Nos. 07-2926; 08-1094

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SAMEH SAMI S. KHOUZAM,
Agency No. A75 795 693,

Petitioner-Appellee,

v.

MICHAEL CHERTOFF,
Secretary, Department of Homeland Security, et al.,

Respondents-Appellants.

ON APPEAL FROM A FINAL ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA GRANTING PETITION FOR WRIT OF HABEAS CORPUS, NO. 3:CV 07-0992

ON PETITION FOR REVIEW OF A DECISION OF THE DEPARTMENT OF HOMELAND SECURITY

BRIEF OF AMICI CURIAE HUMAN RIGHTS WATCH, AMNESTY INTERNATIONAL, CENTER FOR CONSTITUTIONAL RIGHTS, INTERNATIONAL COMMISSION OF JURISTS, AND INTERNATIONAL FEDERATION FOR HUMAN RIGHTS IN SUPPORT OF PETITIONER-APPELLEE SAMEH SAMI S. KHOUZAM

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae Human Rights Watch, Amnesty International, Center for Constitutional Rights, International Commission of Jurists, and International Federation for Human Rights certify that they have no parent corporations, and no publicly held company owns 10% or more of their stock.

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IDENTITY AND INTEREST OF AMICI CURIAE

Amicus Curiae Human Rights Watch ("HRW")[1] is a non-partisan, non-profit human rights organization established in 1978 and headquartered in New York. HRW investigates, documents, and reports on violations of human rights, including torture, genocide, and crimes against humanity, in over seventy countries, and has conducted extensive research on the use of diplomatic assurances against torture worldwide, including by the U.S. government. HRW has filed amicus briefs in U.S. courts and international tribunals.

Amicus Curiae Amnesty International Ltd. ("AI"), established in 1961 and headquartered in London, monitors law and practices in countries in light of international human rights and humanitarian law and standards. It is a worldwide human rights movement of some 1.8 million members and enjoys special consultative/participatory status at the United Nations and the Council of Europe. AI has filed amicus briefs in the United States and in regional human rights courts.

Amicus Curiae Center for Constitutional Rights ("CCR"), established in 1966 and headquartered in New York, is a non-profit legal and educational organization dedicated to protecting the rights guaranteed by the U.S. Constitution

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[1] Joseph A. Stork, Deputy Director of HRW's Middle East and North Africa division, and Julia Hall, then-counsel and a senior researcher in the Europe and Central Asia division of HRW, each submitted expert declarations to the district court on July 26, 2007. *See* J.A. 468-79, 480-509.

and the Universal Declaration of Human Rights. CCR has a long history of advocating on behalf of civil rights and in advancing the protection of international human rights. Currently, CCR represents several individuals who have been, or are in danger of being, transferred from U.S. custody to the custody of foreign governments despite known risks of torture or ill-treatment.

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Amicus Curiae International Federation for Human Rights ("FIDH"), established in 1922 and headquartered in Paris, France, is a federation of 155 non-profit human rights organizations in more than 100 countries. FIDH coordinates and supports affiliates' activities at the local, regional, and international level, through research, advocacy, and litigation, to obtain effective improvements in the prevention of human rights violations, the protection of victims, and the sanction of perpetrators.

INTRODUCTION

Notwithstanding the Egyptian government's long history of gross human rights violations, evidence that Egyptian officials tortured Petitioner, Sameh Sami S. Khouzam, in the past, and prior breaches of similar diplomatic assurances, the U.S. government seeks to deport Mr. Khouzam to Egypt despite a judicial finding that it is more likely than not that he will be tortured if returned.[2] It justifies this position on the basis of diplomatic assurances from the Egyptian government that he will not be tortured. Amici file this Brief because the prohibition against returning an individual to a country where he or she is at risk of torture is absolute, and permits no exceptions.[3] The diplomatic assurances proffered by Egypt, a state that routinely breaches its international obligation not to practice torture, are not an

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[2] The United States has interpreted the "substantial grounds" standard in article 3 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") to mean "more likely than not."

[3] The prohibition against torture is embodied in articles 1 and 3 of the CAT; article 7 of the International Covenant on Civil and Political Rights ("ICCPR"); article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"); article 5 of the American Convention on Human Rights; and article 5 of the African Charter on Human and Peoples' Rights (Banjul Charter). The Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") is the implementing legislation that codifies the nonrefoulement obligations of the United States as a party to the CAT. *See* FARRA, Pub. L. No. 105-277, Div. G, Title XXII, § 2242(a), 112 Stat. 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231)). The absolute ban on torture and the prohibition against sending a person to a place where he or she is at risk of torture are well established as *jus cogens*, peremptory norms of customary international law. *See* Brief of Amici Curiae OMCT and REDRESS in Support of Petitioner Sameh Sami S. Khouzam.

that routinely breaches its international obligation not to practice torture, are not an effective safeguard against torture, and undermine the absolute nonrefoulement obligation of the United States. Reliance on such diplomatic assurances, which have not been subject to an independent and meaningful review, in the face of a real risk of torture clearly violates the prohibition of nonrefoulement.[4]

The dynamics of torture and the problems described below with respect to diplomatic assurances are not unique to Egypt. All of the issues discussed within are pervasive in other regimes that routinely violate international law prohibiting the practice of torture and ill-treatment.

ARGUMENT

I. DIPLOMATIC ASSURANCES FROM EGYPT ARE INHERENTLY UNRELIABLE AND ARE NOT AN EFFECTIVE SAFEGUARD AGAINST TORTURE

A. Egypt Is A State That Routinely Violates The Prohibition Against Torture

Egypt has a long history and continuing record of employing torture. The U.S. Department of State has found that the Egyptian "government's respect

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[4] For the principled view of some of the Amici on the subject, see, for instance, AI, HRW & ICJ, *Reject Rather Than Regulate: Call on Council of Europe Member States Not to Establish Minimum Standards for the Use of Diplomatic Assurances in Transfers to Risk of Torture and Other Ill-Treatment* (Dec. 2005), *available at* http://www.amnesty.org/en/library/asset/IOR61/025/2005/en/dom-IOR610252005en.html.

for human rights remained poor, and serious abuses continued in many areas . . . includ[ing] . . . torture and abuse of prisoners and detainees."[5] The 2006 State Department Report cited statistics from the Egyptian Organization for Human Rights ("EOHR") that 102 detainees were tortured to *death* inside police stations between 2000 and July 2005,[6] and identified the primary methods of torture as including beatings with whips and metal rods, attacks with electric prods, and sexual assault.[7]

Significantly, the Egyptian authorities in practice allow torturers to operate with virtual or full impunity. While the Egyptian government has replied to such criticism by seeking to hold some perpetrators accountable, its efforts have been tepid at best,[8] as it has "continued to give light sentences to police officers

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[5] U.S. Dep't of State, *Country Reports on Human Rights Practices: Egypt, 2006* (Mar. 6, 2007) [hereinafter the "2006 State Department Report"].

