has wide-ranging ramifications for the scope of Executive power. This Court thus should not—indeed, cannot—decide here that the status of the Afghanistan conflict had changed such that the act-of-war exception does not apply in this case. *See Al Hela v. Trump*, No. 19-5079, 2020 WL 5083438, *7 (D.C. Cir. Aug. 28, 2020) (observing that the courts "have no warrant to second guess fundamental war and peace decisions by the political branches").

In addition to infringing upon the Executive's constitutional authority, rendering such a decision would also "express[] lack of the respect due [to the President]," and open the door for "multifarious pronouncements" in an area where the Nation should speak with one voice. *Baker*, 369 U.S. at 217; *see also Zivotofsky*, 135 S. Ct. at 2086 (in foreign policy matters, the Nation's voice "must be the President's"). Even the Supreme Court has so far avoided deciding the nature of the war in Afghanistan. In *Hamdan*, for example, the Supreme Court disagreed with the President's legal conclusion that Common Article 3 did not apply to al-Qaeda fighters, but not with the President's finding that al-Qaeda was not a "High Contracting Party." 548 U.S. at 629.[16] Because this case uniquely raises a political question regarding whether the act-of-war exception

[16] The Fourth Circuit in *United States v. Hamidullin*, 888 F.3d 62, 70 (4th Cir. 2018), ventured outside its proper treaty-interpreting role to find that the war against the Taliban in Afghanistan was a non-international armed conflict by 2009. However, it relied on Red Cross commentaries—not a statement from the Executive—and in the context of conflicting record evidence and ever-shifting positions taken by the government. *Id.* at 79–80, 90–91 (King, J., dissenting) ("[T]hese circumstances demand a clear statement from the Executive Branch."). That decision—in addition to being incorrect—is not binding on this Court.

applies in this case, the entire case should be dismissed for lack of subject-matter jurisdiction.[17]

III. THE FAC SHOULD BE DISMISSED IN ITS ENTIRETY AS TO G4S BECAUSE THE COURT LACKS PERSONAL JURISDICTION.

This Court also lacks personal jurisdiction as to G4S. Under Rule 12(b)(2), "[a] plaintiff bears the burden of establishing a factual basis for personal jurisdiction over the defendant(s)." *Williams v. ROMARM*, 187 F. Supp. 3d 63, 70 (D.D.C. 2013). "A plaintiff must plead specific facts providing a basis for personal jurisdiction, and a plaintiff cannot rely on merely conclusory allegations." *Akhmetshin v. Browder*, 407 F. Supp. 3d 11, 18–19 (D.D.C. 2019). The Court "need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts." *Id.*; *see Atchley*, 2020 WL 4040345, at *2.

To establish personal jurisdiction over G4S, Plaintiffs rely on Rule 4(k)(2).[18] That rule

[17] It is worth noting that Plaintiffs ask this Court not only to define the status of the war in Afghanistan, but to opine on how it was conducted. As noted above, *see* pp. 6–7, and explained by the Senate, *see* S. Rep. at 8–9, the Former Entities were required to hire locals, and the U.S. military specifically directed AGNA to hire White and Pink. The contractual mandate to use Afghan local nationals as security guards was itself a result of DOD policy, and any inquiry into the wisdom of that policy—an inquiry at the heart of and inextricably intertwined with Plaintiff's allegations against G4S and Centerra—necessarily raises a political question by requiring judicial intrusion into the decision-making and policy-setting of DOD officials. DOD policy of local national contracting was widely understood and reported by at least 2008. For example, in July of 2009, DOD officials told the Congressional Research Service that contracting with local nationals in Afghanistan was an important element in DOD's counter-insurgency strategy. *See* Moshe Schwartz, Cong. Rsch. Serv., R40764, *Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis* 7 (2011) (quoting DOD officials that "[e]mploying local nationals injects money into the local economy, provides job training, builds support among local nationals, and can give the U.S. a more sophisticated understanding of the local landscape"), https://fas.org/sgp/crs/natsec/R40764.pdf. In January 2009, CENTCOM Commander, General Raymond Odierno, defended the DOD contracting policy mandating local national hiring as a measure that saves money, strengthens local economies, and "helps eliminate the root causes of the insurgency—poverty and lack of economic opportunity." *Id.* at 7–8; *see also* Argument Section II, Mem. of Points & Auths. In Supp. of DAI Global, LLC's Mot. Dismiss. The Court should not now second-guess that Executive policy by allowing claims against G4S and Centerra for hiring local guards.

