

United States District Court  
For the Middle District of Pennsylvania

Sameh Sami S. Khouzam,	)	
Petitioner,	)	
	)	
v.	)	
	)	
Thomas H. Hogan, as Warden,	)	
York County Prison,	)	NO.
Respondent 1, and	)	
	)	
Thomas Decker, Field Office Operations	)	<b>EMERGENCY</b>
Director, Philadelphia District of	)	Petition For Habeas
United States Immigration & Customs	)	Corpus, Declaratory
Enforcement(USICE), of the U.S	)	Judgement Action &
Department of Homeland Security,	)	For Stay Of Removal
Respondent 2, and	)	
	)	
Julie Myers, Asst. Secretary of Department	)	
Of Homeland Security,	)	
Respondent 3, and	)	(Electronically Filed)
	)	
Michael Chertoff, Secretary of Department of	)	
Homeland Security,	)	
Respondent 4	)	

**EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS,  
DECLARATORY JUDGMENT, WRIT OF MANDAMUS,  
AND FOR STAY OF REMOVAL**

**I. THE PARTIES**

1. Petitioner is Sameh Sami S. Khouzam, a national and citizen of Egypt, who is detained in the custody of U.S.I.C.E., Department of Homeland Security, at York County Prison, 3400 Concord Road, York, Pa. within the Middle District of Pennsylvania. ***Petitioner is in IMMINENT DANGER OF REMOVAL BY JUNE 1, 2007 FROM THE UNITED STATES.***

2. Respondent 1, is Thomas H. Hogan, as Warden of the York County Prison, the immediate custodian of Petitioner.

3. Respondent 2, is Thomas Decker, Field Office Operations Director, Philadelphia District of U.S.I.C.E., at 1600 Callowhill Street, Philadelphia, Pa., and is in joint custody of Petitioner along with Respondent 1, Thomas H. Hogan, pursuant to U.S. law, Regulations, and written agreement between U.S.I.C.E. and York County, Pennsylvania regarding the custody, care, and control of U.S.I.C.E. detainees such as Petitioner.

## II. PROCEDURAL BACKGROUND

4. Respondent 3, on information and belief, is Julie Myers, an Assistant Secretary of the Department of Homeland Security, who on or about January 24, 2007, directed that Petitioner be remanded to the custody of U.S.I.C.E. and removed from the United States upon a basis that she had received 'diplomatic assurances' from the government of Egypt that Petitioner would not be tortured upon his forced repatriation by the United States to Egypt. Assistant Secretary Myers' legal address on information and belief is USICE, Office of Principal Legal Advisor, USDHS, 425 I Street, N.W., Washington, D.C. 20536.

5. Respondent 4, is Michael Chertoff, Secretary of the United States Department of Homeland Security, c/o Department of Homeland Security, Washington, D.C., or on information and belief, 425 I Street, N.W., Washington, D.C. 20536.

6. On or about February 24, 2004, the United States Court of Appeals issued its final Opinion and Order in case No.'s 02-4109 and 02-4159, in which it affirmed the grant of Deferral of Removal to Petitioner under the United Nations Convention Against Torture. Said Order and Opinion are attached to this Petition as **Exhibit 1**. That decision is final and binding upon all parties, since not appealed to the United States Supreme Court.

7. On or about February 6, 2006, Petitioner was order released from a New Jersey prison in U.S.I.C.E. custody by Order of U.S. District Judge Dennis M. Cavanaugh, U.S. District Court for the District of New Jersey, see attached Order of U.S.D.J. Cavanaugh, **Exhibit 2, after 8 years of detention by USICE.**

8. On or about February 7, 2006, Petitioner was placed under an Order of Supervision by U.S.I.C.E., (See **Exhibit 2**) and has been reporting as directed ever since, until on or about May 29, 2007, he was taken back into U.S.I.C.E. custody without warning, and advised by U.S.I.C.E. officials on May 29, 2007, he would be removed from the United States shortly after June 1, 2007, to Egypt.