[6] Between 1993 and July 2007, the EOHR "documented more than 567 cases of torture inside police stations, including 167 deaths that the EOHR concluded were caused by torture and mistreatment." U.S. Dep't of State, *Country Reports on Human Rights Practices: Egypt, 2007* (Mar. 11, 2008) [hereinafter the "2007 State Department Report"].

[7] *Id.*; *see also* AI, *Egypt—Systematic Abuses in the Name of Security* (Apr. 2007), *available at* http://www.amnesty.org/en/library/asset/MDE12/001/2007/en/dom-MDE120012007en.html (discussing the practice of torture in Egypt); J.A. 474, ¶ 10 (describing torture techniques practiced in Egypt).

[8] *See* 2007 State Department Report, *supra* note 6 ("Security forces tortured and abused prisoners and detainees, in many cases with impunity.").

convicted of serious abuses," including suspended prison terms and minor fines,[9] and "none of these investigations have involved SSI [State Security Investigations] officials, despite the fact that SSI has been implicated in no less than 33 cases of torture documented by the Egyptian Organization for Human Rights."[10]

Compounding the "common and persistent" torture and ill-treatment of detainees and the absence of accountability is a concomitant effort to conceal the torture by threat of official retaliation should the victims complain, as they are "forced to sign blank papers for use against themselves or their families should they in the future lodge complaints about the torture."[11] The evidence of officially sanctioned or excused torture in Egypt thus looms large from start to finish.[12]

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[9] 2006 State Department Report, *supra* note 5; *see also* J.A. 471-74, ¶ 9 (describing the practice of torture in Egypt).

[10] *See* J.A. 477-78, ¶ 16.

[11] 2007 State Department Report, *supra* note 6.

[12] Although Egypt is a state party to both the CAT and the ICCPR, their binding obligations not to torture have not stopped Egyptian authorities from routinely torturing detainees. Even the U.S. government declined to transfer a Guantanamo detainee to Egypt because of the government's fear that he would be at risk of torture if returned. *See 3 Detainees at Guantanamo Are Released to Albania*, Wash. Post, Nov. 18, 2006, at A13.

B. Because Torture Is Practiced In Secret And Is An Endemic Feature Of The Justice Systems Of States, Like Egypt, That Routinely Violate The Prohibition Against Torture, Diplomatic Assurances Do Not Provide Adequate Protection On Return

In countries where torture is routine, it is practiced covertly.[13] Torturers use techniques such as sexual assault, electric shocks and prods, psychological abuse, and mock drowning that often defy subsequent detection.[14] Prison doctors and other medical personnel in detention facilities are often complicit in monitoring the abuse to ensure that the torture is not easily discovered.[15]

Returned persons are often held incommunicado without regular access to lawyers and family members.[16] Lawyers who can see their clients often must meet them in the presence of prison or security services officials. Even if the visits are private, authorities can easily identify the detainee who is visited, especially when monitors' access is strictly limited. Consequently, those subjected to torture are often afraid to complain to anyone about the abuse for fear of reprisal.[17]

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[13] *See* HRW, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* 5 (Apr. 2005), *available at* http://hrw.org/reports/2005/eca0405/eca0405.pdf [hereinafter "*Still at Risk*"].

[14] *See id.* at 25.

[15] *See id.* at 24.

[16] *See* 2007 State Department Report, *supra* note 6.

[17] *See* J.A. 488, ¶ 11.

This is evidenced by the case of Maher Arar, a Syrian-born Canadian citizen removed to Syria from the United States with purported reliance on diplomatic assurances against torture.[18] Arar was caught in the cleft stick of wanting to inform Canadian consular visitors about being tortured in Syria, but fearing retaliation if he did.[19]

Because they prohibit independent, universal monitoring of places of detention, governments with poor records on torture can and routinely do deny that such abuse occurs.[20] In the absence of any meaningful oversight mechanism, they refuse to initiate investigations or to hold perpetrators accountable. Thus, where torture is routine and denied, monitoring is non-existent or ineffective, and there are reprisals for any complaints of torture, the discussions on diplomatic assurances between a rendering state and a receiving state are little more than a dialogue of the deaf.[21]

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[18] *See Still at Risk*, *supra* note 13, at 33. A special Canadian commission inquired into Canada's role in Arar's transfer, acknowledging that his case is a clear example of the problems inherent in relying on diplomatic assurances against torture from totalitarian regimes. *See* J.A. 490, ¶ 14.

[19] *See* J.A. 489, ¶ 13.

[20] *See Still at Risk*, *supra* note 13, at 22.

[21] *See id.* ("[S]tates that torture routinely accompany their flagrant violations with insistent denials of abuse, often despite overwhelming evidence to the contrary. . . . Taking the word of a government that routinely lies about torture only reinforces the value of denial over admission and correction.").

It is perhaps equally disquieting that diplomatic assurances lack any enforcement mechanism. Diplomatic assurances are nothing more than brokered bilateral political agreements that have no legal character or force in law.[22] Negotiations for securing diplomatic assurances are often conducted at a political level and are far from transparent. And because diplomatic assurances do not constitute legal undertakings, there is no way to hold a breaching party legally accountable if torture does occur. In no case has a receiving state been formally brought to book by the sending state for breaching diplomatic assurances against torture.

