

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

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SAMEH SAMI S. KHOUZAM, )  
 )  
 *Petitioner,* )  
 )  
 v. )  
 )  
 THOMAS H. HOGAN, *et al.*, )  
 )  
 *Respondents.* )

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Case No. 3:CV-07-0992  
(Judge Thomas I. Vanaskie)

**AMICUS BRIEF FOR THE AMERICAN CENTER FOR LAW AND  
JUSTICE AND THE EUROPEAN CENTER FOR LAW AND JUSTICE IN  
SUPPORT OF PETITIONER SAMEH SAMI S. KHOUZAM**

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## **INTEREST OF AMICI**

The American Center for Law and Justice (ACLJ) is a public interest law firm committed to ensuring the ongoing viability of constitutional freedoms in the United States, including the defense of religious liberties. ACLJ attorneys have argued or participated as amicus curiae in numerous cases involving constitutional issues before the Supreme Court of the United States as well as lower federal and state courts.

The European Center for Law and Justice is an international law firm dedicated to protecting human rights and religious freedoms for people of faith in Europe. Attorneys for the ECLJ have been counsel in numerous cases before the European Court of Human Rights. Additionally, the ECLJ has special Consultative Status as an NGO before the United Nations.

The proper resolution of this case is a matter of substantial organizational concern to the ACLJ and the ECLJ because of their commitment to religious freedom, including the freedom to avoid deportation to countries where religious persecution is rampant.

## ARGUMENT

### I. DIPLOMATIC ASSURANCES FROM EGYPT SHOULD CARRY NO WEIGHT IN DETERMINING WHETHER EGYPT IS LIKELY TO TORTURE SAMEH KHOUZAM.

The United Nations Convention against Torture (“CAT”)<sup>1</sup> provides 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.”<sup>2</sup> Thus, a country violates its treaty obligations by deporting an individual where he or she will be at risk of torture.<sup>3</sup>

The CAT nowhere suggests that diplomatic assurances from the receiving government are alone sufficient to fulfill the sending country’s obligations under

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<sup>1</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 23 I.L.M. 1027 [hereinafter CAT].

<sup>2</sup> *Id.* at part I, art. 3.

<sup>3</sup> International human rights law also proscribes the deportation of aliens where, as in this case, a substantial risk of torture or persecution exists in the receiving country and where, as here, objective and quantifiable data from international sources substantiates the likelihood of persecution or torture. The European Court of Human Rights has consistently held that Member States may not deport any alien where substantial grounds have been shown that the person in question, if expelled, would face a real risk of being subjected to persecution, torture or life threatening treatment in the receiving country. *See, e.g., Case of Cruz Varas & Others v. Sweden*, app. no. 15576/89, judgment of 20 March 1991, Series A no. 201, ¶¶ 69-70 (European Ct. Human Rights); *Case of Soering v. United Kingdom*, app. no. 14038/88, judgment of 7 July 1989, Series A. no. 161, ¶¶ 90-91 (European Ct. Human Rights); *Case of Vilvarajah v. United Kingdom*, app. no. 13163/87, judgment of 30 October 1991, Series A. no 215, ¶ 103 (European Ct. Human Rights).

Article 3. To the contrary, Article 3(2) states that diplomatic assurances are merely one consideration of many:

For the purpose of determining whether there are [substantial grounds for believing that the person would be in danger of being subjected to torture], the competent authorities shall take into account *all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*<sup>4</sup>

Where the receiving country has a poor human rights track record, like Egypt does, diplomatic assurances should carry almost no weight. As this Court recently observed, “all [states] that engage in torture deny it.”<sup>5</sup> The CAT’s protection against torture is virtually meaningless if the receiving government’s mere denial that it will torture the person is all that is required to satisfy the sending government’s obligations.

International human rights bodies widely agree that “diplomatic assurances do not provide an effective safeguard against torture and ill-treatment.”<sup>6</sup> In August 2005, the United Nations Special Rapporteur on torture warned that the use of

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<sup>4</sup> CAT, *supra* note 1, at part I, art. 3(2) (emphasis added). Due to the recent number of terrorist attacks, governments are using diplomatic assurances to bypass their obligations under the CAT. “This trend has raised concern worldwide that the ban on transferring people to places where they are at risk of torture is being eroded systematically by the growing use of diplomatic assurances.” Human Rights Watch, “*Diplomatic Assurances*” against Torture Questions and Answers, <http://hrw.org/backgrounder/eca/ecaqna1106/> (last visited July 24, 2007).