[18] Plaintiffs also allege that the Court has personal jurisdiction over Defendants under Federal Rule of Civil Procedure 4(k)(1)(C) and 18 U.S.C. § 2334(a). *See* FAC ¶ 36. Rule 4(k)(1)(C), which

"allows a district court to acquire jurisdiction over a foreign defendant which has insufficient contacts with any single state but has 'contacts with the United States as a whole.'" *Nuevos Destinos, LLC v. Peck*, No. 15-CV-1846, 2019 WL 78780, at *5 (D.D.C. Jan. 2, 2019). And jurisdiction must be consistent with constitutional due process. *See id.* To that end, Plaintiffs must establish either general or specific personal jurisdiction. *See Williams*, 187 F. Supp. 3d at 70. "Although a nonresident's physical presence within the territorial jurisdiction of the court is not required [to establish personal jurisdiction], the nonresident generally must have certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Walden v. Fiore*, 571 U.S. 277, 283 (2014).

Plaintiffs have not pled any facts sufficient to support the exercise of either general or specific personal jurisdiction over G4S. Plaintiffs' case against G4S is about U.K. corporations performing contracts in Afghanistan that have little or nothing to do with the United States. *Cf. Atchley*, 2020 WL 4040345, at *4 (no personal jurisdiction where "all the relevant conduct that plaintiffs contend gives rise to liability under the ATA occurred ***in Iraq***" (emphasis in original)).

A. <u>The Court Lacks General Personal Jurisdiction Over G4S.</u>

General personal jurisdiction is plainly lacking with respect to G4S. To establish general jurisdiction, "a plaintiff must demonstrate that a defendant's contacts with the forum state are 'so constant and pervasive as to render [it] essentially at home in the forum State.'" *Akhmetshin*, 407 F. Supp. 3d at 26 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014)). For a corporation, the "paradigm bases for general jurisdiction" are its "place of incorporation and principal place of business." *Daimler*, 571 U.S. at 122 (alterations omitted). Here, the FAC alleges that G4S Holdings and G4S Risk Management are both incorporated in the United Kingdom and

provides for personal jurisdiction "authorized by a federal statute," is inapplicable to U.K.-based G4S, as is § 2334(a).

have their principal places of business in London, England. *See* FAC ¶¶ 19–20. Plaintiffs have thus failed to allege general personal jurisdiction.

B. The Court Lacks Specific Personal Jurisdiction Over G4S.

Plaintiffs have also failed to allege facts sufficient to support specific personal jurisdiction over G4S. To establish specific jurisdiction, "plaintiffs must show that each individual defendant purposefully directed his or her activities at the United States; the plaintiffs' injuries 'must proximately result from actions by the defendant *himself* that create a substantial connection with the forum State.'" *Nuevos Destinos*, 2019 WL 78780, at *8 (emphasis in original). The "jurisdictional inquiry focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 287. As such, the plaintiff must allege that the "'necessary relationship' must 'arise out of contacts that the "defendant himself" creates with the forum,'" *Atchley*, 2020 WL 4040345, at *3, as well as "show some sort of causal relationship between a defendant's U.S. contacts and the episode in suit," *Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15, 27 (D.D.C. 2017); *Williams*, 187 F. Supp. 3d at 70 (requiring allegations that a defendant has "purposefully directed" his activities at the forum and "the litigation results from alleged injuries that 'arise out of or relate to' those activities'"). Here, Plaintiffs fail to raise specific allegations connecting G4S to the United States generally and this litigation in particular.

1. Plaintiffs Fail To Allege Sufficient Contacts Between G4S And The United States.

First and foremost, the FAC fails entirely to connect G4S to the United States. *See* FAC ¶¶ 19–20, 145–48, 172–79. That is, the FAC alleges only that (1) actions taken by "Defendants," "ArmorGroup Defendants," or "ArmorGroup" generally are attributable to G4S, *id.* ¶¶ 38–144, 147–57, 163–70, 172, 177–79; (2) G4S obtained and/or performed U.S.-government contracts, *id.* ¶¶ 147, 172, 175–79; or (3) G4S utilized AGNA as a "shell company" or "relied on" AGNA to

bid for and perform U.S.-government contracts, *id.* ¶¶ 146, 172–78. None of these allegations is sufficient to support the exercise of specific personal jurisdiction.

a. Allegations Against "Defendants," "ArmorGroup Defendants," or "ArmorGroup" Cannot Establish Personal Jurisdiction.

