

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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

MOTION INFORMATION STATEMENT

Docket Number(s): 26-341

Caption [use short title]

Motion for: Leave to Participate as Amici Curiae in
Support of Defendant-Appellant

Set forth below precise, complete statement of relief sought:

Movants the Bank Policy Institute, American

Bankers Association, Institute of International

Bankers, and Securities Industry and Financial

Markets Association seek leave to participate

as Amici Curiae.

Kashef v. BNP Paribas SA

MOVING PARTY: BPI, ABA, IIB, and SIFMA

OPPOSING PARTY: Entesar Osman Kashef et al.

☐ Plaintiff☐ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY: David Y. Livshiz

OPPOSING ATTORNEY: Kathryn (Lee) Boyd

[name of attorney, with firm, address, phone number and e-mail]

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Court- Judge/ Agency appealed from: U.S.D.C. S.D.N.Y., No. 1:16-cv-03228 (Hellerstein, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

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

Has this request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☐ No☒ Don't Know

Is oral argument on motion requested?

☐ Yes☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ David Y. Livshiz

Date: May 29, 2026

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

26-341

United States Court of Appeals
for the
Second Circuit

ENTESAR OSMAN KASHEF, TURJUMAN RAMADAN ADAM,
ABULGASIM SULEMAN ABDALLA,

Plaintiffs-Appellees,

(For Additional Parties See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI*
CURIAE BANK POLICY INSTITUTE, AMERICAN BANKERS
ASSOCIATION, INSTITUTE OF INTERNATIONAL BANKERS,
AND SECURITIES INDUSTRY AND FINANCIAL MARKETS
ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT**

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ALFADEL MOSABAL, ABUBAKAR ABAKAR, SIAMA ABDELNABI HAMAD, ABBO AHMED ABAKAR, HAWA MOHAMED OMAR, FATIMA ABDALLA ABDELRAHMAN, NYANRIAK TINGLOTH, REVEREND ANDERIA LUAL, NICOLAS HAKIM LUKUDU, JOHNMARK MAJUC, JOSEPH JOK, HALIMA SAMUEL KHALIFA, AMBROSE MARTIN ULAU, SANDI (SUNDAY) GEORGARI MARJAN, SHAFIKA G. HASSAN, JANE ROE, CLARA E. TABOR, SARA NOURELDIRZ ABDALLA, AMIR AHMED, ISAAC ALI, KUOL SHBUR, JUDY ROE, ESAMELDIN N. ABDELAZIZ, HAMDAN JUMA ABAKAR, ROSA BOL RING, ADIEL ABAKER ABDALLA, ARBAB KHAMIS KHATER, ISMAIL IDRIS ADAM, FATMA OMAR AHMED, HAWA ISMAIL, ADAM ABAKAR HISSEIN, ACHAN ACHOR DUMO, MONG PETER LAM, JACOB LOK GATKOUTH, MAHDI ALTIGANI ALNOUR, HAYDAR AHMED ABDALLA, MAHMOUD MOHAMED IBRAHIM, RABAB AHMED EL SAYED ADAM, HANADI ABAKER MOHAMED, AHMED JUMA AHMED, ATONG D DENG, ABDALLA MOHAMED IDRIS, MOHAMED OMER SALIH HASABO, OMAR BAHER SIBOURU, ADAM ABDELRAHMAN ISMAIL, ABDULMAJID A GAMAR, MUTAZ MOHAMED MAKI KOMI, GAFFAR HAMID ALI NOURELDEIN, NOHA GAFFER HAMID ALI, FATHIA YAGOUB ELNOUR BAKHAT, SADAM Y MOHAMED, KHALID SAYFELDIN KRAMELDIN, SALAH IBRAHIM AHMED, SOMIA ALI ALI, ABDELRAHMAN HASSAN AHMED, MOHAMED ADAM OSMAN MOHAMED, ELHADI HAROUN ADAM, YAHYA MUSA ABDALLA, ABDELRAHMAN OSMAN FADOUL, ABDELKARIM MOUSA OMAR, KUIER AGUER ATEMDENG, SAID ABOBAKAR AHMED ABDALA, ABDELRAZIQ MUSA HUSSEIN, MUSTAFA ALNOR, MOHAMED I ABOH, ALI OMER AMIR TAGAL, IBRAHIM FADI JUMAA, ABBAS KHAMIS HAROON, ZEINAB ABBU, YOUNES OMAR ADAM, IBRAHIM FADEL HUSSEIN, KALTHOUM ARBAB MUSA, MUSA S ADAM, ABDULATIF ISAAK, MARYAM BABO, BABIKER ABDALLA ISAAC, IBRAHIM ALNOR JUMA, ABOUD ISSA SALEH, OMER AMIR BAKHIT, NORELDIN ADAM OSMAN, EISA MOHAMED, IDRIS ADAM MOHAMED DAWOUD, ABDELAZIM ADAM AHMED ABDELMOULA, RAMADAN YAHAI HAROUN, ABDUSHAFIE ABUBAKER AHMED, NAWAL ABAKR, MUSA MOHAMED AHMED, MUSTAFA ISAAC MOHAMMED, HAROUN MOHAMED IDRIS, ABDALLA OMER AMIR, HALEEMA HARSWON ABDALLA, ABDELGADIR MOHAMED ABAKER, MUSA BABIKER ALI HUSSEIN, ABDELKARIM MOHAMED TOGOL B BAKHIT, MOHAMED ABDALLA MOHAMUD, HASSEN A MOHAMED ISMAEL ISMAEL, YAKOUB A YAKOUB, SALEH MOHAMED AHMED, YAGOUB OMER ELSHEIKH, SHADIA MOKHTAR HAMAD ABDELRHAMAN, ISMAIL ABBAS, MARIA ADAM SALIH, JAMES THON ALEER, MALUAL MANYOK DENG DUOT, AMIR SULEIMAN SHAWKAR, YOR CHOL YOR, MORWEL MATHIANG DENG, THON MAJAK DENG, ISHAG OTHMAN ADAM AHMED, SULEIMAN MOHAMED SALEH, JOSEPH AJEO MOILINGA, KRISTENA PETER RUFANEL, ELAF RUFANEL, NOURELDIN

