

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2010

4 (Argued: February 25, 2011 Decided: March 5, 2012)

5 Docket No. 10-1306-cv

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7 YAAKOV LICCI, a minor, by his father and natural guardian,
8 ELIHAV LICCI, and by his mother and natural guardian, YEHUDIT
9 LICCI, et al.,

10 Plaintiffs-Appellants,

11 - v -

12 LEBANESE CANADIAN BANK, SAL; AMERICAN EXPRESS BANK LTD.,

13 Defendants-Appellees.*

14 -----

15 Before: KEARSE, SACK, and KATZMANN, Circuit Judges.

16 Appeal from a judgment of the United States District
17 Court for the Southern District of New York (George B. Daniels,
18 Judge) dismissing the plaintiffs' complaint against defendant
19 Lebanese Canadian Bank, SAL, for lack of personal jurisdiction.
20 The plaintiffs, all Israeli residents, were allegedly injured,
21 or their family members killed or injured, by rockets fired by

* The Clerk of Court is directed to amend the caption as set forth above.

1 Hizballah, a Lebanese terrorist organization, into northern
2 Israel in July and August 2006. The district court concluded
3 that the bank's use of its New York account was not enough to
4 permit the exercise of personal jurisdiction over it under the
5 New York long-arm statute, New York Civil Practice Law and
6 Rules § 302(a)(1). Because we are of the view that there is
7 insufficient New York State authority on the issue for us to
8 determine with confidence whether the district court's
9 conclusion was correct, we seek the views of the New York Court
10 of Appeals as to whether the plaintiffs' claims "aris[e] from"
11 a "transact[ion] [of] business" in New York within the meaning
12 of N.Y. C.P.L.R. § 302(a)(1).

13 The district court's dismissal of a separate claim
14 against American Express Bank Ltd. is affirmed by separate
15 opinion filed today.

16 Questions certified.

17	Appearances:	ROBERT J. TOLCHIN, Jaroslawicz &
18		Jaros, New York, NY, <u>for Plaintiffs-</u>
19		<u>Appellants.</u>
20		JONATHAN D. SIEGFRIED (Lawrence S.
21		Hirsh, <u>on the brief</u>), Dewey & LeBoeuf
22		LLP, New York, NY, <u>for Defendant-</u>
23		<u>Appellee Lebanese Canadian Bank, SAL.</u>
24		MARK P. LADNER (Mark David McPherson,
25		Michael Gerard, <u>on the brief</u>),
26		Morrison & Foerster LLP, New York, NY,
27		<u>for Defendant-Appellee American</u>
28		<u>Express Bank Ltd.</u>

1 SACK, Circuit Judge:

2 This appeal presents the question whether a foreign
3 bank's maintenance and use of a correspondent banking account
4 in New York to conduct wire transfers on behalf of a foreign
5 client renders it amenable to personal jurisdiction in New York
6 under the state's long-arm statute to defend against claims
7 asserted by victims of terrorist attacks committed abroad. The
8 plaintiffs are several dozen American, Canadian, and Israeli
9 citizens, all of whom reside in Israel, who were injured, or
10 whose family members were killed or injured, in rocket attacks
11 allegedly committed by Hizballah, designated as an Islamic
12 terrorist organization,¹ in July and August 2006. The
13 plaintiffs have brought suit against Lebanese Canadian Bank,
14 SAL ("LCB"),² a Lebanese bank headquartered in Beirut, alleging

¹ "Hizballah (Party of God)" has been designated by the United States Department of State as a "Foreign Terrorist Organization" pursuant to 8 U.S.C. § 1189(a). See U.S. Dep't of State, Office of Coordinator for Counterterrorism, Foreign Terrorist Organizations (Jan. 27, 2012), <http://www.state.gov/j/ct/rls/other/des/123085.htm>. We use the State Department's spelling throughout this opinion unless quoting directly from a source that uses different spelling.

² The amended complaint also contains a single claim for negligence against defendant American Express Bank ("AmEx") under Israeli law. This claim is pleaded on behalf of all plaintiffs. The district court, applying New York law, dismissed that claim against AmEx on the basis that there was no actual conflict between Israeli and New York law, and that under New York law, "[b]anks do not owe non-customers a duty to protect them from the intentional torts committed by [the banks'] customers." Licci v. Am. Express Bank Ltd., 704 F. Supp. 2d 403, 410 (S.D.N.Y. 2010) (citing Lerner v. Fleet Bank, N.A., 459 F.3d 273, 286 (2d Cir. 2006)). The plaintiffs' appeal from the dismissal of their

1 that LCB assisted Hizballah by facilitating the international
2 financial transactions of a Hizballah-affiliated entity. The
3 plaintiffs allege that LCB carried out dozens of dollar-
4 denominated international wire transfers totaling several
5 million dollars over the course of several years on behalf of
6 the Hizballah affiliate, with the assistance of another
7 defendant, American Express Bank, where LCB maintained and used
8 a correspondent banking account. According to the plaintiffs,
9 in carrying out these transactions, LCB acted with the
10 knowledge that they were for the purpose of facilitating
11 Hizballah's ability to carry out acts of terrorism, such as the
12 rocket attacks at issue here. The plaintiffs assert claims
13 against LCB under the Anti-Terrorism Act, 18 U.S.C. § 2333(a);
14 the Alien Tort Statute, 28 U.S.C. § 1350; and Israeli tort law.

15 The district court (George B. Daniels, Judge) granted
16 LCB's motion to dismiss for lack of personal jurisdiction on
17 the grounds that LCB's maintenance of a correspondent banking
18 account in New York and use of that account to wire funds on
19 behalf of the Hizballah affiliate were insufficient to
20 establish specific personal jurisdiction over LCB under the New
21 York long-arm statute, N.Y. C.P.L.R. § 302(a)(1). The court
22 concluded both that "[t]he execution of wire transfers . . .

negligence claim against AmEx is addressed in an accompanying
opinion.

1 alone is [not] sufficient to confer jurisdiction over a foreign
2 bank," Licci v. Am. Express Bank Ltd., 704 F. Supp. 2d 403, 407
3 (S.D.N.Y. 2010), and that there was no "articulable nexus or
4 substantial relationship . . . between LCB's general use of its
5 correspondent account for wire transfers through New York and
6 the specific terrorist activities by Hizbollah underlying
7 plaintiffs' claims," id. at 408. The plaintiffs appeal.

8 The question of whether, and if so to what extent,
9 personal jurisdiction may be established under N.Y. C.P.L.R.
10 § 302(a)(1) over foreign banks based on their use of
11 correspondent banking accounts in New York remains unsettled.
12 We conclude that New York law is insufficiently developed in
13 this area to enable us to predict with confidence how the New
14 York Court of Appeals would resolve these issues of New York
15 State law presented on appeal. We therefore certify to the
16 Court of Appeals two questions concerning the application of
17 the New York long-arm statute.

18 **BACKGROUND**

19 The facts set forth below are drawn from the
20 plaintiffs' first amended complaint, see Am. Compl., Licci v.
21 Am. Express Bank Ltd., No. 08 Civ. 7253 (GBD) (S.D.N.Y. Mar.
22 31, 2010), ECF No. 23 ("Compl."), and from the district court's
23 opinion dismissing the claims against LCB for lack of personal
24 jurisdiction, see Licci, 704 F. Supp. 2d at 404-06. All well-

1 pleaded facts are accepted as true at this stage of the
2 litigation. See Famous Horse Inc. v. 5th Ave. Photo Inc., 624
3 F.3d 106, 108 (2d Cir. 2010). We recite only the facts that we
4 think necessary for an understanding of our resolution of this
5 appeal.

6 Allegations of the Amended Complaint

7 According to the allegations contained in the Amended
8 Complaint, between July 12, 2006, and August 14, 2006,
9 Hizballah, an Islamic terrorist organization, fired thousands
10 of rockets into northern Israel. The plaintiffs or their
11 family members were injured or killed by these attacks. See
12 Compl. ¶¶ 58-112.

13 The defendant, LCB, is a Lebanese bank with no
14 branches, offices, or employees in the United States. LCB
15 does, however, maintain a correspondent banking account at AmEx
16 in New York.³ The plaintiffs allege that LCB used this account

³ "Correspondent accounts are accounts in domestic banks held in the name of [] foreign financial institutions. Typically, foreign banks are unable to maintain branch offices in the United States and therefore maintain an account at a United States bank to effect dollar transactions." Sigmoil Res., N.V. v. Pan Ocean Oil Corp. (Nigeria), 234 A.D.2d 103, 104, 650 N.Y.S.2d 726, 727 (1st Dep't 1996). "'Without correspondent banking . . . it would often be impossible for banks to provide comprehensive nationwide and international banking services -- among them, the vital capability to transfer money by wire with amazing speed and accuracy across international boundaries.'" United States v. Davidson, 175 F. App'x 399, 401 n.2 (2d Cir. 2006) (summary order) (quoting Role of U.S. Correspondent Banking in International Money Laundering: Hearings Before the Permanent Subcomm. on Investigations of the S. Comm. on Gov't Affairs, 107th Cong. 1-2 (2001) (opening remarks of Senator Susan M. Collins)).

1 to conduct dozens of international wire transfers on behalf of
2 the Shahid (Martyrs) Foundation ("Shahid"), an entity that
3 maintained bank accounts with LCB and which the plaintiffs
4 allege to be an "integral part" of Hizballah and "part of [its]
5 financial arm." Id. ¶ 46; see also id. ¶ 50 (alleging that the
6 Shahid-titled bank accounts "belonged to Hizbollah and were
7 under the control of Hizbollah"). These wire transfers, which
8 totaled several million dollars, "substantially increased and
9 facilitated Hizbollah's ability to plan, to prepare for[,] and
10 to carry out" the rocket attacks that injured the plaintiffs.
11 Id. ¶ 116.

12 The plaintiffs contend that LCB's role in conducting
13 those wire transfers on Shahid's behalf was actionable. They
14 allege that LCB had "actual knowledge" that Hizballah was a
15 violent terrorist organization, as reflected on official U.S.
16 government lists,⁴ and that Shahid was "part of Hizbollah's
17 financial arm." Id. ¶¶ 130, 135. Moreover, the plaintiffs
18 allege that the bank, as a matter of "official LCB policy,"

⁴ LCB notes that at all relevant times, Shahid itself was not designated as a terrorist organization on official U.S. government lists. Shahid was, however, added to the U.S. Treasury Department's "Specially Designated Nationals" list in July 2007. See U.S. Dep't of Treasury, Press Release, Twin Treasury Actions Take Aim at Hizballah's Support Network (July 24, 2007). Shahid today remains on that list of "individuals, groups, and entities, such as terrorists . . . that are not country-specific." See generally U.S. Dep't of Treasury, Specially Designated Nationals List (SDN), <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (last visited Dec. 21, 2011).

