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

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

**MOTION INFORMATION STATEMENT**

**Docket Number(s):** 14-4449

Caption [use short title]

In re Palestine Liberation Org

**Motion for:** Emergency stay of all district court proceedings pending resolution of petition for writ of mandamus.

Set forth below precise, complete statement of relief sought:

The Palestinian Authority and the Palestine Liberation Organization respectfully request that this Court enter an order (1) staying all proceedings in the district court pending resolution of their petition for a writ of mandamus; and (2) vacating the January 13, 2015 trial date.

**MOVING PARTY:** The Palestinian Authority and the Palestine Liberation Organization

☐ Plaintiff ☑ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

**OPPOSING PARTY:** Mark I. Sokolow, et al.

**MOVING ATTORNEY:** Laura G. Ferguson

**OPPOSING ATTORNEY:** Kent A. Yalowitz

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Court-Judge/Agency appealed from: United States District Court for the Southern District of New York (Daniels, J.)

**Please check appropriate boxes:**

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☑ Yes ☐ No ☐ Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below? ☑ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☑ No

Requested return date and explanation of emergency: December 19, 2014.

The district court indicated its intent to deny the petitioners' motion for a stay, jury selection is scheduled to start on January 7, 2015, and trial is scheduled to start on January 13, 2015.

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

**Signature of Moving Attorney:** /s/ Laura G. Ferguson **Date:** 12/17/2014

Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

**No. 14-4449**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

In re PALESTINE LIBERATION ORGANIZATION, PALESTINIAN AUTHORITY,

*Petitioners*.

**PETITIONERS' MOTION FOR EMERGENCY STAY OF ALL DISTRICT COURT PROCEEDINGS PENDING RESOLUTION OF PETITION FOR WRIT OF MANDAMUS**

Pursuant to Federal Rule of Appellate Procedure 8(a), the Defendants-Petitioners the Palestinian Authority ("PA") and the Palestine Liberation Organization ("PLO") (for ease of reference, collectively, "the Palestinian Government") respectfully request that this Court enter an order (1) staying all proceedings in the district court pending resolution of their petition for a writ of mandamus, and (2) vacating the January 13, 2015 trial date.[1]

[1] The petition for writ of mandamus filed on December 3, 2014, stated that the trial is scheduled to begin on January 12. Doc. No. 1-2 at 2; *see also* Dist. Ct. Dkt. No. 435 at 2 (Pre-Trial Scheduling Order). At a December 16, 2014, pre-trial conference, the district court moved the trial date from January 12 to January 13 to allow additional time for the jury selection process.

## INTRODUCTION AND PROCEDURAL BACKGROUND

On December 1, the district court entered a memorandum decision and order denying the Palestinian Government's motions for dismissal and summary judgment based on lack of personal jurisdiction. Exh. 1 (Dist. Ct. Dkt. No. 657). On December 3, the Palestinian Government filed a petition for writ of mandamus ("Petition") and emergency motion for expedited review. Doc. 1, Doc. 6. On December 9, the Court granted the Palestinian Government's emergency motion for expedited review of their mandamus petition. Doc. 17. The respondents' brief is due today, December 17. Doc. 27. The trial judge, the Honorable George B. Daniels, will begin the jury section process on January 7. With the intervening holidays, there is substantial uncertainty whether this Court will be able to issue a ruling on the Petition before the trial starts.

The Palestinian Government filed a motion to stay and supporting memorandum in the district court on December 8. Dist. Ct. Dkt. No. 664. (At the district court's request the motion and memorandum were re-docketed on December 9 as two separate entries. Dist. Ct. Dkt. Nos. 665, 666.) At a pre-trial conference yesterday, December 16, Judge Daniels repeatedly stated his intent to deny the stay motion. Judge Daniels is awaiting the respondents' opposition brief before entering an order. The relevant portion of the transcript of the December 16 conference will be provided to the Court as soon as it is available.

A stay is necessary to preserve the Palestinian Government's rights. The district court's December 1, 2014 ruling that it may exercise general personal jurisdiction over the Palestinian Government consistent with *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), and *Gucci Am. v. Bank of China*, 768 F.3d 122 (2d Cir. 2014), is indisputably wrong. As an important partner in the United States' efforts to foster peace and security in the Middle East, the Palestinian Government should not be subjected to a lengthy, high-profile terrorism trial in the United States without appellate review of the district court's patently erroneous decision. A stay is necessary to ensure that the Court will have sufficient opportunity to review the Palestinian Government's Petition and seek any necessary additional input or argument.

