

18-1304

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

Entesar Osman Kashef, Alfadel Mosabal, Abubakar Abakar, Siama Abdelnabi Hamad, Abbo Ahmed Abakar, Hawa Mohamed Omar, Jane Doe, Nyanriak Tingloth, Reverend Anderia Lual, Nicolas Hakim Lukudu, Turjuman Ramadan Adam, Johnmark Majuc, Joseph Jok, Halima Samuel Khalifa, Ambrose Martin Ulau, Sandi (Sunday) Georgari Marjan, Shafika G. Hassan, Jane Roe, Judy Doe, Sara Noureldirz Abdalla, Amir Ahmed,

Plaintiffs-Appellants,

v.

BNP Paribas S.A., a French corporation, BNP Paribas North America, Inc., a Delaware corporation, Does 1-10, BNP Paribas S.A., New York Branch,

Defendants-Appellees.

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

**BRIEF OF SUDANESE-AMERICAN COMMUNITY GROUPS AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLANTS, AND SUPPORTING REVERSAL**

RAJIKA L. SHAH
1841B Kelton Avenue
Los Angeles, California 90025
Telephone: (818) 272-9687

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici* Dallas Fort Worth Sudanese Community, Darfur Community in Iowa, Darfur Women Action Group, Lost Boys Center for Leadership Development, and Nile Sisters Development Initiative are each nonprofit corporations. None has any parent corporation or stock held by any publicly held corporation.

TABLE OF CONTENTS

	Page(s)
CORPORATE DISCLOSURE STATEMENT	2
IDENTITY AND INTERESTS OF THE <i>AMICI CURIAE</i>	5
I. Identity of the Sudanese-American Community Groups	5
II. Interests of the Sudanese-American Community Groups	8
DISCUSSION	9
I. <i>Amici</i> Have Embraced the Promise of American Free Enterprise to Help Themselves	9
II. The Sudanese-American Refugee Community Arrived on America’s Doorstep after Years of Violence and Atrocities	11
III. <i>Amici</i> Provide Crucial and Reliable Long-Term Private Assistance to Struggling Communities.....	14
CONCLUSION	17
APPENDIX A: LIST OF <i>AMICI CURIAE</i>	
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Christopher v. Harbury</i> , 536 U.S. 403 (2002).....	17
<i>Republican Party of State of Conn. v. Tashjian</i> , 770 F.2d 265 (2d Cir. 1985), <i>aff'd sub nom. Tashjian v. Republican Party of Connecticut</i> , 479 U.S. 208 (1986)	9

IDENTITY AND INTERESTS OF THE *AMICI CURIAE*

Amici curiae are Sudanese-American Community Groups located throughout the United States.¹ This *amicus* brief aims to provide the Court with the perspective offered by these nonprofit, grassroots, community- and volunteer-led organizations. Founded in response to the wide-ranging needs of the Sudanese-American refugee community, *amici* provide a number of basic services to assist community members in reaching their full potential as new Americans and realizing the promise of the American dream through civic participation.

I. Identity of the Sudanese-American Community Groups²

Dallas Fort Worth Sudanese Community (DFWSCO) is a nonprofit organization established in 2015 to serve the Sudanese community in the Dallas-Fort Worth, Texas area. DFWSCO aims to provide a place for Sudanese

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), *amici curiae* certify that counsel for the parties have not authored this brief. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the *amici* contributed money that was intended to fund preparing or submitting this brief. Pursuant to Fed. R. App. P. 29(a)(2), *amici* further certify that all parties consented to the filing of this brief.

² In addition to the *amici* listed here, several other Sudanese-American Community Groups expressed interest in joining this brief but were unable to do so due to challenges in obtaining formal consent. Many groups, particularly smaller ones, do not have a permanent email address or website, are run by volunteers who work at other jobs during the day, and can be difficult to reach. They are: Gogrial Community Organization in the United States of America (Des Moines, Iowa); New Life Family Alliance Inc. (Omaha, Nebraska); Equatorian South Sudanese Community Association (ESSCA-USA) (North Carolina chapter); Sudanese American Youth Center San Diego (SAYCSD) (San Diego, California); South Sudan Christian Youth and Community Organization (San Diego, California).

community members to hold cultural, social, and family events in an atmosphere where they can feel comfortable and relaxed.

