

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

MIKO PELED, et al.,

Plaintiffs,

-against-

AMERICAN FRIENDS OF BET EL INSTITUTIONS, et
al.,

Defendants.

-----X

Docket No.

1:17-cv-260 (RBW)

Hon. Reggie B. Walton

**DEFENDANTS' JOINT MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO
ALTER THE JUDGMENT AND AMEND THE COMPLAINT OR, IN
THE ALTERNATIVE, TO TRANSFER THE CASE (DE 142)**

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**DEFENDANTS’ JOINT MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS’ MOTION TO ALTER THE JUDGMENT AND
AMEND THE COMPLAINT OR, IN THE ALTERNATIVE, TO TRANSFER THE
CASE (DE 142)**

Defendants American Friends of Bet El Institutions (“AFBEI”), Kushner Family Foundation (“KFF”) and Billet Feit & Preis P.C. (“BF&P”) respectfully submit this joint memorandum in opposition to plaintiffs’ Motion to Alter the Judgment and Amend the Complaint or, in the Alternative, to Transfer the Case (DE 142) (the “Motion”).

PRELIMINARY STATEMENT

Nine years after choosing this forum, and four years after this Court deferred their second attempt to amend, plaintiffs ask the Court to undo its judgment so that they may file a third complaint or, failing that, to send the case to the Eastern District of New York—relief they never requested before judgment. The Motion rests on a premise the record refutes: that this Court “indicated” in 2022 that plaintiffs would be permitted to amend once the motions to dismiss were resolved. The order plaintiffs cite says the opposite. It denied leave to amend without prejudice “pending the Court’s resolution of the defendants’ motions to dismiss,” and stated that “[i]n the event that the Court denies” those motions, it would hold a status conference at which plaintiffs could advise whether their motion should be reinstated (DE 132 at 1 & n.1). The Court granted the motions. No promise was made and none was broken.

The rest of the Motion fares no better. Rule 59(e) does not permit a party to relitigate a four-year-old interlocutory ruling it never asked the Court to revisit, or to raise for the first time after judgment a request—transfer—it could have made in either of two full rounds of Rule 12(b)(2) briefing. The Supreme Court decision plaintiffs argue is an “intervening” change in law was decided seven weeks before the judgment. That case also concerns the scope of the Alien Tort Statute (not personal jurisdiction). And substantively, it forecloses, rather than revives, their

claims. The limitations bar they describe attaches to a theory never pleaded in this case, against one defendant, and expired through their own inaction in 2023. And the proposed pleading would not cure the jurisdictional defect: it still rests on the defendants' filings with federal agencies—the government contacts the Court has already held do not count—and on conference visits by non-party Israeli officials, the same theory the Court rejected in its Memorandum Opinion (DE 140 at 18-21). The Motion should be denied.¹

BACKGROUND

Plaintiffs filed this action on February 9, 2017 and amended once, with leave, on June 16, 2017 (DE 1; DE 15; DE 18). Each defendant moved to dismiss; BF&P and AFBEI moved under Rule 12(b)(2) (DE 29 at 13; DE 34; DE 140 at 6-7). Plaintiffs then obtained, over defendants' objection, a stay pending *Al-Tamimi v. Adelson* (DE 42; DE 53). When the stay was lifted in March 2019 the Court directed new motions; all three defendants moved under Rule 12(b)(2), among other grounds, and plaintiffs opposed on the merits (DE 55; DE 58-60; DE 62-64; DE 140 at 7). At no point did plaintiffs seek transfer, in the alternative or otherwise.

In June 2022 the Court ordered supplemental briefing on *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931 (2021), and set a status conference for September 2, 2022 (DE 109). On August 8, 2022, plaintiffs moved for leave to file a second amended complaint (DE 120). The motion (DE 142-2 at 3-9) said nothing about personal jurisdiction. Following the September 2 conference the Court denied the motion without prejudice “pending the Court’s resolution of the defendants’ motions to dismiss,” adding in a footnote: “In the event that the Court denies the defendants’ pending motions to dismiss, the Court will hold a status conference at which the plaintiffs may advise the Court as to whether their motion to amend their complaint should be reinstated” (DE 132 at 1 & n.1). Plaintiffs

¹The Motion also disregards this Court’s General Order, which limits motions to alter or amend a judgment to 10 pages and requires a table of contents and table of authorities in any memorandum of 10 or more pages (DE 8 at 6–7, 10, ¶¶ 10(c), 13). The Motion runs 17 pages, exclusive of the certificate of service, with neither table.

did not seek reconsideration of that order, did not renew their motion, and filed nothing further concerning amendment in the nearly four years that followed.