1 "continuously supports and supported Hizbollah and its anti-
2 Israel program, goals and activities." Id. ¶ 126. In
3 particular, the plaintiffs allege that LCB carried out the wire
4 transfers "in order to assist and advance Hizbollah's goal of
5 using terrorism to destroy the State of Israel." Id. ¶ 129.

6 Procedural History

7 The plaintiffs began this lawsuit in New York State
8 Supreme Court, New York County, on July 11, 2008. On August
9 15, 2008, AmEx removed the matter to the United States District
10 Court for the Southern District of New York.

11 On January 22, 2009, the plaintiffs filed an amended
12 complaint. It contains five claims against LCB: (1) primary
13 liability for international terrorism under the Anti-Terrorism
14 Act, 18 U.S.C. § 2333(a) ("the Anti-Terrorism Act"); (2)
15 aiding-and-abetting liability for international terrorism under
16 the Anti-Terrorism Act; (3) aiding-and-abetting liability for
17 genocide, war crimes, and crimes against humanity in violation
18 of international law, as made actionable by the Alien Tort
19 Statute, 28 U.S.C. § 1350 (the "ATS"); (4) negligence, in
20 violation of Israeli Civil Wrongs Ordinance § 35; and (5)
21 breach of statutory duty, in violation of Israeli Civil Wrongs
22 Ordinance § 63.⁵ The Anti-Terrorism Act claims are brought by

⁵ Substantially the same group of plaintiffs has filed a related lawsuit in the Southern District of New York against Al Jazeera, a Qatar-based television network. The plaintiffs assert

1 the American plaintiffs alone; the ATS claims are brought by
2 various Canadian and Israeli plaintiffs; and the Israeli-law
3 claims are brought by all but four plaintiffs.

4 On April 17, 2009, LCB moved to dismiss all claims
5 against it for lack of personal jurisdiction under Rule
6 12(b)(2) and for failure to state a claim under Rule 12(b)(6).
7 On July 6, 2009, the plaintiffs filed an opposition to LCB's
8 motion and submitted, among other material, a declaration by a
9 former Israeli counter-terrorism official attesting to the fact
10 that Shahid is a financial front for Hizballah. LCB filed a
11 reply on September 3, 2009.

12 The District Court's Jurisdictional Ruling

13 On March 31, 2010, the district court granted LCB's
14 motion to dismiss pursuant to Rule 12(b)(2), concluding that
15 the plaintiffs had failed to make a prima facie showing of
16 personal jurisdiction over the defendants under N.Y. C.P.L.R.
17 § 302(a)(1). See Licci, 704 F. Supp. 2d at 406-08. According
18 to the court, "[t]o establish personal jurisdiction under

that Al Jazeera violated the Anti-Terrorism Act by purposefully televising the precise impact locations in Israel of Hizballah's rockets in order to assist Hizballah with aiming its attacks more accurately. That lawsuit was dismissed, with leave to amend the complaint, on the grounds that the plaintiffs had failed adequately to plead the elements of intent and proximate causation. See Kaplan v. Al Jazeera, No. 10 Civ. 5298, 2011 WL 2314783, 2011 U.S. Dist. LEXIS 61373 (S.D.N.Y. June 7, 2011) (Kimba M. Wood, J.). A second amended complaint was filed on July 18, 2011, but the plaintiffs voluntarily dismissed the action on November 21, 2011.

1 section 302(a)(1), two requirements must be met: (1) The
2 defendant must have transacted business within the state; and
3 (2) the claim asserted must arise from that business
4 activity.'" Id. at 406 (quoting Sole Resort, S.A. de C.V. v.
5 Allure Resorts Mgmt., LLC, 450 F.3d 100, 103 (2d Cir. 2006)).
6 The court characterized the plaintiffs' theory of jurisdiction
7 as depending solely upon LCB's "alleged use of defendant Amex
8 Bank as its correspondent bank to carry out wire transfers of
9 funds to and from the Shahid-entitled bank accounts." Id. at
10 406. Rejecting that theory, the court appeared to conclude
11 that neither of the two requirements for jurisdiction under
12 N.Y. C.P.L.R. § 302(a)(1) had been satisfied.

13 With respect to the first, "transacted business,"
14 prong, the district court relied upon the general principle
15 that "[t]he mere maintenance of [a] correspondent bank account
16 with a financial institution in New York is not, standing
17 alone, a sufficient basis to subject a foreign defendant to
18 personal jurisdiction under § 302(a)(1)." Id. at 407.
19 Although the court acknowledged that in some circumstances, a
20 "foreign bank's improper use of a New York correspondent
21 account" may support long-arm jurisdiction, id. (citing cases),
22 the court concluded that "[t]he execution of wire transfers is
23 not a 'use' of a correspondent account which alone is
24 sufficient to confer jurisdiction over a foreign bank," id.,
25 and therefore "no meaningful distinction may be drawn between a
26 foreign bank's maintenance of a correspondent account to effect

1 international wire transfers and its indiscriminate use of that
2 account for that exact purpose," id. at 407-08.

3 With respect to the second, "arising from," prong,
4 the district court concluded that the plaintiffs' claims did
5 not arise from LCB's wire transfers in New York for the
6 purposes of N.Y. C.P.L.R. § 302(a)(1). Id. at 408. Relying
7 upon the factually similar case of Tamam v. Fransabank SAL, 677
8 F. Supp. 2d 720, 726-30 (S.D.N.Y. 2010),⁶ the district court
9 ruled that "[n]o articulable nexus or substantial relationship
10 exists between LCB's general use of its correspondent account
11 for wire transfers through New York and the specific terrorist
12 activities by Hizbollah underlying plaintiffs' claims." Licci,
13 704 F. Supp. 2d at 408. In reaching that conclusion, the
14 district court observed that the "[p]laintiffs do not allege
15 that the rocket attacks were directly financed with the subject
16 wire transferred funds," but only that those "transferred
17 funds . . . 'substantially increased' Hizbollah's ability to
18 commit rocket attacks," id. The court further reasoned that
19 "[t]he injuries and death suffered by plaintiffs and their

⁶ In Tamam, a different group of fifty-seven plaintiffs brought suit against five Lebanese banks (not including LCB) under the ATS for aiding and abetting genocide, and committing crimes against humanity, war crimes, and terrorism by providing financial services to parties associated with Hizballah. The Tamam plaintiffs were, like those in the instant case, either themselves injured in the July and August 2006 rocket attacks, or the survivors of family members killed in those attacks. See Tamam, 677 F. Supp. 2d at 722-24. The district court dismissed the Tamam plaintiffs' lawsuit for lack of personal jurisdiction, see id. at 725-34, and no appeal was taken.

1 family members were caused by the rockets launched by
2 Hizbollah, not by the banking services provided by LCB through
3 its correspondent account." Id. The court decided that "LCB's
4 maintenance or use of its correspondent bank account is
5 [therefore] too attenuated from Hizbollah's attacks in Israel
6 to assert personal jurisdiction based solely on wire transfers
7 through New York." Id.

8 After deciding that the requirements of N.Y. C.P.L.R.
9 § 302(a)(1) had not been satisfied, the district court also
10 concluded, summarily, that "[t]he exercise of personal
11 jurisdiction over LCB on the basis alleged by plaintiffs would
12 not comport with constitutional principles of due process."
13 Id. The district court also denied the plaintiffs' request for
14 jurisdictional discovery on the ground that such discovery
15 would be "futile."⁷ Id. Finally, because the court determined
16 that personal jurisdiction was lacking, the court did not reach
17 the merits of LCB's alternative arguments that dismissal of
18 each of the plaintiffs' claims was warranted under Fed. R. Civ.

⁷ On appeal, the plaintiffs do not challenge the district court's denial of jurisdictional discovery. We therefore need not decide whether the district court exceeded the bounds of its discretion in this respect. See Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 401 (2d Cir. 2009) (noting that a district court possesses "wide latitude" and "typically [acts] within its discretion to deny jurisdictional discovery when the plaintiff has not made out a prima facie case for jurisdiction") (brackets and internal quotation marks omitted).

1 P. 12(b)(6). See id. at 406-08. The district court entered
2 judgment for the defendants on March 31, 2010.

3 The plaintiffs appeal.

4 **DISCUSSION**

5 I. Standard of Review

6 "We review a district court's dismissal of an action
7 for want of personal jurisdiction de novo, construing all
8 pleadings and affidavits in the light most favorable to the
9 plaintiff[s] and resolving all doubts in the plaintiff[s']
10 favor." Penguin Grp. (USA) Inc. v. Am. Buddha, 609 F.3d 30, 34
11 (2d Cir. 2010). "In order to survive a motion to dismiss for
12 lack of personal jurisdiction, [the] plaintiff[s] must make a
13 prima facie showing that jurisdiction exists." Id. at 34-35
14 (internal quotation marks omitted). This prima facie showing
15 "must include an averment of facts that, if credited by the
16 ultimate trier of fact, would suffice to establish jurisdiction
17 over the defendant." Chloé v. Queen Bee of Beverly Hills, LLC,
18 616 F.3d 158, 163 (2d Cir. 2010) (brackets omitted). In
19 considering whether the plaintiffs have met this burden, "we
20 will not draw 'argumentative inferences' in the plaintiff's
21 favor," Robinson v. Overseas Military Sales Corp., 21 F.3d 502,
22 507 (2d Cir. 1994), nor are we required "to accept as true a
23 legal conclusion couched as a factual allegation," Jazini v.
24 Nissan Motor Co., 148 F.3d 181, 185 (2d Cir. 1998). We review
25 any factual findings regarding personal jurisdiction for clear

1 error. Sunward Elecs., Inc. v. McDonald, 362 F.3d 17, 22 (2d
2 Cir. 2004).

3 II. Principles of Personal Jurisdiction

4 The lawful exercise of personal jurisdiction by a
5 federal court requires satisfaction of three primary
6 requirements.

7 First, the plaintiff's service of process upon the
8 defendant must have been procedurally proper. See Murphy
9 Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350
10 (1999); In re Kalikow, 602 F.3d 82, 92 (2d Cir. 2010). LCB
11 does not deny that it was properly served in Lebanon with the
12 plaintiffs' summons and complaint pursuant to Federal Rule of
13 Civil Procedure 4(f)(2)(C)(ii).

14 Second, there must be a statutory basis for personal
15 jurisdiction that renders such service of process effective.
16 The available statutory bases in federal courts are enumerated
17 by Federal Rule of Civil Procedure 4(k). In this case, the
18 plaintiffs rely solely upon Rule 4(k)(1)(A), which provides
19 that "[s]erving a summons . . . establishes personal
20 jurisdiction over a defendant . . . who is subject to the
21 jurisdiction of a court of general jurisdiction in the state
22 where the district court is located."⁸ See also Spiegel v.