## STANDARD OF REVIEW

The factors this Court considers when weighing a request for a stay pending appeal are "(1) whether the movant will suffer irreparable injury absent a stay, (2) whether a party will suffer substantial injury if a stay is issued, (3) whether the movant has demonstrated 'a substantial possibility, although less than a likelihood, of success' on appeal, and (4) the public interests that may be affected." *LaRouche v. Kezer*, 20 F.3d 68, 72 (2d Cir. 1994) (quoting *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1993)).

The probability of success is viewed on a sliding scale "according to the court's assessment of the other stay factors." *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) (internal quotation marks and alteration omitted). Thus, "[t]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury [the movant] will suffer absent the stay. Simply stated, more of one excuses less of the other." *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006) (internal quotation marks omitted).

A stay is warranted in this case. Although all four factors weigh in favor of a stay, the Palestinian Government's high probability of success on the merits and the potential irreparable harm to the Palestinian Government's status and important U.S. foreign policy interests make this a uniquely compelling case for a stay. The Court has entered stays in other cases where mandamus relief was sought, and it should likewise do so here. *See, e.g.*, *In re Roman Catholic Diocese of Albany*, 745 F.3d 30, 35 (2d Cir. 2014) (noting that the Court *sua sponte* "stayed all district court proceedings pending consideration" of a mandamus petition that raised post-*Daimler* personal jurisdiction issues); *In re The City of New York*, 607 F.3d 923, 932 (2d Cir. 2010) (noting that, pending consideration of a mandamus petition, the Court granted a stay of a district court's discovery order compelling the production of "sensitive intelligence reports").

# ARGUMENT

## I. THE PALESTINIAN GOVERNMENT HAS DEMONSTRATED "A SUBSTANTIAL POSSIBILITY" OF SUCCESS ON MANDAMUS

The procedural history and merits of the personal jurisdiction issue are set forth more fully in the Petition. Doc. 1-2 at 3-21. To avoid undue repetition of the Petition, both sections are hereby incorporated by reference.

In 2011, the district court held that it could exercise general personal jurisdiction over the Palestinian Authority and PLO because the PLO continuously and systematically maintained a 12-person mission office in the United States, the office of the PLO Mission to the United States. The district court also identified as relevant jurisdictional contacts the PA's retention of a government relations firm and political speech and public appearances of the Head of the PLO Mission to the United States. *See* Doc. 1-2 at 3-5 (citing *Sokolow v. PLO*, No. 04-cv-397, 2011 U.S. Dist. LEXIS 36022 (S.D.N. Y. Mar. 30, 2011)).

In January 2014, the Supreme Court issued its decision in *Daimler*, 134 S. Ct. 746, holding that, aside from an "exceptional case," a district court may assert general personal jurisdiction over a defendant only if the forum is the defendant's place of incorporation or principal place of operation. *Id.* at 761 n.19. The Court emphasized that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Id.* at 760. "With respect to a corporation, the place of incorporation and principal place of business are

paradig[m] . . . bases for general jurisdiction. Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." *Id.* (internal citation and quotations omitted). The Court expressly rejected earlier decisions exercising jurisdiction based on the "presence of a local office." *Id.* at 761 n.18. In *Gucci*, this Court, applying *Daimler*, also held that the continuous presence of offices or branches in the forum is no longer sufficient to make a foreign defendant amenable to general personal jurisdiction. *Gucci Am.*, 768 F.3d at 135.

In its December 1 ruling, the district court held: "Under both *Daimler* and *Gucci*, the PA and PLO's continuous and systematic business and commercial contacts with the United States are sufficient to support the exercise of general jurisdiction." Exh. 1 at 3 (citing Dist. Ct. Dkt. No. 87, the district court's March 11, 2011 decision). The district court mistakenly interpreted *Daimler* to require the PA and PLO to identify a forum other than the West Bank and Gaza Strip where they are more at home than in the United States. *See id.* at 3-4. The district court then concluded: "This record is therefore insufficient to conclude that either defendant is 'at home' in a particular jurisdiction other than the United States." *Id.* at 4. Notably, the respondents, represented by Arnold & Porter, have not argued that the PA or PLO are "at home" in the United States under *Daimler*, but have instead repeatedly relied on alternate grounds for the assertion of personal

jurisdiction, grounds rejected by the district court. *See* Doc. 1-2 at 5-6, 8-9. Moreover, respondents appear poised to rely on the same alternate grounds in responding to the Petition. Doc. No. 18-2 at 1.