On August 10, 2026, the Court granted all three motions to dismiss for lack of personal jurisdiction. It held the jurisdictional allegations conclusory and contradicted by unrebutted declarations, held that filings with the Treasury Department and Internal Revenue Service are excluded under the government contacts principle, and held that the Amended Complaint “does not come close to establishing an ‘agreement’ among the defendants to perform an unlawful act, let alone an overt act in furtherance of that agreement,” so that visits to the District by former Israeli defendants could not supply conspiracy jurisdiction (DE 140 at 14-21; DE 141).

ARGUMENT

POINT I

PLAINTIFFS HAVE NOT SATISFIED RULE 59(e) OR RULE 60(b)

Plaintiffs acknowledge that, once judgment has entered, leave to amend is available only if the judgment is first vacated under Rule 59(e) or 60(b), and that Rule 59(e) relief “need not be granted unless there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996); *Ciralsky v. CIA*, 355 F.3d 661, 671, 673 (D.C. Cir. 2004); *Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 17 (D.C. Cir. 2015); DE 142 at 5-6. A Rule 59(e) motion “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)). None of plaintiffs’ grounds meets that standard.²

²The August 10, 2026 order dismissed the Amended Complaint and closed the case (DE 141). Dismissal of the case, as opposed to the complaint alone, is a final judgment, *Ciralsky*, 355 F.3d at 666–68; *Wilcox v. Georgetown Univ.*, 987 F.3d 143, 146–47 (D.C. Cir. 2021), and plaintiffs treat it as one (DE 142 at 1 n.1, 4 n.4).

A. The Court did not promise leave to amend; DE 132 conditioned any further proceedings on denial of the motions to dismiss

The Motion’s centerpiece is the assertion that the September 12, 2022 order “indicated that upon resolution of the Defendants’ motions to dismiss, Plaintiffs would be given an opportunity to amend,” and that plaintiffs “were reasonably entitled to rely on the Court’s representation” (DE 142 at 3, 9). The order says no such thing. Its footnote provides for a status conference “[i]n the event that the Court denies the defendants’ pending motions to dismiss”—and even then only so that plaintiffs “may advise the Court as to whether their motion to amend their complaint should be reinstated” (DE 132 at 1 n.1). Plaintiffs quote that language accurately at page 8 of the Motion and then recast it, at pages 3, 4 and 9, as an unconditional promise. The condition was denial. The Court granted the motions. There was no representation, no reliance, and no “manifest injustice.”

B. The 2022 order was not error, and any challenge to it was available for four years

Plaintiffs next contend that the denial of leave in 2022 was “clear error” under *Foman v. Davis*, 371 U.S. 178, 182 (1962), and that the error infects the judgment (DE 142 at 6-8). It was not error. Deferring a second amendment until fully briefed dispositive motions are decided is well within a district court’s discretion, and every *Foman* factor was present: undue delay (the principal new fact, a 2013 donation, was public by May 2018, the stay was lifted in March 2019, and plaintiffs elected to brief the 2019 motions on the existing pleading rather than amend); prejudice (a third round of motions to dismiss in a case then five years old); and futility (Point II, below). Plaintiffs’ assertion that they were “entitled to amendment as a matter of right” (DE 142 at 3) ignores that the Amended Complaint was their one amendment under Rule 15(a)(1); any further amendment required leave.