MAHDI ABDALLA ELTOM, ARBAB ABDALLAH ADAM, MOUSTAPHA IBRAHIM MAHAMAT, SAMIA ARBAB ABDURHAMAN, HAMRA IBRAHIM FADOUL, DJOUMA ARBAB ADAM, MATAR MAKINE ABAKAR, YAKUB HAROUN ABDULMOLA, HALEIMA NASRALDEN ABDELMAWLA SHERF, YAHYA KHAMIS, ANWAR HAMED ELNOUR, HASSAN HADO IBRAHIM HASSAN, YOUNESS HASSAN, MOHAMED ADAM ABDALLAH, ABDU MOHAMED, AHMED ARG ABAKHIT, MOHAMMED DAUD ARBAB, ADAM BABKER IBRAHIM, MOHAMED ISHAG, ADAM ZAKARIA JUMA, MARIAM Y. YAKHOUB, SALIH MOHAMED EISSA, SAMIA ABDELRAHMAN, ABDELRAHMAN ADELKARIM, ADAM ABDALLAH BAKHAT, IDRIS ABDULRASUL ADEM, BUSH ZAKARIYA MOHAMMED, EHSSAN ALTAHIR SABIL, IBRAHIM MOHAMMED ADAM, MUBARAK OMAR WADI, JUMA SEIF SHAIBU, ABDELRAZIG ADAM DAHIYA, ABDULKARIM ALI IBRAHIM, AKUEIN AWAN KUETH, AMIRA EL DENG, HOUZAIFA AHMED, AISHA ADAM ABUBAKAR, NADIA YAKUB, DAVID MATTHEWS GERI-ORIMATEO, ZARA IBRAHIM MAHAMAT, ABDELRAHIM OSMAN BASHIR HASSAN, ADAM ABDELKARIM ADAM HAROUN, MUBARAK A. MOHAMED, MARY DENG, KALTUM JUMA ZACHARIA, MONA OSMAN ABDELRAHMAN HASSAN, SULEIMAN ABDALLA ISMAIL, LAILA IBRAHIM ABBAKER, MOHAMED IBRAHIM AHMED, RODA ABDALLA SULEIMAN, ZUHAL FADI, ABDELKARIM ADAM ADAM AHMED MUSA, ADAM AHMED ABUBAKAR, JOHN ALIER LEEK YEN, ABDULKARIM AZARAK AHMED, DAVID BUOTH, ABDELMONEIM MOHAMED KORSI, AKOL CITHEC MACAR AKOL, FATIMA M. ABDELLA, ABELWAHAB GUMAA, SHAMS ELDIN ADAM, ELNAKHEIL BASHA DARA, MICHAEL PETER ABA, MAYEN THON DENG AYUEL, IBRAHIMA ADAMOU, VIOLA PAUL, AHMED TOM ABDALLA SAIEED, YAIA ABAKAR ABRAHIM, VIOLA JOHN DIRI JOSEPH, RAMSEY RENBY SEBIT, AHMED SAIEED, ADAM MOHAMED IBRAHIM, ABBASS AWAD ADAM ALI, NUR AL HUDA ABUBAKAR, NYAKOACH PETER LAM, HELDER ABULGASIM SULEIMAN, CLEMENT JOSEPH WANI MOJUS, ADIER M KUDUM AWEL KWAI, HATIM ABDALLA ADAM, ABDELGABAR MOHAMED MOHAMEDIAN, LUAL RIAK MARLER ADEIM, REBECCA NYAKOTA NYOACH, LAM THOT MUANG, SAMUEL MATHIONG REEC, TABESA AKON YUOL, GUOT KARLO KEN, ALI ABAKER HASSAN, BUOL MAYEN JOK, LEWIS ALFRED UTU BARUD, ADAM KHAMIS ARBAB, MOHAMED ISSA SULIMAN ABDALLA, NYADUOP PETER LAM, NYABEL LAM THOT, MOHAMED ABBASHER MHDI, DENG DENG REYAK, ADAM HARI OMER ABU, GATLUAK PETER LAM, DENG YEL AKOL DENG, YUSSIF MOHAMMED SABIL, SALAH BAKHET BAKHET, NYBOL DENG REYAK, AHMED M ABKER, MUSA MOHAMED ARJA, MOUSSA BABIKIR ABAKAR, MAYSA OSMAN ARBAB, NOORELDIN OMER ALI, HAROON A BATI, ABDALLA SULIMAN ABAKAR, IZZELDIN SALEH AHMAD IBRAHIM, HAROUN HASSAN, DIYO JOK, IBRAHIM ADAM HASSAN, MAHASIN ELNOUR ADAM, ABDELMALIK HUSSEIN YAAKOUB, MOUSSA TEJEDDINE MOHAM AHMAD, RASHIDA HAMED AHMED BALLAH, ADAM JUMAA ARBAB, SOULEYMAN ABDELKERIM MAHAMAD, MICHAEL ADUUT

PARENG, MARY JOHN DERY JOSEPH, NASRIN ANGLO MOHAMED, ZAHRA MOUSSA, DIING RING DIING YOL, FLORA AVURU, RODA LOGA, SABIT BARA KENYI KUBARI, AMEER AJAK NYHAL, NASIR KABASHI NASIR, IBRAHIM BAKHAT, AHMED ADAM ARBAB, YOUSIF KHALIL SULIMAN, JOSEPH G GAMUNDE, ISMAIL ISAAK ADAM, MUNAZIR ABDULLAH BAKHIET, GABRIEL CHARLES RIAK, CHARITY LOWOH, AMNA MOHAMED HASSAN KHALIFA, SAMYA A. HARAN, JAMES KADIN, ABDALLAH OMAR IBRAHIM, ISHAG ADAM GUMA MOHAMED, ADAM YACOB HAMID, ZEINAB AHMED MUSA ABBAS, KAMAL ADAM ABDULRAHMAN, MOHAMMED DABIYOADAM, BABIKER ISMAEL ABDAHMMLLAH ELNOUR, ESTER PETER BEYAL LUWAL, MAWADA IBRAHIM ALI BAKHAT, IBRAHIM A ALI, MALKA ADAM ARBAB, KALTOUM FADUL MUSTAFA, KHALID MOHAMED ALI, DUAL D LUAL, ADAM ABAKER ABDALLA, ABDIAZIZ ALI YAGOUB, TIMANE ISSA WAR, JAMES AYUEL REHAN, ISRAA IBRAHIM AHMED, SAMIA ABUBAKER ABDALLA MOHAMED, AHMAD ALI ASHEKH, ALSADK HASSAN ADAM, ABUBAKRALDOUM ADAM MUSA, MANAHIL IBRAHIM ALI, SANTINO RIAK AKUEI AJAK, MOHAMED IBRAHIM KAMBAL, YOUNES SALEM OMAR, SUKRAH M ELDHAI, ISMAIL MOHAMED ABDELMULLA, ABUBAKAR ALI ZAKARIA, MAHAMAT IBRAHIM ARBAB, JAKLIEN FARAH, AHMED A ISAAK, ASMA M HUSSEIN, ELNOUR HAROUN BABIKER ALI ELRASHID, MONIKA MAKUER MAJOK DOMINIC, MAYOM RIAK MABOR, LORANS OUJIT LOUAL, ANESA SIMON AJEUTH, FANNE ABDELNABI, ABBAS KAMSOR IBRAHIM, YACUOB ADAM OUMAR, ABDALLAH MOHAMMED HASSABANABI, USMAN ARBAB SULAEMAN, NOEL JADA LAKO, JAFAR HARRY JUMMA HASAPALLH, KHALID KHATER MOHAMED ALI, ALSADIG J SABIL, NEHAL GIBREIL, MAWAHIB ABBO, MOHAMEDALMURTADA H ABDALLA, MUSA YAGOUB, YOUNIS MOHAMED MOHAMED, AMONAH ISMAEL, MAHMOUD HAMED ISSA, ABDULRAHMAN ABAKAR, TAGWA IBRAHIM YAHYA, MOHUSSIN ABAKAR, ABDULRASUL ADAM AHMED, AMAN MIHEMEED, YAHIA ADAM SHOGAR ATIA, MOHAMED ISMAIL YOUSIF, DAHIYA YACUB ADAM, MOHAMED AHMED MOHAMED, MALIK KHATAR MALIK, DOW HUSSIEN GASIM, ABDELAZIZ BAKHEIT, HABALDEEN ADAM HASSAN IDREES, YOSEF MOHAMED BAKHAT ABDALLA, ABDULRAHMAN ALNOUR GONGE, FATIMA TEGANI ALI, REMAZ ADAM, AHMED ALSADIG MOHAMED ABDELKARIM, MARIAM OMER KHAMIS, BUTHAINA AAHMED, MAGDI NOURALDIN YOUSF IBRAHIM, BUTRUS ALDO GWAKE LAZARUS, ANNA SERENO MODI, MARTHA AGUEK JOK, ADIL BASHAR ALI ADAM, SALAH MOHAMED KHATER AHMED, REBECCA ATHIENG DENG, YOUSIF MOHAMED, YAHYA ABDALLA JUMAA, ACHOL A AJAK, RHODA YAR ALLER, MOHAMMED KAMALELDIN HAMAH ALI, LUETH M YAK, ADAM ISMAIL MOHAMMED OMER, HAMADI YOUNIS AHMED ADAM, FADLALLA ADAM IBRAHEM MOHAMMED, YASIR RIZIG HASSAN, FATHIYA ABDELDAYIM, EMADALDEEN ALI SWAR BASHIR, MICHAEL M DUT, AMILIYA S DORI, ABDELRAZIG GUMA SULIMAN MOHAMED, NAMAT OSMAN YAGOUB, SALADIN AHMAT HAROUN, MUBARAK ABAKAR

