

Case No. 19-13926-RR

In the United States Court of Appeals
for the Eleventh Circuit

DOE, *et al.*,
Plaintiffs-Appellants-Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC., *et al.*,
Defendants-Appellees-Cross-Appellants.

(IN RE: CHIQUITA BRANDS INTERNATIONAL, INC., ALIEN TORT
STATUTE & SHAREHOLDER DERIVATIVE LITIGATION)

On Appeal from the United States District Court
for the Southern District of Florida
No. 08-md-01916

(Nos. 07-cv-60821, 08-cv-80421, 08-cv-80465, 08-cv-80480, 08-cv-80508, 10-cv-
60573, 17-cv-81285, & 18-cv-80248)
(The Honorable Kenneth A. Marra)

***AMICI CURIAE* HUMAN RIGHTS PRACTITIONERS AND SCHOLARS’
REPLY TO DEFENDANTS-APPELLEES’ OPPOSITION TO *AMICI*’
MOTION FOR LEAVE TO FILE AN *AMICUS* BRIEF**

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Counsel for Amici Curiae (Captions continued on next page)

ANTONIO GONZALEZ CARRIZOSA, *et al.*,
Plaintiffs,

JUANA DOE 11 and MINOR DOE 11A,
Plaintiffs-Appellants-Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC., KEITH E. LINDNER, CYRUS
F. FRIEDHEIM, JR., ROBERT W. OLSON, ROBERT F. KISTINGER, and
WILLIAM A. TSACALIS,
Defendants-Appellees-Cross-Appellants.

District Court No. 07-cv-60821

JOHN DOE 1, *et al.*,
Plaintiffs,

JOHN DOE 7, individually and as representative of his deceased son
JOHN DOE 8, and JANE DOE 7, individually and as representative of her
deceased husband JOHN DOE 11,
Plaintiffs-Appellants-Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC.,
Defendant-Appellee-Cross-Appellant,

MOE CORPORATIONS 1-10,
Defendants,

CHARLES KEISER, CYRUS FRIEDHEIM, ROBERT KISTINGER, ROBERT
OLSON, WILLIAM TSACALIS, and CARLA A. HILLS, as personal
representative of the Estate of RODERICK M. HILLS, SR,
Defendants-Appellees-Cross-Appellants.

District Court No. 08-cv-80421

JANE/JOHN DOES (1-144),
Plaintiffs,

JUANA PEREZ 43A,
Plaintiff-Appellant-Cross-Appellee,

v.

CHIQUITA BRANDS INTERNATIONAL, INC.,
Defendant-Appellee-Cross-Appellant,

DAVID DOES 1-10, *et al.*,
Defendants,

CYRUS F. FRIEDHEIM, JR., ROBERT W. OLSON, ROBERT F. KISTINGER,
and WILLIAM A. TSACALIS,
Defendants-Appellees-Cross-Appellants.

District Court No. 08-cv-80465

JUAN DOES, 1-377, *et al.*,
Plaintiffs,

JUVENAL ENRIQUE FONTALVO CAMARGO and NANCY MORA LEMUS,
Plaintiffs-Appellants Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC.,
Defendant-Appellee-Cross-Appellant,

INDIVIDUALS “A THROUGH J”, *et al.*, (whose identities are presently
unknown),
Defendants.

District Court No. 08-cv-80480

JOSE LEONARDO LOPEZ VALENCIA, *et al.*,
Plaintiffs,

JOSE LOPEZ 339,
Plaintiff-Appellant-Cross-Appellee,

v.

CHIQUITA BRANDS INTERNATIONAL, INC., ROBERT F. KISTINGER,
WILLIAM A. TSACALIS, and KEITH E. LINDNER,
Defendants-Appellees-Cross-Appellants.

District Court No. 08-cv-80508

ANGELA MARIA HENAO MONTES, *et al.*,
Plaintiffs,

ANA OFELIA TORRES TORRES, PASTORA DURANGO, and GLORIA
EUGENIA MUÑOZ,
Plaintiffs-Appellants Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC., and KEITH E. LINDNER,
Defendants-Appellees Cross-Appellants.