Darfur Community in Iowa (DCI) was founded in 2016 as a service support group for the Sudanese refugee community in Des Moines, Iowa. A registered nonprofit, the Darfur Community in Iowa helps to guide the community towards self-sufficiency and full integration into American society while respecting their dignity as new Americans. DCI works collaboratively with St. Andrews Episcopal Church in Des Moines, which provides space for DCI to hold regular Sunday school meetings for children as well as other community events, meetings, and celebrations.

Darfur Women Action Group (DWAG) is a women-led anti-atrocities nonprofit organization based in Washington, D.C. DWAG was founded in 2009 by a survivor of the genocide in Darfur, Sudan, to empower victims and survivors, both in Sudan and in the Diaspora. It does this by providing them with access to tools that will enable them to combat violence, address massive human rights abuses in their societies, and work with others to prevent future atrocities while promoting global peace. DWAG also engages in capacity-building at individual and institutional levels so that affected communities, in particular women and children, can develop the necessary skills to survive and thrive.

Lost Boys Center for Leadership Development was initially founded in 2002 as the Arizona Lost Boys Center in Phoenix, Arizona. It was established with the goal of providing assistance and help for Sudanese “Lost Boys” throughout the United States. Initially committed to supporting basic refugee resettlement issues, the Arizona Lost Boys Center quickly evolved to address the educational and employment needs of both male and female African refugees from a variety of countries by providing college scholarships, citizenship classes, language training, job placements and workforce readiness programs. After more than a decade of serving as the emotional center of the Lost Boys community, on January 1, 2012 the Arizona Lost Boys Center became the Lost Boys Center for Leadership Development with a new mission, focused on the newly-formed Republic of South Sudan: to build the leaders of tomorrow.

Nile Sisters Development Initiative (NSDI) aids newly resettled refugees and asylees in San Diego, California, once their initial period of government assistance expires. NSDI also provides ongoing support to refugee and immigrant families who experience difficulties after assimilation. Since 2001, NSDI has provided assistance to refugees primarily from Sudan and ten other African countries, though it also works with refugees from other parts of the world. As a nonprofit, all of NSDI’s services are provided free of charge.

II. Interests of the Sudanese-American Community Groups

As Sudanese-American grassroots community groups located all around the United States with the primary aim of assisting refugees fleeing the violence and decades of Sudanese government-inflicted atrocities with their transition to life in the United States, the *amici* herein have an interest in ensuring that the voice of the Sudanese-American refugee community is heard and represented in this litigation. Many of those in the Sudanese-American community served by the *amici* are putative class members. *Amici* provide a unique perspective on the struggles and practical challenges faced by this community as they work to rebuild their lives in their adopted homeland, and on the importance of ensuring that the claims in this case are given a full and fair hearing in U.S. courts.

For the *amici* and the community members they serve, the issues in this case are simple and clear: since defendants BNP Paribas S.A., BNP Paribas North America, Inc., and BNP Paribas S.A., New York Branch have admitted they violated U.S. law, causing billions of illegal dollars to flow to the government of Sudan and enabling the Sudanese government to escalate its campaign of violence and atrocities against them and their families, it is only appropriate and necessary to require these same banks as responsible perpetrators to compensate them for their injuries. Sudanese Americans are here because of the banks' actions, struggling to start new lives because of the banks' actions, and forced to rely on

amici for basic assistance because of the banks' actions. *Amici* and their members believe that America has always stood for justice. As Americans, they expect nothing less.

DISCUSSION

I. *Amici* Have Embraced the Promise of American Free Enterprise to Help Themselves

The freedom of association, the benefits of free association, and the importance of civic engagement to achieving the aims of democracy, equality, social mobility, and the fulfilment of human potential have been an essential part of American life since the very earliest days of the republic. *See Republican Party of State of Conn. v. Tashjian*, 770 F.2d 265, 275-76 (2d Cir. 1985), *aff'd sub nom. Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) (noting that “[t]he Madisonian link between freedom of association and ‘true’ democracy became embedded in Western political thought” as early as the Federalist Papers); *see also id.* at 268 (the “ability and propensity of our citizenry to unite and pursue desired goals . . . form the foundation of American political thought”).