9. By Order of the U.S. Court of Appeals for the Second Circuit, Petitioner has been **judicially granted deferral of removal to Egypt under the U.N. Convention Against Torture: See Exhibit 1. The grant of deferral of removal is based upon the conclusion of the U.S. Court of Appeals that Petitioner will be tortured to confess to a murder he is alleged by Egyptian authorities to have committed in Egypt.** That Court concluded, and the parties are legally bound by such conclusion, that Egyptian officials routinely torture criminal suspects in custody for criminal violations of Egyptian law.

10. Respondent 3, Assistant Secretary of Homeland Security, Julie Myers, made a decision on or about January 24, 2007, to remove Petitioner from the United States based upon 'diplomatic assurances' from Egypt that it would not torture Petitioner upon his forced repatriation to Egypt by the United States. A true and accurate copy of the letter/memo from Assistant Secretary, Julie Myers, is attached hereto, marked **Exhibit 3** and incorporated herein.

11. The decision of Ass't. Secretary Myers of January 24, 2007, decision was reduced to writing and served upon Petitioner on or about May 29, 2007, approximately four(4) months after the decision was made, informing him that DHS had terminated his judicial grant of deferral of removal, and that he would be removed to Egypt, but 'not prior to June 1, 2007'.

**12. The government purports to revoke Petitioner's judicial grant of deferral of removal and remove him to Egypt without any judicial hearing or due process of law pursuant to 8 C.F.R. Section 1208.18c and 208.18c as well as 8 C.F.R Section 1208.17(f) and section 208.17(f).**

13. Under these sections the government purports to be able to lawfully remove Petitioner from the United States upon 'diplomatic assurances' of the government of Egypt that Petitioner will not be tortured by that government, despite the above-referenced final ruling and lawful order of the United States Court of Appeals for the Second Circuit.

14. Neither the Immigration and Nationality Act implementing deferral of removal pursuant to the United Nations Convention Against Torture, nor the United Nations Convention Against Torture itself, authorize unilateral, revocation of judicially granted deferral of removal; as such, the attempted revocation of the grant of deferral of removal by the U.S. Court of Appeals for the Second Circuit, is an illegal attempt to circumvent the lawful Order of that Federal Court.

15. The actions of all Respondents in detaining and attempting to remove Petitioner from the United States under color of the laws of the United States of America are unlawful and in direct contravention of the order and findings of the United States Court of Appeals for the Second Circuit, and this Court has both jurisdiction and venue to prevent Respondents, and each of them, from violating the lawful Order of the United States Court of Appeals for the Second Circuit, which binds the executive branch of the United States.

16. The U.S. Court of Appeals specifically found at page 22 of its Opinion, which findings of fact are final and binding on the United States:

‘Applying the correct legal standard to the BIA’s findings *de novo*, we conclude, as the BIA itself previously did, that Khouzam will more likely than not be tortured if he is deported to Egypt. To the extent that the Egyptian police are acting in their official capacities—as is strongly suggested by the fact that their goal is to extract confessions—then the acts are carried out “by ....a public official...acting in an official capacity.” CAT, Art.3. To the extent that these police are acting their purely private capacities, then the “routine” nature of the torture and its connection to the criminal justice system supply ample evidence that higher-level officials either know of the torture or remain willfully blind to the torture and breach their legal responsibility to prevent it. As two of the CAT’s drafters have noted, when it is a public official who inflicts severe pain or suffering, it is only in exceptional cases that we can expect to be able to conclude that the acts do not constitute torture by reason of the official acting for purely private reasons. *Burgers & Danelius, supra*, at 119.’

17. As a result, the United States Court of Appeals for the Second Circuit judicially granted Petitioner deferral of removal under the Convention Against Torture.(See **Exhibit 1**, ‘Conclusion’ at page 23):

17.(continued)

‘In sum, we deny Khouzam’s petition to review the BIA’s March 7, 2002 decision relating to asylum and withholding of removal. We grant Khouzam’s petition to review the BIA’s May 7, 2002 decision relating to relief under the CAT and vacate that decision. Since the May 7, 2002 decision was a reconsideration of a previous BIA decision that had granted Khouzam CAT relief, we let the previous decision stand.’