<sup>5</sup> *Khouzam v. Hogan*, No. 07-0992, 2007 U.S. Dist. LEXIS 43570, at \*26 (M.D. Pa. June 15, 2007) (quoting *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992)) (Memorandum, doc. # 30).

<sup>6</sup> Human Rights Watch, *supra* note 4.

diplomatic assurances “reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he or she might be subjected to torture.”<sup>7</sup> He explained, “diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated.”<sup>8</sup>

In 2006, the Council of Europe Commissioner for Human Rights determined that diplomatic assurances “are not credible and have also turned out to be ineffective.”<sup>9</sup> Similarly, the United Nations High Commissioner for Human Rights rejected “the dubious practice of seeking diplomatic assurances,” explaining that they “do not work as they do not provide adequate protection against torture and ill-treatment, nor do they, by any means, nullify the obligation of non-

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<sup>7</sup> Office of the U.N. High Commissioner for Human Rights Press Release, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [www.ohchr.org/english/issues/torture/rapporteur/index.htm](http://www.ohchr.org/english/issues/torture/rapporteur/index.htm) (follow “Press releases” hyperlink; then follow “Archived News Items”; then follow “‘23/08/2005 Diplomatic Assurances’ Not An Adequate Safeguard For Deportees, UN Special Rapporteur Against Torture Warns”) (last visited July 24, 2007).

<sup>8</sup> The U.N. Secretary-General, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment*, ¶ 51, delivered to the General Assembly, U.N. Doc. A/60/316 (Aug. 30, 2005), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/476/51/PDF/N0547651.pdf?OpenElement>.

<sup>9</sup> Thomas Hammarberg, Council of Europe Commissioner for Human Rights, “Torture Can Never, Ever Be Accepted,” June 27, 2006, [http://www.coe.int/t/commissioner/viewpoints/060626\\_en.asp](http://www.coe.int/t/commissioner/viewpoints/060626_en.asp) (last visited July 24, 2007).

refoulement.”<sup>10</sup>

In addition, the European Court of Human Rights has held that diplomatic assurances are an inadequate guarantee for returns to countries where torture is ‘endemic,’ or a ‘recalcitrant and enduring problem.’”<sup>11</sup>

## **II. EGYPT’S HABITUAL USE OF TORTURE SEVERELY UNDERMINES THE CREDIBILITY OF DIPLOMATIC ASSURANCES THAT IT WILL NOT TORTURE SAMEH KHOUZAM.**

### **A. The Egyptian Government Regularly Engages in Torture.**

There is consensus among international monitoring agencies that the Egyptian government routinely uses torture, especially as a method of law enforcement. For example, the United Nations Committee Against Torture found that Egyptian security forces’ use of “torture [is] seen to be habitual, widespread and deliberate in at least a considerable part of the country.”<sup>12</sup> The Committee

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<sup>10</sup> Office of the U.N. High Commissioner for Human Rights, Statement of The High Commissioner, <http://www.ohchr.org/english/about/hc/index.htm> (follow “HC Press releases and statements” hyperlink; then follow “ 29/03/2006 Council of Europe, Group of Specialists on Human Rights and the Fight Against Terrorism, 29-31 March 2006) (last visited July 25, 2007).

<sup>11</sup> *See Case of Chahal v. United Kingdom* [G.C.], app. no. 22414/93, judgment of 25 October 1996, ¶¶ 104-105 (European Ct. Human Rights) (holding that the United Kingdom would violate Article 3 of the CAT by deporting a Sikh activist, despite assurances from the Indian government that he would not be tortured); *see also* The U.N. Secretary-General, *supra* note 8, at ¶ 39.

<sup>12</sup> U.N. Comm. Against Torture, *Summary account of the results of the proceedings concerning the inquiry on Egypt*, ¶ 200, U.N. Doc. A/51/44 (May 3, 1996); *see also* U.N. Comm. Against Torture, *Conclusions and Recommendations: Egypt*, U.N. Doc. CAT/C/CR/29/4 (Dec. 23, 2002) (2002 report in which the Committee

found further that there was a lack of direct access to courts to lodge torture complaints, and a failure to comply with court decisions to release prisoners.<sup>13</sup> Similarly, Amnesty International's 2007 Report concluded that "[t]orture and ill-treatment in detention continued to be systematic" in Egypt and that, in "the majority of torture cases, the perpetrators were not brought to justice."<sup>14</sup>

The Egyptian Organization for Human Rights (EOHR) monitored 263 torture cases between 2000-2006 inside police stations and detention centers. In about 79 cases, the torture was so severe that the victim's death was likely "a direct result of torture and maltreatment."<sup>15</sup> Ten torture incidents were monitored in the first two months of 2007.<sup>16</sup>