### A. Neither the PA Nor the PLO Has Its Principal Place of Operation in the United States.

As set forth in the Petition, during the relevant period, the Palestinian Authority had its headquarters in the Gaza Strip and West Bank. Doc. 1-2 at 14 (citing Doc. 1-6 at ¶ 32). As the government for approximately 4.4 million Palestinians living in the West Bank and Gaza Strip, the Palestinian Authority "carries out a broad range of governmental and humanitarian activities." *Id.* (citing Doc. 1-8 at 17). The PLO represents the Palestinian people, wherever located, in their aspirations for a homeland. The PLO is the body that negotiates with Israel and carries out the foreign affairs function for Palestine, including by maintaining diplomatic embassies, delegations, and missions throughout the world. *Id.* (citing Doc. 1-6 at ¶¶ 1, 14). During the relevant period, the PLO had its headquarters in the Gaza Strip, the West Bank, and Amman, Jordan. *Id.* (citing Doc. 1-6 at ¶ 31).

In asserting general personal jurisdiction over the PA and PLO, the only significant forum contact the district court identified was the Washington, D.C. office of the PLO Mission to the United States. The activities of that office are exempt under the government contacts exception, as is the PA's retention of a lobbying firm. *See Atlantigas Corp. v. Nisource, Inc.*, 290 F. Supp. 2d 34, 45

(D.D.C. 2003) (lobbying and government relations activities are "precisely the type of activities protected by the 'government contacts' exception and cannot serve as the basis for personal jurisdiction"); *see also Brunson v. Kalil & Co.*, 404 F. Supp. 2d 221, 235 (D.D.C. 2005); C*ellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 50 (D.D.C. 1994). Even before *Daimler*, "the presence of an embassy or consulate alone is insufficient to find general jurisdiction." *Frontera Res. Azer. Corp. v. State Oil Co.*, 479 F. Supp. 2d 376, 387 n.4 (S.D.N.Y. 2007); *accord Fasolyak v. Cradle Society, Inc.*, No. 06-01126, 2007 U.S. Dist. LEXIS 52041, at *29-*34 (D.D.C. July 19, 2007).

Even assuming the presence and activities of the PLO U.S. Mission office could be imputed to the PA and are not excluded by the government contacts exception, the presence of a local office is not a sufficient basis for the exercise of general personal jurisdiction over either the PA or the PLO. *Daimler*, 134 S. Ct. at 735 n.18; *Gucci Am. v. Bank of China*, 768 F.3d 122, 135 (2d Cir. 2014).

### B. The District Court Clearly Erred in Ruling That *Daimler*'s Principal Place of Business Test Applies Only to Foreign Corporations or Banks.

The district court held that because the PA and PLO are not "foreign corporations," they "therefore are not subject to the traditional analysis in determining a defendant's place of incorporation or principal place of business." Exh. 1 at 3. To the extent the district court is suggesting that the Constitutional

due process test for the assertion of general personal jurisdiction laid out in *Daimler* is limited to corporations, the district court clearly is wrong.

As this Court recently explained, "[t]he natural result of general jurisdiction's 'at home' requirement is that 'only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there.'" *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 225 (2d Cir. 2014) (quoting *Daimler*, 134 S. Ct. at 760). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, *it is an equivalent place*, one in which the corporation is fairly regarded as at home." *Daimler*, 134 S. Ct. at 760 (quoting *Goodyear*, 131 S. Ct. at 2853-54) (internal quotation marks omitted, emphasis added). For other organizations, it also is a place equivalent to an individual's domicile, such as a principal place of operation. It is not, as the district court ruled, every place in which the defendant engages in continuous and systematic activity. That is the test the Supreme Court rejected as "unacceptably grasping" in favor of the "at home" test, a test that applies to all types of defendants. *Id.* at 760-761.

Other district courts have had no difficulty adapting the "at home" test to non-corporate entities similar to the PA and PLO and found them to be "at home" in the jurisdictions where they principally operate. *See, e.g.*, *Krishanti v. Rajaratnam*, No. 2:09-cv-05395, 2014 U.S. Dist. LEXIS 58314, at *5-6, *15-21

(D.N.J. Apr. 28, 2014) (applying *Daimler* and dismissing for lack of personal jurisdiction a suit against a "Sri Lankan based non-governmental organization"); *Toumazou v. Turkish Republic of N. Cyprus*, No. 09-cv-1967, 2014 U.S. Dist. LEXIS 143535, at *11 (D.D.C. Oct. 9, 2014) (holding that the Turkish Republic of Northern Cyprus "is 'at home' in northern Cyprus, as its name suggests, not in the District of Columbia").