⁸ At least two other statutory bases for personal jurisdiction might be relevant to lawsuits brought under the Anti-Terrorism Act: (1) Federal Rule of Civil Procedure 4(k)(2),

1 Schulmann, 604 F.3d 72, 76 (2d Cir. 2010) ("A district court's
2 personal jurisdiction is determined by the law of the state in
3 which the court is located."). We therefore look to New York
4 law in determining whether personal jurisdiction is available
5 in New York over LCB.⁹

which provides for personal jurisdiction in federal-question cases where a defendant is "not subject to jurisdiction in any state's courts of general jurisdiction," but "exercising jurisdiction [would be] consistent with the United States Constitution and laws," Fed. R. Civ. P. 4(k)(2); and (2) the Anti-Terrorism Act's nationwide service of process provision, which provides that a defendant "may be served in any district where the defendant resides, is found, or has an agent." 18 U.S.C. § 2334(a); see also Fed. R. Civ. P. 4(k)(1)(C). Because the plaintiffs in the instant litigation have relied only upon Rule 4(k)(1)(A), however, we do not consider these alternative bases for jurisdiction here.

⁹ There are two types of personal jurisdiction: general and specific. General jurisdiction is authorized where the defendant's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2851 (2011). A court asserts "general jurisdiction" over a defendant when the court is permitted to "hear any and all claims against" that defendant. Id.

"Specific jurisdiction," however, "depends on an 'affiliation between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Id. (brackets omitted). Such jurisdiction is "confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" Id.; see also Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 nn.8-9 (1984) (discussing the terms).

The plaintiffs do not allege that LCB is subject to general personal jurisdiction in New York. See N.Y. C.P.L.R. § 301. They argue only that LCB is subject to specific personal jurisdiction under the first subdivision of the New York long-arm statute, N.Y. C.P.L.R. § 302(a)(1).

1 N.Y. C.P.L.R. § 302(a) provides, in pertinent part,
2 that a court "may exercise personal jurisdiction over any non-
3 domiciliary . . . who in person or through an agent . . .
4 transacts any business within the state," so long as the
5 plaintiff's "cause of action aris[es] from" that
6 "transact[ion]." ¹⁰ Id. So, in determining whether personal
7 jurisdiction may be exercised under section 302(a)(1), "a court
8 must decide (1) whether the defendant 'transacts any business'
9 in New York and, if so, (2) whether this cause of action
10 'aris[es] from' such a business transaction." Best Van Lines,
11 Inc. v. Walker, 490 F.3d 239, 246 (2d Cir. 2007) (citing
12 Deutsche Bank Sec., Inc. v. Montana Bd. of Invs., 7 N.Y.3d 65,
13 71, 818 N.Y.S.2d 164, 166, 850 N.E.2d 1140, 1142 (2006)).

14 Third, the exercise of personal jurisdiction must
15 comport with constitutional due process principles. In this
16 case, because the plaintiffs' assertion of personal
17 jurisdiction rests upon a state long-arm statute, the relevant
18 constitutional constraints are those imposed by the Due Process
19 Clause of the Fourteenth Amendment. See Chloé, 616 F.3d at

¹⁰ Section 302(a)(1) also authorizes personal jurisdiction where a defendant "contracts anywhere to supply goods or services in the state." That provision is not at issue in this appeal. Nor do the plaintiffs rely on sections 302(a)(2) or 302(a)(3), which authorize personal jurisdiction for claims arising out of torts committed within and without New York State, respectively.

1 164. The constitutional analysis under the Due Process Clause
2 consists of two separate components: the "minimum contacts"
3 inquiry and the "reasonableness" inquiry. Id. The "minimum
4 contacts" inquiry requires us to consider "whether the
5 defendant has sufficient contacts with the forum state to
6 justify the court's exercise of personal jurisdiction." Id.
7 The "reasonableness" inquiry requires us to decide "whether the
8 assertion of personal jurisdiction comports with 'traditional
9 notions of fair play and substantial justice' -- that is,
10 whether it is reasonable to exercise personal jurisdiction
11 under the circumstances of the particular case." Id.

12 The New York long-arm statute does not extend in all
13 respects to the constitutional limits established by
14 International Shoe Co. v. Washington, 326 U.S. 310 (1945), and
15 its progeny. The state statutory and federal constitutional
16 standards are thus not co-extensive, as they are in many other
17 states. See, e.g., Best Van Lines, 490 F.3d at 244-45 & n.8
18 (noting "gaps" between the jurisdiction conferred by the New
19 York long-arm statute and that permissible under the federal
20 Due Process Clause); Banco Ambrosiano, S.p.A. v. Artoc Bank &
21 Trust Ltd., 62 N.Y.2d 65, 71, 476 N.Y.S.2d 64, 67, 464 N.E.2d
22 432, 435 (1984) ("[I]n setting forth certain categories of
23 bases for long-arm jurisdiction, [the New York long-arm
24 statute] does not go as far as is constitutionally

1 permissible."); see also Patrick J. Borchers, The Problem with
2 General Jurisdiction, 2001 U. Chi. Legal F. 119, 122 & n.17
3 (collecting examples from other states of long-arm statutes
4 that extend to constitutional limits). Where, as here, the
5 plaintiffs premise their theory of personal jurisdiction upon
6 the New York long-arm statute, we first consider whether the
7 requirements of the statute have been satisfied before
8 proceeding to address whether the exercise of jurisdiction
9 would comport with the Due Process Clause. See Chloé, 616 F.3d
10 at 163-64; Am. Buddha, 609 F.3d at 35; Best Van Lines, 490 F.3d
11 at 242, 244. This reflects our respect for the doctrine of
12 constitutional avoidance. See Ehrenfeld v. Bin Mahfouz, 489
13 F.3d 542, 547 (2d Cir. 2007); United States v. Magassouba, 544
14 F.3d 387, 404 (2d Cir. 2008) (collecting cases discussing the
15 doctrine).¹¹ We therefore address the statutory bases of

¹¹ In many cases, the jurisdictional analysis under the New York long-arm statute may closely resemble the analysis under the Due Process Clause of the Fourteenth Amendment. See Best Van Lines, 490 F.3d at 242 ("[T]he analysis of the state statutory and federal constitutional limitations have become somewhat entangled in New York jurisprudence"). This similarity of state-law and constitutional standards appears particularly evident with respect to N.Y. C.P.L.R. § 302(a)(1), the subdivision of the New York long-arm statute under which the plaintiffs in this case argue the court has personal jurisdiction over LCB. See Chloé, 616 F.3d at 166, 169 (taking note of these similarities); Best Van Lines, 490 F.3d at 247 (same); Ehrenfeld v. Bin Mahfouz, 9 N.Y.3d 501, 508, 851 N.Y.S.2d 381, 385-86, 881 N.E.2d 830, 834-45 (2007) (same).

1 personal jurisdiction prior to considering the constitutional
2 limitations. See, e.g., Am. Buddha, 609 F.3d at 35.

3 III. Long-Arm Jurisdiction Under Section 302(a)(1)

4 A. Transaction of Business in New York

5 The first question we consider is whether a foreign
6 bank's maintenance of a correspondent banking account in New
7 York, and use of that account over the course of several years
8 to effect a succession of wire transfers totaling several
9 million dollars on behalf of a foreign client, constitutes a
10 transaction of business within New York. The New York Court of
11 Appeals has explained that "the overriding criterion necessary
12 to establish a transaction of business is some act by which the
13 defendant purposefully avails itself of the privilege of
14 conducting activities within New York," Ehrenfeld, 9 N.Y.3d at
15 508, 851 N.Y.S.2d at 385, 881 N.E.2d at 834 (brackets and
16 internal quotation marks omitted), thereby "invoking the
17 benefits and protections of its laws," Fischbarg v. Doucet, 9
18 N.Y.3d 375, 380, 849 N.Y.S.2d 501, 505, 880 N.E.2d 22, 26
19 (2007).

20 A defendant need not physically enter New York State
21 in order to transact business, "so long as the defendant's
22 activities here were purposeful." Id. (quoting Deutsche Bank
23 Sec., Inc., 7 N.Y.3d at 71, 818 N.Y.S.2d at 167, 850 N.E.2d at
24 1142). "Not all purposeful activity, however, constitutes a

1 'transaction of business' within the meaning of [N.Y. C.P.L.R.
2 § 302(a)(1)]." Id. For example, the Court of Appeals has
3 indicated that "'merely telephon[ing] a single order' to New
4 York requesting a shipment of goods to another state, [or] the
5 transitory presence of a corporate official here, [or]
6 communications and shipments sent here by an out-of-state
7 doctor serving as a 'consultant' to plaintiff's New York
8 physician do not support [N.Y. C.P.L.R. § 302(a)(1)]
9 jurisdiction." Id. (citations omitted).

10 "Although it is impossible to precisely fix those
11 acts that constitute a transaction of business . . . it is the
12 quality of the defendants' New York contacts that is the
13 primary consideration." Id. A single act within New York
14 will, in the proper case, satisfy the requirements of section
15 302(a)(1). See Deutsche Bank, 7 N.Y.3d at 72, 818 N.Y.S.2d at
16 167, 850 N.E.2d at 1143 ("[W]hen the requirements of due
17 process are met, as they are here, a sophisticated
18 institutional trader knowingly entering our state -- whether
19 electronically or otherwise -- to negotiate and conclude a
20 substantial transaction is within the embrace of the New York
21 long-arm statute."). Other times, however, when an individual
22 act in New York will not suffice, an ongoing course of conduct
23 or relationship in the state may. See, e.g., Fischbarg, 9
24 N.Y.3d at 382-83, 849 N.Y.S.2d at 507, 880 N.E.2d 22 at 28

1 (defendants' "substantial ongoing professional commitment"
2 supported long-arm jurisdiction); Longines-Wittnauer Watch Co.
3 v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 458, 261 N.Y.S.2d 8,
4 19, 209 N.E.2d 68, 76 (1965); Grimaldi v. Guinn, 72 A.D.3d 37,
5 44, 895 N.Y.S.2d 156, 162 (2d Dep't 2010). A court must have
6 regard for the "totality of the circumstances." Farkas v.
7 Farkas, 36 A.D.3d 852, 853, 830 N.Y.S.2d 220, 221 (2d Dep't
8 2007); accord Best Van Lines, 490 F.3d at 246.

9 The plaintiffs assert that LCB's maintenance and use
10 of its correspondent banking account in New York was
11 sufficiently purposeful to constitute a transaction of business
12 within New York State. They emphasize that they rely not only
13 on the fact that LCB owned a correspondent banking account in
14 New York, but also on the fact that LCB allegedly used that
15 account "dozens" of times to execute international wire
16 transfers on Shahid's behalf. Compl. ¶ 53.