C. Given The Limits Of Diplomacy, Assurances That The Removed Individual Will Be Protected From Torture Are Unreliable

Diplomacy involves a panoply of wide-ranging and significant national interests, ranging from economic, to political, to global and regional security interests. While human rights may be an articulated diplomatic priority, in practice it is typically subordinate to others.[23] As a consequence, diplomacy – including the

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[22] To Amici's knowledge, the United States is the only jurisdiction that provides for the use of diplomatic assurances in law. There is no mechanism in the federal regulations, however, for addressing a breach of the assurances. *See supra* note 3. According to the governing regulations, the Secretary of State secures the diplomatic assurances against torture, and, in consultation with the Secretary of State, the Attorney General determines whether they are "sufficiently reliable." *See* 8 C.F.R. § 208.18(c) (2007).

[23] *See Still at Risk, supra* note 13, at 19.

seeking and securing of diplomatic assurances against torture in various transfer contexts – cannot be a reliable lever for human rights protection.[24] Indeed, a diplomat's top priority in ensuring amicable relations with other states often takes precedence over confronting them about human rights violations.[25]

Under the current diplomatic relationship between the United States and Egypt, there are compelling reasons to doubt the effectiveness of any assurances Egypt might offer on the question of torture.[26] U.S. officials responsible for relations with Egypt have acknowledged to HRW that the United States' own recent and well-publicized abusive interrogation practices have made it extremely difficult for the United States to credibly raise issues of torture with Egypt.[27] In addition, the U.S. government's reliance on Egypt to support U.S. policies on a variety of issues[28] has made it increasingly difficult for the United States to raise

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[24] *See id.*; J.A. 491, ¶ 17.

[25] *See* J.A. 491, ¶ 17.

[26] *See* J.A. 478, ¶ 17.

[27] *See* J.A. 478-79, ¶ 17.

[28] *See* Daniel Dombey, *Rights Abuses Cast Doubt on U.S. Goals*, Fin. Times [London], Mar. 12, 2008, at 6 (discussing the 2007 U.S. human rights report just "as the Bush administration contends with charges that it has softened its line on human rights while it seeks to bolster traditional alliances to ends such as increasing pressure on Iran and isolating Hizbollah and Hamas"); *see also* Steven Lee Myers, *Bush Lauds Egypt Leader, Avoiding Record on Dissent*, N.Y. Times, Jan. 17, 2008, at A16 ("President Bush lavished praise on President Hosni Mubarak of Egypt . . . emphasizing the country's role in regional security and the

human rights concerns in any effective way.[29] Over the past year in particular, the United States has demonstrated great reluctance to criticize or otherwise embarrass the government of Egypt over serious ongoing human rights abuses.[30]

In fact, Secretary of State Condoleezza Rice announced last month that she had exercised a waiver to allow $1.3 billion in military aid for Egypt despite its failures to meet human rights benchmarks or other conditions Congress attached to the release of these funds, including ending police abuses.[31] This very public shift in U.S. policy from opposing Egypt's human rights abuses to supporting Egypt's role in regional security regardless of such abuses clearly demonstrates that the diplomatic relationship between the two countries elevates other interests over human rights protection. Any representations that the diplomatic assurances of the Egyptian government are to be credited simply cannot be squared with endemic torture there and the government's clear post-September 11 determination to put security interests above human rights.

Israeli-Palestinian peace process while publicly avoiding mention of the government's actions in jailing or exiling opposition leaders . . . .").

[29] *See* J.A. 479, ¶ 17.

[30] *See* J.A. 479, ¶ 17.

[31] *See* Editorial, *Ms. Rice's Retreat: The Secretary of State, Who Once Championed Reform in Egypt, Waives Human Rights Restrictions on U.S. Aid*, Wash. Post, Mar. 11, 2008, at A18; *see also* Joel Brinkley, *Democracy Has Become a Dirty Word in Much of the World*, McClatchy-Tribune News Serv. [Washington], Apr. 3, 2008.

The U.S. government's request for complete confidentiality regarding the negotiations leading up to securing diplomatic assurances is especially pernicious.[32] Because a person cannot challenge the diplomatic assurances, the complete secrecy surrounding them "thus can directly contribute to a person's risk of abuse upon return."[33] Moreover, because diplomatic assurances necessitate the sharing of sensitive information between the governments involved about the returning person's fear of torture, the use of diplomatic assurances actually may aggravate the risk of retaliation.

No other country that uses diplomatic assurances has taken the extraordinary and lopsided position that judicial review "would have a 'chilling effect' on future negotiations for such guarantees or would impede in general its ability to conduct foreign relations."[34] Rather, parliaments in other countries have established procedures to ensure the confidentiality of sensitive national security information that leave open the door for challenges to diplomatic assurances.[35]

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[32] *See* J.A. 492, ¶ 17.

[33] *See* J.A. 492, ¶ 17.

[34] J.A. 484, ¶ 6.

[35] *See* J.A. 485, ¶ 6.

D. Neither The Receiving Nor The Sending Country Has An Incentive To Acknowledge Or Investigate Allegations Of Torture In Possible Breach Of Diplomatic Assurances

If an allegation of torture of a returnee is made, it creates a Catch-22 for the receiving and sending governments, as neither has any incentive to acknowledge or investigate the allegation. Each would necessarily have to admit a violation of its respective obligation not to torture or transfer a person to a place where he or she is at risk of torture. Even if the sending state's diplomatic or consular staff learned of an allegation through *ad hoc* post-return monitoring visits, any government undertaking such monitoring would gain nothing by acknowledging the receiving state's abuse other than its own liability for having violated its absolute nonrefoulement obligation.[36]

The United States has admitted it has a limited capacity to enforce diplomatic assurances against torture post-transfer.[37] On February 16, 2005, then-Director of Central Intelligence Porter J. Goss testified before Congress, acknowledging a responsibility to ensure proper treatment of transferred

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[36] *See* HRW, *"Empty Promises:" Diplomatic Assurances No Safeguard Against Torture* 5 (Apr. 2004), *available at* http://hrw.org/reports/2004/un0404/diplomatic0404.pdf.