District Court No. 10-cv-60573

JOHN DOE 1, *et al.*,
Plaintiffs,

JOHN DOE 7, individually and as representative of his deceased son
JOHN DOE 8, and JANE DOE 7, individually and as representative of her
deceased husband JOHN DOE 11,
Plaintiffs-Appellants-Cross-Appellees,

v.

CARLA A. HILLS, as personal representative of the Estate of RODERICK M.
HILLS, SR,
Defendant-Appellee-Cross-Appellant.

District Court No. 17-cv-81285

JOHN DOE 1, *et al.*,
Plaintiffs,

JOHN DOE 7, individually and as representative of his deceased son
JOHN DOE 8, and JANE DOE 7, individually and as representative of her
deceased husband JOHN DOE 11,
Plaintiffs-Appellants-Cross-Appellees,

v.

CHIQUITA BRANDS INTERNATIONAL, INC., CHARLES KEISER, CYRUS
FRIEDHEIM, ROBERT KISTINGER, ROBERT OLSON, and WILLIAM
TSACALIS,
Defendants-Appellees Cross-Appellants.

District Court No. 17-cv-81285

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT OF *AMICI CURIAE***

Amici curiae file this Certificate of Interested Persons and Corporate Disclosure Statement, pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1-1-3, 27-1(a)(9), and 28-1(b).

Amici curiae state that they are all natural persons except for the Center for Justice and Accountability (“CJA”) and Partners in Justice International. CJA is a 501(c)(3) non-profit public benefit corporation, incorporated in Washington, D.C. and registered as a foreign non-profit corporation in California. It has no parent corporation and no publicly traded stock. No publicly held corporation owns any part of it. Partners in Justice International is a 501(c)(3) non-profit corporation, incorporated in Washington, D.C. It has no parent corporation and no publicly traded stock. No publicly held corporation owns any part of it.

The remaining *amici curiae* – Professor Gregory S. Gordon, Professor Kevin Jon Heller, Ambassador Stephen J. Rapp, Ambassador David Scheffer, Professor Beth Stephens, Professor Ralph G. Steinhardt, and Professor Beth Van Schaack – all sign on to this Reply to Defendants-Appellees’ Opposition to *Amici*’s Motion for Leave to File an Amicus Brief in their individual capacities and not as representatives of any corporate entity.

The *amici curiae* represented herein certify that a list of interested persons, trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or

corporations (noted with stock symbol if publicly listed), that have an interest in the outcome of this appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, and other identifiable legal entities related to a party, known to *amici curiae*, are as follows:

1. The individual plaintiffs are listed in the Complaints as filed in the Southern District of Florida in Case Nos. 07-60821-CIV-MARRA (Carrizosa); 08-80421-CIV-MARRA (N.J. Action); 08-80465 CIV-MARRA (D.C. Action, Does 1-144); 08-80508-CIV-MARRA (Valencia); 08-80408-CIV-MARRA (Manjarres, NY Action); 10-60573-CIV-MARRA (Montes); and in 10-80652-CIV-MARRA (D.C. Action, Does 1-976); 11-80404-CIV-MARRA (D.C. Action, Does 1-677); 17-81285-CIV-MARRA (D.C. Action, Does v. Hills); 18-80248-CIV-MARRRA (Ohio Action, John Doe 1).

2. The thousands of other individual Plaintiffs whose complaints have been consolidated in the instant multidistrict litigation, Case No. 0:08-md-1916-KAM.

3. Additional interested parties are:

Amici have included persons previously identified by Chiquita Brands International as having a financial interest in this litigation. *Amici* do not have direct information as to whether these persons continue to have such an interest.

Abrams, Louis D.

Abreu Medina, Ligia

Adelman, Roger M.