MOHMMED, ADAM YAHYA OMAR, SAFIYA AHMAT HAROUN, AWATIF IBRAHIM ISSA, MONIR AHMED ABDALLA, ADAM MOHAMED ABDALLA AHMED, HASSAN ISSACK ABDALLA, DFAALLA BASHIR DFAALLA, MOAWIA ABDELRAHMAN I. ABOH, EBTESAM OSMAN, BASHIR D IDRIS, FAIZA SABIL MOHAMED, SAMUEL GUYA LOBURI, GAFAR IBRAHIM YAGOUB, NABEEL A KHAMIS, MUTASIM IBRAHIM ABDALLA MOHAMMED, MONICA H TIMON, MAGDI YAHIA YUNIS, IBRIS AMIN, KARIMA ABRAHIM, ALGEZAFEE MOHAMED HAMID HAMID, ZAINAB BABIKER ABDELMA HASSAN, ZAHARA MOHAMED HUSSEIN, AGOK K GARANG, MOHIELDIN DAWED OMER, ROSE NAJORE HALISTO, NOURALDEIN ABAKER HOSS BAKHT, MOHMOUD IBRAHIM ABDULRAZIG, ABDALLAH ADAM TAHIR ADAM, HAMDI IBRAHIM AMIR, SULIMAN ADAM, MUBARAK YAGOUB IBRAHIM RAHMA, MUSTAFA MOHAMMED ALI, OMER ADAM OMAR, AHMED IBRAHIM YUSUF, HUSSIEN BASHIR HAROUN ADAM, RASHID HUSSEIN YOUNIS IBRAHIM, NOURDINIE MAHAMAD YUNIS, GAMAL ADAM YAGOUB HASSAN, MADIBO ADAM HASSABLLAH MADIBO, SALAHELDIN IDRIS YOUNIS SENIEN, AMER MOHAMMED BAKHT MENAWY, ADAM A IBRAHIM, NYANTHIEC JAM AWEL, NORALDIEM AHMED ISMAIL, LADO YANGA JURKIN, MUNA YAGOUB MOHAMED, AHMED ABDULRASOUL MOH MATAR, BAHARELDIN MOHAMMAD OMER ABDALLA, ABDU NORAIN MOHAMED, MUOTASIM MUSA ALSAFI, MAHSIM ABAKAR ISMAIL, MOHAMMED H KHATER, AUAR IBRAHIM YAHYA, KHALED OSMAN, YONIES HASSAN, ABDALLAH ALI ELNOUR, JUR KUCHA, MOHAMMED IBRAHIM, HANAN MUSA TAGAL, ABDALKARIM ADAM MOHAMMED IZZALDIN, KAMAL AHMAD MAHMOUD, MARY ABIECH AKOON, ARBAB ISMAIL IBRAHIM, MOHAMED ADAM MOHAMED JUMA, MUSAB ARBAB, ZAHARA YEKISUK, MAHAMAD ISMAIL IBRAHIM, ADAM IBRAHIM ISMAIL, MONICA ALUEL AYUEN, MOHAMMED MAHMOUD WARAA, EMAN ALI, ABOBAKER S IBRAHIM, ATIA KAFI KUJUR, ABUALGESEM A ABDALMOULA, IBRAHIM AHMED ALI, ABBAKAR EL SONOSI MOHAMED, JOHN MALWAL, MOHAMED O FADH I, YASSIEN DALEEL, MARY DAWOD L. LAKO, AMAN GAI GARANG DENG, AMNA KORASHY, EKALINO M AWOUR KUR, MAHMOUD ABDALLA ADAM ABDALLA, HAFIZ ABDULKARIM WADI, SAMUAL MUSA ABDALGADIR, MUBARAK SULIMAN RAHMA, YASMEEN MUSA ABELGADIR, ABDULRAZIK MAHDI, ABDELKARIM OSMAN HASSAN, BABIKER ABDALLA HAROUN ABDALLA, ABDALLAH ISHAG, ABDELBARI ELTIGANI M ADAM, ELSHAZLY RAHMA, ISMAIL AHMED ALNOUR, MANAL MUSA MUHAMED-AHMED, HASSAN AWAAD ABDALLAH, AMANI SHAREIF A. MOHAMED, MUTASIM A ALI AHMED, SAFA ALI ARBAB, AMIR ARBAB HASSAN MOHAMED, MOHAMED YAGOUB ADAM, ALI ADAM MOHAMMEDIN BHAR, HANAA AHMED ABAKER IBRAHIM, MAHGOUB ABDALLAH DAFALL KHDIR, EKRAM IBRAHIM HAMED, ABEER HAROUN MOHAMMED HASABALLAH, SAYEDA ABDALIRHMAN FASHIR, A. B., SAFA ALI IBRAHIM ABDELKARIM, ANDERIA AROK LUAL, SAIDA SHARAFEFIDIN MORSAL KHAMIS, ALI AHMED ELTAYIB ELFAKI, SADIYA M

MOHAMED, MUSA ABDALWAHAB BABKER KAMAL, AHMED KHAMIS MOHAMED HAROUN, C. D., NYANGOK DANIEL DONGWAY, HAROUN HASSAN HAROUN, MAHA SABIR ABDALLA, ABUBAKAR LYDAM IBRAHIM MOHAMMED, SAMRA ABBAS IBRAHIM MOHAMMED, AZAHIR ALZAIN ADAM, KHALID HAROUN, ALSADIG SALIM TUKKA SABUN, ANDREW AKECH JOHN JOK, AWDIA AMIR ABDELBAIGI, VICTORIA ADHAR AGUEK, ELTEGANI AHMED NHAR BERKA, YOSIF ABUAIQASIM KHATIROMER, SAMIA ALTOM TIBIN OMER, ZAINA HAMID GARELNAB ELTAHIR, SALIH INTISAR ABDELRAHMAN, GATAR GALIA HAMED ADAM, AHMED ISMAIL A. WADI, E. F., ATEM JOHN THUE AGUER, SAMIRA MOHAMMED ADAM IBRAHIM, FAISEL ABDURHMAN ADAM, OMDA AAHMED, ROSE BAGAZI LORI, MOHAMMED MOHAMMED AHMED, ZAKAREYA MOHAMED TARBOUSH, OMAR ABDELHAMEED, ALIET MALEK ALIER, TAHA HASSAN ISHAG, IBRAHIM A ISSA, AHMED ABDULKARIM WADI ISMAIL, AREK GARANG BAK LUAL, ZAKIA HAROUN SULYMAN ADAM, MAHMOUD MUKHTAR ELTAYB, OMAR HANDOGA KHATIR NAIR, ABDULLAH ABDULMAHMUD ABDULMAHMUD, ANWAR MOHAMMED DAFALLA, AHMED ADAM ELOMDA MOHAMED, AMINA OUSMAN IBRAHIM, AZIZA KHAMIS IBRAHIM, HAWA IBRAHIM JUMA HAROUN, SUMAIA IBRAHIM ALNOR JUMA, NOURACHAM OUMAR, ALTAYEB MUSTAFA ADAM WAR, BUTHAINA AMBADA, AMANI ABDALLA IBRAHIM, MOHAMMED ISMEIL JOMA MOHAMMED, ABUBAKAR ADAM OBAID BAKO, EMADALDEEN SULIMAN IBRAHIM, MAHMOUD ELRAYAH GUMAA, FAISAL ADAM IDRIS, MOUSAB TOGOL, KHALID ABAKER MUHAMED TAIRAB, ABDULAZIZ MOHAMMED ABDALLA, SIHAM ARBAB ABDALLAH, OSAM BAKHIT MUSA SAM, MUHIEDDIN ABELRAHMAN I. MAHMOUD, MOHYALDEEN ABDREHEEM ABAM ABAKAR, ACHOL GARANG AWUOL AKOIH, ABUK MATHIANG MADUT, HANADI ZAKARIYA IBRAHIM, GEHAD A ABDELRASOUL, MUNIRA HARON ALTOM MOUSA, AMEERA BASHEER HAROUN, HAITHAM ABUBAKAR ABDELMAILK, HAMED YAGOUB ADAM, NAJWA ADAM ISA JUBARA, OSMAN MAHAMED ISMAIL ABDELRAHMAN, MAHMOUD OMER ISSAK ADAM, SALMA ABDELKARIM ALI, ABDELRAHMAN YAGOUB ABDELMAILK,

Plaintiffs-Consolidated Plaintiffs,

– v. –

BNP PARIBAS, a French corporation,

Defendant-Appellant,

BNP PARIBAS NORTH AMERICA, INC., a Delaware corporation, DOES 1-10,
BNP PARIBAS, SA NEW YORK BRANCH, a foreign branch, BNP PARIBAS
US WHOLESALE HOLDINGS, CORP., FKA BNP Paribas North America, Inc.,
a Delaware corporation,

Defendants.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the Bank Policy Institute, American Bankers Association, Institute of International Bankers, and Securities Industry and Financial Markets Association each individually state that they have no parent corporation, and no publicly-held corporation owns more than 10% of their stock.