Plaintiffs "cannot aggregate factual allegations concerning multiple defendants in order to demonstrate personal jurisdiction over any individual defendant." *Atlantigas Corp. v. Nisource, Inc.*, 290 F. Supp. 2d 34, 42 (D.D.C. 2003). Instead, personal jurisdiction must be based on the specific relationship between G4S and the United States. *See Walden*, 571 U.S. at 286; *Rush*, 444 U.S. at 332 (explaining that due process requirements "must be met as to each defendant over whom a state court exercises jurisdiction"). As explained above, most of the FAC is a generalized pleading that has nothing to do with G4S, and Plaintiffs cannot assert personal jurisdiction over G4S by lumping them with ***thirteen*** other Defendants.

General allegations against the "ArmorGroup Defendants" or "ArmorGroup" are likewise insufficient to support the exercise of personal jurisdiction over G4S. With respect to the "ArmorGroup Defendants" or "ArmorGroup," Plaintiffs at most describe payments to "Taliban cut-outs" in Afghanistan during the performance of contracts in Afghanistan. FAC ¶¶ 94, 148–50, 152, 162–68. Beyond that, Plaintiffs allege that the "ArmorGroup Defendants" had access to a U.S.-based subscription data service (Strategic Forecasting, Inc.), *id.* ¶¶ 125–26. But that allegation does not specifically address G4S, and regardless, access to a website or subscription service is insufficient to demonstrate minimum contacts with the United States. *See Triple Up Ltd.*, 235 F. Supp. 3d at 23 ("[I]t is clear that the 'mere accessibility of the defendants' websites' in the forum cannot by itself 'establish[] the necessary 'minimum contacts.'" (citations omitted)).

Nor can Plaintiffs establish personal jurisdiction over G4S by alleging that the "ArmorGroup Defendants'" conduct was "expressly aimed at the United States." FAC ¶ 179. That

conclusory allegation merely recites Plaintiffs' "theory of specific jurisdiction" without any supporting factual allegations. *Livnat v. Palestinian Auth.*, 851 F.3d 45, 57 (D.C. Cir. 2017). And Plaintiffs have failed to demonstrate that ***G4S*** directly targeted the United States, as courts have consistently required. *See, e.g.*, *Atchley*, 2020 WL 4040345, at *4 (allegations that "[d]efendants knew or recklessly disregarded" risk that transactions financed terrorists demonstrated "at best" an indirect connection to terrorist attacks and contradicted any claim of express aiming); *Livnat*, 851 F.3d at 57 (rejecting the inferential personal-jurisdiction argument that terrorist attacks in Israel that harmed U.S. citizens were intended to influence U.S. policies); *Shatsky*, 955 F.3d at 1037 (rejecting personal jurisdiction on the basis of targeting, because plaintiffs "do not identify any evidence in the record connecting" the attack to the alleged campaign (citations omitted)); *Williams*, 187 F. Supp. 3d at 71 ("[T]he only allegations regarding the District of Columbia involve criminal conduct by others . . . . Such facts are far from 'purposeful availment' and are more akin to [] 'random, fortuitous, tenuous and accidental contacts.'").

b. Plaintiffs Have Failed To Allege Facts Supporting The Claim That G4S Obtained Any U.S.-Government Contracts.

Plaintiffs have also failed to allege with specificity that G4S obtained any U.S.-government contracts. Indeed, Plaintiffs fail to allege any specific facts connecting the five contracts which G4S—or its alleged foreign Former Entities, AGMA or AGI—allegedly performed and the United States. FAC ¶ 147. As should be clear from the titles assigned by Plaintiffs, the UNOPS Mine Clearance Contract was a contract issued by the United Nations Office for Project Services.[19] The

[19] At best, Plaintiffs allege that G4S Risk Management "relied on contacts with the United States" or "frequently worked with and relied on U.S.-based personnel" to implement AGMA work in Afghanistan. FAC ¶ 176. Plaintiffs, however, provide limited facts to support this conclusory assertion, and certainly no facts that specifically connect G4S Risk Management to the United States. *See id.* ¶¶ 176–78.

U.K. FCO Contract and the British Embassy Contract were issued by the U.K. government. And Plaintiffs do not even allege what government or entity issued the PRT Security Contract.