Agrícola Bananera Santa Rita, S. de R. L.

Agrícola Longaví Limitada

Agrícola Santa Marta Limitada

Agroindustria Santa Rosa de Lima, S.A.

Aguirre, Fernando

Alamo Land Company

Alexander, Lauren

Alsama, Ltd.

American Produce Company

Americana de Exportación S.A.

Anacar LDC

Arnett, Ashley L.

Arvelo, José E.

Arnold & Porter Kaye Scholer LLP

Arrubla Devis Asociados

ASD de Venezuela, S.A.

Associated Santa Maria Minerals B C Systems, Inc.

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Bach, Lucinda J.

Bandy, Kevin M.

Banta, Natalie M.

Baer, Jr., The Honorable Harold

Barbush Development Corp.

Bates, The Honorable John D.

Berman, Richard E.

Berman, Steve W.

Betz, Cynthia Stencil

Bienes Del Rio, S.A.

Blalack II, K. Lee

Blank Rome LLP

Blue Fish Holdings Establishment

Bocas Fruit Co. L.L.C.

Boies Schiller & Flexner, LLP

Borja, Ludy Rivas

Borja Hernandez, Genoveva Isabel

Boyd, David R.

Brackman, Liza J.

Braunstein, Rachel L.

Bronson, Ardith M.

Brown, Benjamin D.

Browne, Maureen F.

Brundicorpi S.A.

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Burman, John Michael

Cambs, Peter James

Carrillo, Arturo

Cardenas, John Arturo

Carter, Melanie S.

Casey, Daniel Arthur

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C.C.A. Fruit Service Company Limited

CB Containers, Inc.

Centro Global de Procesamiento Chiquita, S.R.L.

Charagres, Inc., S.A.

Chaves, Matthew Ronald

Chiquita (Canada) Inc.

Chiquita (Shanghai) Enterprise Management Consulting Co., Ltd.

Chiquita Banana Company B.V.

Chiquita Banana Ecuador CB Brands S.A.

Chiquita Brands Costa Rica Sociedad de Responsabilidad Limitada

Chiquita Brands International Foundation

Chiquita Brands International Sàrl

Chiquita Brands International, Inc.

Chiquita Brands L.L.C.

Chiquita Central Europe, s.r.o.

Chiquita Compagnie des Bananes

Chiquita Deutschland GmbH

Chiquita Food Innovation B.V.

Chiquita for Charities

Chiquita Europe B.V.

Chiquita Finance Company Limited

Chiquita For Charities

Chiquita Fresh B.V.B.A.

Chiquita Fresh España, S.A.

Chiquita Fresh North America L.L.C.

Chiquita Fruit Bar (Belgium) BVBA

Chiquita Fruit Bar (Germany) GmbH

Chiquita Fruit Bar GmbH

Chiquita Frupac B.V.

Chiquita Guatemala, S.A.

Chiquita Hellas Anonimi Eteria Tropikon Ke Allon Frouton

Chiquita Holding SA

Chiquita Holdings Limited

Chiquita Honduras Company Ltd.

Chiquita Hong Kong Limited

Chiquita International Services Group N.V.

Chiquita Italia, S.p.A.

Chiquita Logistic Services El Salvador Ltda.

Chiquita Logistic Services Guatemala, Limitada

Chiquita Logistic Services Honduras, S.de RL

Chiquita Melon Packers, Inc.

Chiquita Mexico, S. de R.L. de C.V.

Chiquita Nature and Community Foundation

Chiquita Nordic Oy

Chiquita Norway As

Chiquita Panama L.L.C.

Chiquita Poland Spolka Z ograniczonaodpowiedzialnoscia

Chiquita Portugal Venda E Comercializaçao De Fruta, Unipessoal

Chiquita Relief Fund - We Care

Chiquita Shared Services

Chiquita Singapore Pte. Ltd.

Chiquita Slovakia, S.r.o.

Chiquita Sweden AB

Chiquita Tropical Fruit Company B.V.