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 29, the Bank Policy Institute (“BPI”), American Bankers Association (“ABA”), Institute of International Bankers (“IIB”), and Securities Industry and Financial Markets Association (“SIFMA,” and together with BPI, ABA, and IIB, “Movants”) respectfully move for leave to participate as amici curiae in support of the Defendant-Appellant. Movants have notified all counsel of record of their intent to file this motion. Defendant-Appellant has consented to the filing of the proposed amicus brief, and Plaintiffs-Appellees have stated that they do not object to the filing of the proposed amicus brief.

STATEMENT OF INTEREST OF AMICI CURIAE

BPI is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

ABA, established in 1875, is the united voice of America’s \$23.4 trillion banking industry, comprised of small, regional, and large national and state banks that safeguard nearly \$18.6 trillion in deposits,

and extend more than \$12.3 trillion in loans.

IIB is the only national association devoted exclusively to representing and advancing the interests of internationally headquartered banking organizations that operate in the United States. The IIB's membership consists of internationally headquartered banking and financial institutions from over 35 countries around the world. Collectively, the U.S. branches and other operations of IIB member institutions enhance the depth and liquidity of the U.S. financial markets, including for domestic borrowers, and play a key role in the U.S. economy and those of the many other countries where they operate.

SIFMA is a securities industry trade association representing the interests of hundreds of securities firms, banks, and financial asset managers across the United States. SIFMA's mission is to support a strong financial sector while promoting investor opportunity, capital formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

Movants have a strong interest in maintaining the well-established and considered standard applied by U.S. courts when imposing secondary liability, which is implicated in this appeal. Banks engaged in international transactions are among the most frequent targets of aiding and abetting claims because of their central role in the global financial

system. As indispensable intermediaries in nearly any modern financial transaction, banks' routine services are susceptible to misuse by third parties, often without the bank's knowledge, support, or consent. Banks thus rely on the well-defined standards for secondary liability. Under U.S. law, establishing secondary liability generally requires that an alleged aider and abettor both knowingly and substantially assist the commission of the alleged principal conduct, and that the alleged abetting conduct have a nexus with the plaintiff's injury. This standard protects banks—as well as other transnational service providers, such as telecommunications, technology, construction, and social media companies—from unjustifiably facing civil liability for facilitating transactions where they are unaware of tortious conduct or intentions by parties benefiting from transaction and/or do not intend to assist that conduct. This certainty permits these businesses not only to continue providing efficient, cost-effective services to their existing customers, but also to provide services in emerging or challenged economies where they are vital to creating opportunities for growth and development.

DESIRABILITY AND RELEVANCE OF AMICUS BRIEF

The U.S.-law standard for secondary liability generally requires that an alleged aider and abettor both knowingly and substantially assist the commission of the alleged principal conduct and requires a nexus

between the abetting conduct and the plaintiff's injury. In the case below, however, the district court lowered the bar for secondary liability far below the well-established and considered standard applied under U.S. law and adopted an interpretation of Swiss law that the Swiss government intervened to explain was incorrect.

Movants' amicus briefing would therefore express their concern that endorsing the district court's application of such a low standard for secondary liability will undercut the substantial policy rationales underlying the U.S. standard and carry significant policy implications for the banking industry, the United States, and the global economy. An overly permissive standard risks subjecting banks to even more protracted, expensive, and unending litigation for nonculpable conduct. That uncertainty may force banks to limit or discontinue providing services in higher-risk jurisdictions, including in conflict zones, areas of governmental instability, and countries facing humanitarian crises where access to financial services is especially important to supporting vulnerable populations. The increased potential liability for providing U.S. dollar-based services to foreign jurisdictions would also undermine the United States' foreign policy interests, including its international borrowing power, geopolitical leverage, and central role in maintaining global financial stability.

As financial institution industry associations that regularly contribute to discussions regarding public policy, Movants are uniquely positioned to explain the significant implications of a lower secondary liability standard for the banking industry, U.S. interests, and the global economy. Movants have direct, practical knowledge of the operational constraints facing banks and the consequences that would follow from a lower secondary liability standard, which will assist this Court in its review of this appeal.

CONCLUSION

For all these reasons, and those more fully expressed in the attached brief, Movants request leave to file their amicus brief in support of the Defendant-Appellant.

Dated: May 29, 2026
New York, New York

FRESHFIELDS US LLP

By: /s/ David Y. Livshiz

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with Local R. 29.1(c), because it contains 884 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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/s/ *David Y. Livshiz*

David Y. Livshiz

26-341

United States Court of Appeals
for the
Second Circuit

ENTESAR OSMAN KASHEF, TURJUMAN RAMADAN ADAM,
ABULGASIM SULEMAN ABDALLA,

Plaintiffs-Appellees,

(For Additional Parties See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF FOR *AMICI CURIAE* BANK POLICY INSTITUTE,
AMERICAN BANKERS ASSOCIATION, INSTITUTE OF
INTERNATIONAL BANKERS AND SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION IN SUPPORT OF
DEFENDANT-APPELLANT BNP PARIBAS S.A. AND REVERSAL**

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Plaintiffs-Consolidated Plaintiffs,

– v. –

BNP PARIBAS, a French corporation,

Defendant-Appellant,

BNP PARIBAS NORTH AMERICA, INC., a Delaware corporation, DOES 1-10,
BNP PARIBAS, SA NEW YORK BRANCH, a foreign branch, BNP PARIBAS
US WHOLESALE HOLDINGS, CORP., FKA BNP Paribas North America, Inc.,
a Delaware corporation,

Defendants.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the Bank Policy Institute, American Bankers Association, Institute of International Bankers, and Securities Industry and Financial Markets Association each individually state that they have no parent corporation, and no publicly-held corporation owns more than 10% of their stock.

STATEMENT OF INTEREST¹

The Bank Policy Institute (“BPI”) is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

The American Bankers Association (“ABA”), established in 1875, is the united voice of America’s \$23.4 trillion banking industry, comprised of small, regional, and large national and state banks that safeguard nearly \$18.6 trillion in deposits, and extend more than \$12.3 trillion in loans.

The Institute of International Bankers (“IIB”) is the only national association devoted exclusively to representing and advancing the interests of internationally headquartered banking organizations that operate in the United States. The IIB’s membership consists of internationally headquartered banking and financial institutions from

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel made any contribution toward preparation or submission of this brief.

over 35 countries around the world. Collectively, the U.S. branches and other operations of IIB member institutions enhance the depth and liquidity of the U.S. financial markets, including for domestic borrowers, and play a key role in the U.S. economy and those of the many other countries where they operate.

The Securities Industry and Financial Markets Association (“SIFMA”) is a securities industry trade association representing the interests of hundreds of securities firms, banks, and financial asset managers across the United States. SIFMA’s mission is to support a strong financial sector while promoting investor opportunity, capital formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

Amici have a strong interest in maintaining the well-established and considered standard applied by U.S. courts when imposing secondary liability. In the case below, the district court may have been seeking to compensate victims of the violence committed by the government of Sudan against its people and the suffering endured by the plaintiffs. Amici do not dispute the seriousness of this heinous conduct. But the district court lowered the bar for secondary liability far below the well-established and considered standard applied under U.S. law, and adopted an interpretation of Swiss law that the Swiss government

intervened to explain was incorrect.² Amici write to express their concern that endorsing the district court’s application of such a low standard will undercut the substantial policy rationales underlying the U.S. standard for secondary liability and carry significant implications for the banking industry, the United States, and vulnerable populations.

Banks engaged in international transactions are among the most frequent targets of aiding and abetting claims because of their central role in the global financial system. As indispensable intermediaries in nearly any modern financial transaction, banks’ services are susceptible to misuse by third parties, often without banks’ knowledge, support, or consent. Banks are appropriately protected from the imposition of unwarranted liability by the U.S.-law standard for secondary liability, which generally requires that an alleged aider and abettor both knowingly and substantially assist the commission of the alleged principal conduct, and that the alleged abetting conduct have a nexus with the plaintiffs’ injury. This standard protects banks—as well as

² Amici do not provide this submission to opine on Swiss law issues in this case—which are otherwise addressed by experts. But amici note that following the district court’s decisions interpreting Swiss law, the Swiss government took the remarkable step of formally notifying the district court that its secondary liability standard was “not . . . Swiss law at all, but rather a new U.S. court-created law.” Order Regulating Proceedings at 4, *Kashef v. BNP Paribas SA*, No. 16-cv-3228-AKH (S.D.N.Y. Sep. 2, 2025) (No. 937).

other transnational service providers, such as telecommunications, technology, construction, and social media companies—from unjustifiably facing civil liability for facilitating transactions where they are unaware of tortious conduct or intentions by parties benefitting from the transaction and/or do not intend to assist that conduct. This certainty permits these businesses not only to continue providing efficient, cost-effective services to their existing customers, but also to provide services in emerging or challenged economies where they are vital to creating opportunities for growth and development.