[37] *See Still at Risk, supra* note 13, at 37.

individuals: "'But of course once they're out of our control, there's only so much we can do.'"[38]

Former Attorney General Alberto Gonzales also admitted as much in a March 2005 interview. He conceded that notwithstanding diplomatic assurances, once a detainee is abroad, "'[w]e can't fully control what that country might do. We obviously expect a country to whom we have rendered a detainee to comply with their representations to us . . . . If you're asking me, "Does a country always comply?" I don't have an answer to that.'"[39] Testifying before the Senate Armed Services Committee, Gonzales acknowledged: "'you know, we are not there—(chuckles)—in the jail cell in foreign countries where we render someone.'"[40]

Michael Scheuer, a former CIA officer who purportedly initiated the CIA's rendition program, has asserted that diplomatic assurances provide no real protection, and that both CIA agents and their superiors were aware that abuses were likely:[41]

> "[T]he non-C.I.A. staff members . . . knew that taking detainees to Egypt or elsewhere might yield treatment not consonant with United States legal practice. How did they know? . . . [W]e told

[38] *Id.* (citations omitted).

[39] *Id.* (citation omitted).

[40] *See* HRW, *Double Jeopardy: CIA Renditions to Jordan* 8 (2008), *available at* http://hrw.org/reports/2008/jordan0408/jordan0408web.pdf [hereinafter "*Double Jeopardy*"] (citation omitted).

[41] *See id.* at 8-9.

> them—again and again and again. . . . They usually listened, nodded, and then inserted a legal nicety by insisting that each country to which the agency delivered a detainee would have to pledge it would treat him according to the rules of its own legal system."[42]

In fact, in light of the overwhelming evidence of abuse of prisoners rendered to Egypt and Jordan from the United States in the aftermath of the September 11th terrorist attacks,[43] even the carefully phrased comments of Secretary of State Rice indicating that "'the United States seeks assurances that transferred persons will not be tortured'" and insisting that the United States "'does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture'" suggest that the United States was aware these prisoners would in fact be at risk of torture there.[44]

The striking admissions by former U.S. government officials acknowledge that the government here is donning blinders to the obvious: once detainees are returned, there is no way to enforce diplomatic assurances or guarantee a detainee's safety.[45] With respect to Secretary of State Rice's comments, reliance on such unenforceable assurances is particularly malign for

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[42] *Id.* (citation omitted).

[43] *See* HRW, *Black Hole: The Fate of Islamists Rendered to Egypt* 3, 14 (May 2005), *available at* http://hrw.org/reports/2005/egypt0505/egypt0505.pdf; *see also infra* note 63 (discussing torture of rendered prisoners in Jordanian custody).

[44] *See Double Jeopardy*, *supra* note 40, at 7-8 (citations omitted).

[45] *See Still at Risk*, *supra* note 13, at 37.

persons who will be incarcerated in detention centers and prisons —"the very locus of the human rights abuses for which the receiving country is notorious and upon which basis the US seeks diplomatic assurances in the first place."[46]

E. Post-Return Monitoring Of A Sole Detainee In States Where Torture Is Practiced Cannot Protect The Removed Individual From Abuse

Despite some governments' reliance on post-return monitoring to allegedly ensure compliance with diplomatic assurances, such monitoring provides no guarantee against torture.[47] Only a small minority of diplomatic assurances even provide for monitoring of a person after return, and in such cases, the pre-agreed, post-return monitoring schemes lack sufficient safeguards.[48] But even independent and universal monitoring of places of detention without broader reforms cannot in and of itself work as an effective safeguard.[49] Monitors who lack the authority to remedy the situation and hold abusing officials and governments accountable cannot be considered a preventive mechanism that complies with the United States' nonrefoulement obligations.

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[46] J.A. 493, ¶ 20.

[47] *See Still at Risk, supra* note 13, at 24-27.

[48] *See id.* at 24, 25.

[49] Independent and universal monitoring involves visits without notice to places of detention by independent, impartial monitors who have access to all detainees for private visits.

In Egypt, no independent monitoring mechanisms exist.[50] Egypt has never permitted an official visit by the U.N. Special Rapporteur on Torture, despite repeated requests beginning in 1996.[51] Nor do other independent human rights monitors have access to places of detention.[52] Only officials from the National Council for Human Rights ("NCHR") received permission to visit Egyptian detention facilities in 2006.[53] Although HRW lauded the Egyptian authorities for establishing the NCHR in 2004, "'serious issues like routine torture of persons in detention and suppression of non-violent political dissent remain unaddressed'" by the NCHR.[54]

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[50] *See* J.A. 476, ¶ 14. For example:

> The International Committee of the Red Cross (ICRC), the preeminent international monitor and advisor on prison conditions, has refused to visit particular detainees in Egypt[] . . . without a general agreement allowing it access to all prisoners and has refused to be "involved in any process which could in any way be perceived to contribute to, facilitate, or result in the deportation of individuals to Egypt."

J.A. 488-89, ¶ 12 (quoting *Youssef v. Home Office*, [2004] EWHC (QB) 1884, 2004 WL 1640250 (July 30, 2004) [26] (Eng.)).

[51] *See* 2007 State Department Report, *supra* note 6.

[52] *See* J.A. 493, ¶ 21. Egypt has not ratified the *Optional Protocol to the Convention Against Torture*, which creates an independent monitoring body that visits places of detention in CAT signatory states.

[53] *See* J.A. 493-94, ¶ 21.

[54] J.A. 494, ¶ 21 (quoting HRW, *World Report 2005: Egypt* (Jan. 2005), *available at* http://hrw.org/english/docs/2005/01/13/egypt9802.htm); *see also* Joshua A. Stacher, *Rhetorical Acrobatics and Reputations: Egypt's National Council for*

The absence of independent and universal monitoring of places of detention increases the risk of torture and makes it extremely difficult to track the treatment of those transferred to Egypt. Indeed, even if such monitoring were permitted, it would still be insufficient without broader systemic torture-prevention reforms.