More fundamentally, the ruling plaintiffs attack is a September 2022 interlocutory order. For nearly four years they could have moved for reconsideration under Rule 54(b) or renewed their

motion. They did nothing. Rule 59(e) is not a vehicle for arguments “that could have been raised prior to the entry of judgment,” *Exxon Shipping*, 554 U.S. at 485 n.5, and plaintiffs’ own authority denies relief to a party who “could have easily avoided the outcome, but instead elected not to act until after a final order had been entered.” *Ciralsky*, 355 F.3d at 673 (quoted at DE 142 at 8-9); *accord Mohammadi*, 782 F.3d at 18 (no “manifest injustice” where plaintiffs “could have ‘easily avoided the outcome’” but “‘elected not to act’ until after the entry of judgment”). That describes plaintiffs precisely. Nor was it error for the Court to rule on the operative pleading rather than on allegations in a proposed amendment it had declined to accept (DE 142 at 4).

C. Cisco preceded the judgment, does not bear on its ground, and confirms futility

Plaintiffs say *Cisco Systems, Inc. v. Doe*, 146 S. Ct. 1882 (2026), is an intervening change in controlling law because it confines the ATS to the “Blackstone Three” torts and restricts aiding-and-abetting liability (DE 142 at 9-10). It is not intervening. *Cisco* was decided on June 23, 2026, seven weeks before the judgment. Plaintiffs, who knew how to bring new authority to the Court’s attention—defendants did so three times (DE 77; DE 79; DE 137)—said nothing about it until after the case was closed. Their motion concedes the point, describing *Cisco* as a development that arose “between the September 2, 2022 status conference and the dismissal of the case” (DE 142 at 5). A decision available before judgment is an argument that “could have been raised prior to the entry of judgment,” *Exxon Shipping*, 554 U.S. at 485 n.5, not a ground for reopening it.

Nor would *Cisco* matter if it were new: this judgment rests on the absence of personal jurisdiction, and a decision about which torts are actionable under the ATS has no bearing on whether any defendant transacted business in the District or joined a conspiracy furthered by an overt act here. What *Cisco* does bear on is futility. The Court “close[d] the door that *Sosa* cracked” and held “that courts may not create new causes of action for violations of international norms” under the ATS, leaving undisturbed only *Sosa*’s assumption “that causes of action are available for

torts corresponding to the Blackstone three”—violation of safe conducts, infringement of the rights of ambassadors, and piracy—and holding that “there is necessarily no liability for aiding and abetting” violations of international law. 146 S. Ct. at 1886, 1888, 1892 & n.3 (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 715 (2004)). That disposes of Count Two of the Amended Complaint (aiding and abetting) and of the proposed pleading’s ATS count, except insofar as plaintiffs propose to relabel West Bank settlement violence a “violation of safe conducts” (DE 142 at 10). Nothing in the proposed pleading alleges that any defendant—two American charities and an accounting firm—violated a safe conduct, infringed the rights of an ambassador, or committed piracy. A change in law that forecloses the claims plaintiffs seek to replead is a reason to deny leave, not to grant it.

D. The limitations argument is self-inflicted and concerns a claim never pleaded

Plaintiffs argue that unless the judgment is vacated, an Anti-Terrorism Act claim premised on a 2013 donation by AFBEI—first reported, they say, in May 2018—will be time-barred under the 10-year period of 18 U.S.C. § 2335 (DE 142 at 10-11). That claim has never been part of this case; it appeared for the first time in the proposed pleading tendered in August 2022. Its limitations period expired in 2023, while DE 120 stood denied without prejudice and plaintiffs neither sought reconsideration nor filed a new action in a forum with jurisdiction over AFBEI. The judgment did not cause the bar; plaintiffs’ inaction did. *Ciralsky*’s discussion of dismissals that are “effectively with prejudice,” 355 F.3d at 672, concerns claims that were in the dismissed suit, not claims a plaintiff never pleaded (DE 142 at 6). The theory, moreover, runs only against AFBEI; it says nothing about KFF or BF&P, and 18 U.S.C. § 2333(a) affords a remedy only to United States nationals, which the proposed pleading does not allege any movant to be (DE 142-1 ¶¶ 1-11).