De Tocqueville marveled at the variety and number of associations he observed in America:

Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very

small; Americans use associations to give fêtes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools.³

As de Tocqueville noted, though, the true power of free association lay in its ability to enable groups of individuals in a democracy to “do[] great things” that in other societies, such as England and France, could only be undertaken by, and were reserved for, an elite aristocracy.⁴

The *amici* named herein, and dozens of other organizations like them located all around the United States, were founded by enterprising and determined people—Sudanese refugees fleeing violence and war who were given the opportunity to resettle in the United States and make a new life for themselves—who saw a need in their communities and acted to fill it in the firm belief that a rising tide lifts all boats. Like countless others before them, these lawfully residing immigrants to America have sought to make themselves truly American by associating together to provide essential services and safe spaces for social events and worship, and, above all, to foster the sense of well-being and stability that allows communities to truly thrive.

Amici are on the front lines of assistance to the Sudanese-American

³ Alexis de Tocqueville, *Democracy in America* (Harvey C. Mansfield and Delba Winthrop, trans., 2000), at <http://www.press.uchicago.edu/Misc/Chicago/805328.html> (“*Democracy in America*”).

⁴ *See id.*

community. The story they tell is the same: refugees from Sudan arrive here physically and psychologically traumatized by their injuries and experiences. They very often arrive alone, with no family members or familiar faces from their home communities – indeed, many have no family members left. They likely do not speak English, and may be illiterate even in their native language, having often come from rural and farming backgrounds. They may have had little to no schooling, particularly the women, and if they do have advanced training or a university degree, their qualifications are not recognized by U.S. schools and businesses. In short, they arrive with little more than the shirts on their backs.

II. The Sudanese-American Refugee Community Arrived on America's Doorstep after Years of Violence and Atrocities

This is a community of resilient survivors. Sudan was embroiled in a long-running civil war from 1983 to at least 2005. Taking advantage of the unstable situation, Sudan's president, Omar Al-Bashir, successfully led a coup in 1989 and has been in power ever since.⁵ Following Al-Bashir's rise to power, the civil war became much more violent, targeting vulnerable groups in the south and west of the country. This resulted in successive waves of Sudanese refugees fleeing to camps in neighboring countries. Only a small number of those were eventually

⁵ See Omar al-Bashir Fast Facts, CNN Library (Dec. 19, 2017), at <<https://www.cnn.com/2012/12/10/world/africa/omar-al-bashir---fast-facts/index.html>>.

resettled abroad, including to the United States, after being vetted and cleared by both the UN High Commissioner for Refugees and the U.S. government in a rigorous two-year process involving multiple interviews and background checks.⁶

The first wave of Sudanese refugees to the United States consisted primarily of the so-called Lost Boys in the mid-late 1990s. The Lost Boys are a group of at least 22,000 children, mostly boys, who fled their homes and villages, often at a moment's notice, in order to avoid being forced to join either the Sudanese army or the rebel groups fighting the army.⁷ They walked hundreds of miles through the bush, often at night with no food, water, or shelter from wild animals, to reach refugee camps in neighboring Ethiopia.⁸ Though some were eventually reunited with their families, many eventually became each other's only family to speak of.⁹

⁶ See, e.g., Resettlement in the United States, Refugee Resettlement Facts, United Nations High Commissioner for Refugees (Jan. 2018), at <<http://www.unhcr.org/resettlement-in-the-united-states.html>>. At least eight U.S. government agencies are involved in the standard screening process, which occurs prior to entry to the United States. *Id.* Individuals are checked against six different security databases, and undergo five background checks and three in-person interviews. *Id.* The United States has long offered a warm welcome to refugees as the top resettlement country in the world. *Id.*

⁷ See The Lost Boys of the Sudan, Children in War: The State of the World's Children 1996, at <<https://www.unicef.org/sowc96/closboys.htm>>.

⁸ See *id.*; see also "Our amazing 12-year journey with the Lost Boys," 60 Minutes, CBS News (July 21, 2013), at <https://www.cbsnews.com/news/our-amazing-12-year-journey-with-the-lost-boys/>.

⁹ See The Lost Boys of the Sudan, Children in War: The State of the World's Children 1996, at <<https://www.unicef.org/sowc96/closboys.htm>>; see also Benjamin Ajak, Benson Deng, and Alephonsion Deng, *They Poured Fire on Us From the Sky: The True Story of Three Lost Boys from Sudan* (2005).