Chiquita Tropical Ingredients, Sociedad Anónima

Chiquita UK Limited

Chiquita US Corporation

ChiquitaStore.com L.L.C.

Chiriqui Land Company

Chomsky, Judith Brown

Cioffi, Michael L.

CILPAC Establishment

Clark, Alison K.

Coast Citrus Distributors Holding Company

Cohen Millstein Sellers & Toll PLLC

Collingsworth, Terrence P.

Colombian Institute of International Law

Compañía Agrícola de Nipe, S.A.

Compañía Agrícola de Rio Tinto Compañía Agrícola del Guayas

Compañía Agrícola e Industrial Ecuaplantation, S.A.

Compañía Agrícola Sancti-Spiritus, S.A.

Compañía Bananera Atlántica Limitada

Compañía Bananera Guatemateca Independinte, S.A.

Compañía Bananera La Ensenada, S. de R.L.

Compañía Bananera La Estrella, S.A.

Compañía Bananera Los Laureles, S.A.

Compañía Bananera Monte Blanco, S.A.

Compañía Caronas, S.A.

Compañía Cubana de Navegación Costanera

Compañía Frutera América S.A.

Compañía La Cruz, S.A.

Compañía Mundimar, S.A.

Compañía Productos Agrícolas de Chiapas, S.A. de C.V.

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Conrad & Scherer, LLP

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Fresh Holding C.V.

Fresh International Corp.

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Heli Abel Torrado

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Mozabanana, Lda.

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Ordman, John

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Orr, Jason A.

Padukone, Aseem

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Porter, Newton Patrick

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Portnoi, Dimitri D.

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United Fruit Transports S.A.

United Reefer Services S.A.

Vahlsing, Marissa

Van Schaack, Beth

Vargas, Claret

Vazquez, The Honorable John Michael

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INTRODUCTION

Amici curiae respectfully submit that their motion for leave to file a proposed *amicus* brief should be granted.¹ The proposed *amicus* brief will assist the Court by providing both specific information and a unique perspective to the issues on appeal that are not otherwise offered by the parties.

ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 29(b), a motion for leave to file an *amicus* brief need only state the interest of the *amici* in filing, “the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case.” *Maples v. Thomas*, No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669, at *2 (N.D. Ala. Sept. 23, 2013) (quoting Fed. R. App. P. 29(b)). Ultimately, the function of an *amicus* brief is to be of assistance to the Court. *See Alabama v. United States*, No. 2:16-cv-0029-JEO, 2016 WL 7010948, at *2 (N.D. Ala. Apr. 22, 2016). “[A] broad reading [of desirability] is prudent” and it is better to “err on the side of granting leave” than risk “depriv[ing] [the court] of a resource that might have been of assistance.”² *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d

¹ Pursuant to the 11th Circuit’s General Order No. 44, “Restrictions on Visitors to the Court and Temporary Suspension of Paper Filing Requirements,” and the inability of *amici* to presently comply with paper filing requirements, this reply has only been filed electronically. The required paper copies will be filed at a future date to be established by the Court.

² Circuit courts that have examined the role of *amicus* briefs in detail, including the Third Circuit, have articulated several ways in which *amici* can be useful, such as

128, 132-33 (3d Cir. 2002); *see also Duronslet v. County of Los Angeles*, No. 2:16-cv-08933-ODW(PLAx), 2017 WL 5643144, at *1 (C.D. Cal. Jan. 23, 2017) (reasoning that it is “preferable to err on the side of” permitting [amicus] briefs”) (quoting *Neonatology Assocs.*, 293 F.3d at 133).

