07-7009

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

ALI SAADALLAH BELHAS, et al.,
Plaintiff-Appellant,

– v. –

MOSHE YA'ALON,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE CENTER FOR JUSTICE & ACCOUNTABILITY AS AMICUS CURIAE IN SUPPORT OF THE PLAINTIFF-APPELLANT AND REVERSAL OF THE DISTRICT COURT'S DECISION

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August 31, 2007

*motion for admission to the D.C. Circuit submitted August 21, 2007

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Statutes

Other Authorities

INTEREST OF THE AMICUS

This Brief for the Center for Justice & Accountability ("CJA") as *Amicus Curiae* is respectfully submitted pursuant to Federal Rule of Appellate Procedure 29 and District of Columbia Circuit Rule 29 in support of the Appellants.[1]

CJA is a non-profit legal advocacy center that works to prevent torture and other severe human rights abuses around the world by helping survivors hold their perpetrators accountable. In doing so, CJA seeks to prevent the United States from serving as a safe haven for torturers. When representing survivors seeking redress for acts of torture and extrajudicial killing, CJA depends on the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note (2000), to hold individual perpetrators who have come to the United States accountable under the law as Congress intended.

An unanticipated result of the district court's far-reaching decision in *Belhas v. Ya'alon*, 466 F. Supp. 2d 127 (D.D.C 2006), is that it virtually nullifies the TVPA. Unless corrected by this Court, the holding in *Belhas* will deny a large class of victims access to the courts. For example, a case filed by CJA on behalf of five survivors of torture, extrajudicial killing, and other mass atrocities in Somalia has been dismissed by a district court that relied upon the faulty reasoning of the *Belhas* decision. *Yousuf v. Samantar*, No. 1:04cv1360, 2007 U.S. Dist. LEXIS 56227 (D. Va. Aug. 1, 2007).[2] If allowed to stand, the *Belhas* decision will eliminate the sole

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[1] A Motion for Leave to File an Amicus Curiae Brief has been jointly filed with this brief, including a Corporate Disclosure Statement pursuant to Circuit Rule 26.1.

[2] CJA represents the five plaintiffs in *Yousuf*: Mr. Bashe Abdi Yousuf, a young business man detained, tortured, and kept in solitary confinement for over six years; Aziz Mohamed Deria, whose father and brother were abducted by officials and never seen again; John Doe I, whose two brothers were summarily executed by soldiers; Jane Doe, a university student detained by officials, raped 15 times, and put in solitary confinement for over three years; and John Doe II, imprisoned for his clan affiliation, who was shot by a firing squad, but miraculously survived by hiding under other dead bodies. *Yousuf*, 2007 U.S. Dist. LEXIS 56227, at *9-18. The defendant, General Mohamed Ali Samantar, a member of the brutal regime of Siad Barre, resides in Fairfax, Virginia.

avenue for many survivors, particularly United States citizens, to seek redress for acts of torture and extrajudicial killing committed overseas.

CJA has filed civil actions in United States courts on behalf of survivors of torture and other abuses against former officials from Bosnia, Chile, El Salvador, Haiti, Honduras, Indonesia, Peru and Somalia. Each of these cases has included claims brought under the TVPA.[3] In these cases, none of the enumerated exceptions to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-11 (2000), have applied, but this has not prevented these cases from moving forward—until now. If finding an exception under the FSIA is a prerequisite, as the *Belhas* court requires, the legal remedies now available to a large class of victims of torture and extrajudicial killing will be effectively eliminated. Congress could not have intended this result when it enacted the TVPA.

Accordingly, the *amicus curiae* seeks to provide this Court with additional information on the adverse impact of the district court's decision on torture survivors ability to seek redress against their perpetrators who have come to the United States.

SUMMARY OF ARGUMENT

Congress intended the TVPA to serve as a tool for victims to hold accountable former foreign officials responsible for torture and extrajudicial killing who come to the United States. Congress could not have intended the FSIA, passed long before the TVPA, to bar actions properly pled under the TVPA against former officials. Instead, the legislative history of the TVPA shows Congress agreed that acts of torture and extrajudicial killing, by their nature, are outside the legal scope of any official's authority and therefore do not fall under the protection of the FSIA. Suits brought by torture survivors and families of those extrajudicially killed by

[3] CJA also brings claims in United States courts under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350 (2000), for human rights abuses committed abroad. The ATS confers subject matter jurisdiction for claims brought by aliens only and is not available to United States citizens.