Plaintiffs' allegations regarding the Shindand Mine Clearance Contract fare no better. Plaintiffs fail to allege any specific connection with the United States related to this subcontract, other than the prime contract was issued by a U.S. agency. That is, Plaintiffs allege no visits to the United States to negotiate or execute the contract, no performance in the United States, and no specific allegations of communications with U.S. government personnel. Instead, Plaintiffs allege only that AGMA was "hired" by a U.S. company (ECC) to conduct work in Afghanistan "in connection with" a U.S. Air Force contract, FAC ¶ 147.b, and that it "made repeated communications to ECC personnel in the United States," *id.* ¶ 175. But G4S is unaware of any cases in this Circuit holding that subcontract work conducted by a foreign company on a U.S. contract in a foreign country alone is sufficient to support the exercise of personal jurisdiction. *See Okolie v. Future Servs. Gen. Trading & Contracting Co., W.L.L.*, 102 F. Supp. 3d 172, 177–78 (D.D.C. 2015) (rejecting exercise of personal jurisdiction for tort claims brought against Kuwaiti company that contracted directly with the U.S. government for provision of vehicles in Kuwait); *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 13, 28 (D.D.C. 2014) (rejecting exercise of personal jurisdiction for tort claims brought against U.K. company that contracted directly with the U.S. Army for actions that took place in Iraq); *cf. United States ex rel. Miller v. Bill Harbert Int'l Const., Inc.*, 608 F.3d 871, 887 (D.C. Cir. 2010) (no dismissal where significant portion of foreign corporation's work related to U.S. prime contract bid, foreign corporation signed the bid, and foreign corporation was created "for the specific purpose of providing services to companies that were bidding on projects that were going to be funded by agencies of the United States").

Moreover, general allegations of "communications" to the United States are similarly

insufficient to support the exercise of personal jurisdiction over foreign corporate defendants. As the *Atchley* court recently held, allegations of "work[ing] closely with U.S.-based personnel" and "procur[ing] critical paperwork from the United States" do not "amount[] to relevant suit-related conduct sufficient to confer specific jurisdiction." *Atchley*, 2020 WL 4040345, at *5; *see also Thompson Hine, LLP v. Taieb*, 734 F.3d 1187, 1192 (D.C. Cir. 2013) (limited email communication sent by a non-resident defendant to a law firm in the District of Columbia did not establish a basis for personal jurisdiction); *FC Inv. Group LC v. IFX Mkts., Ltd.*, 529 F.3d 1087, 1095 n.8 (D.C. Cir. 2008) (regular telephone calls by foreign defendant to assist local company were deemed insufficient to establish personal jurisdiction); *Clay v. Blue Hackle N. Am., LLC*, 907 F. Supp. 2d 85, 88 (D.D.C. 2012) (allegations that non-resident defendant "conducts business directly, or through its affiliates and/or agents" in the jurisdiction "are of no value").

c. Plaintiffs' Allegations That G4S Made Contacts With The United States Via AGNA Fail As A Matter Of Law.

Plaintiffs also cannot establish personal jurisdiction based on conclusory allegations that G4S Holdings utilized AGNA as a "shell company," FAC ¶¶ 146, 173, or that G4S Risk Management "relied on" U.S. contacts or AGNA personnel to perform a contract, *id.* ¶ 176.[20]

First, Plaintiffs cannot support an "alter ego" theory of personal jurisdiction against G4S

[20] Based on the allegations in the Complaint, Plaintiffs have likely failed to establish personal jurisdiction over AGNA as well. Personal jurisdiction pursuant to Rule 4(k)(2) is not applicable to AGNA because there are other federal courts that would have jurisdiction over AGNA. FAC ¶¶ 18, 173; *see also Nuevos Destinos*, 2019 WL 78780, at *5 (rejecting personal jurisdiction over defendants who were "subject to jurisdiction in other states"). And Plaintiffs cannot establish personal jurisdiction pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they have failed to allege facts sufficient to demonstrate that AGNA's conduct falls within the reach of the D.C. long-arm statute, D.C. Code § 13-423. Specifically, Plaintiffs have failed to allege facts to overcome the government-contracts exception to personal jurisdiction that applies to cases brought in the District of Columbia. *See Alkanani*, 976 F. Supp. 2d at 25 ("Under the government contacts exception, a nonresident's entry into the District of Columbia for 'the purpose of contacting federal governmental agencies cannot serve as a basis for personal jurisdiction.'" (citations omitted)).