E. Rule 60(b)(6) is unavailable

Plaintiffs invoke Rule 60(b)(6) in a single sentence (DE 142 at 6). That clause “is available only when Rules 60(b)(1) through (b)(5) are inapplicable,” and “[e]ven then, ‘extraordinary circumstances’ must justify reopening.” *Kemp v. United States*, 596 U.S. 528, 533 (2022); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863-64 & n.11 (1988); *Salazar v. District of Columbia*, 633 F.3d 1110, 1116 (D.C. Cir. 2011). A judge’s asserted legal error is a “mistake” within Rule 60(b)(1), *Kemp*, 596 U.S. at 533-34, and is the proper subject of an appeal—which plaintiffs expressly reserve (DE 142 at 4 n.4)—not of a motion to reopen. *Ackermann v. United States*, 340 U.S. 193, 198 (1950).

POINT II**AMENDMENT WOULD BE FUTILE BECAUSE THE PROPOSED PLEADING DOES NOT ESTABLISH PERSONAL JURISDICTION**

Even if plaintiffs could satisfy Rule 59(e), amendment would be futile: the proposed pleading has the same defects the Court identified in the Amended Complaint. Plaintiffs must “allege specific acts connecting [the] defendant with the forum,” *First Chi. Int’l v. United Exch. Co.*, 836 F.2d 1375, 1378-79 (D.C. Cir. 1988), and, to invoke conspiracy jurisdiction, must plead with particularity both an agreement and an overt act within the District in furtherance of it. *Second Amend. Found. v. U.S. Conf. of Mayors*, 274 F.3d 521, 523-24 (D.C. Cir. 2001); DE 140 at 19-21. They offer three purported cures; none works.

First, the Motion says a news article cited in the proposed pleading “shows Mr. Friedman present in Washington D.C. in February 2017,” while conceding that whether that presence matters depends “on what he was doing” and requesting “preliminary discovery” to find out (DE 142 at 12-13). No discovery is needed. The article is a 2018 report about a charitable donation, and the only February 2017 “presence” it depicts is Mr. Friedman testifying at his Senate confirmation hearing as Ambassador to Israel (DE 142-1 ¶ 149(d) & n.9)—an appearance before Congress as a nominee,

not business transacted for any defendant, and the paradigm of a government contact. And the proposed pleading itself does not allege that Mr. Friedman—dismissed as a defendant in 2019 (DE 69)—was ever in the District. A theory resting on a fact the movant’s own pleading omits is not a cure.

Second, the proposed pleading alleges that non-party Israeli officials visited the District: one to keynote a gala in 2023, another to attend the AIPAC conference in 2019, another to attend CPAC in 2026, and the Prime Minister to address AIPAC (DE 142-1 ¶¶ 73, 75, 77, 79). None is alleged to have done anything in the District in furtherance of an agreement with any defendant, and each dated visit postdates the filing of this action. This is the theory the Court has already rejected: visits by Israeli actors do not supply “any agreement between Defendant KFF, Defendant AFBEI, or Defendant BF&P to participate in an unlawful act” (DE 140 at 21).

Third, as to the defendants themselves, the proposed pleading’s jurisdictional theory is that they or their co-conspirators visited the District “to raise funds, attend annual lobbying conferences like the annual [AIPAC] conference, ... and file for tax-exempt status” (DE 142-1 ¶ 15), and its allegations against BF&P remain that it prepares and files tax forms for exempt organizations whose “clientele base ... indicates” knowledge of wrongdoing (*id.* ¶¶ 14, 162-166; DE 142 at 14). Filing forms with federal agencies is the very conduct the Court excluded under the government contacts principle (DE 140 at 18-19), and knowledge inferred from a client list is not an agreement. Nothing in the proposed pleading alleges an agreement among KFF, AFBEI and BF&P, or an overt act by any of them in this District. The proposed pleading’s remaining hooks fail as well. Section 1956(b)(2) is a long-arm provision for civil-penalty actions brought by the United States; it “does not provide an independent statutory basis for personal jurisdiction because it does not authorize a civil remedy.” *Kyko Glob., Inc. v. Prithvi Info. Sols. Ltd.*, No. 2:18-cv-01290, 2020 WL 1159439,

at *34-35 (W.D. Pa. Mar. 10, 2020). And RICO’s nationwide-service provision, 18 U.S.C. § 1965(b), is available only where the forum already has jurisdiction over at least one defendant under § 1965(a), *FC Inv. Grp. LC v. IFX Mkts., Ltd.*, 529 F.3d 1087, 1099-1100 (D.C. Cir. 2008), and no defendant here satisfies that provision.