> The legislation uses the term "individual" to make crystal clear that foreign states or their entities cannot be sued under this bill under any circumstances: only individuals may be sued. Consequently, the TVPA is not meant to override the [FSIA] of 1976, which renders foreign governments immune from suits in U.S. courts, except in certain instances . . . . *[T]he committee does not intend these immunities [sovereign, diplomatic, and head of state] to provide former officials with a defense to a lawsuit brought under this legislation.*

S. Rep. No. 102-249, at 7-8 (emphasis added). Courts have cited to this legislative history with approval. *See, e.g., Pugh v. Socialist People's Libyan Arab Jamahiriya*, No. 02-02026, 2006 U.S. Dist. LEXIS 58033, at *41 (D.D.C. 2006). Congress understood that the FSIA would provide immunity to *governments* for human rights abuses, but it did not intend that immunity would apply to former *individual* officials accused of torture or extrajudicial killing. *See* H.R. Rep. No. 102-367, at 5 ("[S]overeign immunity would not generally be an available defense" to a claim brought under the TVPA).

Congress expressly provided in the statutory language of the TVPA that those who acted under "the color of law" would be subject to the TVPA. 28 U.S.C. § 1350 note. This requirement shows that Congress intended for individual officials to be sued but wanted to exclude "purely private criminal acts by individuals or nongovernmental organizations" from coverage. S. Rep. No. 102-249, at 8; *See Doe I v. Islamic Salvation Front*, 993 F. Supp. 3, 9 (D.D.C. 1998) (quoting H.R. Rep. No. 102-367, at 5) ("[T]he TVPA contains explicit language requiring state action. The legislative history clearly indicates that 'The bill does not attempt to deal with torture or killing by purely private groups.'")

Congress directed the courts to look to interpretations of 42 U.S.C. § 1983 when construing "color of law." H.R. Rep. No. 102-367, at 5; S. Rep. No. 102-249, at 8. By doing so, Congress agreed with the courts' analysis that certain actions—although they must be committed by government officials—are nonetheless outside the powers granted by any sovereign, and

therefore sovereign immunity does not shield an individual from answering for those actions. *See Williams v. United States*, 341 U.S. 97, 99 (1951) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)) ("'Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law.'") Congress viewed acts performed under "color of law" as distinct from, and not equivalent to, the sovereign acts that are shielded from United States judicial scrutiny under the FSIA.

As the Senate noted, "no state officially condones torture or extrajudicial killings," and therefore "few such acts, if any, would fall under the rubric of 'official actions' taken in the course of an official's duties." S. Rep. No. 102-249, at 8. In enacting the TVPA, Congress took the view that torture and extrajudicial killing cannot be within the scope of a foreign official's authority. This is because both crimes "violate standards accepted by virtually every nation. This universal consensus condemning these practices has assumed the status of customary international law." S. Rep. No. 102-249, at 3. Therefore, Congress did not intend for the FSIA to apply to former government officials who commit torture and extrajudicial killing. The Senate Report states clearly:

> [T]he committee does not intend these immunities to provide former officials with a defense to a lawsuit brought under this legislation . . . . [T]he FSIA should normally provide no defense to an action under the TVPA against a formal official.

S. Rep. No. 102-249, at 8. Accordingly, an interpretation of the FSIA that only allows TVPA actions that fall within the narrow FSIA exceptions to proceed is not consistent with the Congressional understanding of the relationship between these two statutes.

B. Congress Intended the TVPA to Deny Safe Haven in the United States and Provide Redress for Victims

Congress enacted the TVPA to prevent former foreign government officials who commit torture and extrajudicial killing from finding refuge in the United States. The TVPA "puts torturers on notice that they will find no safe haven in the United States. Torturers may be sued under the bill if they seek the protection of our shores." 137 Cong. Rec. H11244 (1991) (statement of Rep. Mazzoli). Extending broad immunity that shields these individuals from the reach of the judicial system contravenes this explicit purpose.

Congress also intended that the TVPA provide redress for torture victims who cannot achieve justice in their own countries. "This bill is designed to provide 'tangible' results—a cause of action for damages for violation of the law of nations condemning torture and extrajudicial killing." 132 Cong. Rec. 12949 (1986) (statement of Sen. Specter). Congress recognized that victims of these types of crimes often have no other way to seek justice:

> The countries that encourage torture and killing are generally the least likely to be able to adjudicate victims' claims fairly. The torturer who becomes subject to the jurisdiction of our courts must not be shielded by the lack of remedies in the very country that encourages his action.

135 Cong. Rec. 22717 (1989) (statement of Rep. Leach). Congress enacted the TVPA to provide a crucial tool of enforcement and provide victims access to a fair judicial system. The district court's application of immunity undermines Congress's intent by denying most victims access to United States courts, even when the perpetrators of their abuse are in the United States.

II. The District Court's Decision Unjustifiably Narrows the Application of the TVPA and Would Deny Many Survivors of Torture and Other Severe Human Rights Violations Access to the Courts

The district court in *Belhas* erred when it found that United States courts lack jurisdiction to consider TVPA claims if none of the enumerated exceptions to the FSIA apply.[4] 466 F. Supp. 2d at 132. This holding ignores a prerequisite inquiry to determine if the FSIA applies at all: whether the defendant was acting within the scope of his legal mandate. As a result, the decision in *Belhas* has the sweeping effect of precluding the majority of claims for torture or extrajudicial killing that Congress intended to go forward.