Holdings. *See id*. ¶¶ 146, 173. Generally, "a corporation is treated as a separate and distinct juridical entity, independent of its owner." *Alkanani*, 976 F. Supp. 2d at 8 (citation omitted). However, "courts will impute personal jurisdiction under an alter ego theory in cases where the parent company 'so dominated the [subsidiary] corporation as to negate its separate personality.'" *Oceanic Expl.*, 2006 WL 2711527, at *13 (citation omitted). To demonstrate the requisite unity of interest and ownership for an alter-ego finding, courts consider:

> [W]hether parent and subsidiary have common business departments; whether the parent finances the subsidiary; whether the parent incorporated the subsidiary; whether the subsidiary is inadequately capitalized; whether parent and subsidiary file consolidated financial statements and tax returns; whether they have a joint accounting and payroll system; whether the subsidiary is operated as a mere division of the parent; whether the subsidiary depends on the parent for substantially all of its business; whether the subsidiary's obligations are assumed to be those of the parent; whether the subsidiary's property is used by the parent as its own; and whether the subsidiary is operated exclusively in the interest of the parent.

Id. (citations omitted). Further, as this Court has made clear, "it is not relevant that the parent ultimately benefitted from the activities of the subsidiary or that the subsidiary's supervisors reported to the parent." *Id.* (citation omitted).

Plaintiffs have not alleged any such facts to support their allegation that AGNA functioned as a "shell company" for G4S Holdings. At best, Plaintiffs have only offered the broad and conclusory allegations that G4S Holdings was "involved in and supervised" AGNA's contract performance, such that G4S Holdings "exercised control over, and was jointly responsible for" AGNA's conduct and that G4S benefitted from the relationship. FAC ¶ 146; *see id.* ¶ 173 (alleging that G4S Holdings "could not have obtained or implemented U.S. government contracts or subcontracts" without AGNA). Indeed, they have not even identified the AGNA contracts to

which they are referring.[21]

Such "unsubstantiated, conclusory statements" are insufficient to justify the assertion of an alter-ego theory of personal jurisdiction. *Oceanic Expl.*, 2006 WL 2711527, at *13 (rejecting assertion of personal jurisdiction based on allegation that defendants' subsidiaries "are financed by the parent, are operated in the interest of the parent, and are mere divisions of the parent"); *Clay*, 907 F. Supp. 2d at 89 (rejecting alter-ego theory of personal jurisdiction over government-contract group based on "threadbare assertions" that defendants "conduct business together as different elements of the same common enterprise"). As the Court held in *Oceanic Exploration*, such conclusory allegations fail to provide "sufficient information as to the nature of the relationship" between parent and subsidiary, and the "paucity of individualized evidence" as to that alleged relationship precludes the Court from exercising personal jurisdiction. *Oceanic Expl. Co. v. ConocoPhillips, Inc.*, No. 04-332 (EGS), 2006 WL 2711527, at *13 (D.D.C. 2006).[22]

Second, Plaintiffs' allegations regarding G4S Risk Management are similarly flawed. *See* FAC ¶¶ 176–77. "'Conclusory statements' or a 'bare allegation of conspiracy or agency'"—like

[21] For the first time in its FAC, Plaintiffs opaquely reference AGI's need for AGNA's U.S. presence to bid for an obtain contracts "like the one to protect the U.S. Embassy in Kabul." FAC ¶ 173. According to the FAC, however, AGI was not alleged to be involved with the Kabul Embassy Contract, *id.* ¶ 147.c, and there is no allegation that AGI bid on, or had any part in AGNA's work related to, the Kabul Embassy Contract.

[22] The allegations that G4S Holdings "made payments through" AGNA, FAC ¶ 172, and that G4S Holdings "obtained the money" used to pay the Taliban from AGNA's American counterparts, *id.* ¶ 174, are also insufficient to demonstrate that AGNA was an alter ego of G4S Holdings. Not only do Plaintiffs fail to explain how such payments demonstrate the control or domination necessary to support the exercise of personal jurisdiction under an alter-ego theory, they fail to allege how any unspecified payments made through AGNA, or money obtained from AGNA, relate to the allegedly wrongful payments made in Afghanistan. Such conclusory and indirect allegations cannot support the exercise of personal jurisdiction. *See Atchley*, 2020 WL 4040345, at *5 (finding that "paying certain banking fees through the New York banking system" did not "amount[] to relevant suit-related conduct sufficient to confer specific jurisdiction" over a foreign defendant).