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found "many consistent reports received concerning the persistence of the phenomenon of torture" and "the absence of measures to ensure effective protection and prompt and impartial investigations). According to the U.S. Department of State's *Country Reports on Human Rights Practices*, the principal methods of torture practiced by the Egyptian authorities include: stripping and blindfolding victims; suspending victims from a ceiling or doorframe with feet just touching the floor; beating victims with fists, whips, metal rods, or other objects; using electrical shocks; dousing victims with cold water; forcing victims to sign blank papers for use against themselves or their families should they in the future lodge complaints about torture; being sexually assaulted; kicking; burning with cigarettes; and threatening rape against victims or family members. U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices—2006: Egypt*, Mar. 6, 2007, available at [www.state.gov/g/drl/rls/hrrpt/2006/78851.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78851.htm).

<sup>13</sup> *Id.*

<sup>14</sup> Amnesty Int'l, *Report on the state of the world's human rights, Egypt*, 106 (2007), available at <http://thereport.amnesty.org/document/15>.

<sup>15</sup> Egyptian Org. for Human Rights Statement, *EOHR Demands the Amendment of Articles Concerned with Torture in the Penal Code and the Criminal Procedure*

Finally, the United States Department of State reported that between 2000 and 2004, 81 detainees were tortured to death inside Egyptian police stations, and that between April 2004 and July 2005, 21 detainees were tortured to death.<sup>17</sup>

**B. Egypt Routinely Persecutes And Tortures Coptic Christians.**

Coptic Christians, like Sameh Khouzam, struggle for basic human rights, including religious freedom, in Egypt.<sup>18</sup> 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.”<sup>19</sup> As a result, millions of Coptic Christians have immigrated to Western countries to flee persecution in Egypt.<sup>20</sup>

Egypt’s own National Council of Human Rights has recognized that Coptic Christians’ demands for basic civil rights “are not met expeditiously for fear of inciting sensitivities among the Muslim majority that may in turn lead to eruption of uncontrollable tension.”<sup>21</sup>

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*Code*, June 2, 2007, <http://www.eohr.org/press/2007/pr0206.shtml> (last visited July 24, 2007).

<sup>16</sup> *Id.*

<sup>17</sup> U.S. Dep’t of State, Bureau of Democracy, Human Rights and Labor, *supra* note 12.

<sup>18</sup> U.S. Copts Association, <http://www.copts.com/English/HistoryOfCopts.aspx> (last visited July 6, 2007); [www.copts.net/history.asp](http://www.copts.net/history.asp) (last visited July 24, 2007).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> National Council for Human Rights, *Annual Report*, Chapter Two, p. 51 (2005/2006), available at

President Hosni Mubarak claims to discourage Islamic hostility against Christians, yet many government ministers and police and state security officers openly pledge their devotion to Islamic ideologies hostile to Coptic civil rights. Thus, conflicts between Muslim radicals and Coptic Christians are common, and “[o]ver the past 20 years, more than 30 massacres of Coptic Christians have occurred.”<sup>22</sup> For example, in January 2000, rioting broke out in Al-Kosheh, where Muslim mobs destroyed 100 homes and shops and massacred twenty-one Christians. The Center for Religious Freedom noted that “the Egyptian government covered up these crimes to avoid the ‘politically sensitive’ issue of punishing Muslims for murdering Christians.”<sup>23</sup> While only one Muslim died as compared to 21 Christians, no Muslim was convicted for killing any Christians. “The only four Muslims to be convicted were held responsible for the accidental killing of the Muslim. The longest sentence is being served by a Christian, Surial Gayed Isshak, for allegedly ‘publicly insulting Islam.’”<sup>24</sup>

The massacre of Al-Kosheh is merely one example of the Egyptian government’s reluctance to prosecute Muslim violence and its eagerness to blame

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[http://www.nchr.org.eg/popup\\_window.html?pdf\\_url=annual\\_pdf/05\\_en/report2006.PDF](http://www.nchr.org.eg/popup_window.html?pdf_url=annual_pdf/05_en/report2006.PDF).