F. Egypt Has Breached Diplomatic Assurances Against Torture In The Past

Sweden's involvement in the December 2001 CIA rendition of Egyptian nationals Mohammed al-Zari and Ahmed Agiza from Stockholm to Cairo in reliance on diplomatic assurances against torture amply illustrates the lack of reliability of diplomatic assurances and the inherent deficiencies of attempting *ad hoc* post-return monitoring of an individual prisoner in a system where the practice of torture is endemic. Swedish diplomats conducted dozens of post-return monitoring visits of al-Zari and Agiza, who were transferred to Egypt pursuant to diplomatic assurances that they would not be tortured.[55] Five weeks lapsed

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Human Rights, Middle East Report, Summer 2005, *available at* http://www.merip.org/mer/mer235/stacher.html ("[T]he council's limited legal reach suggests it is unlikely to assert itself as a check on the abuse of power in Egypt.").

[55] *Agiza v. Sweden*, CAT/C/34/D/233/2003 (U.N. Comm. Against Torture May 20, 2005), ¶¶ 4.12, 4.14-4.15, *available at* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=42ce734a2.

between their transfer and the diplomats' first visit.[56] The former Swedish Ambassador explained that an immediate visit was not possible because that would have signaled distrust in the Egyptian authorities.[57] And, indeed, the men reported that they had been tortured during that period, a fact that the Swedish government thereafter suppressed because of fear of reprisals against them.[58]

Thereafter, the U.N. Human Rights Committee concluded that Sweden's involvement in al-Zari's transfer breached Sweden's absolute nonrefoulement obligation, despite Egypt's assurances of humane treatment. The Committee stated that Sweden "has not shown that the diplomatic assurances procured were in fact sufficient in the present case to eliminate the risk of ill-treatment to a level consistent" with the ban on torture and other ill-treatment.[59]

With respect to Agiza's transfer, the U.N. Committee Against Torture held that Sweden violated the refoulement ban, stating that the "procurement of diplomatic assurances [from Egypt], which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk."[60]

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[56] *See* J.A. 496, ¶ 25.

[57] *See* J.A. 496-97, ¶ 25.

[58] *See* J.A. 497, ¶ 26.

[59] *Alzery v. Sweden*, CCPR/C/88/D/1416/2005 (U.N. Human Rights Comm. Nov. 10, 2006), ¶ 11.5, *available at* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=47975afa21.

[60] *Agiza*, CAT/C/34/D/233/2003, *supra* note 55, ¶ 13.4.

Another Egyptian national, Hassan Mustafa Osama Nasr (known as Abu Omar), who was transferred from Italy to Egypt by the United States in reliance upon diplomatic assurances, claims also to have been tortured in an Egyptian prison, including by electric shock, leading to loss of hearing and difficulty in walking.[61]

II. THE UNITED STATES HAS INVOKED OR USED DIPLOMATIC ASSURANCES IN OTHER CONTEXTS, AND IN EACH OF THOSE CONTEXTS, ASSURANCES AGAINST TORTURE HAVE BEEN BREACHED

In addition to securing or attempting to secure diplomatic assurances in the immigration context, the U.S. government has used diplomatic assurances against torture to effect transfers in the contexts of Guantanamo Bay repatriations and renditions abroad. Most of the countries from which the United States has sought diplomatic assurances, including Egypt, Libya, Russia, Saudi Arabia, Uzbekistan, and Yemen, have long histories and continuing records of employing torture.

Moreover, diplomatic assurances do not in any way ensure that transferred individuals will not be tortured. A slew of cases show that individuals

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[61] *See* J.A. 498, ¶ 28; *see also* HRW, *US/Italy: Italian Court Challenges CIA Rendition Program: Rome Should Seek Extradition of 26 Americans in Cleric's Abduction* (Apr. 16, 2008), *available at* http://www.hrw.org/english/docs/2008/04/16/usint18540.htm (describing Italy's prosecution of Omar's alleged abductors who transferred him to Egypt where he was tortured and "hung up like a slaughtered sheep and given electric shocks").

transferred in the repatriation[62] and rendition[63] contexts in reliance on diplomatic assurances against torture have, in fact, been tortured and ill-treated – a blatant breach of those assurances.

III. FOREIGN JURISDICTIONS HAVE HALTED TRANSFERS TO EGYPT AND OTHER COUNTRIES DESPITE DIPLOMATIC ASSURANCES AGAINST TORTURE

A. Transfers To Egypt In Reliance On Diplomatic Assurances Have Been Halted In The Past

In the case of Hani Youssef, the Home Office and Foreign and Commonwealth Office warned that diplomatic assurances from Egypt could not be trusted, frustrating former British Prime Minister Tony Blair's attempts in 1999 to deport Youssef and three other Egyptian nationals.[64]

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[62] Some detainees transferred from Guantanamo Bay to Russia and Tunisia in reliance on diplomatic assurances have been tortured and/or ill-treated. *See, e.g.*, HRW, *The "Stamp of Guantanamo": The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States* (Mar. 2007), *available at* http://www.hrw.org/reports/2007/russia0307/russia0307web.pdf; HRW, *Ill-Fated Homecomings: A Tunisian Study of Guantanamo Repatriations* 3-9 (Sept. 2007), *available at* http://hrw.org/reports/2007/tunisia0907/tunisia0907web.pdf.

[63] Since the September 11th attacks, the United States has rendered at least fourteen non-Jordanian prisoners to Jordan for interrogations and likely torture. *See Double Jeopardy*, *supra* note 40, at 1, 13, 32; *see also id.* at 18-31 (detailed discussion of individual rendition cases). The cases of Maher Arar (*see supra* Part I.B) and Abu Omar (*see supra* Part I.F) also are examples of diplomatic assurances breached in the rendition context.

[64] *See Still at Risk*, *supra* note 13, at 69-72. Egypt failed in the end to produce the assurances.

In another case, Austria renewed its efforts in 2005 to extradite Mohamed Bilasi-Ashri pursuant to diplomatic assurances from Egypt, but the European Court of Human Rights ("ECtHR") took the unusual step of requesting that his extradition be stayed pending review of his application, which raised, *inter alia*, a possible violation of the ECHR's prohibition on returns to risk of torture and ill-treatment.[65] To the best of Amici's knowledge, the application remains *sub judice.*

In December 2006, a Canadian federal court ordered its government to conduct a new risk assessment regarding a decision to deport Egyptian national Mohammad Zeki Mahjoub.[66] With respect to Egypt's diplomatic assurances, the court found that the government "disregarded the bulk of evidence from a multitude of sources that cited Egypt's non-compliance with assurances."[67]

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[65] *See* ECtHR, *First Section Annual Activity Report 2005: Bilasi-Ashri v. Austria* (App. 40902/05) 18 (Jan. 2006), *available at* http://www.echr.coe.int/NR/rdonlyres/82DE0139-9EDC-44A4-A53B-BD7CFB7C683A/0/Section1.pdf.