18. The actions of the government in attempting to revoke the judicially granted deferral of removal to Petitioner are not only illegal, but in fact, will likely place Petitioner at risk of torture upon his forced repatriation by U.S. Officials to Egypt:

a) the 2006 U.S. Department of State Country Report on Egypt states that: ‘torture is pervasive in Egyptian detention centers.’ There were numerous, credible reports that security forces tortured and mistreated prisoners and detainees. Domestic and international human rights groups reported that the State Security Investigations Service, police, and other government entities continued to employ torture to extract information or force confessions.

b) the United Nations Committee Against Torture, the United Nations Human Rights Committee, and the United Nations Special Rapporteur on Torture have all consistently expressed concern at the persistence and systemic nature of torture in Egypt, as well as cruel, inhuman or degrading treatment at the hands of Egyptian law-enforcement personnel. See: Human Rights Watch, Egypt’s Torture Epidemic, Feb., 2004: <http://hrw.org/english/docs/2004/02/25/egypt7658.htm>

c) The Egyptian Government has refused to allow a visit by the UN Special Rapporteur on Torture every year since 1996. See: U.S. Department of State, 2006 Country Reports on Human Rights Practices, Egypt.

d) There is significant evidence that the government has repeatedly failed to prosecute police officers who participate in torture practices. U.S. Department of State, 2006 Country Reports on Human Rights Practices, Egypt.(Egyptian public prosecutor closed an investigation into assaults by police officers, claiming that it was not possible to identify the perpetrators, despite video documentation of the officers assaulting demonstrators and journalists).

e) The types of torture exhibited at police stations, and widely reported by the Egyptian Organization for Human Rights, include detainees who are kicked, burned with cigarettes, shackled, forcibly stripped, beaten with water hoses, and dragged on the floor. U.S. Department of State, 2006 Country Reports on Human Rights Practices, Egypt.

19. The government has failed to develop any regulations or procedures to define what precisely constitutes 'adequate diplomatic assurances' for CAT purposes. No U.S. Court has addressed the question of whether and under what circumstances diplomatic assurances can be used to justify returning individuals to situations where the likelihood of torture has been established by a Federal Court.

20. The government has apparently requested and received 'diplomatic assurances' from Egypt in Petitioner's case on January 27, 2007, but has failed to provide Petitioner a copy of such 'diplomatic assurances' nor any procedure by which Petitioner affords Petitioner adequate notice and an opportunity to respond to same.

### **III. OPERATIVE FACTS:**

21. Petitioner is a 37 year old native and citizen of Egypt. He arrived at JFK Airport on February 11, 1998, where he applied for asylum.

22. Petitioner attempted to effect entry to the United States on a valid visitor's visa issued to him prior to this trip, but this visa was cancelled during the flight from Egypt to the United States, because the U.S. government received notice from Egyptian officials that Petitioner had been charged with murder in Egypt.

23. Petitioner was taken into custody, where he remained until February, 2006.

24. Petitioner's case reached the U.S. Court of Appeals for the Second Circuit on Petition for Review from the BIA. On February 24, 2004, the Second Circuit entered a final order of removal to Egypt, but granted deferral of removal under the CAT.

25. On February 6, 2006, Petitioner was released from custody via Federal Court Order. See **Exhibit 2**.



26. On Tuesday, May 29, 2007, Petitioner was detained by U.S.I.C.E. pursuant to an administrative determination by Respondent 3, Ass't Secretary of DHS, Julie Myers, which purported to revoke the judicially granted deferral of removal pursuant to CAT from the U.S. Court of Appeals for the Third Circuit.

27. As aforesaid, Petitioner was delivered a letter on DHS letterhead indicating he would be removed no earlier than June 1, 2007, on May 29, 2007, at the York County Prison, 3400 Concord Road, York, Pa. 17402 by U.S.I.C.E. Officials.