Next came those fleeing the genocide committed by Sudanese government-backed Janjaweed in Darfur in the early 2000s. Then-U.S. Secretary of State Colin Powell was one of the first to declare the situation in Darfur—involving widespread “killings, rape and destruction of homes”—a genocide.¹⁰ President Al-Bashir was eventually indicted by the International Criminal Court on charges of war crimes, crimes against humanity, and genocide for the atrocities that occurred in Darfur, though he has thus far successfully evaded arrest.¹¹

Finally, a third wave of ethnically black African and Christian-animist southern Sudanese arrived in the United States from the mid-2000s onward. These people were targeted for indiscriminate bombing and air strikes by Sudanese president Omar al-Bashir’s Arab and National Islamic Front-aligned government in the leadup to the creation of the new state of South Sudan in 2011.¹²

¹⁰ Steven R. Weisman, “Powell Says Rapes and Killings in Sudan are Genocide” N.Y. Times (Sept. 10, 2004), at <<https://www.nytimes.com/2004/09/10/politics/powell-says-rapes-and-killings-in-sudan-are-genocide.html>>.

¹¹ See *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, International Criminal Court, ICC-02/05-01/09-1 (Mar. 4, 2009); *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir, International Criminal Court, ICC-02/05-01/09-95 (July 12, 2010).

¹² See, e.g., Andrew Natsios, “Fear of Revolution Drives Omar Al-Bashir of Sudan,” N.Y. Times (Feb. 29, 2012), at <<https://www.nytimes.com/roomfordebate/2012/02/29/how-to-prevent-another-darfur/fear-of-revolution-drives-omar-al-bashir-of-sudan>>.

III. Amici Provide Crucial and Reliable Long-Term Private Assistance to Struggling Communities

There are now approximately 40-50,000 Sudanese-Americans as a result of these refugee resettlements.¹³ While they are extremely grateful to be safe and away from the violence, and to have been given the chance to start a new life, as recent arrivals they are completely disoriented and in desperate need of multiple layers of ongoing assistance.

The Department of Health and Human Services' Office of Refugee Resettlement ("ORR") provides only "time-limited" assistance to newly resettled refugees,¹⁴ which in practice may only last somewhere between three and five months – enough to find a short-term living situation, address only the most acute medical conditions, and connect with other community members, but nothing more. Some individuals have lost limbs or other body parts and are physically disabled. Many have family members in Sudan that are still under attack or rely on them to send assistance from overseas. Others, conversely, have lost their entire families in the war. All have suffered deep psychological crisis that leaves them feeling despondent, unable to cope with daily life, and bewildered from living in a

¹³ These numbers are widely agreed-upon, but mostly anecdotal. *See also* "Sudanese Americans," Wikipedia (last visited July 9, 2018), at <https://en.wikipedia.org/wiki/Sudanese_Americans>.

¹⁴ "Refugees," Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, at <<https://www.acf.hhs.gov/orr/refugees>>.

country with a culture, language, and way of life so vastly different from their own. The challenges of facing these seemingly insurmountable economic, educational, language, and medical/psychological needs are daunting in the extreme.

To fill this need, Sudanese-American communities throughout the United States have slowly built up grassroots organizations, including *amici*, to assist their fellow community members (whom they refer to as brothers and sisters). Though some, like *amici* Nile Sisters Development Initiative (NSDI), Darfur Women Action Group (DAWA), and Lost Boys Center for Leadership and Development, are well-established, all rely on individual private donations to varying degrees for support.

Some of the services offered by the *amici* include: housing assistance, job training, computer skills/IT training, English language classes, tutoring, children and youth programs, mental health and physician referrals, community counseling, local fundraising to provide support in the event of a birth, marriage, or death, and a safe space to hold community and religious events. Sometimes this is in partnership with other local organizations or churches.¹⁵ Another equally important, but less tangible, role played by the *amici* is to act as a focal point for

¹⁵ For example, St. Luke's Episcopal Church in San Diego, California, has provided meeting and cultural space for the San Diego South Sudanese community for fifteen years. See "Who We Are," St. Luke's Episcopal Church, at <<https://www.stlukesnorthpark.org/>>. *Amicus* Darfur Community in Iowa partners with the local St. Andrews Episcopal Church for community and cultural space.

the voice of the community, provide a sense of belonging and hope for the future, and facilitate connections between individual community members and other Sudanese-American communities across the country.¹⁶

Though this list of services is long and varied, it does not tell the entire story: Sudanese-American Community Groups such as *amici* are the lifeblood of their communities. It is not an exaggeration to say that many individuals—particularly those most deeply traumatized—would be unable to continue if not for the support provided by these groups.