The application of an overly permissive standard, such as in the case below, risks significantly increasing the number of lawsuits brought against banks, subjecting them to even more protracted and expensive litigation, including costly and difficult discovery. That uncertainty may also force banks to limit or discontinue services provided in conflict zones and areas of governmental instability, or countries facing humanitarian crises, where foreign investment and international finance are often particularly important to struggling populations. The increased potential liability for providing dollar-based services to foreign jurisdictions may also undermine the United States’ foreign policy interests, including its international borrowing power, geopolitical leverage, and central role in ensuring global financial stability.

INTRODUCTION AND SUMMARY OF ARGUMENT

Limiting secondary liability to instances where a defendant *knowingly* and *substantially assisted* the alleged primary violation through conduct with a sufficiently close nexus to the tort appropriately confines liability to situations where a defendant engaged in affirmative misconduct intended to cause specific harm. This framework reflects long-established and oft-reaffirmed policy choices by Congress and U.S. courts. The standard applied by the district court below sidestepped these U.S.-law requirements for secondary liability, opening the door to liability for *unknowing* assistance and rejecting the requirement that the defendant “substantially” assist the wrongdoer in the commission of unlawful acts. The district court did so based on its interpretation of Swiss law, which the Swiss government informed the district court was incorrect.

The adoption of a lower standard by the district court demands careful scrutiny. Affirming the application of a loose standard would send a strong signal that U.S. courts are open to imposing liability based on foreign-law tort claims relying on expansive legal theories far beyond U.S.-law requirements. This result flies in the face of decades of U.S. Supreme Court precedent limiting the availability of U.S. courts to address foreign conduct and curtailing new or expansive theories of

secondary liability. As a policy matter, this increase in potential liability would create considerable uncertainty for banks, especially those engaging in business in regions of the world, including conflict zones, that are developing and/or facing significant instability or tumult. This uncertainty may undermine banks' ability to provide services in foreign jurisdictions or in U.S. dollars, which in turn has implications for the geopolitical reach of the U.S. government and the customers who depend on banks to provide critical economic services and stability.

U.S. courts have recognized that absent reasonable limitations on secondary liability, banks may be exposed to potentially limitless litigation for carrying out essential banking services. As a result, courts carefully circumscribe secondary liability for instances of truly culpable conduct—particularly with regard to banks. U.S. law anchors liability to *knowing and substantial assistance* of the primary violation of law, which requires not that a defendant be aware of a connection to illicit activity, but that the defendant consciously directed its own conduct toward helping a particular wrongful act occur and that the defendant's conduct have a sufficient nexus with the primary tort. For foreign conduct, this well-considered standard is applied under statutes like the Anti-Terrorism Act (“ATA”) and the Alien Tort Statute (“ATS”), even in the context of the most serious primary violations, such as genocide, torture,

and terrorism.

Although the district court below purported to apply Swiss law, the Swiss government intervened to explain that the lower court's standard for secondary liability is "not . . . Swiss law at all, but rather a new U.S. court-created law." Order Regulating Proceedings at 4, *Kashef*, No. 16-cv-3228-AKH (No. 937). This judge-created standard departed from the principles of U.S. secondary liability in two important ways, potentially exposing banks to near-unlimited liability on aiding and abetting claims. *First*, the district court decided that a defendant could be held liable for unknowing assistance, that is, where the defendant did not desire or intend to assist the primary conduct. *Second*, the district court also explicitly rejected any requirement that a defendant "substantially" assist in the primary violation. In other words, the lower standard applied below not only departs from Swiss law according to the Swiss government, but also starkly contrasts with the standard that U.S. courts have developed over decades, which deliberately limits liability to conscious and culpable participation in a specific wrongful act.

While there is no doubt that the conduct by the Sudanese government at issue in this case is heinous, this Court should carefully consider situations where the application of foreign law results in a secondary liability standard for global banks that is lower than the

standard recognized by Congress and U.S. courts. Permitting U.S. courts to play host to such claims would undercut the careful policy considerations underlying well-established U.S. case law and statutes. It would also incentivize plaintiffs to exploit U.S. courts as a vehicle for pursuing expansive secondary liability theories, turning them into a forum for claims that fail to meet the U.S. standards for liability. Such an expansion of potential liability would have significant implications for banks doing business in the United States and abroad, especially those banks electing to do business in regions of the world where an increased risk of liability may lead them to limit or cease the provision of financial services. This outcome may undermine the stated U.S. government policy of ensuring at-risk populations have access to services through transparent financial channels, and more generally undermine U.S. geopolitical influence and support for vulnerable populations.

ARGUMENT

I. The U.S. Standard for Secondary Liability Reflects Important Policy Considerations Recognized by Congress and U.S. Courts.

a. Reasonable Limits on Secondary Liability Are Essential for Banks.

Congress and U.S. courts have long recognized the perils posed to businesses and the broader economy by unchecked secondary liability.

As the Supreme Court recently warned in *Twitter, Inc. v. Taamneh*, “if aiding-and-abetting liability were taken too far, then ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer.” 598 U.S. 471, 489 (2023); *see also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 292 (2025) (expressing concern that “an ‘ordinary merchant’ [will] ‘become liable’ for all criminal ‘misuse[s] of [his] goods,’ even if he knows that in some fraction of cases misuse will occur” (quoting *Twitter*, 598 U.S. at 489)); *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994) (explaining that “[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and [market] efficiency”); *Ashley v. Deutsche Bank Aktiengesellschaft*, 144 F.4th 420, 443 (2d Cir. 2025) (cautioning against “extend[ing] aiding-and-abetting liability” because it “risks making a ‘manufacturer of goods . . . an accomplice to every unaffiliated retailer whom it fails to make follow the law” (quoting *Smith*, 605 U.S. at 1297)).

This concern is particularly acute in the context of human rights and terrorism-related litigation. Over the last several decades, plaintiffs, backed by litigation funders, have targeted companies in critical sectors of the global economy—including banking, construction,

telecommunications, and social media—for allegedly aiding and abetting human rights abuses and/or terrorism abroad. Courts have spent years addressing these claims and defendants have been forced to pay tens, if not hundreds, of millions of dollars to defend them. There is no evidence to suggest that Congress intended to impose these costs for engaging in regular business activities. And the Supreme Court has responded by repeatedly and thoroughly limiting the reach of U.S. law and U.S. courts to non-U.S. conduct. *See, e.g., Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 632 (2021) (limiting extraterritorial application of the Alien Tort Statute); *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 272 (2018) (plurality opinion) (ruling foreign corporations are not subject to liability under the Alien Tort Statute); *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 339 (2016) (limiting the extraterritorial reach of the Racketeer Influenced and Corrupt Organizations Act); *Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014) (limiting U.S. courts’ jurisdiction over U.S. companies for acts committed abroad); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) (limiting U.S. courts’ jurisdiction over foreign subsidiaries of U.S. companies); *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 265–66 (2010) (limiting ability of foreign plaintiffs to bring Securities Exchange Act of 1934 (the “Exchange Act”) claims for foreign conduct). Indeed, the Supreme Court’s jurisprudence concerning the

extraterritorial reach of U.S. law has repeatedly cautioned that U.S. courts should not become global courts adjudicating all conduct, wherever occurring. *See, e.g., RJR Nabisco*, 579 U.S. at 335 (explaining that “United States law governs domestically but does not rule the world”); *Morrison*, 561 U.S. at 270 (recognizing concern that “the United States . . . has become the Shangri-La of class-action litigation for lawyers representing those allegedly cheated in foreign securities markets”).

The specter of overly-broad secondary liability is particularly acute for banks, which occupy a uniquely central role in the global economy. Banks are essential businesses that facilitate the global financial system and are integral to maintaining the “[f]inancial stability [that] is a public good.” *See* Janet Yellen, *Remarks by Sec’y of the Treasury Janet L. Yellen at the Nat’l Ass’n for Bus. Econs. 39th Annual Econ. Pol’y Conf.* (Mar. 30, 2023).³ Banks operate across borders, serve millions of customers, and process enormous volumes of transactions every day, the overwhelming majority of which are routine and socially beneficial. It is precisely because banks participate in so many transactions, however, that they are frequently the targets of aiding and abetting claims. Plaintiffs in these suits typically seek to hold banks liable, not for any direct

³ <https://home.treasury.gov/news/press-releases/jy1376>.

participation in wrongdoing, but solely on the theory that their transactions with foreign entities indirectly benefited or supported those entities' or others' unlawful acts.