[66] *Mahjoub v. Canada* (Minister of Citizenship and Immigration), 2006 FC 1503 (Dec. 14, 2006), ¶ 97, *available at* http://reports.fja.gc.ca/eng/2006/2006fc1503/2006fc1503.html.

[67] *See id.* ¶ 88. The federal court ordered Mahjoub's release from detention in February 2007. *See Mahjoub v. Canada* (Minister of Citizenship and Immigration), 2007 FC 171 (Feb. 15, 2007), ¶ 25, *available at* http://decisions.fct-cf.gc.ca/en/2007/2007fc171/2007fc171.html.

B. Transfers To Other Countries In Reliance On Diplomatic Assurances Also Have Been Halted

Courts in the United Kingdom[68] and the Netherlands[69] have halted extraditions and deportations where a risk of torture and ill-treatment exists, despite the fact that the respective governments had secured diplomatic assurances.

The U.N. Committee Against Torture and the ECtHR have made similar findings. In *Pelit v. Azerbaijan*, the U.N. Committee Against Torture determined that Azerbaijan's extradition to Turkey of Elif Pelit violated article 3 of the CAT, despite diplomatic assurances from Turkey.[70]

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[68] *AS [& DD] (Libya) v. Sec'y of State for the Home Dep't*, [2008] EWCA (Civ.) 289, 2008 WL 833659 (Apr. 9, 2008) (Eng.), *available at* http://www.lawreports.co.uk/WLRD/2008/CACiv/apr0.4.htm (no deportation to Libya despite diplomatic assurances); *Gov't of Russian Fed'n v. Zakaev*, Bow Street Magistrates' Court, Decision of Hon. T. Workman (Nov. 13, 2003), *available at* http://www.tjetjenien.org/Bowstreetmag.htm (no extradition to Russia despite diplomatic assurances).

[69] *See* HRW, *Cases Involving Diplomatic Assurances Against Torture: Developments Since May 2005*, Case of Nuriye Kesbir at 10-11 (Jan. 2007), *available at* http://www.hrw.org/backgrounder/eca/eu0107/eu0107web.pdf (no extradition to Turkey despite diplomatic assurances); *see also Dutch Court Blocks Extradition of PKK Leader*, Reuters News, Sept. 15, 2006, *available at* http://www.institutkurde.org/en/afp/archives/060915115042.dw3ltink.html.

[70] *Pelit v. Azerbaijan*, CAT/C/38/D/281/2005 (U.N. Comm. Against Torture June 5, 2007), *available at* http://www1.umn.edu/humanrts/cat/decisions/281-2005.html.

Similarly, in *Chahal v. United Kingdom*,[71] and *Saadi v. Italy*,[72] the ECtHR affirmed the absolute and unconditional prohibition on refoulement. In *Chahal*, the ECtHR ruled that the return to India of a Sikh activist would violate the United Kingdom's nonrefoulement obligations, despite India's diplomatic assurances.[73]

Nassim Saadi, a Tunisian national sentenced in absentia there for terrorism-related offenses,[74] challenged his deportation from Italy to Tunisia on the grounds that it violated Italy's nonrefoulement obligations.[75] The Grand Chamber of the ECtHR unanimously held, *inter alia*, that enforcing the deportation decision would violate the ECHR article 3 ban on returns to risk of torture and ill-treatment[76] and that the diplomatic assurances provided by Tunisia were insufficient to ensure that Saadi would not be tortured.

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[71] *Chahal v. United Kingdom*, 70/1995/576/662 (ECtHR Nov. 15, 1996), *available at* http://www.worldlii.org/int/cases/IIHRL/1996/93.html.

[72] *Saadi v. Italy*, Application No. 37201/06 (ECtHR Feb. 28, 2008), at 32-33, ¶ 138, *available at* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=47c6882e2.

[73] *Chahal*, 70/1995/576/662, *supra* note 71, at (9), (11) (12-7).

[74] *See Saadi*, Application No. 37201/06, *supra* note 72, at 34-35, ¶ 144.

[75] *See id.* at 35, ¶ 146.

[76] *See id.* at 45, ¶ 2.

IV. NO OTHER COUNTRY DENIES A PERSON SUBJECT TO TRANSFER THE RIGHT TO CHALLENGE THE RELIABILITY AND SUFFICIENCY OF DIPLOMATIC ASSURANCES BEFORE AN INDEPENDENT, IMPARTIAL BODY

A. In Every Other Country That Either Employs Or Proposes Employing Diplomatic Assurances Against Torture, Judicial Review Of The Reliability And Sufficiency Of The Assurances Is Guaranteed

No other country currently seeking and/or securing diplomatic assurances transfers a person at risk of torture without permitting a challenge to that transfer, including assessment of the assurances, before an independent, impartial body.[77] Judicial review of the transfer entails the production of any diplomatic assurances against torture for the detainee's and for the court's evaluation as well as for their assessment of the context within which the assurances were sought, negotiated, secured, and alleged to be enforceable post-transfer. All other countries that may employ diplomatic assurances against torture (e.g., Austria, Canada, Georgia, Germany, the Netherlands, Russia, Sweden, Switzerland, Turkey, and the United Kingdom) guarantee judicial review of the reliability and sufficiency of the assurances.[78]

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[77] *See* J.A. 483, ¶ 4; *see also Still at Risk*, *supra* note 13, at 38 ("The most glaring deficiency in U.S. law and policy lies precisely in the absence of express provision for procedural guarantees for the person subject to transfer, including any opportunity to challenge the credibility or reliability of diplomatic assurances before an independent judicial body.").

[78] *See* J.A. 484, ¶ 6.