17 The district court rejected the plaintiffs' proffered
18 distinction. Relying upon a line of Second Circuit district-
19 court cases, the court stated that "[t]he mere maintenance of
20 [a] correspondent bank account with a financial institution in
21 New York is not, standing alone, a sufficient basis to subject
22 a foreign defendant to personal jurisdiction under
23 § 302(a)(1)." Licci, 704 F. Supp. 2d at 407 (citing Tamam, 677
24 F. Supp. 2d at 727; Daventree Ltd. v. Republic of Azerbaijan,

1 349 F. Supp. 2d 736, 762 (S.D.N.Y. 2004); and Leema Enters.,
2 Inc. v. Willi, 575 F. Supp. 1533, 1537 (S.D.N.Y. 1983)).
3 Although the district court acknowledged the plaintiffs'
4 attempt to distinguish between the "'mere maintenance of
5 correspondent banking accounts'" and "'the active execution
6 . . . of dozens of wire transfers totaling millions of dollars
7 over a multi-year period,'" Licci, 704 F. Supp. 2d at 407
8 (emphasis omitted), the court concluded that "no meaningful
9 distinction may be drawn between a foreign bank's maintenance
10 of a correspondent account to effect international wire
11 transfers and its indiscriminate use of that account for that
12 exact purpose," id. at 407-08.

13 The New York Court of Appeals has apparently not yet
14 addressed the precise question before the district court and
15 now before us: whether a foreign bank's frequent use of a
16 correspondent account in New York to effect international wire
17 transfers on behalf of an overseas client is an act directed
18 with sufficient purposefulness at New York to constitute a
19 transaction of business in that state under the long-arm
20 statute. And, of course, the district court did not itself
21 have the ability to ask the New York Court of Appeals for
22 guidance. See N.Y. Comp. Codes R. & Regs. tit. 22,
23 § 500.27(a).

1 New York courts have, however, considered several
2 similar sets of circumstances. In perhaps the most prominent
3 case concerning a similar issue, Amigo Foods Corp. v. Marine
4 Midland Bank-N.Y., 39 N.Y.2d 391, 384 N.Y.S.2d 124, 348 N.E.2d
5 581 (1976), the Court of Appeals addressed the question
6 "whether, under the governing long-arm jurisdiction statute
7 [N.Y. C.P.L.R. § 302(a)(1), also invoked here], a showing that
8 a New York bank is the correspondent of an out-of-State bank
9 provides a sufficient basis upon which New York courts may
10 exercise jurisdiction over the out-of-State bank." Id. at 393,
11 384 N.Y.S.2d at 125, 348 N.E.2d at 582.

12 The plaintiff, a New York wholesaler, had contracted
13 to buy several truckloads of potatoes from a Maine distributor.
14 After the plaintiff made payment, its letter of credit passed
15 through a New York correspondent account owned by one of the
16 defendants, Aroostook Trust Company, a Maine bank. Id. at 394,
17 384 N.Y.S.2d at 126, 348 N.E.2d at 582.

18 The Appellate Division dismissed the plaintiff's
19 claims against Aroostook, "holding that a correspondent bank
20 relationship was an insufficient basis upon which to predicate
21 long-arm jurisdiction." Id. at 395, 384 N.Y.S.2d at 126, 348
22 N.E.2d at 583. And the Court of Appeals declined to hold that
23 a correspondent bank relationship in New York "suffic[ed], in
24 and of itself," to support the exercise of personal

1 jurisdiction. Id. at 395, 384 N.Y.S.2d at 127, 348 N.E.2d at
2 583. The court announced a general rule that "standing by
3 itself, a correspondent bank relationship, without any other
4 indicia or evidence to explain its essence, may not form the
5 basis for long-arm jurisdiction under [N.Y. C.P.L.R.
6 § 302(a)(1)]." Id. at 396, 384 N.Y.S.2d at 127, 348 N.E.2d at
7 584. The court then remanded for jurisdictional discovery to
8 permit the plaintiff to establish that the general rule did not
9 apply. Discovery would allow the plaintiff to inquire into,
10 among other things, "the precise nature of [Aroostook's]
11 relationship with [its correspondent bank in New York]
12 vis-à-vis the handling of [the plaintiff's] letters of credit."
13 Id.

14 Several years later, in Ehrlich-Bober & Co. v. Univ.
15 of Houston, 49 N.Y.2d 574, 427 N.Y.S.2d 604, 404 N.E.2d 726
16 (1980), the Court of Appeals upheld the exercise of personal
17 jurisdiction over a public university located in Texas based
18 upon the fact that the university -- which had contracted to
19 sell securities to the plaintiff, a New York securities dealer
20 -- employed the services of a correspondent bank in New York to
21 carry out the transaction. Id. at 577, 427 N.Y.S.2d at 606,
22 404 N.E.2d at 728. The Court of Appeals concluded that
23 "[a]lthough 'standing by itself, a correspondent bank
24 relationship . . . may not form the basis for long-arm

1 jurisdiction under [N.Y. C.P.L.R. § 302(a)(1)],' the facts
2 alleged here, which we accept as true for this purpose, show
3 substantially more." Id. at 579, 427 N.Y.S.2d at 607, 404
4 N.E.2d at 729 (quoting Amigo Foods, 39 N.Y.2d at 396, 384
5 N.Y.S.2d at 127, 348 N.E.2d at 584) (citation omitted). The
6 court appeared to regard as relevant the fact that the
7 contractual transactions at issue had been "centered" in New
8 York.¹² Id. at 581-82, 427 N.Y.S.2d at 609, 404 N.E.2d at 731
9 ("[T]he transactions in question . . . were initiated by an
10 employee of the defendant university in a phone call to the
11 plaintiff's New York offices. They were accepted in New York
12 by the plaintiff. The money was paid in New York. The
13 securities were delivered in New York.").

14 In Banco Ambrosiano v. Artoc Bank & Trust, 62 N.Y.2d
15 65, 476 N.Y.S.2d 64, 464 N.E.2d 432 (1984), a decision applying
16 due process standards rather than the long-arm statute, the
17 Court of Appeals upheld the exercise of quasi-in-rem
18 jurisdiction over a Bahamian bank based upon its use of a
19 correspondent account in New York to conduct a loan transaction

¹² The principal issue on appeal in Ehrlich-Bober & Co. was not the scope of N.Y. C.P.L.R. § 302(a)(1), but whether the trial court should have declined jurisdiction over the plaintiff's suit against the defendant university as a matter of comity based upon a Texas statute limiting the jurisdictions in which the university is subject to suit. Id. at 577-79, 427 N.Y.S.2d at 606-07, 404 N.E.2d at 728-29.

1 with the plaintiff, id. at 72-73, 476 N.Y.S.2d at 67-68, 464
2 N.E.2d at 435-36. The court, emphasizing the "quality of this
3 contact and its significance in the context of this
4 litigation," viewed the bank's correspondent account as
5 "closely related to plaintiff's claim" because it was "the very
6 account through which [the bank] effectuated the transaction at
7 issue." Id. at 72, 476 N.Y.S.2d at 67-68, 464 N.E.2d at 435-
8 36. The court also appeared to rely on the fact that "this
9 transaction [was not] an isolated one" inasmuch as the bank had
10 "utilize[d] this account regularly to accomplish its
11 international banking business." Id. at 72-73, 476 N.Y.S.2d at
12 68, 464 N.E.2d at 436. Although the court's decision rested
13 not on a determination that the New York long-arm statute was
14 satisfied, but on a conclusion that the exercise of quasi-in-
15 rem jurisdiction under the circumstances would not violate due
16 process standards, see generally id. at 71-73, 476 N.Y.S.2d at
17 66-68, 464 N.E.2d at 434-36, the decision may be relevant
18 insofar as the statutory and constitutional inquiries "have
19 become . . . entangled in New York jurisprudence." Best Van
20 Lines, 490 F.3d at 242.

21 In Indosuez International Finance B.V. v. National
22 Reserve Bank, 98 N.Y.2d 238, 746 N.Y.S.2d 631, 774 N.E.2d 696
23 (2002), the Court of Appeals upheld the exercise of personal
24 jurisdiction in New York over a Russian bank that had

1 maintained a bank account in New York and used it in connection
2 with currency-exchange options transactions with the plaintiff.
3 The court ruled that the bank's "course of dealing" in making
4 and accepting payments through a New York bank "constitute[d]
5 purposeful exercise . . . of the privilege of conducting
6 business in New York State sufficient to subject it to personal
7 jurisdiction" under N.Y. C.P.L.R. § 302(a)(1). Id. at 247, 746
8 N.Y.S.2d at 636, 774 N.E.2d at 701.

9 Those four decisions suggest to us that the
10 "transaction of business" prong of the test for jurisdiction
11 under section 302(a)(1) may, in appropriate cases, be satisfied
12 by a showing that the defendant maintained and used a
13 correspondent bank account in New York. Some New York State
14 courts nonetheless seem to regard a nondomiciliary defendant's
15 maintenance and use of such an account in New York, standing
16 alone, as ipso facto insufficient to support personal
17 jurisdiction under the New York long-arm statute. See
18 Faravelli v. Bankers Trust Co., 85 A.D.2d 335, 339, 447
19 N.Y.S.2d 962, 964-65 (1st Dep't 1982) ("[T]he fact that Punjab
20 had correspondent banks in New York in and of itself [does not]
21 provide sufficient contacts for longarm jurisdiction under
22 [N.Y. C.P.L.R. § 302]."), aff'd for the reasons stated by the
23 Appellate Division, 59 N.Y.2d 615, 618, 463 N.Y.S.2d 194, 449
24 N.E.2d 1272 (1983); Nemetsky v. Banque de Developpement de la

1 Republique du Niger, 65 A.D.2d 748, 748-49, 407 N.Y.S.2d 556,
2 557 (2d Dep't 1978) ("Even if the trade acceptance [upon which
3 plaintiff brought suit] were shown to be part of the
4 [defendant's] correspondent bank relationship [with a New York
5 bank], that relationship does not itself provide the basis for
6 long arm jurisdiction under [N.Y. C.P.L.R. § 302(a)(1)]."),
7 aff'd mem., 48 N.Y.2d 962, 964, 425 N.Y.S.2d 277, 401 N.E.2d
8 388 (1979) ("All that appears is a correspondent bank
9 relationship between defendant and Credit Lyonnais and the
10 trade acceptance connected to that relationship. These factors
11 standing alone are insufficient to support an exercise of in
12 personam jurisdiction"); Taub v. Colonial Coated
13 Textile Corp., 54 A.D.2d 660, 661, 387 N.Y.S.2d 869, 870 (1st
14 Dep't 1976) (depending on Amigo Foods for the conclusion that
15 an Israeli bank's use of a correspondent account in New York
16 does not suffice to establish long-arm jurisdiction). And
17 federal district court decisions in this Circuit have relied
18 upon these state-court decisions and Amigo Foods' statement
19 that a correspondent banking relationship "standing by itself"
20 does not suffice, Amigo Foods, 39 N.Y.2d at 396, 384 N.Y.S.2d
21 at 127, 348 N.E.2d at 584, to conclude that the "mere