### C. The District Court Committed Clear Error in Its Application of *Daimler*'s Proportionality Test.

*Daimler* held that only in an "exceptional case" could an organizational defendant be found "at home" in a forum that is not its principal place of business. *Daimler*, 134 S. Ct. at 761 n.19. In assessing whether the defendant's contacts with the forum are so substantial that an exceptional case exists for the assertion of general personal jurisdiction outside the paradigm fora, the district court must appraise the defendant's "activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20.

The district court erred when it interpreted *Daimler* to require the PA and PLO to establish that they are not more at home in the United States than they are any place *outside* the West Bank. *See* Doc. 1-2 at 18. Neither *Daimler* nor *Gucci* authorizes the district court to exclude the activities in the paradigm forum when undertaking the proportionality test. In *Gucci*, for example, this Court did not exclude the Bank of China's operations in China when determining whether its

U.S. activities were significant compared to its global activities. To the contrary, it included the bank's 10,145 domestic branches in the analysis. *Gucci*, 768 F.3d at 135; *see also Sonera*, 750 F.3d at 226 (contrasting the defendant's forum contacts with its conduct in Turkey, its principal place of operation and place of creation).

The district court's test would not only invariably result in a defendant being at home in a forum other than the paradigm forum, *see* Doc. 1-2 at 19, it would also require significant fact development to determine a defendant's level of activities in a variety of states and/or countries, even though the Supreme Court created a simple test that would rarely require jurisdictional discovery. *Daimler*, 134 S. Ct. at 760, 761 n.20, 762 n.20.

## II. THE PALESTINIAN GOVERNMENT WILL SUFFER IRREPARABLE INJURY ABSENT A STAY

### A. The Trial and Attendant Publicity Will Interfere with Governmental and Diplomatic Functions of the Palestinian Government.

Most of the respondents' case at trial will focus on the Palestinian Authority. The PA is at a critical juncture as it continues to seek recognition for the State of Palestine, maintain law and order in the West Bank, reassert control over the Gaza Strip, and address heightened tensions between Israelis and Palestinians in Jerusalem. The PA plays an essential role in the United States' efforts to achieve a two-state solution as part of a comprehensive regional peace in the Middle East. The PA "will incur significant harm absent a stay if [it is] . . . ordered to prompt

trial, as the district court has directed." *S.E.C. v. Citigroup Global Markets Inc.*, 673 F.3d 158, 166 (2d Cir. 2012).

The reputational harm and interference with U.S. foreign policy goals resulting from this trial cannot be overstated. The respondents seek to brand the Palestinian Authority as a terrorist organization based on unauthorized conduct alleged to have been undertaken by a scattering of low-level PA employees a decade ago. Although such claims are meritless, they will be made by respondents throughout the trial, and, given the attendant politics, likely will be the subject of considerable publicity during trial. Such characterizations threaten important foreign relations, law enforcement, and state-building efforts of the Palestinian Government. The trial's interference with the PA governmental and security functions satisfies the irreparable injury requirement.

The Palestinian Government has limited financial and personnel resources and is consumed with the task of maintaining security in the West Bank and Gaza, while providing essential services to approximately 4.4 million Palestinians under extraordinarily trying and volatile circumstances. While "mere litigation expense" generally does not constitute irreparable harm, *see Fed. Trade Comm'n v. Standard Oil Co.*, 449 U.S. 232, 244 (1980), defending a 12-week terrorism trial in the United States requires a commitment of resources and personnel that are critically needed for performing governmental and diplomatic functions.

By way of example, one of the PA's trial witnesses is Brigadier General Majed Faraj, the Head of Intelligence for the PA's General Intelligence Service, who plays an essential role in the PA's anti-terrorism and security coordination with Israel and the United States. His preparation to testify and attendance at trial in the U.S. will interfere with that important function. This level of interference and imposition of burden on a foreign government should not be undertaken where the district court's exercise of jurisdiction conflicts with controlling Supreme Court and Circuit precedent.