the allegations here—are insufficient to establish personal jurisdiction. *Livnat*, 851 F.3d at 57; *Second Amendment Found. v. U.S. Conf. of Mayors*, 274 F.3d 521, 524 (D.C. Cir. 2001). Plaintiffs provide no facts to support their claim that G4S Risk Management "frequently worked with and relied on" U.S.-based personnel. FAC ¶ 176. Further, to the extent that Plaintiffs are seeking the exercise of some type of conspiracy jurisdiction over G4S Risk Management based on AGNA's conduct, the D.C. Circuit "requires that the plaintiff 'plead ***with particularity*** the conspiracy as well as the ***overt acts within the forum*** taken in furtherance of the conspiracy' in order to establish conspiracy jurisdiction over a defendant." *Cockrum v. Donald J. Trump for President, Inc.*, 319 F. Supp. 3d 158, 185 (D.D.C. 2018). Here, Plaintiffs allege that G4S Risk Management "relied on" cooperation with its "U.S. affiliate" (AGNA), FAC ¶¶ 176–77, but they have not alleged specific facts demonstrating "cooperation" between the two entities. *See Clay*, 907 F. Supp. 2d at 89 (rejecting exercise of personal jurisdiction based solely on allegations that affiliates "conduct business together as different elements of the same common enterprise").

Plaintiffs do allege that AGNA recommended White II and brokered "critical meeting[s]" related to G4S Risk Management's retention of White II. FAC ¶ 176. Plaintiffs, however, do not allege that any of these recommendations or meetings took place in the United States or were in anyway related to the United States. It cannot be that taking the alleged recommendations of, or attending a meeting allegedly arranged by, a U.S. company operating abroad is sufficient to justify the exercise of personal jurisdiction over a defendant. *See Cockrum*, 319 F. Supp. 3d at 179 (rejecting argument that the Court should assume that two meetings held in the United States—in contrast to the zero meetings alleged in this case—related to plaintiffs' claims). Plaintiffs, therefore, fail to allege any specific contacts between G4S and the United States that are sufficient for the exercise of personal jurisdiction.

2. Plaintiffs Have Further Failed To Establish A Nexus Between G4S's U.S. Contacts And This Litigation.

Plaintiffs have also failed to demonstrate that any of G4S's specific contacts have a "causal relationship" to Plaintiffs' alleged injuries at issue in this litigation. *Triple Up Ltd.*, 235 F. Supp. 3d at 27. The "litigation" element requires a direct relationship between the attacks in Afghanistan that allegedly injured Plaintiffs and G4S's contacts with the United States. *See Walden*, 571 U.S. at 287; *cf. Livnat*, 851 F.3d at 57 ("The record before us does not support that inference."). Where the defendant's suit-related conduct is unrelated, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the [forum]." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017). In an ATA claim, "[t]he relevant 'suit-related conduct' . . . [is] the conduct that could have subjected [defendants] to liability under the ATA." *Waldman v. PLO*, 835 F.3d 317, 335 (2d Cir. 2016), *vacated on other grounds*, No. 19-764 (U.S. Apr. 27, 2020).

Here, Plaintiffs allege that G4S is liable under the ATA for making protection payments to the Taliban. But all of those payments allegedly took place in Afghanistan. FAC ¶¶ 148–50, 152, 157–58, 162–64. Plaintiffs do not allege that G4S interacted with, or made any payments to, the Taliban anywhere outside of Afghanistan, let alone were payments made in the United States. Thus, there is no connection between the conduct that forms the basis of Plaintiffs' ATA claim and G4S's alleged U.S. contacts (minimal as they are). *See Alkanani*, 976 F. Supp. 2d at 27.

Indeed, G4S's alleged contract-based contacts with the United States cannot be related to Plaintiffs' tort injuries as a matter of law. "[A]n injury sounding in tort does not 'arise from' a contract for services for the purpose of specific jurisdiction." *Id.* (listing cases in support). Here, alleging that Plaintiffs were harmed during the twelve years following G4S's performance of international contracts in Afghanistan simply "does not establish the necessary relationship

between [c]ontract and claim for personal jurisdiction purposes as a matter of law." *Alkanani*, 976 F. Supp. 2d at 27. "The critical test is whether the nonresident's conduct and connection with the forum state are such that he or she should reasonably anticipate being haled into court there." *Okolie*, 102 F. Supp. 3d at 177 (citation omitted). G4S could not have anticipated being haled into a U.S. court in connection with attacks that occurred in Afghanistan, based solely on its performance of international security contracts outside of the United States. For this additional reason, personal jurisdiction is lacking, and the case should be dismissed entirely against G4S.

CONCLUSION

For the foregoing reasons, all of Plaintiffs' claims against G4S and Centerra should be sdismissed with prejudice.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2020, the foregoing was filed electronically on the CM/ECF system for the United States District Court for the District of Columbia and thereby distributed to all counsel of record.

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