The consequences of allowing such claims to proceed without meaningful limits are severe. Absent reasonable constraints on secondary liability, banks are exposed to potentially unbounded, burdensome litigation simply for processing transactions where the funds are ultimately misused. This exposure is particularly unjust where banks have no intention that their clients will use their financial resources for ill.

Recognizing this concern, courts have established and consistently enforced clear and reasonable standards governing secondary liability, particularly with respect to financial institutions. *See, e.g., Cent. Bank of Denver*, 511 U.S. at 188 (rejecting aiding and abetting liability under Section 10(b) of the Exchange Act and SEC Rule 10b-5, including because the financial industry “demands certainty and predictability”). As the Supreme Court highlighted in *Twitter*, “courts have long recognized the need to cabin aiding-and-abetting liability” to avoid “mostly passive actors *like banks* becom[ing] liable for all of their customers’ crimes by virtue of carrying out routine transactions.” 598 U.S. at 489, 491 (emphasis added).

Courts have also cautioned against permitting plaintiffs to sidestep the carefully constructed liability standards under U.S. law, or to manufacture new causes of action beyond those prescribed by Congress. For example, courts have rejected attempts to create a private right of action to hold banks civilly liable for violations of sanctions under the common law. *See Ofisi v. BNP Paribas, S.A.*, 77 F.4th 667, 672 (D.C. Cir. 2023) (“[T]here is no private right of action for violation of banking sanctions under the common law.”);⁴ *see also* Exec. Order No. 13412, 71 Fed. Reg. 61369, 61370 (Oct. 13, 2006) (disclaiming any private right of action from imposition of Sudan sanctions); Exec. Order No. 13067, 62 Fed. Reg. 59989, 59990 (Nov. 3, 1997) (same). As another example, in

⁴ Amici are committed to full compliance with U.S. sanctions law. The defendant below admitted to certain violations of U.S. sanctions against Sudan. However, it resolved those charges through its guilty plea with the United States and the payment of an \$8.9 billion penalty. Sanctions law and tort law are distinct: among other things, sanctions law concerns duties owed to the U.S. government, while secondary liability concerns a separate set of duties to a near-limitless set of third parties. A failure to comply with one does not equal a failure to comply with the other. *See Ofisi*, 77 F.4th at 673 (rejecting aiding and abetting liability for terrorist attacks allegedly funded through violation of U.S. sanctions). Moreover, empowering private plaintiffs to intrude into delicate areas of U.S. foreign policy by policing U.S. sanctions violations would undermine the “congressional calibration of force” that sanctions are designed to apply. *See Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 380 (2000) (“Sanctions are drawn not only to bar what they prohibit but to allow what they permit.”).

Jesner, the Supreme Court declined to extend common law liability under the ATS to foreign corporations, noting that “[t]he detailed regulatory structures prescribed by Congress and the federal agencies charged with oversight of financial institutions reflect the careful deliberation of the political branches on when, and how, banks should be held liable It would be inappropriate for courts to displace this considered statutory and regulatory structure by holding banks subject to common-law liability.” 584 U.S. at 268. While *Jesner* considered whether to expand common-law liability in the context of the ATS, the same logic applies to attempts to expand or sidestep the existing legal regime for secondary liability more broadly under U.S. law. *See, e.g., Smith*, 605 U.S. at 298 (2025) (rejecting attempt to sidestep restrictions on aiding and abetting liability under the Protection of Lawful Commerce in Arms Act); *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, 552 U.S. 148, 162, 165 (2008) (refusing to expand Section 10(b)’s implied private right of action under the Exchange Act to aiders and abettors); *Cent. Bank of Denver*, 511 U.S. at 191 (same).

b. Reflecting These Policy Considerations, U.S. Law Requires Knowing and Substantial Assistance for Secondary Liability to Attach.

Consistent with these considerations, U.S. law reserves aiding and abetting liability for behavior that goes beyond a party’s mere passive or

incidental involvement in an alleged harm. As the Supreme Court has recognized, “our [U.S.] legal system generally does not impose liability for mere omissions, inactions, or nonfeasance.” *Twitter*, 598 U.S. at 489. This limit on secondary liability applies under both state and federal law, under which performing routine banking services cannot by itself, as a matter of law, be a basis for a finding of aiding and abetting liability. *See, e.g., id.* at 491; *Alarmex Holdings, LLC v. JP Morgan Chase Bank, N.A.*, 48 N.Y.S.3d 19, 20 (App. Div. 2017) (“[D]efendant’s allowing of the transfer of funds was [a] routine business service, and does not amount to substantial assistance of the [primary violation].”).

In the international realm, Congress has enacted the ATS and ATA to regulate liability for certain acts occurring abroad, and these statutes set a high bar for secondary liability, limiting it to “truly culpable conduct.” *Twitter*, 598 U.S. at 489. In 2016, Congress passed the Justice Against Sponsors of Terrorism Act (“JASTA”), which created secondary liability for those who aid and abet acts of terrorism under the ATA, and in doing so, “explicitly endorsed” a D.C. Circuit case, *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), as the “proper legal framework” for assessing secondary liability. *Ashley*, 144 F.4th at 435. Courts (including the Supreme Court, and this Court) thus rely on *Halberstam* as the proper framework for secondary liability. *Twitter*, 598 U.S. at 493;

Ashley, 144 F.4th at 435.

Under *Halberstam*’s test, courts require, among other things, that the defendant “***knowingly and substantially assist***” the principal violation. *Ashley*, 144 F.4th at 435 (emphasis added). “[K]nowing and substantial assistance” is “designed to capture the defendants’ state of mind with respect to their actions and the tortious conduct” in question. *Ashley*, 144 F.4th at 438 (internal quotations omitted). Establishing knowing and substantial assistance requires showing that a defendant consciously directed its own conduct toward helping a particular wrongful act succeed. *Id.* at 441. In other words, courts require a “strong showing of assistance and scienter” reflecting “affirmative misconduct,” and a “close nexus” between the defendant bank and the tort—which reinforces that aiding and abetting liability is “designed to capture conscious and culpable conduct.”⁵ *Id.* at 437–39 (internal citations omitted).

These twin requirements of knowing and substantial assistance work “in tandem,” such that courts assess the defendant’s conduct overall

⁵ This nexus requirement is consistent with other areas of law, including, for example, copyright law, where the Supreme Court recently affirmed that contributory liability for copyright infringement only attaches if the defendant induced the infringement through specific acts or intentionally tailored a service to promote the infringement. *See Cox Comm’ns, Inc. v. Sony Music Ent.*, 146 S. Ct. 959, 967 (2026).

rather than treating either element in isolation. *Twitter*, 598 U.S. at 491–92. Thus, where a defendant’s assistance is attenuated from the specific wrongful act (as is often the case for banks processing commercial transactions through ordinary correspondent banking channels), courts require a correspondingly greater showing of knowing, conscious, and targeted participation (which is also far removed from providing routine services): “the more attenuated the nexus [between the defendant’s acts and the tort], the more courts should demand that plaintiffs show culpable participation through intentional aid that substantially furthered the tort.” *Id.* at 506. To do otherwise “would run roughshod over the typical limits on tort liability.” *Id.* at 503.

II. The District Court’s Development of a Permissive Secondary Liability Standard Will Harm U.S. Interests and Inhibit Banks’ Ability to Provide Crucial Financial Services.

a. The District Court Developed a Standard for Secondary Liability Which, According to the Swiss Government, Is Not Swiss Law – and Which Departs Sharply from the Well-Established and Considered Standard Under U.S. Law.