In addition, there is substantial risk that the trial will be politicized, if not by the respondents themselves, then by outside interests and through the publicity associated with the trial. Following the district court's ruling on the Palestinian Government's motion for summary judgment, the respondents' Israeli counsel Ms. Darshan-Leitner, informed a media outlet:

> This is a precedent and a historical decision of the court. We've sued the Palestinian Authority in the past, and these suits were heard by different federal judges who ruled in them, but this is the first time a trial will be heard by an American jury, a trial that is open to the public and the world media. This is a historic opportunity to call to the stand many PLO and PA officials for an in-depth interrogation about their actions. The PA, the PLO and Abbas will have to answer to these actions.

*See* Doc. 1-15 at 4; *see also* Dist. Ct. Dkt. No. 487, Mem. at 13 (describing Ms. Darshan-Leitner as "Plaintiffs' co-counsel in Israel"). Again, a foreign

government should not be haled into U.S. court for "an in-depth interrogation" by private plaintiffs where no jurisdiction is present. The undeserved reputational and political harm to the Palestinian Government from the efforts to litigate a conflict from a decade ago in the "world media" cannot be remedied by a reversal on appeal, especially a reversal that would be based on jurisdiction and therefore would not address the merits of the respondents' claims.

### B. The Financial Stakes Threaten the Palestinian Government's Viability.

Collectively, the respondents seek $1 billion in compensatory damages, which amounts to $3 billion by operation of the Anti-Terrorism Act's automatic trebling provision. Dist. Ct. Dkt. No. 4 at 44 (First Amended Complaint); 18 U.S.C. § 2333(a) (providing that successful plaintiffs "shall recover threefold the damages he or she sustains"). According to a recent World Bank report, the Palestinian Authority's financial situation is "highly vulnerable" due to a deteriorating economy, the toll of the "humanitarian tragedy in Gaza," declining foreign aid, and rising unemployment. *See* Exh. 2 at 4, 9, 11, 14. In another case against the PA and PLO, involving a $193 million default judgment, *Knox v. Palestine Liberation Organization*, No. 03-cv-4466 (S.D.N.Y.), the U.S. Department of Justice submitted a letter to the district court stating that "the United States remains concerned about the potentially significant impact that these cases

may have on the financial and political viability of the defendants." Exh. 3 (2/29/08 letter from C. Nichols to Judge Marrero) at 1.

The Seventh Circuit recently issued a writ of mandamus to a district court on a personal jurisdiction issue. As here, the case involved a high-profile issue (a suit against Hungarian banks by Holocaust victims alleging expropriation and financing of genocide), "appreciable foreign policy consequences," substantial financial stakes, and only a tangential connection to the United States. *Abelesz v. OTP Bank*, 692 F.3d 638, 651 (7th Cir. 2012). The court of appeals found that the substantial financial stakes created a risk of irreparable harm because the sheer magnitude of the risk to which the defendants were exposed presented "intense pressure to settle." *Id.* at 652-53. In addition, here, the cost of a post-trial supersedeas bond may be so prohibitive to preclude, as a practical matter, the PA or PLO from obtaining appellate review after entry of a final judgment.

### C. The Potential Public Disclosure of Confidential Intelligence Files Would Create Irreparable Harm.

The district court previously ordered the PA to produce hundreds of pages of GIS files for dozens of individuals. Dist. Ct. Dkt. No. 380. The documents at issue reveal law enforcement activities of the GIS, including the identity of witnesses and intelligence sources, and public disclosure of them would undermine important interests of the PA. *See* Exh. 4 (Declaration of Majed Faraj) at ¶¶ 12-14, 17 (declaring that disclosure of GIS investigative methods would, *inter alia*,

increase security threats and impair GIS's ability to conduct future investigations); *see also Gilmore v. Palestinian Interim Self-Government Auth.*, No. 01-853, 2014 U.S. Dist. LEXIS 38037, at *4 (D.D.C. Mar. 24, 2014) (citing "numerous persuasive arguments for concluding that disclosure of the requested [GIS] files would 'undermine important interests' of the PA."). The GIS files were produced pursuant to a protective order. Recently, journalists moved to intervene to seek public disclosure of the files. Dist. Ct. Dkt. No. 628. At a November 20, 2014 pretrial conference, the district court announced its intent to make public all documents that are admitted into evidence. Exh. 5 at 17:20-25. At the December 16, 2014, pre-trial hearing the district court stated his intention to admit the GIS files into evidence with limited redactions. The district court has not yet entered a ruling, and a transcript of the hearing is not yet available.

