



ACLJ Case Summary: Sameh Sami S. Khouzam v. Thomas H. Hogan
January 10, 2008

Sameh Sami S. Khouzam v. Thomas H. Hogan, 3:CV-07-0992 (M.D. Pa. Jan. 10, 2008) (Judge Vanaskie)

On July 31, 2007, the American Center for Law & Justice (“ACLJ”) – along with its European affiliate the European Centre for Law and Justice (“ECLJ”)¹ – asked a federal district court in Pennsylvania to protect the human rights of a Coptic Christian from Egypt who would likely face torture and possible death if returned to his native country. The ACLJ and the ECLJ – which has special consultative status with the United Nations – filed an amicus brief with the district court on behalf of Sameh Sami S. Khouzam.

As the ACLJ and ECLJ mentioned in the amicus brief filed on Mr. Khouzam’s behalf, “[t]here is a consensus among international monitoring agencies that the Egyptian government routinely uses torture, especially as a method of law enforcement.”² Moreover, we also explained in our amicus brief that “Coptic Christians face widespread persecution in Egypt, including kidnappings and forced conversions.”³ Citing the U.S. Copts Association, the brief explained the imminent danger Mr. Khouzam would face if deported to Egypt: “Despite international disapproval, the Egyptian government ‘continues to deny Copts basic rights such as judicial and police protection from persecution, freedom of religious expression and worship, and equal opportunity employment.’ As a result, millions of Coptic Christians have immigrated to Western countries to flee persecution in Egypt.”⁴

On January 10, 2008, Judge Vanaskie, of the United States District Court for the Middle District of Pennsylvania, vacated the decision of the Secretary of Homeland Security to terminate Mr. Khouzam’s court-ordered deferral of removal. Mr. Khouzam has been returned to his previous status, remaining in the United States under a deferral of removal, and has been released from the federal facility that has been holding him for the last seven months.

¹ The ECLJ holds special consultative status from the U.N. – a designation that enhances the global nature of the ACLJ’s religious liberty and human rights work that already spans more than 35 countries.

² *Amicus Brief of the American Center for Law & Justice and the European Centre for Law & Justice in Support of Petitioner Sameh Sami S. Khouzam* (“ACLJ and ECLJ Amicus Brief”) 5, July 31, 2007, filed in *Khouzam v. Hogan*, 3:07-cv-00992 (M.D. Pa.).

³ *ACLJ and ECLJ Amicus Brief*, *supra* n.2 at 9.

⁴ *Id.* at 7.

Mr. Khouzam had previously been granted deferral of removal because, as the Immigration Judge had previously found, “*the evidence is overwhelming that [Khouzam] will more likely than not be subjected to torture by a responsible Egyptian government official who will breach his duty and engage in the torture of [Khouzam], or at the least, will abdicate such duty by acquiescing in such torture . . .*.”⁵ The Board of Immigration Appeals affirmed that decision in 2000;⁶ after a series of appeals, in 2004, the Second Circuit held that Mr. Khouzam could not be removed under a United Nations treaty that the United States has signed (together with numerous other countries), the Convention Against Torture (“CAT”). Although the Second Circuit Court of Appeals affirmed that Mr. Khouzam was not eligible for asylum or withholding of removal, the court found that Mr. Khouzam should be granted deferral of removal under the CAT, concluding that “‘Khouzam will more likely than not be tortured if he is deported to Egypt.’”⁷

Mr. Khouzam had been peacefully residing in the United States, practicing his Christian faith, when he was taken into custody on May 29, 2007 “while reporting as required at the [Bureau of Immigration and Customs Enforcement (“BICE”)] facility in York [Pennsylvania].”⁸ Mr. Khouzam’s “deferral of removal had been terminated four months earlier based on diplomatic assurances from the Government of Egypt that he would not be tortured.”⁹ Mr. Khouzam’s attorneys immediately filed a Petition for Habeas Corpus, and the ACLJ and the ECLJ filed an amicus brief in support of Mr. Khouzam’s petition.