The standard applied by the court below—based on its interpretation of Swiss law that the Swiss government intervened to condemn—replaced the knowledge and substantial assistance requirements under U.S. law with a permissive, negligence-based

standard permitting liability in cases of unknowing assistance and attenuated causation. The application of this lower standard was not an accident: following trial, the plaintiffs explained that they “wanted to avoid” certain U.S. laws, because “the Supreme Court and the lower courts have really made the bar high,” and the district court’s application of non-U.S. law was “really, really helpful.”⁶

While the application of foreign law may result in a different liability standard than under U.S. law, the Swiss government itself has stated that the standard developed by the district court is “not . . . Swiss law at all, but rather a new U.S. court-created law.” Order Regulating Proceedings at 4, *Kashef*, No. 16-cv-3228 (No. 937).⁷ This district-court-

⁶ See Mike Vilensky, BNP’s Court Foe Eyes Billions in Sudan Case, *Bloomberg Law* (Oct. 21, 2025) (quoting co-lead counsel for plaintiffs: “We’ve suffered a lot of defeats at the hands of the Alien Tort Statute because the Supreme Court and the lower courts have really made the bar high for victims to be successful. I certainly wanted to avoid that. So I framed it as just a garden variety tort. We had been writing about that in the academic world for a while, but it hadn’t been tried that I know of. So we tried it, and that was, I think, really, really helpful.”) (available at https://www.bloomberglaw.com/bloomberglawnews/new-york-brief/X799LBK000000?bna_news_filter=new-york-brief#jcite).

⁷ The Swiss government appeared in the case following the district court’s decision denying the defendant’s motion for summary judgment, see *Kashef v. BNP Paribas SA*, No. 16-cv-3228, 2024 WL 1676355 (S.D.N.Y. Apr. 18, 2024), to explain that it was “concerned that [its laws] are being interpreted in a manner that actually

created standard departed from well-established principles of U.S. secondary liability in two alarming ways that undercut the well-established policy considerations underlying the U.S. standard.

First, the district court dispensed with any meaningful knowledge requirement. The court concluded that under Swiss law, an “accomplice need not desire or intend the assistance” and that liability “includes *unintentional* conduct,” writing that “negligence is sufficient.” *Kashef v. BNP Paribas SA*, No. 16-cv-3228, 2021 WL 603290, at *3–4 (S.D.N.Y. Feb. 16, 2021) (emphasis added).⁸ Similarly, when charging the jury, the

conflicts with Swiss law.” Order Regulating Proceedings at 3, *Kashef*, No. 16-cv-3228 (S.D.N.Y. Sep. 3, 2025) (No. 937). Specifically, the Swiss government explained that Swiss law does not permit secondary liability unless the defendant engaged in “conscious cooperation,” which requires “willful and substantial assistance to the unlawful act that injured the plaintiff at issue, not generalized assistance to the perpetrator,” and “there must be a specific causal link between the defendant’s conduct and the plaintiff’s individual injury.” *Id.* The district court rejected the Swiss government’s views about the interpretation of its own law. Order Responding to Ambassador Heckner at 2, *Kashef*, No. 16-cv-3228 (S.D.N.Y. Sep. 3, 2025) (No. 943) (ruling that “points argued by [the Swiss government] . . . need not again be discussed”).

⁸ See also Transcript of Jury Charge at 118, *Kashef v. BNP Paribas SA*, No. 16-cv-3228 (S.D.N.Y. Oct. 16, 2025) (No. 1071); see also *id.* at 116 (charging knowledge element as “BNP Paribas *knew or should have known* that the banking and financial services it was providing to the government of Sudan was contributing to the government of Sudan’s human rights violations.” (emphasis added)).

district court instructed that the law “does not require that the defendant intended or desired that human rights violations would result.” Transcript of Jury Charge at 118, *Kashef*, No. 16-cv-3228 (S.D.N.Y. Oct. 16, 2025) (No. 1071). This standard adopted by the district court converts secondary liability from a doctrine that targets knowing participation in the commission of wrongful acts into one that punishes banks for processing transactions that—irrespective of the bank’s intentions—are used to support illicit activities. Such secondary liability absent knowledge or intent and premised merely on unintentional conduct stands in stark contrast to the “strong showing of assistance and scienter” required for aiding and abetting liability under U.S. law, which protects banks and businesses against the imposition of significant liability for acts committed by other parties.⁹ *Ashley*, 144 F.4th at 437.

Second, the district court applied a causation standard that is

⁹ While U.S. law does recognize negligence-based theories of liability, it cabins these theories to situations where a defendant owed the plaintiff a duty of care. *See, e.g., Abdulaziz v. McKinsey & Co., Inc.*, No. 21-2921, 2022 WL 2444925, at *2 (2d Cir. July 5, 2022) (“Any claim sounding in negligence under New York law must be based in the breach of a legally cognizable duty of care.”). The defendant-appellant argued below that Swiss law requires a similar duty of care, but the district court rejected that argument. *See* Transcript of Charging Conference at 12, *Kashef*, No. 1:16-cv-3228 (S.D.N.Y. Oct. 10, 2025) (No. 1069) (counsel objecting to proposed jury charge because “under Swiss law[,] ‘should have known’ requires a duty of care”); *id.* at 13 (court overruling objection).

dramatically lower than the standard under U.S. law, undermining the policy considerations underpinning that standard. The district court explicitly rejected any requirement that “conduct must be a ‘*substantial*’ contribution to the harm in order to be an adequate cause,” instead ruling that liability only “requires determining whether it would be ‘reasonable’ to hold” a party responsible, which in turn asks only whether the primary conduct was “foreseeable.” *Kashef*, 2021 WL 603290, at *7 (emphasis added); *see also* Transcript of Jury Charge at 119, *Kashef*, No. 16-cv-3228 (S.D.N.Y. Oct. 16, 2025) (No. 1071) (“Plaintiffs must prove by a preponderant likelihood that it was reasonably foreseeable that banking and financing services provided by a major international bank to the government of Sudan would result in a greater likelihood or greater intensity of human rights violations and thereby plaintiffs’ damages.”). The district court held this standard was met because “the revenue generated for the Sudanese government by [defendants’] assistance” led to increased “military expenditures” which in turn led to the government’s attacks on civilians “occur[ing] with greater frequency and velocity.” *Kashef*, 2021 WL 603290, at *6. In other words, under the district court’s standard, providing financial services to a foreign government could result in liability for any tortious act on which the government expended funds.

This reasoning dispenses with the requirement for a “concrete nexus between defendants’ services and the [tortious act],” and so “would necessarily hold [financial institutions] liable as having aided and abetted each and every [government] act committed anywhere in the world,” precisely the kind of “expansive scope” U.S. courts have rejected to protect businesses and banks engaged in international commerce from unwarranted civil liability. *Twitter*, 598 U.S. at 501. This is contrary to U.S. law, under which a defendant may be liable for all the acts of the primary tortfeasor only upon a showing that “defendants provided such ‘systemic and pervasive’ assistance . . . that they could be said to aid and abet every [illegal act] the group commits as part of a common enterprise.” *Atchley v. AstraZeneca UK Ltd.*, 165 F.4th 592, 604 (D.C. Cir. 2026) (quoting *Twitter*, 598 U.S. at 501). The standard applied by the district court set a much lower bar: requiring only that some downstream conduct by the primary tortfeasor was “foreseeable.” *Kashef*, 2021 WL 603290, at *7. This test would expose banks to potential liability for illicit acts performed by foreign governments or entities across the globe, merely as a result of having provided routine banking services resulting in the availability of money which might possibly be

used by such governments or entities for tortious acts.¹⁰

b. The Standard Developed by the District Court Has Significant Negative Implications for the Provision of Financial Services and Broader U.S. Interests.

Permitting plaintiffs to pursue aiding and abetting claims under an overly permissive standard for secondary liability, such as the one adopted by the district court, will incentivize plaintiffs from around the world to exploit U.S. courts as a vehicle for pursuing such secondary liability theories, making them a forum of first resort for claims that could not satisfy U.S. law’s requirements for knowledge and substantial assistance. By invoking a more permissive standard, plaintiffs gain access to the procedural advantages U.S. courts offer—including expansive discovery, classwide litigation, jury trials, and enforcement against assets held in the United States—but can sidestep the careful limits Congress and U.S. courts have deliberately imposed on secondary liability. This is not an abstract threat: as noted above, counsel in this case has explained that they intentionally avoided bringing their claims under the ATS to circumvent the “high standard” set by “the Supreme

¹⁰ For the same reason, a violation of U.S. sanctions is not sufficient to establish secondary liability for acts by the sanctioned party: under U.S. law, conducting prohibited financial transactions with a foreign government does not show the required knowing and substantial assistance in specific acts taken by that government. *See supra* note 4; *Ofisi*, 77 F.4th at 673.