In examining a motion for leave to file, some district courts in this Circuit have adopted additional guidance from the Seventh Circuit that *amicus* briefs should be permitted in the following situations: (1) the “party is inadequately represented,” (2) the “amicus has a direct interest in another case that may be materially affected,” *or* (3) “the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Maples*, 2013 WL 5350669, at *2 (quoting *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)); *see also Alabama*, 2016 WL 7010948, at *2. According to the Seventh Circuit, the presence of one of these circumstances makes it “more likely” that “the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices*, 339 F.3d

“collect[ing] background or factual references that merit judicial notice,” “argu[ing] points deemed too far-reaching for emphasis by a party intent on winning a particular case,” bringing a “particular expertise not possessed by any party to the case,” and “explain[ing] the impact a potential holding might have on an industry or other group.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 132 (3d Cir. 2002) (quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279, 281 (1999)).

at 545; *see also Maples*, 2013 WL 5350669, at *2 (noting that “amicus briefs are particularly helpful” in these circumstances).

Defendants-Appellees’ opposition to *amici*’s motion turns on two interrelated misapprehensions. First, they fundamentally misunderstand the criteria for granting a request to file an *amicus* brief. Second, Defendants-Appellees mischaracterize the specific information and unique perspective that *amici* submit to aid the Court in its deliberations.

Amici have plainly satisfied the requirements of Federal Rule of Appellate Procedure 29(b) by setting forth their interest in filing,³ *see* Motion for Leave to File Brief as *Amici Curiae* Human Rights Practitioners and Scholars in Support of Plaintiffs-Appellants and Supporting Reversal (“Motion”) at 1-6, why their brief is desirable, and its relevance to the disposition of the case, *see* Motion at 6-8. The proposed *amicus* brief further details the specific information and unique perspective not otherwise offered by the parties that *amici* respectfully submit would assist the Court.

³ Defendants-Appellees’ insinuations regarding *amici*’s independence are baseless. Defendants-Appellees’ Opposition to *Amici*’s Motion for Leave to File Brief as *Amici Curiae* (“Opposition”) at 12. Nonetheless, it bears repeating that *amici* are independent of the parties in this case. *See* Brief of *Amici Curiae* Human Rights Practitioners and Scholars in Support of Plaintiffs-Appellants and Supporting Reversal (“Proposed Brief”) at 1 n.1 (certifying that “[n]o counsel for a party authored this brief in whole or in part, and no persons other than *amici* or their counsel contributed money to preparing or submitting this brief.”).

As detailed in their proposed brief, *amici* are concerned that, if left uncorrected, the District Court's legal errors will have far-reaching implications for evidentiary issues in complex litigation, including those dealing with mass atrocity crimes. Proposed Brief at 7. The potential impact extends to a broad range of complex litigation before this and other U.S. courts. *See, e.g.*, Proposed Brief at 15-16 (providing examples of numerous federal court decisions relying on evidentiary principles relevant to this appeal, including Eleventh Circuit decisions ranging from insider trading to employment discrimination and RICO claims). Mass atrocity litigation, which *amici* specialize in, is a form of complex litigation that is particularly vulnerable to shifts in evidentiary standards regarding the propriety of circumstantial pattern evidence. *See, e.g.*, Proposed Brief at 16-17 (noting importance of pattern evidence relied upon in *Mamani v. Berzain*, 309 F.Supp.3d 1274 (S.D. Fla. 2018)). None of the parties have addressed these broader implications, nor do they have an incentive to look beyond the confines of their case on appeal.

Amici — a group of international human rights practitioners and scholars with specialized knowledge and expertise in human rights litigation in U.S. federal courts and international tribunals — are also well-positioned to provide a unique perspective to the Court on these issues. *Amici* are, individually and collectively as a group, qualified to offer to the Court their insights on the significance of

evidentiary standards within the context of mass atrocity litigation. *Amici* Ambassador Stephen J. Rapp and Ambassador David J. Scheffer, for example, were both Ambassador-at-Large heading the Office of Global Criminal Justice in the U.S. Department of State, from 2009 to 2015 and from 1997 to 2001, respectively. They operated at the highest levels of government to address accountability for mass atrocity crimes.⁴ *Amicus*, the Center for Justice and Accountability, has litigated nearly twenty civil cases involving mass atrocity in U.S. courts⁵ and submitted approximately thirty *amicus* briefs to these same courts on procedural and