POINT III
THE BELATED REQUEST TO TRANSFER SHOULD BE DENIED

Plaintiffs alternatively ask the Court to transfer the case to the Eastern District of New York under 28 U.S.C. §§ 1406(a) and 1631 (DE 142 at 14-16). They never sought that relief before judgment, although the jurisdictional objection was fully briefed in 2017 and 2019 and pending for seven years. A request made for the first time after judgment is not properly raised under Rule 59(e), *Exxon Shipping*, 554 U.S. at 485 n.5, and falls squarely within this Court’s admonition that it will not entertain arguments “that should have been previously raised” (DE 8 at 10, ¶ 13). Plaintiffs’ own authority underscores the point. In *Hill v. U.S. Air Force*, 795 F.2d 1067, 1070-71 (D.C. Cir. 1986), the D.C. Circuit held that a district court lacking personal jurisdiction did not abuse its discretion by dismissing rather than transferring under § 1631 where “[n]either party urged the District Court to transfer this case.” Neither party urged it here.

Transfer would not serve the interest of justice in any event. Whether under § 1406(a)—which addresses a case “laying venue in the wrong division or district,” though plaintiffs have never claimed venue here was improper (DE 142-1 ¶ 18)—or under § 1631, “[t]he decision whether a transfer or a dismissal is in the interest of justice ... rests within the sound discretion of the district court.” *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 789 (D.C. Cir. 1983). Plaintiffs chose this forum and defended it for nine years with full knowledge of the objection. The claims they would transfer have already been dismissed on the merits in the companion case on which they stayed this one, *Al-Tamimi v. Adelson*, No. 16-cv-445 (TSC) (D.D.C. Feb. 23, 2024) (DE 137-1),

and the proposed pleading fares no better: its RICO count alleges no domestic injury, *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 354 (2016); *Yegiazaryan v. Smagin*, 599 U.S. 533, 543-44 (2023); its ATA count is available only to United States nationals, on a theory of liability plaintiffs concede is unsettled (DE 142 at 11; see *Keren Kayemeth LeIsrael-Jewish Nat'l Fund v. Educ. for a Just Peace in the Middle E.*, 66 F.4th 1007, 1014 (D.C. Cir. 2023)); and, after *Cisco*, its ATS count survives only if a defendant itself committed one of the three torts *Sosa* identified, which no reading of the proposed pleading suggests. The D.C. Circuit has affirmed dismissal rather than transfer on exactly this ground, holding that “[i]n light of the substantive problems with its asserted claims,” the plaintiff’s “objection that the case should have been transferred to another federal court is likewise without merit.” *Naartex*, 722 F.2d at 789; accord *Phillips v. Seiter*, 173 F.3d 609, 610-11 (7th Cir. 1999). Finally, plaintiffs bear the burden of showing that the action could have been brought in the transferee district against every defendant; their assertion that KFF, a New Jersey foundation, has “relevant minimum contacts with the Eastern District” rests on “information and belief” alone (DE 142 at 4-5), and the only limitations concern they identify involves a claim never pleaded here, against AFBEI alone.³

CONCLUSION

For the foregoing reasons, defendants respectfully request that the Court deny plaintiffs’ Motion in its entirety.

³Should the Court nonetheless be inclined to consider transfer rather than dismissal, defendants respectfully submit that the Court should first resolve the fully briefed Rule 12(b)(1) and 12(b)(6) grounds it did not reach (DE 140 at 12; see DE 137 (Judge Chutkan’s dismissal of the parallel *Al-Tamimi* action, brought by some of the same plaintiffs and counsel, on similar Rule 12(b)(1) and 12(b)(6) grounds)). Transfer of a complaint that cannot survive a motion to dismiss is not in the interest of justice.

Dated: October 6, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2026, I caused the foregoing Defendants' Joint Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Alter the Judgment and Amend the Complaint or, in the Alternative, to Transfer the Case, together with the accompanying proposed order, to be filed electronically with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record, and to be served by first-class mail on pro se plaintiff Abdur-Rahim Dib Dudar at his address of record.

/s/ _____