<sup>22</sup> Kate O’Beirne, *Crusading Martyred: Muslim murder and mayhem against Christians*, National Review, Dec. 3, 2001, Vol. LIII, No. 23.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

conflict on the Christian population. According to the U.S. Commission on International Religious Freedom 2007 Report:

Violent attacks on Christian communities over the years have resulted in very few prosecutions of perpetrators, including the 2004 Court of Cassation decision to uphold the acquittal of 94 of 96 suspects who were charged with various offenses in connection with the killing of 21 Christians in Al-Kosheh in late 1999 and early 2000.<sup>25</sup>

Nina Shea, the Vice Chair of the U.S. Commission on Religious Freedom and Director of Center for Religious Freedom at Hudson Institute's Freedom House,<sup>26</sup> testified before Congress that Coptic Christians, in particular, face widespread persecution in Egypt, including kidnappings and forced conversions. "Hundreds of young Coptic women disappear and are reported kidnapped each year in Egypt."<sup>27</sup> Instead of prosecuting these kidnappings, "security officers frequently prevent Christian parents from having any contact with their daughters once they have been located, leaving them instead in the custody of the Muslim 'protector' who abducted them."<sup>28</sup>

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<sup>25</sup> U.S. Comm'n on Int'l Religious Freedom, *Annual Report 205* (2007).

<sup>26</sup> *Monitoring Respect for Human Rights Around the World: A Review of the Country Reports on Human Rights Practices for 2005: Hearing Before the Subcomm. on Africa, Global Human Rights, and Int'l Operations of the H. Comm. on Int'l Relations*, 109th Cong. (Mar. 16, 2006) (statement of Nina Shea, Director, Freedom House), available at <http://www.internationalrelations.house.gov/archives/afhear.htm>.

<sup>27</sup> *Egypt: Police Obstruct Search for Missing Christian Women*, Compass Direct News, Sept. 08 2005, <http://www.compassdirect.org/content/index.php?id=25>.

<sup>28</sup> *Monitoring Respect for Human Rights Around the World*, *supra* note 26.

Shea also testified that many converts to Christianity have been “arrested, imprisoned, interrogated and tortured.”<sup>29</sup> Shea provided detailed examples:

[I]n early 2005, Gaseer Mohamed Mahmoud, who converted to Christianity from Islam in 2003, was tortured by police, including pulling out his toenails, and, on January 10, 2005, with the assistance of state security police, was forcibly confined to Cairo’s El-Khanka mental hospital after his adoptive parents discovered his conversion. He was kept in solitary confinement, kept in a water-filled room, refused visits from Christians, beaten, whipped, and was told that he would be kept until he renounced his new faith. After international publicity he was released June 9, but stayed in hiding. On April 6, 2005, Baha al-Aqqad, a recent convert to Christianity from Islam, was arrested on the grounds that he had ‘defamed Islam’ and held in Doqqi prison. After 45 days he was transferred to Tora prison in Cairo, typically a prison for political prisoners.<sup>30</sup>

Additionally, while Egypt allows non-Muslims to convert to Islam and provides for registration of such conversions, it does not recognize the conversion of Muslims to other religions.<sup>31</sup> Thus, Christians who convert to Islam “can get their identity cards changed within 24 hours,” but converts to Christianity “have found it to be impossible” to change their religion from Islam to Christianity and are arrested and tortured for attempting to do so.<sup>32</sup> For example, in October 2003, twenty-two Christians were arrested for changing religious affiliations and “[a]ll

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> U.S. Dep’t of State, Bureau of Democracy, Human Rights, & Labor, *Country Reports on Human Rights Practices – 2004: Egypt*, Feb. 8, 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41720.htm>.

<sup>32</sup> Christian Solidarity Worldwide, *UPDATE: Tortured Egyptian Christian woman released on bail* (Dec. 8, 2003), <http://www.csw.org.uk/latestnews/article.php?id=300>.

22 arrested were beaten during interrogation.”<sup>33</sup> Also, “[c]onverts to Islam are not permitted to revert to their original religion” and have been “subjected to harassment from the Government, including regular questioning and restriction of travel abroad.”<sup>34</sup>

In 2005, police officers imprisoned Muslim sheikh Bahaa el-Din Ahmed Hussein el-Akkad for “insulting Islam” by converting to Christianity. “He was told he would remain there indefinitely unless he agreed to work as a government informer against other converts to Christianity.”<sup>35</sup> In 2006, a court ordered his release but security officers “deliberately ignored the ruling” and merely transferred him to another prison.<sup>36</sup>

### **C. It Is Not Uncommon for Egyptian Authorities to Pin Trump Charges on Coptic Christians.**

Trump charges are often used after violent conflicts between Muslim radicals and Coptic Christians to restore order. Human rights groups have

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<sup>33</sup> *Id.*

<sup>34</sup> U.S. Dep’t of State, Bureau of Democracy, Human Rights, & Labor, *supra* note 31. Such discrimination is mandated under Islamic law because all five major Islamic schools – Hanafi, Maliki, Shafii, Hanbali, and Shia Jaafari – consider apostasy, or the recanting of the Muslim faith, as a crime, generally punishable by death. *See* David Forte, *Islam’s Trajectory*, Real Clear Politics, August 25, 2006, at 5, available at [http://www.realclearpolitics.com/articles/2006/08/islams\\_trajectory.html](http://www.realclearpolitics.com/articles/2006/08/islams_trajectory.html).