1 maintenance" of a correspondent bank account in New York does
2 not suffice to establish personal jurisdiction there.¹³

3 Assuming for present purposes that this "mere
4 maintenance" principle is a faithful articulation of the Court
5 of Appeals' decision in Amigo Foods, it is unclear to us how to
6 apply it to the facts of this case: What role is the word
7 "mere" intended to play? It may be, as the plaintiffs suggest,
8 that it is intended to distinguish the "maintenance" of an
9 account from its active use. See Licci, 704 F. Supp. 2d at 407
10 (describing this argument). But perhaps it is intended to
11 suggest that other types of contacts with the forum -- such as
12 borrowing money in New York, signing notes payable in New York,
13 or negotiating agreements in New York -- are also required in

¹³ See, e.g., Tamam, 677 F. Supp. 2d at 727 ("[M]erely maintaining a New York correspondent bank account is insufficient to subject a foreign bank to personal jurisdiction."); Neewra, Inc. v. Manakh Al Khaleej Gen. Trading & Contracting Co., No. 03 Civ. 2936, 2004 WL 1620874, at *3, 2004 U.S. Dist. LEXIS 13556, at *10 (S.D.N.Y. July 20, 2004); Societe Generale v. Fla. Health Scis. Ctr., Inc., No. 03 Civ. 5615, 2003 WL 22852656, at *4, 2003 U.S. Dist. LEXIS 21502, at *11 (S.D.N.Y. Dec. 1, 2003) (merely maintaining correspondent bank account is not sufficient); Globex Int'l Inc. v. Commercial Bank of Namibia Ltd., No. 99 Civ. 4789, 1999 WL 529538, at *1, 1999 U.S. Dist. LEXIS 11321, at *2 (S.D.N.Y. July 23, 1999) (same); Semi Conductor Materials, Inc. v. Citibank Int'l PLC, 969 F. Supp. 243, 246-47 (S.D.N.Y. 1997) (same); Johnson Elec. N. Am., Inc. v. Bank of Wales, PLC, No. 90 Civ. 6683, 1991 WL 20006, at *2, 1991 U.S. Dist. LEXIS 1596, at *5 (S.D.N.Y. Feb. 8, 1991) (same); Celton Man Trade, Inc. v. UTEX S.A., No. 84 Civ. 8179, 1986 WL 6788, at *4, 1986 U.S. Dist. LEXIS 24280, at *12 (S.D.N.Y. June 12, 1986) (same); Exchange Nat'l Bank of Chicago v. Empresa Minera del Centro del Peru S.A., 595 F. Supp. 502, 505 (S.D.N.Y. 1984) (same).

1 order to permit jurisdiction over the defendant to be
2 exercised. See, e.g., DirectTV Latin Am., LLC v. Park 610, LLC,
3 691 F. Supp. 2d 405, 423 (S.D.N.Y. 2010). Or it may be that
4 the term means that a transaction of business in New York will
5 not suffice unless the plaintiff's cause of action also
6 "arise[s] from" that transaction -- in other words, that the
7 second prong of the test must also be satisfied.¹⁴ See Neewra,
8 Inc., 2004 WL 1620874, at *3, 2004 U.S. Dist. LEXIS 13556, at
9 *10 ("A foreign bank's mere maintenance of a correspondent
10 account . . . is not enough On the other hand, 'a
11 cause of action arising out of a transaction involving the use
12 of a correspondent account may confer jurisdiction over [the]
13 defendant in New York.'") (citation omitted; emphasis in
14 original).

¹⁴ District courts in this Circuit have upheld personal jurisdiction based upon a defendant's use of a correspondent bank account in New York where the use of that account was held to lay at the "very root of the [plaintiff's] action." Correspondent Servs. Corp. v. J.V.W. Invs. Ltd., 120 F. Supp. 2d 401, 4005 (S.D.N.Y. 2000); see also, e.g., Dale v. Banque SCS Alliance S.A., No. 02 Civ. 3592, 2005 WL 2347853, at *3, 2005 U.S. Dist. LEXIS 20967, at *12-*13 (S.D.N.Y. Sept. 22, 2005) (upholding jurisdiction based on defendant's use of "several correspondent bank accounts in New York . . . to effect a number of the funds transfers that are the subject of this action"); Chase Manhattan Bank v. Banque Generale du Commerce, No. 96 Civ. 5184, 1997 WL 266968, at *2 (S.D.N.Y. May 20, 1997) (finding personal jurisdiction proper based on the defendant's use of a correspondent account in New York because "the [plaintiff's] cause of action arises out of [that] use").

1 Were we required to decide ourselves, we might
2 conclude -- in light of the Court of Appeals' post-Amigo Foods
3 decisions in Ehrlich-Bober & Co., Banco Ambrosiano, and
4 Indosuez -- that Amigo Foods is best read as standing for the
5 proposition that the first prong of the long-arm jurisdiction
6 test under N.Y. C.P.L.R. § 302(a)(1) -- whether the defendant
7 has transacted business within New York -- may be satisfied by
8 the defendant's use of a correspondent bank account in New
9 York, even if no other contacts between the defendant and New
10 York can be established, if the defendant's use of that account
11 was purposeful. Whether or not we would think it necessary to
12 certify that question to the New York Court of Appeals were it
13 the only one that challenged us, in light of the fact that we
14 are asking the court to address the second, "arising from,"
15 prong of the test for long-arm jurisdiction, we consider it
16 prudent to ask that court also to address the first prong of
17 the test, and to further explicate its guidance in Amigo Foods
18 -- if, of course, it chooses to do so. Accordingly, we certify
19 the following question to the New York Court of Appeals for its
20 consideration:

21 (1) Does a foreign bank's maintenance of a
22 correspondent bank account at a financial
23 institution in New York, and use of that
24 account to effect "dozens" of wire
25 transfers on behalf of a foreign client,
26 constitute a "transact[ion]" of business in

1 New York within the meaning of N.Y.
2 C.P.L.R. § 302(a)(1)?

3 B. Nexus Between Plaintiffs' Claims
4 and Defendant's Transaction in New York

5 If the first prong of the test for jurisdiction under
6 N.Y. C.P.L.R. § 302(a)(1) has been satisfied, a question as to
7 which we are asking the New York Court of Appeals for help, we
8 must then inquire whether the plaintiffs' claims arise from
9 that transaction. We have explained, with respect to this
10 "nexus" requirement, that "'[a] suit will be deemed to have
11 arisen out of a party's activities in New York if there is an
12 articulable nexus, or a substantial relationship, between the
13 claim asserted and the actions that occurred in New York.'" Best Van Lines, 490 F.3d at 246 (quoting Henderson v. INS, 157
14 F.3d 106, 123 (2d Cir. 1998)); see also Kreutter v. McFadden
15 Oil Corp., 71 N.Y.2d 460, 467, 527 N.Y.S.2d 195, 198, 522
16 N.E.2d 40, 43 (1988) (employing a "substantial relationship"
17 test); McGowan v. Smith, 52 N.Y.2d 268, 272, 437 N.Y.S.2d 643,
18 645, 419 N.E.2d 321, 323 (1981) (employing an "articulable
19 nexus" test). "[J]urisdiction is not justified [under N.Y.
20 C.P.L.R. § 302(a)(1)] where the relationship between the claim
21 and transaction is too attenuated," Johnson v. Ward, 4 N.Y.3d
22 516, 520, 797 N.Y.S.2d 33, 35, 829 N.E.2d 1201, 1203 (2005),
23 and "[a] connection that is 'merely coincidental' is
24 insufficient to support jurisdiction," Sole Resort, 450 F.3d at
25

1 103 (quoting Johnson, 4 N.Y.3d at 520, 797 N.Y.S.2d at 35, 829
2 N.E.2d at 1203); see also Fischbarg, 9 N.Y.3d at 384, 849
3 N.Y.S.2d at 508-09, 880 N.E.2d at 29-30 (a contact's
4 "tangential relationship to the present case" will not
5 suffice).

6 There is no bright-line test for determining whether
7 the "nexus" is present in a particular case. "This inquiry is
8 a fact-specific one, and [the point at which] the connection
9 between the parties' activities in New York and the
10 [plaintiffs'] claim crosses the line from 'substantially
11 related' to 'mere coincidence' is not always self-evident."

12 Sole Resort, 450 F.3d at 103. We observed:

13 In cases where claims have been dismissed on
14 jurisdictional grounds for lack of a sufficient
15 nexus between the parties' New York contacts and
16 the claim asserted, the event giving rise to the
17 plaintiff's injury had, at best, a tangential
18 relationship to any contacts the defendant had
19 with New York. In fact, in those cases, the
20 injuries sustained and the resulting disputes
21 bore such an attenuated connection to the New
22 York activity upon which the plaintiffs
23 attempted to premise jurisdiction that the
24 disputes could not be characterized as having
25 "arisen from" the New York activity.

26
27 Id. at 104.

28 The district court, deciding that the nexus
29 requirement was not satisfied in this case, concluded that
30 "[n]o articulable nexus or substantial relationship exists
31 between LCB's general use of its correspondent account for wire

1 transfers through New York and the specific terrorist
2 activities by Hizbollah underlying plaintiffs' claims."¹⁵
3 Licci, 704 F. Supp. 2d at 408. In reaching that conclusion,
4 the court relied principally upon two observations. First, the
5 court noted that the "[p]laintiffs themselves are not customers
6 of . . . [LCB], nor did they have any financial interest in the
7 wired funds," id., thereby distinguishing several cases that
8 had upheld personal jurisdiction based upon a defendant's use
9 of a correspondent banking account in New York.¹⁶ Second, the
10 court concluded that "[t]he injuries and death[s] suffered by
11 plaintiffs and their family members were caused by the rockets
12 launched by Hizbollah, not by the banking services provided by
13 LCB through its correspondent account or wire transfers with
14 Amex Bank via New York."¹⁷ Id. Based on this assertion, the

¹⁵ In conducting its analysis into whether the plaintiffs' claims "aris[e] from" LCB's transaction of business in New York for the purposes of section 302(a)(1), the district court did not separately evaluate the plaintiffs' Anti-Terrorism Act, ATS, and Israeli-law claims.

¹⁶ See Dale, 2005 WL 2347853, at *3, 2005 U.S. Dist. LEXIS 20967, at *12-*13; Correspondent Servs. Corp., 120 F. Supp. 2d at 405; Chase Manhattan Bank, 1997 WL 266968, at *2, 1997 U.S. Dist. LEXIS 7020, at *4-*7.