The ACLJ and ECLJ brief contended that the CAT should apply in Mr. Khouzam’s case. The CAT states that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Judge Vanaskie agreed. The court found that, although the government’s acceptance of diplomatic assurances from States such as Egypt are not a *per se* violation of the CAT and the Foreign Affairs Reform and Restructuring Act (“FARRA”) (a federal Act which implemented the CAT),¹⁰ the United States Government had an obligation to allow an impartial tribunal to review the government’s asserted “diplomatic assurances” that had allegedly been provided by the Egyptian Government.¹¹

Specifically, the court found a substantial question of fact as to whether the Government complied with regulations concerning deportation based upon diplomatic assurances.¹² The government, the court found, failed to provide sufficient evidence that the Department of State and the Department of Homeland Security had followed the regulations under FARRA because the documentation provided with regard to Egypt’s diplomatic assurances were not signed or sworn: “[T]here is no competent evidence that the appropriate high level official at the

⁵ *Khouzam v. Hogan*, 3:07-cv-00992-TIV, Memorandum Opinion at 5 (M.D. Pa. Jan. 10, 2008) (quoting Response to Habeas Corpus Pet., Dkt. Entry 9, at 000499-500) (emphasis added by court)).

⁶ *Id.* at 6.

⁷ *Id.* at 9 (quoting *Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004)).

⁸ *Id.* at 10.

⁹ *Id.*

¹⁰ *Id.* at 19-22.

¹¹ *Id.* at 29-33.

¹² *Id.* at 2.

Department of Homeland Security actually engaged in consultations with the appropriate official at the Department of State concerning the Egyptian assurances.”¹³ As the court explained, “[t]he regulations require more than the mere forwarding of diplomatic assurances obtained by the State Department. They require *consultation* at the highest levels of the Departments of State and Homeland Security.”¹⁴

Moreover, the Government’s refusal to allow the court to review the diplomatic assurances by Egypt was “not consonant” with the congressional intent of FARRA.¹⁵ The Government “contend[ed] that neither the diplomatic assurance itself, nor the record concerning the diplomatic assurance and the discussions that may have occurred, is to be made available to Khouzam with an opportunity to be heard on the reliability of the assurance.”¹⁶ Again, Judge Vanaskie disagreed, finding that FARRA did require such review: “There is nothing in FARRA, however, that contemplates a scenario where the Executive Branch would effect the removal of an alien who has shown a likelihood of torture by relying upon a secret, unreviewable diplomatic assurance.”¹⁷

Moreover, even if FARRA did not require review by an impartial tribunal, the Due Process Clause of the Fifth Amendment did require such review, the court held. As Judge Vanaskie noted, President Bush has described the right to be free from torture as an “inalienable human right.”¹⁸ The court continued, explaining that, “[f]reedom from torture falls squarely within the concept of ‘liberty’ protected by the Fifth Amendment.”¹⁹ Notably, the court found that the fundamental right to freedom from torture is “surely protected by the Fifth Amendment regardless of a person’s immigration status.”²⁰ Comparing the practice of other signatory States to the CAT,²¹ the court noted that all such parties “to the CAT provide for judicial review of the reliability and sufficiency of diplomatic assurances.”²² As such, the court found that, “consultation among members of the Executive Branch, even assuming it occurred, does not satisfy . . . the Fifth Amendment”²³ As the court explained, “[t]he involvement of more than one of the servants of [the] unitary executive in commencing a deprivation does not create an apparent substitute for the notice requirement inherent in the constitutional norm.”²⁴

The ACLJ and the ECLJ applaud the court’s decision in this case – a well-reasoned decision that acknowledges and protects human rights and religious freedoms for people of faith, including the freedom to avoid deportation to countries where religious persecution is rampant.

¹³ *Id.* at 25.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 26.

¹⁷ *Id.* at 29.

¹⁸ *Id.* at 38.

¹⁹ *Id.*

²⁰ *Id.*

²¹ “Hall, Austria, Canada, Germany, Netherlands, Russia, Sweden, Switzerland, Turkey and the United Kingdom.” *Id.* at 39.

²² *Id.* at 39. International cases (requiring judicial review) are considered “relevant.” *Id.* at 41 (citing *Lawrence v. Texas*, 539 U.S. 558, 576-77 (2003); *Roper v. Simmons*, 543 U.S. 551, 575 (2005); *Thompson v. Oklahoma*, 487 U.S. 815, 830-31 (1988)).

²³ *Id.* at 43.

²⁴ *Id.* (quoting *Nat’l Council of Resistance of Iran v. Dep’t of State*, 251 F.3d 192, 207 (D.C. Cir. 2001)).

CURRENTLY:

On the same day that Judge Vanaskie issued the court's opinion, the government filed its Notice of Appeal to the Third Circuit Court of Appeals, and Judge Vanaskie has granted a five-day stay of Mr. Khouzam's release pending action on the case by the Third Circuit.