Court and the lower courts.” See Vilensky, *BNP’s Court Foe Eyes Billions in Sudan Case*, Bloomberg Law (Oct. 21, 2025).

Any influx of such suits will impose significant burden on defendants and the U.S. court system, regardless of their merit. As the Supreme Court has cautioned, “the mere existence of an unresolved lawsuit has settlement value to the plaintiff not only because of the possibility that he may prevail on the merits . . . but because of the threat of extensive discovery and disruption of normal business activities which may accompany a lawsuit which is groundless in any event, but cannot be proved so before trial.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 742–43 (1975).

The practical consequences of an expansive secondary liability standard fall with particular force on banks, which already face substantial litigation for secondary liability claims—often resulting in costly dismissals. Faced with even greater exposure for the same payment and lending transactions they have always conducted, banks may be compelled to make fundamental adjustments to their existing practices. Non-U.S. banks may seek to shift transactions away from U.S. dollar-based instruments and the use of U.S.-dollar correspondent accounts to limit the possibility of U.S. courts’ jurisdiction. Conversely, U.S. banks unable to avoid the jurisdiction of U.S. courts may reconsider

the cost of providing of financial services in riskier foreign jurisdictions and to certain clients abroad to limit potential exposure. Neither outcome serves U.S. interests. The first would erode the geopolitical influence of the United States; the second would deprive legitimate businesses, governments, and individuals of access to financial markets and services on which they depend.

Dollar-based transactions. Banks depend on stable, predictable legal standards to assess their obligations and calibrate their potential exposure to liability. A secondary liability standard that exposes banks to sprawling, discovery-intensive litigation premised on routine fund transfers and U.S. dollar-clearing transactions risks exerting a powerful chilling effect on banks' willingness to engage in certain transactions. This outcome would undermine U.S. geopolitical interests and significantly increase the risk of providing financial services to certain at-risk populations, such as those in conflict zones.

The U.S. dollar underpins the United States' borrowing power while ensuring the stability of the broader global financial system. See Anshu Siripurapu & Noah Berman, *The Dollar: The World's Reserve Currency*, Council on Foreign Rels. (July 19, 2023).¹¹ The dollar's reserve currency status allows the United States to borrow at lower interest rates

¹¹ <https://www.cfr.org/backgrounders/dollar-worlds-reserve-currency>.

than virtually any other nation—a structural advantage that finances federal spending, underwrites national defense, and enables the United States to respond to economic crises without the volatility that constrains other governments. Each of these benefits is directly implicated by any erosion of banks’ willingness to engage in dollar-based transactions, a willingness premised in large part upon the predictability U.S. law.

A liability standard that risks converting routine U.S. dollar clearing transactions into protracted and endless litigation would threaten the existing equilibrium. Any erosion of global dollar-clearing transactions risks reducing foreign demand for dollar-based assets, placing upward pressure on U.S. borrowing costs, and constraining the fiscal flexibility that reserve currency status otherwise affords.

The geopolitical advantage afforded to the United States from global use of the dollar is significant: it provides the United States leverage to deploy economic statecraft through measures like sanctions, asset freezes, and correspondent banking restrictions, often without requiring large-scale coordination with foreign governments. If liability exposure drives non-U.S. banks to migrate transactions into alternative, non-dollar-based financial networks, the United States risks losing jurisdictional reach, influence, and financial visibility. Similarly, when U.S. banks are unable to provide services, the void “has the potential to

push countries to seek closer relationships with geopolitical competitors and cause significant macroeconomic damage to regions of U.S. foreign policy interest.” U.S. Dep’t of the Treasury, *The Department of the Treasury’s De-Risking Strategy*, at 38 (Apr. 2023);¹² *see also* U.S. Dep’t of the Treasury, *2026 National Terrorist Financing Risk Assessment*, at 16 (Mar. 2026).¹³

Perhaps most significantly, a more permissive secondary liability standard, which could make banks adverse to engaging in certain international transactions, risks driving financial flows out of the regulated, transparent U.S. dollar system and into informal, unmonitored channels that could undermine the U.S. government’s ability to detect and disrupt illicit finance. The integration of foreign financial flows into the dollar-based banking system gives U.S. regulators, law enforcement, and government agencies unrivaled visibility into cross-border transactions and global financial transactions. This access to information is among the most effective tools the United States possesses for detecting and disrupting illicit activities and terrorist financing.

Ironically, a more permissive secondary liability standard—viewed

¹² https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

¹³ <https://home.treasury.gov/system/files/246/2026-NTFRA.pdf>.

by some as a tool to counter these very activities—could have the opposite effect by incentivizing banks to curtail dollar-based transactions in higher-risk jurisdictions or exit certain markets entirely.

Banking services. The uncertainty of a more permissive secondary liability standard would not only affect U.S. interests but would also negatively affect vulnerable populations in other parts of the world. As noted above, when confronted with more open-ended exposure to aiding and abetting claims, banks may be pressured to curtail correspondent relationships, withdraw from certain markets, and restrict the range of clients they are able to serve. Banks operating in conflict or developing regions already face a difficult balance between continuing to provide services that sustain local economies and humanitarian operations and limiting their exposure to elevated counterparty risk. On the one hand, regions most vulnerable to financial stress—including warzones, countries facing political instability, or areas being ravaged by crisis—are precisely the populations most in need of reliable banking services for long-term development and economic security. Yet these same regions are also the most likely to carry the highest counterparty risk for banks.

Permissive standards for secondary liability increase the costs of operating in these jurisdictions. Banks already dedicate thousands of

employees and billions of dollars to comply with anti-money laundering and financial crime regulations. *See* LexisNexis Risk Solutions, *2022 True Cost of Financial Crime Compliance Study* 9 (2022) (projected total cost of financial crime compliance across U.S. financial institutions is \$45.9 billion); Press Release, LexisNexis, *Global Spend on Financial Crime Compliance at Financial Institutions Reaches \$213.9 Billion USD* (June, 9 2021) (projected total cost of financial crime compliance across all financial institutions globally is \$213.9 billion).

A more permissive secondary liability standard may make the balancing act banks must navigate untenable in some instances. The consequences associated with the loss of financial services are well-documented—severing legitimate businesses and individuals from the financial system results in instances of real human hardship. *See* Thomas J. Curry, Comptroller of the Currency, *Remarks Before the Institute of International Bankers*, at 6 (Mar. 7, 2016).¹⁴ Non-profit organizations operating in less stable jurisdictions with less well-known and established counterparties especially face particularly acute challenges that can cut off their access to banking services entirely, directly impeding their ability to meet the “basic human needs of

¹⁴ <https://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-25.pdf>.

extremely vulnerable populations.” U.S. Dep’t of the Treasury, *The Department of the Treasury’s De-Risking Strategy*, at 2 (Apr. 2023). The U.S. government recently urged banks to remain engaged in at-risk markets, noting the value of “transparent financial channels” for humanitarian assistance, despite the “significant compliance risk for financial institutions.” See Press Release, U.S. Dep’t of the Treasury, *Treasury Targets Flotilla Organizers and Muslim Brotherhood Networks Supporting Hamas* (May 19, 2026);¹⁵ U.S. Dep’t of the Treasury, *Supplemental Guidance for the Provision of Humanitarian Assistance* (Feb. 27, 2023).¹⁶ As the Treasury Department has recognized, encouraging such organizations to operate through regulated financial channels produces “life-saving services in jurisdictions where there is an increased risk of terrorist financing”—an outcome that an expansive secondary liability standard would place directly at risk. U.S. Dep’t of the Treasury, *2026 National Terrorist Financing Risk Assessment*, at 20 (Mar. 2026).

In short, the district court’s embrace of a permissive secondary liability standard risks opening U.S. courts to an influx of litigation against banking institutions and compromising banking institutions’

¹⁵ <https://home.treasury.gov/news/press-releases/sb0501>.

¹⁶ <https://ofac.treasury.gov/media/931341/download?inline>.

ability to offer crucial financial services abroad, resulting in significant adverse consequences for the financial industry and availability of U.S. dollar-based banking services around the world and harm to the global economy and U.S. national security and foreign policy interests.

CONCLUSION

For the reasons above, Amici urge the Court to consider the significant care employed by U.S. courts in establishing the stringent standard for secondary liability under U.S. law, and the significant policy implications for the United States and global economy of allowing more permissive standards of the type adopted below. The judgment below should be reversed.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with Local R. 29.1(c), because it contains 6,586 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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