¹⁷ This conclusion echoed the one reached in the factually similar Tamam case, in which the court stated: "It is clear that the events giving rise to the physical injuries and deaths for which Plaintiffs seek redress are missile attacks in Israel, not funds transfers in New York." Tamam, 677 F. Supp. 2d at 728. Indeed, there, as here, the district court concluded that the plaintiffs had failed to demonstrate a "'substantial

1 district court concluded that "LCB's maintenance or use of its
2 correspondent bank account is too attenuated from Hizballah's
3 attacks in Israel to assert personal jurisdiction based solely
4 on wire transfers through New York." Id.

5 The district court was of course correct in observing
6 that the rockets launched by Hizballah were the alleged
7 immediate cause of the plaintiffs' injuries or their relatives'
8 deaths. But the plaintiffs bring their claims against LCB for
9 its role in the transfer of funds to Hizballah. And the
10 jurisdictional nexus analysis directs us to consider the
11 relationship between the plaintiffs' claims and LCB's alleged
12 transactions in New York. It may be that the district court,
13 in concluding that "[t]he injuries and death[s] suffered by
14 plaintiffs" were caused by Hizballah rather than LCB, id., was
15 reaching a conclusion that properly bears upon the ultimate
16 merits of plaintiffs' claims, which seek to hold LCB liable for
17 damages allegedly inflicted by Hizballah.¹⁸ And while we may

relationship' between the correspondent bank accounts and
Hizballah's terrorist activity." Id. at 727-30.

¹⁸ As discussed below, the parties vigorously dispute whether the plaintiffs, to state a claim against LCB under the Anti-Terrorism Act, must demonstrate a causal connection between LCB's provision of banking services and Hizballah's rocket attacks. Because this case reaches us solely on appeal from a Rule 12(b)(2) dismissal, however, we need not and do not address the parties' arguments concerning the existence vel non of such a causation requirement under the Anti-Terrorism Act at this time.

1 eventually be required to address the merits, such merits
2 determinations do not bear on the pure state-law question of
3 whether the plaintiffs can show that the facts alleged in the
4 complaint in support of their claims are sufficient to
5 establish personal jurisdiction under the New York long-arm
6 statute.

7 On appeal from the district court's judgment in this
8 regard, the plaintiffs make several arguments directed solely
9 to their Anti-Terrorism Act claims, and others that appear
10 directed primarily to their other claims.

11 1. The Anti-Terrorism Act Claims. On appeal, the
12 plaintiffs focus their arguments primarily on the district
13 court's treatment of their Anti-Terrorism Act claims.

14 The Anti-Terrorism Act, enacted in 1990,¹⁹ provides
15 that "[a]ny national of the United States injured in his or her
16 person, property, or business by reason of an act of
17 international terrorism, or his or her estate, survivors, or
18 heirs, may sue therefor in any appropriate district court of
19 the United States." 18 U.S.C. § 2333(a). For an act to

¹⁹ The Anti-Terrorism Act was originally enacted in 1990. Due to a procedural error, however, the Anti-Terrorism Act was repealed in April 1991 and later re-introduced and reenacted in substantially the same form. The current text of the Anti-Terrorism Act, codified at 18 U.S.C. § 2333, was enacted in 1992. See Wultz v. Islamic Republic of Iran, 755 F. Supp. 2d 1, 19 n.1 (D.D.C. 2010) (summarizing this history); Strauss v. Credit Lyonnais, S.A., 249 F.R.D. 429, 444 (E.D.N.Y. 2008) (same).

1 constitute "international terrorism," it must satisfy four
2 separate requirements: (1) it must "involve violent acts or
3 acts dangerous to human life"; (2) it must qualify as "a
4 violation of the criminal laws of the United States or of any
5 State" if it were committed within a United States
6 jurisdiction; (3) it must "appear to be intended" to intimidate
7 a civilian population, influence government policy, or affect
8 the conduct of government by certain specified means; and (4)
9 it must occur primarily outside the United States or transcend
10 national boundaries. Id. § 2331(1)(A)-(C). The Seventh
11 Circuit, and several district courts in this Circuit, have
12 concluded that a defendant's violation of the criminal
13 material-support statutes, see 18 U.S.C. §§ 2339A, 2339B &
14 2339C,²⁰ constitutes an act of "international terrorism" within
15 the meaning of section 2331(1). According to these courts,
16 victims of terrorism therefore may bring civil suits against

²⁰ Those three statutes criminalize, respectively: (1) "provid[ing] material support or resources . . . knowing or intending that they are to be used in preparation for[] or in carrying out" certain identified criminal offenses, 18 U.S.C. § 2339A(a); (2) "knowingly provid[ing] material support or resources to a foreign terrorist organization," id. § 2339B(a)(1); and (3) "directly or indirectly . . . provid[ing] or collect[ing] funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out . . . any [] act intended to cause death or serious bodily injury to a civilian," id. § 2339C(a)(1). Each of the three statutes contain further provisions defining or limiting their terms.

1 violators of those statutes under section 2333(a), see, e.g.,
2 Boim v. Holy Land Found. for Relief and Dev. (Boim II), 549
3 F.3d 685, 690-91 (7th Cir. 2008) (en banc), cert. denied, 130
4 S. Ct. 458 (2009); Boim v. Quranic Literacy Inst. (Boim I), 291
5 F.3d 1000, 1012-16 (7th Cir. 2002).

6 The plaintiffs contend that the district court's
7 decision reflects a mistaken understanding about the elements
8 of an Anti-Terrorism Act cause of action -- in particular, the
9 extent to which proof of causation is required to sustain such
10 a claim. See Pls.' Br. at 16-25 (citing Holder v. Humanitarian
11 Law Project, 130 S. Ct. 2705, 2720, 2729 (2010) (concluding
12 that Congress could lawfully criminalize the provision of
13 "training" or "expert advice or assistance" to terrorist
14 groups, even when the assistance was intended to further non-
15 violent or humanitarian ends, because the recipients of such
16 assistance could nonetheless use it "as part of a broader
17 strategy to promote terrorism"); Boim II, 549 F.3d at 695
18 (concluding that a charity which donates money to a terrorist
19 organization may be held liable under the Anti-Terrorism Act --
20 even if a plaintiff is unable to prove that the money the
21 charity donated actually helped finance the attacks that
22 injured the plaintiff -- if a plaintiff proves that the charity
23 "kn[ew] the [terrorist] character of that [donee]
24 organization.")). However, the plaintiffs' contentions

1 regarding the scope of the Anti-Terrorism Act bear upon the
2 merits of this case. The question we confront here, and the
3 question we ask the Court of Appeals to consider, is an
4 antecedent question of state law: whether the plaintiffs'
5 claims, as supported by the facts alleged, see Chloé, 616 F.3d
6 at 163 (determining whether plaintiff alleged "facts that, if
7 credited by the ultimate trier of fact, would suffice to
8 establish jurisdiction over the defendant" under the New York
9 long-arm statute) (brackets omitted), arise from LCB's
10 transaction of business in New York, thereby giving rise to
11 personal jurisdiction over LCB under the New York long-arm
12 statute.

13 As an initial matter, we conclude that the district
14 court was mistaken about what alleged conduct by LCB is being
15 relied upon by the plaintiffs as giving rise to the their
16 claims. The plaintiffs' claims are not premised on allegations
17 that LCB played a direct role in committing or facilitating the
18 particular rocket attacks that injured the plaintiffs. They
19 are based upon the assertion that LCB knowingly wired money on
20 behalf of a Hizballah affiliate through New York; that LCB
21 purposefully did so in order to assist Hizballah (irrespective
22 of how it intended the money would be used by Hizballah, or how
23 it was in fact used); that these services constituted material
24 support to a terrorist organization; and that LCB therefore

1 violated the Anti-Terrorism Act. It would appear, then, that
2 LCB's transactions in New York are among the operative facts
3 underpinning the plaintiffs' Anti-Terrorism Act claims as
4 alleged. Cf. Pls.' Br. at 20 (asserting that "the entire actus
5 reus of the torts attributed to LCB in the [amended complaint]
6 is none other than LCB's transfers to Hezbollah via its account
7 at Amex Bank in New York"). We nonetheless conclude that we
8 are without sufficient guidance to permit us to resolve the
9 state-law question authoritatively.

10 Once again, the question is whether, as a matter of
11 New York law, the plaintiffs' Anti-Terrorism Act claims, as
12 they are alleged by the plaintiffs, "aris[e] from" the
13 defendants' transaction of business in New York within the
14 meaning of N.Y. C.P.L.R. § 302(a)(1). But two ambiguities are
15 present in the New York Court of Appeals' statement that a
16 sufficient nexus exists where "there is a substantial
17 relationship between [a New York] transaction and the claim
18 asserted," Kreutter, 71 N.Y.2d at 467, 527 N.Y.S.2d at 198, 522
19 N.E.2d at 43 (emphases added) -- what is a "substantial
20 relationship"? And, what is a "claim"?

21 **a. What is a "substantial relationship" for purposes**
22 **of N.Y. C.P.L.R. § 302(a)(1)?**
23

24 First, it remains unclear to us what sort of causal
25 connection, if any, must be demonstrated between a defendant's

1 New York activities and a plaintiff's "claim" under the New
2 York long-arm statute's nexus requirement. Some courts have
3 interpreted the Court of Appeals' decisions in McGowan v.
4 Smith, 52 N.Y.2d 268, 437 N.Y.S.2d 643, 419 N.E.2d 321 (1981),
5 and similar cases, as holding that N.Y. C.P.L.R. § 302(a)(1)
6 contains a nexus requirement that is considerably stricter than
7 its constitutional analogue. See Graphic Controls Corp. v.
8 Utah Med. Prods., Inc., 149 F.3d 1382, 1386-87 (Fed. Cir. 1998)
9 (concluding that the statutory nexus requirement has been
10 "interpreted very narrowly" by the New York Court of Appeals);
11 Beacon Enters, Inc. v. Menzies, 715 F.2d 757, 764-65 & n.6 (2d
12 Cir. 1983) (stating that N.Y. C.P.L.R. § 302(a)(1) requires
13 proof of "a strong nexus," meaning "'a direct relation between
14 the cause of action and the in-state conduct'" (quoting
15 Fontanetta v. Am. Bd. of Internal Med., 421 F.2d 355, 357 (2d
16 Cir. 1970))); Talbot v. Johnson Newspaper Corp., 123 A.D.2d
17 147, 149, 511 N.Y.S.2d 152, 154 (3d Dep't 1987) ("A defendant
18 may not be subject to personal jurisdiction under [N.Y.
19 C.P.L.R. § 302(a)(1)] simply because her contact with New York
20 was a link in the chain of events giving rise to the cause of
21 action[.]"), aff'd, 71 N.Y.2d 827, 527 N.Y.S.2d 729, 522 N.E.2d
22 1027 (1988). Those interpretations appear to be consistent
23 with the view that the New York long-arm statute requires that
24 the defendant's contacts with New York be the "proximate cause"

1 of the plaintiff's injuries. Cf., e.g., Mass. Sch. of Law at
2 Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 35 (1st Cir. 1998)
3 (concluding that, to comport with the Due Process Clause, the
4 exercise of specific jurisdiction requires proof that the
5 defendant's forum contacts were the proximate cause of the
6 plaintiff's injury); see generally Dudnikov v. Chalk &
7 Vermilion Fine Arts, Inc., 514 F.3d 1063, 1078-79 (10th Cir.
8 2008) (describing "proximate cause" approach and comparing it
9 to other approaches); O'Connor v. Sandy Lane Hotel Co., 496
10 F.3d 312, 318-19 (3d Cir. 2007) (same). This view may find
11 support in the text of the long-arm statute itself, insofar as
12 it provides jurisdiction only for a plaintiff's "cause of
13 action arising from" an enumerated act by the defendant. N.Y.
14 C.P.L.R. § 302(a).