⁴ Judges frequently rely on *amici* with practical experience in the legal issues presented to add valuable information to their analysis. *See, e.g., Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1423 (2018) (Sotomayor, J., dissenting) (citing for support *amicus* brief filed by Ambassador David J. Scheffer); *Trump v. Hawaii*, 138 S. Ct. 2392, 2444-45 (2018) (Sotomayor, J., dissenting) (citing for support *amicus* brief filed by former national security officials, including former Secretary of State Madeleine Albright and former State Department Legal Adviser John Bellinger III); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 387 n.25 (2000) (citing *amicus* brief by Senator Barbara Boxer and others); *see also Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 99 (2009) (Stevens, J., dissenting) (citing for support *amicus* brief of current and former prosecutors); *City of Los Angeles v. Barr*, 929 F.3d 1163, 1191 (9th Cir. 2019) (Wardlaw, J., dissenting) (citing for support *amicus* brief filed by "current and former prosecutors and law enforcement leaders").

⁵ CJA's experience in mass atrocity litigation in U.S. Federal Court includes the following eight cases in the Eleventh Circuit: *Jara v. Nunez*, 878 F.3d 1268 (11th Cir. 2018); *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006); *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005); *Jaramillo v. Naranjo*, No. 10-21951-CIV-TORRES, 2015 WL 10857563 (S.D. Fla. Sept. 30, 2015); *Lizarbe v. Hurtado*, No. 07-21783-CIV-JORDAN, 2007 WL 9702177 (S.D. Fla. Nov. 21, 2007); *Jean v. Dorelien*, No. 03-20161-CIV-KING/GARBER (S.D. Fla. Aug. 16, 2007); *Reyes v. Grijalba*, No. 02-22046-CIV-LENARD/KLEIN (S.D. Fla. Mar. 31, 2006); *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322 (N.D. Ga. 2002).

substantive issues related to mass atrocity crimes.⁶ Similarly, *amicus* Partners in Justice International is comprised of lawyers and advocates with decades of experience in litigating mass atrocity cases in U.S. and international forums. Finally, *amici*'s proposed brief reflects the expertise of leading legal scholars on mass atrocity, including the pursuit of accountability through litigation in U.S. courts.⁷ Defendants-Appellees have not challenged *amici*'s qualifications nor the unique perspective offered in the proposed *amicus* brief — nor can they. Indeed, this Court

⁶ See, e.g., Brief of *Amici Curiae*, the Ctr. for Constitutional Rights and the Ctr. for Justice and Accountability, in Support of Plaintiffs-Appellees and Affirmance, *Estate of Alvarez v. Johns Hopkins Univ.*, No. 19-1530 (4th Cir. Sept. 18, 2019); Brief of *Amici Curiae* Retired U.S. Military Commanders and Law of War Scholars in Support of Plaintiffs-Appellants and Reversal, *Mamani v. Sanchez Berzain*, No. 18-12728 (11th Cir. Oct. 12, 2018); Brief for the Ctr. for Justice & Accountability as *Amicus Curiae* in Support of the Plaintiff-Appellant and Reversal of the District Court's Decision, *Belhas v. Ya'alon*, 515 F.3d 1279 (D.C. Cir. 2008) (No. 07-7009); Brief for the Ctr. for Justice and Accountability et al. as *Amici Curiae* in Support of the Plaintiffs-Appellants and Reversal of the District Court's Decision, *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) (No. 07-2579-cv).