28. No stay is in place to prevent U.S.I.C.E. from effecting an immediate removal of Petitioner to Egypt on and after June 1, 2007.

#### **IV. THE PETITION FOR ISSUANCE OF A WRIT OF HABEAS CORPUS**

29. Paragraphs 1 through 28, inclusive of this document are incorporated herein by reference as though set out fully at this point in the Petition for Issuance of A Writ of Habeas Corpus.

30. This Court has jurisdiction to hear and decide this case pursuant to 28 U.S.C. Section 2241(a) and (c)(1) and (c) (3), in that this is a Petition for a Writ of Habeas Corpus, and Petitioner is being held in custody under the authority of the United States(28 U.S.C. Section 2241(c)(1), and in violation of the Constitution of the United States(28 U.S.C. Section 2241(c)(3) ). This Court also has independent jurisdiction to hear and decide this case pursuant to the Suspension Clause of the United States Constitution, Article I, Section 9, Clause 2.

31. Venue is proper in this Court since Petitioner is being held in custody within the boundaries of the Middle District of Pennsylvania.

32. The provisions of the Real ID Act of 2005 set forth at 8 U.S.C. Section 1252, Immigration & Nationality Act, Section 242, which strip jurisdiction of this Court's habeas corpus review powers are not applicable to this Petition because REAL ID only applies on its face to direct review of an alien's removal proceedings.

33. Further, government actions(such as the one under scrutiny in this case) which are taken separate and apart from removal proceedings, such as efforts to secure diplomatic assurances to override a grant of Convention Against Torture protection are subject to habeas review. See, for example: *Singh v. Chertoff, 2005*

*WL 2043044(N.D.Cal.); Cretu v. Chertoff, 2005 WL 1630541(W.D. La.); Garcia-Perez v. United States Dep't of Homeland Security, 2005 WL 1398100(W.D. Tex).*

WHEREFORE, Petitioner, Sameh Sami Khouzam, prays this Honorable Court to issue a Writ of Habeas Corpus in his favor and to grant him the following relief:

1. Order a Stay of removal against the United States of America and all of its officers, agents and service until further Order of this Court, and
2. Order an immediate release from the custody and control of the Department of Homeland Security and/or U.S.I.C.E., subject to previous administrative reporting requirements, in place prior to May 29, 2007, and
3. Set aside the administrative determination/purported revocation of Petitioner's judicially granted deferral of removal under C.A.T., and
4. Order such other relief as the Court deems appropriate under the circumstances of this case.

#### **V. THE REQUEST FOR DECLARATORY JUDGMENT RELIEF**

34. Paragraphs 1 through 28 and paragraphs 31 through 33 (as applicable to federal actions for a declaratory judgment) of this document are incorporated herein by reference.

35. This Court has the power to issue an Order declaring the action of Respondents Ass't Secretary Myers and Secretary Chertoff in purportedly revoking Petitioner's judicial grant of deferral of removal by the U.S. Court of Appeals for the Second Circuit through Executive fiat and by letter, as null and void, *ab initio*, pursuant to 28 USC Section 2201 because it was done in violation of the final Order of the U.S. Court of Appeals for the Second Circuit, binding upon the government of the United States, and for the further reason that it deprives Petitioner of any due process rights through which he may address the purported revocation of his judicial grant of deferral of removal under CAT.

36. Pursuant to 28 U.S.C. Section 2202, this Court may issue injunctive relief to effectuate its Declaratory Judgement.



37. This case is appropriate for declaratory judgment relief.

WHEREFORE, Petitioner, Sameh Sami S. Khouzam, prays this Honorable Court for relief as follows:

- a) for a declaratory judgement, adjudging the purported revocation of Petitioner's judicially conferred deferral of removal under CAT as void, *ab initio*,
- b) for a stay of removal pursuant to 28 U.S.C. Section 2202, and/or the All Writs Act at 28 U.S.C. Section 1651,
- c) and for such other relief as this Court deems appropriate under all of the circumstances of this case.

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