15 Other courts have assumed or suggested, however, that
16 the nexus requirement of the New York long-arm statute is
17 relatively permissive. See, e.g., Sole Resort, 450 F.3d at 104
18 (implying that the nexus requirement is met unless "the event
19 giving rise to the plaintiff's injury had, at best, a
20 tangential relationship to any contacts the defendant had with
21 New York"); PDK Labs, Inc. v. Friedlander, 103 F.3d 1105, 1109
22 (2d Cir. 1997) ("A cause of action arises out of a defendant's
23 New York transactions when it is 'sufficiently related to the
24 business transacted that it would not be unfair to deem it to

1 arise out of the transacted business.'" (quoting Hoffritz for
2 Cutlery, Inc. v. Amajac, Ltd., 763 F.2d 55, 59 (2d Cir.
3 1985))). These interpretations evoke the "substantial
4 connection" or "discernible relationship" approaches, O'Connor,
5 496 F.3d at 319-20, and reflect the view that the proper test
6 for satisfaction of the nexus requirement should not be
7 causally based. See, e.g., Vons Cos., Inc. v. Seabest Foods,
8 Inc., 14 Cal. 4th 434, 456, 475, 926 P.2d 1085, 1099, 1112
9 (1996) (adopting a "substantial nexus or connection" approach
10 in applying the California long-arm statute and, in rejecting
11 other approaches, questioning the wisdom "of importing a
12 causation test from tort law to measure a matter that is
13 fundamentally one of relationship and fairness rather than
14 causation"). But cf. Chew v. Dietrich, 143 F.3d 24, 29-30 (2d
15 Cir.) (suggesting in dicta that the "relatedness" test under
16 the Due Process Clause may require proof of either but-for or
17 proximate causation), cert. denied, 525 U.S. 948 (1998). To
18 the extent that the Court of Appeals determined in Kreutter and
19 McGowan that the nexus requirement may be satisfied by a
20 showing of a "substantial relationship" or an "articulable
21 nexus," respectively, see Kreutter, 71 N.Y.2d at 467, 527
22 N.Y.S.2d at 198, 522 N.E.2d at 43; McGowan, 52 N.Y.2d at 272,
23 437 N.Y.S.2d at 645, 419 N.E.2d at 323, it would appear as
24 though no showing of causation is required by N.Y. C.P.L.R.

1 § 302(a)(1). Cf. Thomason v. Chem. Bank, 234 Conn. 281, 290,
2 661 A.2d 595, 600-01 (1995) (concluding, as to Connecticut's
3 long-arm statute providing specific jurisdiction over cases
4 that "arise out of" a defendant's forum contacts, that the
5 statute "does not require a causal connection between the
6 defendant's forum-directed activities and the plaintiffs'
7 lawsuit").²¹ But we think the New York Court of Appeals is in a
8 better position to respond to that question than are we.

9 **b. What is a "claim" for purposes of N.Y. C.P.L.R.**
10 **§ 302(a)(1)?**

11 Further complicating the analysis is a lack of
12 clarity regarding what must "aris[e] from" a defendant's New
13 York contacts. Although it is well-established that the nexus
14 inquiry requires us to decide whether "there is a substantial

²¹ Complicating matters, an approach has begun to emerge in the federal district courts that a plaintiff's claim may only arise from a defendant's use of a correspondent banking account in New York where the defendant's use of such an account was "clearly 'at the very root' of the action." Tamam, 677 F. Supp. 2d at 727-29; see also Licci, 704 F. Supp. 2d at 407; Daventree, 349 F. Supp. 2d at 762; Correspondent Servs. Corp., 120 F. Supp. 2d at 405. It is not clear to us whether this "very root of the action" formulation is consistent with the constructions of the nexus requirement under N.Y. C.P.L.R. § 302(a)(1) elaborated by Kreutter and McGowan.

It also remains unclear whether it is possible that a plaintiff's cause of action might bear an "articulable nexus" but not a "substantial relationship" (or vice versa) to a defendant's New York-based contacts. Cf. Helicopteros, 466 U.S. at 415 n.10 (reserving the question "whether the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's contacts with a forum").

1 relationship between the transaction and the claim asserted,"
2 Kreutter, 71 N.Y.2d at 467, 527 N.Y.S.2d at 198, 522 N.E.2d at
3 43 (emphasis added), it is not clear whether the plaintiffs'
4 "claim" is to be understood more loosely as the factual
5 circumstances surrounding the harm suffered by a plaintiff, or
6 more strictly as the doctrinal elements of a particular theory
7 of recovery. Cf., e.g., Agency Rent A Car System, Inc. v.
8 Grand Rent A Car Corp., 98 F.3d 25, 31 (2d Cir. 1996)
9 (comparing the elements of plaintiff's cause of action to
10 defendant's forum contacts). And if a "claim" refers to the
11 elements of a cause of action, it is unclear whether the
12 relevant element here is the plaintiffs' "injuries" or the
13 defendant's wrongful act (referred to in the tort context as a
14 "breach of duty") -- or perhaps both. See, e.g., Consol. Rail
15 Corp. v. Gottshall, 512 U.S. 532, 550-51 (1994) (noting that
16 "traditional tort concepts" include "injury" and "breach of
17 duty"). In other words, for sufficient nexus to exist, must
18 the plaintiffs' injuries -- the deaths and injuries in Israel
19 -- "aris[e] from" the defendant's use of a New York
20 correspondent bank account, or must the defendant's alleged
21 wrongful act -- LCB's transfer of funds -- "aris[e] from" the
22 use of that account?²² This distinction is of potential

²² Some cases have placed a greater emphasis on the connection between the plaintiff's injury and the defendant's New

1 relevance because under plaintiffs' theory of recovery, the
2 injury suffered is causally decoupled from the defendant's
3 wrongful act,²³ and LCB's alleged wrongful act bears a closer
4 relationship to its New York contacts than do the plaintiffs'
5 injuries. This ambiguity regarding the meaning of the term
6 "claim" compounds the previously noted uncertainty as to the
7 meaning of "substantial relationship" for purposes of N.Y.
8 C.P.L.R. § 302(a)(1).

York contacts. See Sole Resort, 450 F.3d at 104 (discussing the "nexus between the parties' New York contacts and the . . . event giving rise to the plaintiff's injury"); Holness v. Maritime Overseas Corp., 251 A.D.2d 220, 224, 676 N.Y.S.2d 540, 544 (1st Dep't 1998) ("[P]laintiff's alleged injury and the tort action based on it cannot be said to have arisen directly out of this . . . transaction"); Chamberlain v. Peak, 155 A.D.2d 768, 769, 547 N.Y.S.2d 706, 707 (3d Dep't 1989) ("[N.Y. C.P.L.R. § 302(a)(1)] requires an articulable nexus . . . between the New York activity . . . and the asserted claim and injury."). Other cases have focused instead on the link between the defendant's breach of duty and its New York activities. See Best Van Lines, 490 F.3d at 254 (discussing the "nexus . . . between allegedly tortious conduct" and New York activity); Hoffritz for Cutlery, 763 F.2d at 60 (finding "a substantial nexus between these [New York] activities . . . and the alleged breach of the franchise agreement"); Hugeclick.com, Inc. v. Vanderpol, No. 00 Civ. 1976, 2001 WL 170803, at *2, 2001 U.S. Dist. LEXIS 1619, at *4-*5 (S.D.N.Y. Feb 21, 2001) ("[T]here is a 'substantial relationship' between these activities and defendant's alleged torts and other breaches of duty").

²³ See Pls.' Br. at 21 ("[A] [section] 2333 plaintiff need only show that the defendant knowingly gave material support to the terrorist group that harmed him, and need not allege or prove that the specific material support provided by the defendant caused the harm." (citing Boim II, 594 F.3d at 695-700)).

1 To be sure, there have been several relatively recent
2 decisions by the New York Court of Appeals and by our Court
3 applying the nexus requirement. These decisions, however, have
4 generally undertaken fact-bound analyses that shed little light
5 on how the nexus requirement should be applied in the instant
6 case.²⁴ In light of the foregoing, we cannot confidently say
7 whether the New York Court of Appeals would conclude that the

²⁴ See, e.g., Sole Resort, 450 F.3d at 104 (nexus requirement satisfied, in petitioner's action to vacate an arbitral award, where respondent had New York contacts "underlying [the] contract that [had] provide[d] for [the] arbitration"); Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 167 (2d Cir. 2005) (nexus requirement satisfied, in plaintiff's antitrust suit, where parties had negotiated and signed relevant contract in New York), cert. denied, 549 U.S. 951 (2006); Kronisch v. United States, 150 F.3d 112, 130-32 (2d Cir. 1998) (nexus requirement satisfied, in plaintiff's Bivens action, where defendant drugged plaintiff in Paris but regularly visited New York in connection with clandestine LSD-testing scheme); Fischbarg, 9 N.Y.3d at 384, 849 N.Y.S.2d at 508-09, 880 N.E.2d at 29-30 (nexus requirement satisfied, in plaintiff's action to recover legal fees accrued, where defendants solicited plaintiff in New York to perform legal services in Oregon); Johnson, 4 N.Y.3d at 520, 797 N.Y.S.2d at 35, 829 N.E.2d at 1203 (nexus requirement not satisfied because "[p]laintiffs' cause of action arose out of defendant's allegedly negligent driving in New Jersey, not from the issuance of a New York driver's license or vehicle registration [to the defendant]"); see also Copp v. Ramirez, 62 A.D.3d 23, 30, 874 N.Y.S.2d 52, 58-59 (1st Dep't 2009) (nexus requirement not satisfied, in defamation action, where defamatory statements were made in New Mexico concerning events in New York that defendants had witnessed during a one-day visit to New York three years prior); Opticare Acquisition Corp. v. Castillo, 25 A.D.3d 238, 246-47, 806 N.Y.S.2d 84, 91 (2d Dep't 2005) (nexus requirement satisfied, in plaintiff's contract and misappropriation action, where contracts were executed and other business activities were transacted in New York).