⁷ For example, *amici* Beth Van Schaack and Beth Stephens have authored relevant casebooks. Beth Van Schaack is the author of one of the principal casebooks on international criminal law, see Beth Van Schaack & Ronald C. Slye, *International Criminal Law and Its Enforcement, Cases and Materials* (4th ed. 2020), and Beth Stephens is the co-author of a canonical volume on *International Human Rights Litigation in U.S. Courts*, see Beth Stephens et al., *International Human Rights Litigation in U.S. Courts* (2d ed. 2008), one of only a handful of books included in the Federal Judicial Center's guide for judges in international human rights litigation. See David Nersessian, Fed. Judicial Ctr., *International Human Rights Litigation: A Guide for Judges* 160 (2016).

has routinely accepted similar proposed *amicus* briefs, including those of the proposed *amici*.⁸

Compounding their error, Defendants-Appellees mischaracterize the arguments put forth by *amici*. The proposed *amicus* brief highlights the potential far-reaching implications the District Court's decision has for evidentiary analysis in complex federal litigation, including those dealing with mass atrocity crimes. Proposed Brief at 7. As argued in the proposed *amicus* brief, the totality of evidence standard and the use of circumstantial pattern evidence are bedrock evidentiary principles regularly used by *U.S. courts* in complex litigation, including mass atrocity cases — principles which the District Court ignored. *See, e.g.*, Proposed Brief at 11 (“U.S. human rights litigation, including in this Circuit, follows the same rule, and provides guidance on the reasoning underpinning use of the totality standard in complex cases such as this one.”). Nowhere do *amici* posit that the Court should forego the application of the Federal Rules of Evidence in favor of the

⁸ *See e.g.*, *Doe v. Drummond Co.*, No. 13-15503-FF (11th Cir. May 1, 2014) (granting leave to file multiple *amicus* briefs by legal scholars and practitioners, including Professor Gregory S. Gordon and Professor Kevin Jon Heller); *Mamani v. Berzain*, No. 09-16246-FF (11th Cir. Nov. 17, 2011) (granting leave to file several legal scholar and practitioner *amicus* briefs); *Sinaltrainal v. Coca-Cola Co.*, No. 06-15851-HH (11th Cir. May 2, 2008) (granting leave to file *amicus* brief of human rights advocates, including the George Washington University Law School International Human Rights Clinic); *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, No. 04-10234-HH (11th Cir. Apr. 21, 2004) (granting leave to file *amicus* brief of human rights advocates and legal scholars, including the Center for Justice and Accountability and Professor Beth Stephens).

evidentiary standards used by international criminal tribunals. To state otherwise, as Defendants-Appellees do, is simply without basis. *See* Opposition at 8-9. Instead, *amici* draw on the analysis of the international criminal tribunals as illustrative examples of how specialized courts that regularly engage with mass atrocity crimes have approached these complex cases. This comparative perspective is precisely the type of contribution that *amicus* briefs can provide. For example, this Court has found useful an *amicus* brief detailing “cases wherein civilians, including private business owners, have been found liable . . . in customary international law and in current international tribunals.” *Doe v. Drummond Co.*, 782 F.3d 576, 610 (11th Cir. 2015). Information on the practices and outcomes of litigation in international tribunals is not a plea to apply the rules of a foreign or international court. Instead, it provides a comparative perspective that this Court may find useful in considering matters that, by their nature, resonate with international human rights or international criminal prosecution. In sum, none of the parties offer the Court the unique information and perspective reflected in the proposed *amicus*.

CONCLUSION

For the foregoing reasons, the prospective *amici* respectfully request leave to appear as *amici curiae* in the above-captioned matter and to file their proposed brief in this proceeding.

/s/ Claret Vargas

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CERTIFICATE OF COMPLIANCE

I certify that this reply is in compliance with Fed. R. App. P. 27(d)(1)(E), as it is proportionally spaced, is in Times New Roman Font, and has a typeface of 14 points. This reply complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(C) because it contains 2,275 words, as counted by Microsoft Word, excluding the accompanying documents authorized by Fed. R. App. P. 27(a)(2)(B).

/s/ Claret Vargas
Claret Vargas

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2020, I caused the foregoing document to be filed through the Court's CM/ECF system. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Claret Vargas
Claret Vargas