Amici believe that a successful resolution of this case is crucial not just to the individual plaintiffs or a narrow interest group, but rather for the entire large and legitimate Sudanese-American community, who live daily with the long-term mental and physical disabilities significantly caused by defendants BNP Paribas S.A., BNP Paribas North America, Inc., and BNP Paribas S.A., New York Branch. Through *amici*, the Sudanese-American community asserts its collective interest in the importance of having a remedy against these perpetrators so that they may overcome their ongoing atrocity-related disabilities and begin to live again.

///

///

¹⁶ Sudanese-American communities can be found all across the United States. There are communities in Arizona, California, Idaho, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Nebraska, New York, North Carolina, North Dakota, Virginia, and Washington, to name a few.

CONCLUSION

It is clear from this list of achievements—among a community that has only existed in the United States for a little more than twenty years—that Sudanese Americans are motivated, hard-working, entrepreneurial, and determined to succeed. They want to integrate into American society, and give back to their adopted homeland as a way of giving thanks for the opportunities that were given to them. Their children are growing up American, look forward to attending college, and have dreams that are far bigger than anything their parents imagined.

Amici stand in a long line of private associations in the United States who, through their combined efforts and energy, seek to achieve success. They exemplify the American can-do spirit, and through their activities help their members to become American.

The Constitution guarantees every American the right of access to justice through the courts. *See Christopher v. Harbury*, 536 U.S. 403, 415 and accompanying footnote (2002) (noting the “separate and distinct right to seek judicial relief for some wrong” founded in multiple Constitutional clauses). Accordingly, *amici* Sudanese-American Community Groups urge this Court to reverse the district court’s ruling dismissing the claims and remand for further proceedings on the merits.

DATED: July 12, 2018

Respectfully submitted,

By: /s/ Rajika L. Shah

Rajika L. Shah

1841B Kelton Avenue

Los Angeles, CA 90025

Telephone: (818) 272-9687

Counsel for *Amici Curiae*

Sudanese-American Community Groups

APPENDIX A
LIST OF *AMICI CURIAE*¹⁷

Dallas Ft. Worth Sudanese Community
Irving, TX

Darfur Community in Iowa
Des Moines, IA

Darfur Women Action Group
Washington, D.C.

Nile Sisters Development Initiative
San Diego, CA

Lost Boys Center for Leadership Development
San Diego, CA

¹⁷ In addition to the *amici* listed here, several other Sudanese-American Community Groups expressed interest in joining this brief but were unable to do so due to challenges in obtaining formal consent. Many groups, particularly smaller ones, do not have a permanent email address or website, are run by volunteers who work at other jobs during the day, and can be difficult to reach. They are: Gogrial Community Organization in the United States of America (Des Moines, Iowa); New Life Family Alliance Inc. (Omaha, Nebraska); Equatorian South Sudanese Community Association (ESSCA-USA) (North Carolina chapter); Sudanese American Youth Center San Diego (SAYCSD) (San Diego, California); South Sudan Christian Youth and Community Organization (San Diego, California).

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G), and using the word count function of Microsoft Word, the undersigned hereby certifies that this brief of *amici curiae* Sudanese-American Community Groups contains 3,084 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). The brief's type size and type face comply with Fed. R. App. P. 32(a)(4), (5), and (6) because it has been prepared in a proportionally spaced, roman typeface in 14-point using Microsoft Word.

DATED: July 12, 2018

Respectfully submitted,

By: /s/ Rajika L. Shah

Rajika L. Shah
1841B Kelton Avenue
Los Angeles, CA 90025
Telephone: (818) 272-9687

Counsel for *Amici Curiae*
Sudanese-American Community Groups

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the
Appellate CM/ECF System

I hereby certify that I electronically filed the

**BRIEF OF SUDANESE-AMERICAN COMMUNITY GROUPS AS *AMICI*
CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS, AND
SUPPORTING REVERSAL**

with the Clerk of the Court of the United States Court of Appeals for the Second
Circuit by using the Appellate CM/ECF system on

August 9, 2018

I certify that all participants in the case are registered CM/ECF users and that
service will be accomplished via the CM/ECF system.

/s/ Rajika L. Shah

Rajika L. Shah