1 plaintiffs have demonstrated an "articulable nexus" or
2 "substantial relationship" on these facts.

3 2. The ATS and Israeli-Law Claims. The Canadian
4 and Israeli plaintiffs bring claims against LCB under the ATS.
5 The plaintiffs also assert claims against LCB under Israeli law
6 for negligence and breach of statutory duty. LCB moved
7 pursuant to Rule 12(b)(6) to dismiss each of these claims as
8 insufficient as a matter of law.²⁵ The district court did not
9 reach their merits, dismissing them on jurisdictional grounds
10 alone. Therefore, as with the Anti-Terrorism Act claims, we
11 ask only whether those claims bear an "articulable nexus" to,
12 or a "substantial relationship" with, the business allegedly
13 transacted by LCB in New York. Best Van Lines, 490 F.3d at 246
14 (internal quotation marks omitted). For the reasons already
15 discussed with respect to the plaintiffs' Anti-Terrorism Act
16 claims, however, we find that inquiry difficult.

17 It must be noted that under the current law of this
18 Circuit, as established after the district court decided this

²⁵ Before the district court, LCB did not express a view as to whether New York or Israeli law governed the plaintiffs' tort claims, but instead argued that the claims would fail regardless of which law governs. The district court, in dismissing these claims for lack of personal jurisdiction, did not reach the choice-of-law question, and the parties have not briefed it on appeal. Therefore, insofar as we refer to these claims as "Israeli law" claims, we do not intend to signal any view regarding the choice-of-law question.

1 case, the ATS claims against LCB cannot be maintained in any
2 event because the ATS does not provide subject matter
3 jurisdiction to enable us to entertain civil actions against
4 corporations for violations of customary international law.
5 Kiobel v. Royal Dutch Petro. Co., 621 F.3d 111 (2d Cir. 2010),
6 cert. granted, 132 S. Ct. 472 (2011). Based on the imminence
7 of the Supreme Court's review of Kiobel, however, and the fact
8 that the jurisdictional inquiry applicable to all of
9 plaintiffs' claims appears to be similar, we reserve decision
10 as to the ATS claims. We think it the more prudent course to
11 allow the Court of Appeals first to address whether personal
12 jurisdiction exists over each of the plaintiffs' claims,
13 including the ATS claim.

14 Should the Supreme Court reverse our decision in
15 Kiobel, and the Court of Appeals decision (if any) indicate
16 that we have personal jurisdiction over LCB in this case, the
17 ATS claims will likely require further proceedings in the
18 district court. If the Supreme Court affirms in Kiobel or the
19 Court of Appeals indicates that we do not have personal
20 jurisdiction over LCB, we will likely be required to affirm the
21 dismissal of the ATS claims against it on either or both
22 grounds. We will therefore await the decisions of one or both
23 of those courts before reaching a conclusion as to the ATS
24 claims against LCB.

In light of the foregoing, we certify the following second question to the Court of Appeals:

(2) Do the plaintiffs' claims under the Anti-Terrorism Act, the ATS, or for negligence or breach of statutory duty in violation of Israeli law, "aris[e] from" LCB's transaction of business in New York within the meaning of N.Y. C.P.L.R. § 302(a)(1)?

IV. Certification

The rules of this Court provide that "[i]f state law permits, the court may certify a question of state law to that state's highest court." 2d Cir. Local R. 27.2(a); see also Am. Buddha, 609 F.3d at 41-42. Although the parties have not requested certification, we are empowered to pursue it on our own motion. See 10 Ellicott Square Court Corp. v. Mtn. Valley Indem. Co., 634 F.3d 112, 125 (2d Cir. 2011); Kuhne v. Cohen & Slamowitz, LLP, 579 F.3d 189, 198 (2d Cir. 2009). Our decision whether to certify is discretionary. Am. Buddha, 609 F.3d at 41. In determining whether to pursue it, we are guided principally by three factors.

First, "certification may be appropriate if the New York Court of Appeals has not squarely addressed an issue and other decisions by New York courts are insufficient to predict how the Court of Appeals would resolve it." Id. at 42; see

1 also 10 Ellicott Square Court Corp., 634 F.3d at 125-26
2 (collecting cases); N.Y. Comp. Codes R. & Regs. tit. 22,
3 § 500.27(a). Second, "the question on which we certify must be
4 of importance to the state," 10 Ellicott Square Court Corp.,
5 634 F.3d at 126 (internal quotation marks and ellipsis
6 omitted), and "its resolution must 'require[] value judgments
7 and important public policy choices that the New York Court of
8 Appeals is better situated than we to make,'" id. (quoting Am.
9 Buddha, 609 F.3d at 42). Third, "we may certify if the
10 question is 'determinative' of a claim before us." Id. (citing
11 N.Y. Comp. Codes R. & Regs. tit. 22, § 500.27(a)) (other
12 internal quotation marks omitted); see also O'Mara v. Town of
13 Wappinger, 485 F.3d 693, 698 (2d Cir. 2007).

14 Although we need not certify if we are confident that
15 we can correctly resolve the matter at issue ourselves, see,
16 e.g., Best Van Lines, 490 F.3d at 242 n.3, we conclude that the
17 standards for certification are met in the case before us.

18 First, the New York Court of Appeals does not appear to have
19 squarely addressed the jurisdictional questions presented by
20 this case, and we conclude that the decisions of other New York
21 state courts do not enable us to predict with confidence how
22 the Court of Appeals would resolve them. Second, determining
23 the scope of the New York long-arm statute is -- as we have
24 previously noted in certifying other jurisdictional questions,

1 see, e.g., Am. Buddha, 609 F.3d at 32 -- a task that requires
2 the exercise of "value judgments and important public policy
3 choices," 10 Ellicott Square Court Corp., 634 F.3d at 126, best
4 left to New York's highest court, if possible. Finally, the
5 answers to these questions will be determinative if the Court
6 of Appeals decides that long-arm jurisdiction is lacking in
7 this instance, as all of the plaintiffs' claims against LCB
8 would have to be dismissed.

9 Accordingly, we certify to the New York Court of
10 Appeals the following two questions:

11 (1) Does a foreign bank's maintenance of a
12 correspondent bank account at a financial
13 institution in New York, and use of that
14 account to effect "dozens" of wire
15 transfers on behalf of a foreign client,
16 constitute a "transact[ion]" of business in
17 New York within the meaning of N.Y.
18 C.P.L.R. § 302(a)(1)?

19 (2) If so, do the plaintiffs' claims under
20 the Anti-Terrorism Act, the ATS, or for
21 negligence or breach of statutory duty in
22 violation of Israeli law, "aris[e] from"
23 LCB's transaction of business in New York
24 within the meaning of N.Y. C.P.L.R.
25 § 302(a)(1)?

26 "As is our practice, we do not intend to limit the
27 scope of the Court of Appeals' analysis through the formulation
28 of our question[s], and we invite the Court of Appeals to
29 expand upon or alter th[ese] question[s] as it should deem
30 appropriate." 10 Ellicott Square Court Corp., 634 F.3d at 126.

1 V. Constitutional Due Process Limits to Personal
2 Jurisdiction
3

4 For personal jurisdiction over LCB to be permissible,
5 federal constitutional due process standards must also be
6 satisfied. See Chloé, 616 F.3d at 164 ("If the long-arm
7 statute permits personal jurisdiction, the second step is to
8 analyze whether personal jurisdiction comports with the Due
9 Process Clause of the United States Constitution."); accord
10 LaMarca v. Pak-Mor Mfg. Co., 95 N.Y.2d 210, 216, 713 N.Y.S.2d
11 304, 308, 735 N.E.2d 883, 887 (2000). But see D.H. Blair & Co.
12 v. Gottdiener, 462 F.3d 95, 105 (2d Cir. 2006) (suggesting that
13 the application of section 302(a) automatically "meets
14 [constitutional] due process requirements"). Because the
15 district court determined that exercising personal jurisdiction
16 was not authorized by the New York long-arm statute, it was not
17 required to reach the question of whether exercising
18 jurisdiction would comport with the Due Process Clause.
19 Nonetheless, the district court concluded similarly that "[t]he
20 exercise of personal jurisdiction over LCB on the basis alleged
21 by plaintiffs would not comport with constitutional principles
22 of due process." Licci, 704 F. Supp. 2d at 408.²⁶ We reserve

²⁶ On appeal, the plaintiffs do not expressly challenge that conclusion. Under the circumstances, however, and in light of the substantial similarity between the statutory and constitutional inquiries, we do not think that the plaintiffs have forfeited their argument in this respect -- nor does LCB

1 decision on this issue. We will address it, if necessary, when
2 this case returns to us following the New York Court of
3 Appeals' disposition of our certification request. See
4 Ehrenfeld, 489 F.3d at 547. Accordingly, nothing in this
5 opinion is intended, or should be read, to indicate our view as
6 to whether jurisdiction in this case would pass Fourteenth
7 Amendment muster.

8 **CONCLUSION**

9 For the foregoing reasons and pursuant to New York
10 Court of Appeals Rule 500.27 and Local Rule 27.2 of this court,
11 we certify the following two questions to the New York Court of
12 Appeals:

13 (1) Does a foreign bank's maintenance of a
14 correspondent bank account at a financial
15 institution in New York, and use of that
16 account to effect "dozens" of multimillion
17 dollar wire transfers on behalf of a
18 foreign client, constitute a
19 "transact[ion]" of business in New York
20 within the meaning of N.Y. C.P.L.R.
21 § 302(a)(1)?

22 (2) If so, do the plaintiffs' claims under
23 the Anti-Terrorism Act, the ATS, or for
24 negligence or breach of statutory duty in
25 violation of Israeli law, "aris[e] from"
26 LCB's transaction of business in New York
27 within the meaning of N.Y. C.P.L.R.
28 § 302(a)(1)?
29

argue that they have.

1 It is hereby ORDERED that the Clerk of this Court
2 transmit to the Clerk of the New York Court of Appeals this
3 opinion as our certificate, together with a complete set of the
4 briefs, the appendix, and the record filed in this Court by the
5 parties. The parties shall bear equally any fees and costs
6 that may be imposed by the New York Court of Appeals in
7 connection with this certification. This panel will resume its
8 consideration of this appeal after the disposition of this
9 certification by the New York Court of Appeals.