B. Both The U.N. Committee Against Torture And The U.N. Human Rights Committee Recommend Judicial Review Of Diplomatic Assurances In All Transfer Contexts Where They Are Employed

Both the U.N. Committee Against Torture and the U.N. Human Rights Committee ("HRC") have criticized the U.S. government for denial of the right to challenge diplomatic assurances in court. The Committee Against Torture and the HRC are the treaty-bodies responsible for monitoring implementation of, and compliance with, the CAT and the ICCPR, respectively. Upon signing and ratifying these treaties, the United States agreed to their oversight. Each committee's general comments, jurisprudence in individual petition cases, and recommendations and conclusions to governments on their implementation of the respective treaties are considered authoritative interpretations of state responsibility under each convention.

> In July 2006, the Committee Against Torture stated that it was
>
> concerned by the [U.S. government's] use of 'diplomatic assurances,' or other kind of guarantees, assuring that a person will not be tortured if expelled, returned, transferred or extradited to another State. The Committee is also concerned by the secrecy of such procedures including the absence of judicial scrutiny and the lack of monitoring mechanisms put in place to assess if the assurances have been honoured.[79]

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[79] U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19: United States of America, Conclusions and Recommendations (Advance Unedited Version)*, CAT/C/USA/CO/2 (May 19,

The Committee recommended that the United States provide "adequate judicial mechanisms for review" of the assurances.[80]

In its consideration of the second and third periodic combined report submitted by the United States, the HRC expressed its concern with the restrictive U.S. interpretation of its obligations under article 7 of the ICCPR and its adoption of the "more likely than not" standard in nonrefoulement procedures,[81] which is not consistent with international obligations. It also noted that the adoption of a practice of removal of individuals to other countries "without the appropriate safeguards to prevent treatment prohibited by the [ICCPR] . . . grossly violat[ed] the prohibition contained in article 7."[82] The HRC recommended that, in addition to conducting "thorough and independent investigations" into allegations of torture:

> The [United States] should exercise the utmost care in the use of diplomatic assurances and adopt clear and transparent procedures with adequate judicial mechanisms for review before individuals are deported, as well as effective

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2006), ¶ 21, *available at* http://www1.umn.edu/humanrts/cat/observations/usa2006.html.

[80] *Id.*

[81] *See* HRC, *Concluding Observations, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: United States of America* (87th Sess. Dec. 18, 2006), at 5, *available at* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=45c30bec9.

[82] *Id.* at 4-5.

> mechanisms to monitor scrupulously and vigorously the fate of the affected individuals.[83]

Notably, the HRC cautioned "that the more systematic the practice of torture . . . , the less likely it will be that a real risk of such treatment can be avoided by such assurances, however stringent any agreed follow-up procedures may be."[84]

V. HUMAN RIGHTS EXPERTS OPPOSE THE PRACTICE OF SEEKING DIPLOMATIC ASSURANCES FROM GOVERNMENTS THAT TORTURE

High-level international experts oppose reliance on diplomatic assurances against torture and ill-treatment in all transfer contexts. The U.N. High Commissioner for Human Rights ("HCHR") stated categorically that the prohibition on returning an individual where there is a risk of torture or ill-treatment is absolute, such that diplomatic assurances should not be relied upon in any transfer context where a risk of such abuse obtains:[85] "'I strongly share the view that diplomatic assurances do not work as they do not provide adequate protection against torture and ill-treatment.'"[86]

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[83] *Id.* at 5.

[84] *Id.*

[85] *See* J.A. 506, ¶ 36 (citing Speech by Louise Arbour, HCHR, *In Our Name and On Our Behalf*, Chatham House (Feb. 15, 2006), *available at* http://www.chathamhouse.org.uk/files/3375_ilparbour.pdf).

[86] J.A. 506, ¶ 36 (quoting Statement by Louise Arbour, HCHR, to the Council of Europe's Group of Experts on Human Rights and the Fight Against Terrorism (DH-S-TER) (Mar. 29-31, 2006)).

The U.N. Special Rapporteur on Torture also has firmly opposed reliance upon diplomatic assurances against torture in all transfer contexts where there is a risk of torture.[87]

The Council of Europe Human Rights Commissioner shares this view:

> "'Diplomatic assurances,' whereby receiving states promise not to torture specific individuals if returned, are definitely not the answer to the dilemma of extradition or deportation to a country where torture has been practised. Such pledges are not credible and have also turned out to be ineffective in well-documented cases. The governments concerned have already violated binding international norms and it is plain wrong to subject anyone to the risk of torture on the basis of an even less solemn undertaking to make an exception in an individual case. In short, the principle of non-refoulement should not be undermined by convenient, non-binding promises of such kinds."[88]

As the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights advocates, it is "unacceptable" to transfer persons to states that use torture on the

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[87] *See* J.A. 506-07, ¶ 37 (citing United Nations, Press Conference by United Nations Representative on Torture Convention (Oct. 23, 2006), *available at* http://www.un.org/News/briefings/docs/2006/061023_Nowak.doc.htm); *see also* Supplemental Appendix containing the Declaration of Manfred Nowak, U.N. Special Rapporteur on Torture.

[88] *See* J.A. 507, ¶ 38 (quoting Thomas Hammarberg, Council of Europe Human Rights Commissioner, *Viewpoints: Torture Can Never, Ever Be Accepted* (June 27, 2006)).

basis of diplomatic assurances.[89] Not only are such assurances "unenforceable," but "[r]eliance on them in these circumstances is contrary to the obligation of non-refoulement . . . and undermines the absolute prohibition of such treatment in international law."[90]

VI. THE USE OF DIPLOMATIC ASSURANCES AGAINST TORTURE UNDERMINES THE ABSOLUTE NONREFOULEMENT OBLIGATION OF THE UNITED STATES

Reliance on diplomatic assurances against torture from Egypt passes neither intellectual nor legal muster, and violates the U.S. government's article 3 nonrefoulement obligation under the CAT. "[A]ny assurances of humane treatment offered by the Egyptian authorities should be rejected as inherently unreliable" because of the endemic nature of torture there, the government's repeated denials that torture occurs and refusal to hold perpetrators accountable,

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[89] ICJ, *Eminent Jurists Panel Concludes Hearings on Counter-Terrorism and Human Rights in Europe* (July 6, 2007), *available at* http://ejp.icj.org/hearing2.php3?id_article=136&lang=en.