In *In re Roman Catholic Diocese of Albany*, this Court issued a writ of mandamus dismissing the defendant on *Daimler* personal jurisdiction grounds, in part because of the potential irreparable harm from disclosure of confidential materials. 745 F.3d at 35-37. The district court in that case had entered a discovery order requiring disclosure of materials relating to child sex abuse, including the identifying names and addresses of the investigators and summaries of the oral and written statements taken during the course of the investigation. *Id.* at 36. The Court concluded that mandamus was "the only means for the Diocese

to obtain the relief it seeks," especially given the "clarity of the district court's error, and the need for guidance from this Court regarding the proper general personal jurisdiction inquiry." *Id.* at 35, 37; *see also In re The City of New York*, 607 F.3d at 932, 934 (issuing writ of mandamus to prevent the disclosure of confidential reports of undercover police officers, when the petitioning parties "ha[d] no other adequate means to attain…relief" because "a remedy after final judgment cannot unsay the confidential information that has been revealed") (internal quotation marks omitted).

Similarly, here, the PA will be irreparably harmed if its law enforcement methods and sources are publicly revealed before or at trial. Needless to say, a reversal on appeal from a final judgment will not provide the PA relief from the harm that would flow from the release of confidential intelligence documents. *See In re Roman Catholic Diocese of Albany*, 745 F.3d at 35-37; *see also In re The City of New York*, 607 F.3d at 934 ("[A] remedy after final judgment cannot unsay the confidential information that has been revealed.") (internal quotation marks omitted). A stay of proceedings in the district court is necessary to prevent that irreparable harm.

## III. A STAY PENDING RESOLUTION OF THE MANDAMUS PETITION WOULD SERVE THE PUBLIC INTEREST

As the United States recently explained in defending a legal challenge brought by private plaintiffs to U.S. foreign aid to the PA, "U.S. Government

support for the Palestinian Authority and Palestinian people is intended to promote the Palestinian Authority's fiscal viability, strengthen public institutions, develop the Authority's capacity to provide security, foster private sector-economic growth, and meet humanitarian needs." Exh. 6 at 4-5; *see also id.* at 18. Such aid is provided to the PA in furtherance of U.S. "foreign policy to achieve a two-state solution as part of a comprehensive regional peace in the Middle East." *Id.* at 4 (internal quotation marks omitted). Because the stability of the PA is essential to important U.S. foreign policy objectives, that stability should not be put at risk without first establishing that the district court is properly exercising general personal jurisdiction.

## IV. THE SOKOLOWS WILL NOT SUFFER "SUBSTANTIAL INJURY" IF THE STAY IS ISSUED

Balanced against the irreparable injury to the Palestinian Government if the Court denies a stay, it is clear that the respondents will not suffer any substantial injury if the stay is issued. A stay would do "nothing more than maintain the status quo….[with] no appreciable harm to anyone…" *Citigroup Global Markets Inc.*, 673 F.3d at 168. While the respondents might incur fees to alter any travel arrangements made for trial, any such costs would be minimal in comparison to the irreparable injury to the Palestinian Government absent a stay. Moreover, if appropriate, relief could be provided regarding travel-related cancellation fees. And "[a] mere assertion of delay does not constitute substantial harm. Some delay

would be occasioned by almost all interlocutory appeals." *United States v. Philip Morris Inc.*, 314 F.3d 612, 622 (D.C. Cir. 2003).

In granting the mandamus petition and directing the district court to dismiss the defendants in *Abelesz*, 692 F.3d 638, the Seventh Circuit emphasized: "The consequences for the plaintiffs themselves are also very substantial. If the claims against these defendants do not belong in U.S. courts, no matter how compelling the claims might be on the merits, we would do the plaintiffs no favors by allowing them to spend more time and money to proceed further toward an inevitable dismissal." *Id.* at 651. Here too, the respondents are not well served by litigating a 12-week trial only to have this Court dismiss the case for lack of jurisdiction.

## CONCLUSION

For all of the reasons set forth above, a stay of all proceedings in the district court pending this Court's resolution of the Palestinian Government's petition for a writ of mandamus is warranted. Given the uncertainty about when this Court would rule, the Court also should vacate the January 13, 2015 trial date to remove the extraordinary burden on the Palestinian Government of continuing to prepare for trial in the absence of any legal basis for the district court's exercise of jurisdiction. Given the approaching holidays, an expedited ruling on the stay motion would be greatly appreciated.

December 17, 2014

Respectfully Submitted,

/s/ Laura G. Ferguson

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 17th day of December, 2014, a true and genuine copy of the foregoing was filed by ECF, which automatically provided service to all ECF counsel of record.

/s/ Laura G. Ferguson
Laura G. Ferguson