<sup>35</sup> *Egypt: Christian Convert from Islam Jailed*, Compass Direct News, Oct. 18, 2006, <http://www.compassdirect.org/content/index.php?id=27>.

<sup>36</sup> *Id.*

documented numerous accounts of authorities attempting to placate Muslims by manufacturing trump charges against Coptic Christians after a conflict.

This year on February 13, 2007, Muslim extremists attempted to burn down the homes of two Coptic Orthodox families with kerosene-soaked cotton. The Copts were able to extinguish the fires but when six family members attempted to report the arson to the police, they were detained for two days until “they agreed to sign statements that they had burned their own homes.”<sup>37</sup>

Last year, International Christian Response reported that five Coptic Christians were being tried for “conspiracy to murder” Mohammed Ahmad Abu Talib. Talib was a Muslim man who died from a stroke after a fight in which he had beaten Christians.<sup>38</sup> The forensic medical report confirmed that the cause of death was a heart condition. In response to the Muslim furor over Talib’s death, however, police refused to protect Christian homes against violent attacks and the deputy governor ordered Christians to pay Talib’s family compensation of 1 million Egyptian pounds.<sup>39</sup> Additionally, five Christian families were forced to

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<sup>37</sup> *Egypt Detains Copts after Anti-Christian Attack*, Compass Direct News, Feb. 22, 2007, <http://www.compassdirect.org/content/index.php?id=25&&rowcur=75>.

<sup>38</sup> *Egypt: Copts Lose Homes, Freedom over Murder Charge*, Compass Direct News, Aug. 14, 2006,

<http://www.compassdirect.org/content/index.php?id=25&&rowcur=200>.

<sup>39</sup> *Id.*

sign over the deeds to their homes to secure the release of their loved ones. Two detainees still remained in police custody.<sup>40</sup>

On August 12, 1998, when two Coptic Christians were found murdered in a village in Upper Egypt, hundreds of Christians from the surrounding area were interrogated and tortured.<sup>41</sup> While witnesses accused three Muslim men of the crime, prosecutors instead tried and convicted a Copt named Shaiboub William Aرسال “based solely on the confessions of two army officers, who later attempted to retract their statements, because they had been given under duress.”<sup>42</sup> Aرسال was sentenced to 15 years of hard labor<sup>43</sup> and his appeal is still pending.<sup>44</sup>

Given Egypt’s record of torture and persecution of Coptic Christians, Egypt’s diplomatic assurances that it will not torture Sameh Khouzam are simply not credible. If the United States is to take its obligations under CAT seriously, it must not deport Sameh Khouzam.

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<sup>40</sup> *Id.*

<sup>41</sup> U.S. Dep’t of State, Bureau of Democracy, Human Rights, & Labor, *supra* note 31; *see also* Christian Solidarity Worldwide, *Campaign for Shaiboub William Aرسال* (April 12, 2004)

[http://www.csw.org.uk/LtstCampaigns/Egypt/ShuiboubWilliamArsal\\_Egypt.htm](http://www.csw.org.uk/LtstCampaigns/Egypt/ShuiboubWilliamArsal_Egypt.htm).

<sup>42</sup> Christian Solidarity Worldwide, *supra* note 41.

<sup>43</sup> *Id.*

<sup>44</sup> U.S. Dep’t of State, Bureau of Democracy, Human Rights and Labor, *supra* note 12.

## **CONCLUSION**

For the foregoing reasons, amici American Center for Law and Justice, and European Center for Law and Justice respectfully request this Court to grant all such relief requested by Petitioner Sameh Sami S. Khouzam in his Emergency Petition for a Writ of Habeas Corpus, Declaratory Judgment, Writ of Mandamus, and For Stay of Removal.

Respectfully submitted,

/s/

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## CERTIFICATE OF SERVICE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2007, Andrew L. Swope, a member of the firm Kirkpatrick & Lockhart Preston Gates Ellis LLP, attorney for *amici curiae*, does hereby certify that I served this day the within *Amicus Brief For The American Center For Law And Justice And The European Center For Law And Justice In Support Of Petitioner Sameh Sami S. Khouzam* by First Class U.S. Mail to the party or attorney of record as follows:

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