[90] *Id.*; *see also* ICJ, *International Panel Concludes Mission on Counter-Terrorism Measures in the Middle East* (June 7, 2007), *available at* http://ejp.icj.org/hearing2.php3?id_article=126&lang=en ("[D]etainees are transferred to [Middle East] countries on the basis of diplomatic assurances . . . , a promise that, in many cases, has not been fulfilled. . . . [T]hese assurances are unreliable, difficult to monitor and therefore not an adequate protection against torture or ill-treatment.").

the absence of independent and universal monitoring, and the Egyptian authorities' repeated failures to comply with prior diplomatic assurances against torture.[91]

Diplomatic assurances from the Egyptian government do not provide an effective safeguard against torture and thus do not dispel the risk faced upon return. To suggest otherwise is to indulge in stubborn disregard of a record that is replete with evidence that torture occurs and that diplomatic assurances and monitoring do little, if anything, to prevent it.

CONCLUSION

The decision of the district court should be affirmed.

April 22, 2008

Respectfully submitted,

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[91] *See* J.A. 508-09, ¶ 41.

CERTIFICATE OF BAR MEMBERSHIP

I, Paul R. Taskier, counsel for Amici Curiae, hereby certify that I am a member in good standing of the Bar of the United States Court of Appeals for the Third Circuit.

Paul R. Taskier

Paul R. Taskier

CERTIFICATE OF COMPLIANCE

I, Paul R. Taskier, counsel for Amici Curiae, hereby certify that this Brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains 6,797 words of text, by word count of the word processing system used to prepare the Brief, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I further certify that this Brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because this Brief has been prepared in a proportionately spaced typeface using MS Word, font size 14 Times New Roman. I further certify that the text in the electronic copy of this Brief is identical to the text in the paper copies. I further certify that the electronic copy of this Brief was scanned for viruses by Symantec AntiVirus version 10.0, and no viruses were detected.

Paul R. Taskier

Paul R. Taskier

SUPPLEMENTAL APPENDIX

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NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME

UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

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REFERENCE: G/SO 214 (53-21)

21 April 2008

To whom it may concern

Khouzam v. Chertoff, Nos. 07-2926; 08-1094

I, Manfred Nowak, United Nations Special Rapporteur on Torture, have outlined my concerns and positions in relation to diplomatic assurances in respect of refoulement of persons to countries, where they would be at risk of being tortured in several of my reports to the Human Rights Commission and the UN General Assembly. The views set out below are based on these reports, which discuss relevant international and regional standards and jurisprudence, see e.g. E/CN.4/2006/6, paras 31, 32 and A/60/316, paras 29-52.

On the basis of my analysis of the matter, I wish to draw the Court's attention to the following points which are relevant to the instant case, Khouzam v. Chertoff, Nos. 07-2926; 08-1094:

(a) The principle of non-refoulement as explicitly contained in the Convention against Torture (CAT) and implicitly in the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, is an absolute obligation deriving from the absolute and non-derogable nature of the prohibition of torture;

(b) Diplomatic assurances are typically sought from countries with a record of practicing torture, i.e. the very fact that such diplomatic assurances are sought is an acknowledgement that the requested State, in the opinion of the requesting State, is practicing torture. In most cases, those individuals in relation to whom diplomatic assurances are being sought belong to a high-risk group;

(c) It is often the case that the requesting and the requested States are parties to CAT, ICCPR and other treaties absolutely prohibiting torture. Rather than using all their diplomatic and legal powers as States parties to hold other States parties accountable for their violations, requesting States, by means of diplomatic assurances, seek only an exception from the practice of torture for a few individuals, which leads to double standards vis-à-vis other detainees in those countries;

(d) Diplomatic assurances are not legally binding. It is therefore unclear why States that violate binding obligations under treaty and customary international law should comply with non-

binding assurances. Another important question in this regard is whether the authority providing such diplomatic assurances has the power to enforce them vis-à-vis its own security forces;

(e) Post-return monitoring mechanisms are no guarantee against torture - even the best monitoring mechanisms (e.g. the International Committee of the Red Cross and the European Committee for the Prevention of Torture) are not "watertight" safeguards against torture;

(f) The individual concerned has no recourse if assurances are violated;

(g) In most cases, diplomatic assurances do not contain any sanctions in case they are violated, i.e. there is no accountability of the requested or requesting State, and therefore the perpetrators of torture are not brought to justice;

(h) Both States have a common interest in denying that returned persons were subjected to torture. Therefore, where States have identified independent organizations to undertake monitoring functions under the agreement, these interests may translate into undue political pressure upon these monitoring bodies, particularly where one is funded by the sending and/or receiving State.

In my view, as Special Rapporteur on Torture, diplomatic assurances are therefore unreliable and ineffective in the protection against torture and ill-treatment. Even if one assumes that such assurances can ever be relied upon, they must be subject to effective and independent review, including judicial review.

This letter is provided without prejudice to, and should not be considered as a waiver, express or implied of the privileges and immunities of the United Nations, its officials and experts, pursuant to the 1964 Convention on the Privileges and Immunities of the United Nations.

Yours sincerely,

Manfred Nowak
Special Rapporteur on the question of torture

AFFIDAVIT OF SERVICE

DOCKET NO. 07-2926;08-1094
----------X
Khouzam

vs.

Chertoff
----------X

I, , swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

on April 22, 2008

I served the **BRIEF AND SUPPLEMENTAL APPENDIX OF AMICI CURIAE HUMAN RIGHTS WATCH, AMNESTY INTERNATIONAL, CENTER FOR CONSTITUTIONAL RIGHTS, INTERNATIONAL COMMISSION OF JURISTS, AND INTERNATIONAL FEDERATION FOR HUMAN RIGHTS IN SUPPORT OF PETITIONER-APPELLEE SAMEH SAMI S. KHOUZAM** within in the above captioned matter upon:

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via **Express Mail** by depositing **2** copies of same, enclosed in a post-paid, properly addressed wrapper, in an official depository maintained by United States Postal Service.

Unless otherwise noted, copies have been sent to the court on the same date as above for filing via Express Mail.

Sworn to before me on April 22, 2008

Robyn Cocho
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Commission Expires January 8, 2012

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