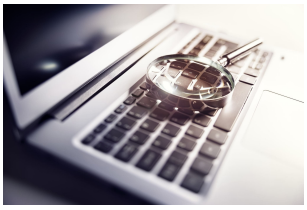

# Supreme Court Defines Limits of Social Media Company Liability

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The U.S. Supreme Court issued two decisions in the 2022-23 term that begin to define the limits of liability for social media companies concerning their role not only as communication platforms, but also arbiters of online content and operators of revenue-sharing systems.

## *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (May 18, 2023)

In a unanimous decision in *Twitter, Inc. v. Taamneh*, the Supreme Court held that Twitter was not liable under the Justice Against Sponsors of Terrorism Act (JASTA) for damages in connection with a 2017 terrorist attack by the Islamic State (ISIS) in Turkey. The plaintiffs were victims and families of victims of a terrorist attack by ISIS on an Istanbul nightclub that killed 39 people and wounded 79 more. They alleged that ISIS used Twitter's social media platform to recruit new terrorists and raise funds for terrorism, and that Twitter knew that ISIS was using its platform but failed to stop it from doing so.

The plaintiffs sought to hold Twitter (as well as Google/YouTube and Facebook) liable for damages from the attack. They brought claims under a provision of JASTA, 18 U.S.C. § 2333, which imposes secondary liability on anyone who "aids and abets by knowingly providing substantial assistance" to a person who commits an act of international terrorism.

Writing for the Court, Justice Thomas relied on the text of the statute to foreclose Twitter's liability. In JASTA, Congress cited *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), as establishing the proper legal framework for civil aiding and abetting and conspiracy liability. *Halberstam* focused on three elements for aiding-and-abetting liability, including that the defendant "knowingly and substantially assist[ed]" in the wrong.


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The Court acknowledged that *Halberstam* did not map perfectly onto all circumstances, and so it looked to *Halberstam's* "thrust" to guide its analysis. Tracing the historical underpinnings of *Halberstam*, the Court held that the phrase "aids and abets" in JASTA refers to a "conscious, voluntary, and culpable participation in another's wrongdoing." The Court held that the plaintiffs cleared this hurdle in their allegations against Twitter.

However, the plaintiffs' allegations that Twitter "gave such knowing and substantial assistance to ISIS" fell short of the Court's standard. Plaintiffs never alleged that the terrorist group actually used the social media platform to *plan* the attack. Mere access to the platform along with the globally applicable algorithms that Twitter had created long ago and without any specific reference to ISIS was insufficient. In other words, while Twitter may have "stood back and watched," it gave no special encouragement to the ISIS members who ultimately carried out the attack. Finally, in light of tort law's caution against imposing liability on passive nonfeasance, the Court held that plaintiffs' claims did not meet the high bar of assistance and scienter required to impose liability under such circumstances.

## Key Takeaways

- Aiding and abetting conspiracy liability in the civil tort context is not unlimited. To succeed on such a claim, plaintiffs must offer specific allegations to show a nexus between the acts or inactions alleged and the wrongful act that damaged them in order to clear the bar of "knowing and substantial assistance."
- Without allegations that they actively assisted wrongful acts, social media companies—and other media defendants—are likely relatively safe from lawsuits seeking to impose liability for criminal terrorist acts that merely make use of the companies' platforms.
- If social media and similar companies set up universally applicable systems (like open access and agnostic content algorithms), those alone are not enough to impose liability for aiding and abetting criminal acts. However, the Supreme Court cautioned that there could be scenarios where the


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provider of a routine service does so in an unusual way or sells such dangerous products that providing either to a terrorist group could constitute "aiding and abetting" a foreseeable terror attack.

- Justice Jackson authored a concurring opinion only to emphasize that the Court's decision was a narrow one based on its procedural posture (a motion to dismiss) and without a fully developed factual record. Justice Jackson's concurrence, albeit brief, leaves room (at least in her view) for a different result under different allegations.

## *Gonzalez, et al. v. Google LLC*, 143 S. Ct. 1191 (May 18, 2023)

In *Gonzalez v. Google,* the U.S. Supreme Court considered a complaint alleging that YouTube was directly and indirectly responsible for a 2015 terrorist attack in France.

ISIS and its supporters utilized YouTube in the lead-up to a coordinated attack executed across Paris in 2015 that killed Nohemi Gonzalez, a 23-year-old U.S. citizen. Plaintiffs, Gonzalez's surviving family members, alleged that Google, the owner of YouTube, was both directly and secondarily liable for the attack mainly because of ISIS's use of YouTube's platform before the attack.

The Ninth Circuit held that most of the plaintiffs' claims were barred by section 230 of the Communications Decency Act of 1996. The court of appeals held that plaintiffs' allegations—that Google approved ISIS videos for advertising purposes and shared in the proceeds from these advertisements with ISIS through YouTube's revenue-sharing system—failed to state a viable claim for relief.

In a per curiam opinion, the Supreme Court acknowledged that the plaintiffs' complaint seemed to fail under *Twitter, Inc. v. Taamneh*, and that the plaintiffs did not seek review of the Ninth Circuit's holdings regarding their revenue-sharing claims. Because the issues were materially identical to those in *Twitter*, the Court vacated the Ninth Circuit's judgment and remanded it for the court to consider plaintiffs' complaint in light of its *Twitter* decision.


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## Key Takeaways

- Because the Court declined to address whether section 230 applied in this matter, the scope of section 230 as it relates to social media liability and digital revenue sharing remains unclear.
- The Court's decision in *Twitter v. Taamneh* (explained above) will govern future claims of civil liability for aiding and abetting under 18 U.S.C. § 2333.

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