A. Under the District Court's Decision the Very Type of Victim to Whom Congress Intended to Give Redress Under the TVPA Would Lose Access to the Courts

Below, a*micus curiae* provides three examples of torture and extrajudicial claims successfully brought by our clients under the TVPA.[5] These claims exemplify the types of cases Congress intended in passing the TVPA. However, if the *Belhas* expansion of sovereign immunity under the FSIA had been applied to the defendants in these cases, these claims would likely not have been allowed to proceed to trial. The TVPA is the only mechanism for redress that the plaintiffs in these cases—all of them United States citizens—had available to them for the abuses that they suffered. Their perpetrators had come to live in the jurisdiction of the United States, and the claimants had to demonstrate that they had exhausted all remedies in the countries where the abuses originated as required under the TVPA. 28 U.S.C. § 1350 note. However, none of the exceptions enumerated in the FSIA apply in these cases: there is no

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[4] The exceptions are explained in the district court's decision in *Belhas* as:

> ...waiver, 28 U.S.C. § 1605(a) (1), certain actions by state sponsors of terrorism, 28 U.S.C. § 1605(a) (7), disputes arising from commercial activities of a foreign state, 28 U.S.C. § 1605(a) (2), and disputes arising from certain tortious acts committed within the United States, 28 U.S.C. § 1605(a) (5).

466 F. Supp. 2d at 131.

[5] The cases discussed herein involved claims brought under the ATS as well as the TVPA, however the featured plaintiffs are all United States citizens whose claims were limited to those brought under the TVPA.

waiver of immunity by the country where the abuses took place (28 U.S.C. § 1605(a) (1)); these countries have not been designated as state sponsors of terrorism (28 U.S.C. § 1605(a) (7)); the facts do not involve commercial activities of a foreign state (28 U.S.C. § 1605(a) (2)); and the tortious acts were committed outside the United States (28 U.S.C. § 1605(a) (5)). Nonetheless, the holding in *Belhas* would have blocked these plaintiffs from proceeding successfully with their claims.

1. The Torture and Extrajudicial Killing of Winston Cabello

After General Augusto Pinochet led a military *coup d'état* that ousted Chilean President Salvador Allende on September 11, 1973, his military *junta* arrested members of the Allende government, including an economist named Winston Cabello, who was taken to the Copiapo military garrison in northern Chile. *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1152 (11th Cir. 2005). In early October 1973, General Arellano Stark took his unit on the "Caravan of Death," a bloody tour of northern Chile. *Id.* Joining General Stark was a military officer named Armando Fernandez-Larios (Fernandez). *Id.*

On the morning of October 17, 1973, members of the Caravan of Death, including Fernandez, selected 13 prisoners from Copiapo, Mr. Cabello among them, to be driven out of town and executed. *Cabello*, 402 F.3d at 1152. The prisoners were ordered out of the truck one by one, then executed by gunfire and stabbing. *Id.* Mr. Cabello refused to leave the truck. *Id.* Fernandez slashed Mr. Cabello with a *corvo*, a short, curved knife designed to kill while causing a prolonged and painful death. *Id.* Mr. Cabello's body was among the bodies of the 13 prisoners finally exhumed in 1990 after the end of General Pinochet's rule. *Id.*

Fernandez resigned from the Chilean military in 1987 with the rank of Major and came to live in the United States. *Cabello*, 402 F.3d at 1153. Fleeing the violence in Chile, surviving

members of Mr. Cabello's family also came to the United States, received political asylum, and became naturalized citizens. When they learned of Fernandez's presence in the United States, they filed an action against him in federal court that included claims for extrajudicial killing and torture under the TVPA. *Id.* at 1151. A federal jury held Fernandez liable, representing the first time any of the former members of General Pinochet's regime who fled to the United States faced accountability for their crimes. *Id.*

2. The Torture of Dr. Juan Romagoza Arce

On December 12, 1980, Dr. Juan Romagoza Arce was working at a rural health clinic in El Salvador when two vehicles carrying soldiers from the local army garrison and the National Guard pulled up in front and opened fire upon the clinic. *See* Second Amended Complaint, ¶¶ 12-13, *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006) (No. 99-8364), *available at* http://www.cja.org/cases/Romagoza_Docs/RomagozaComplaint.htm ("2d Amend. Compl.").[6] Dr. Romagoza was shot in the right foot and another bullet grazed his head. *Id.* at ¶ 14. The soldiers and Guardsmen then detained Dr. Romagoza as a "subversive leader" because he possessed medical and surgical instruments. *Id.*

For 22 days, three to four times a day, National Guardsmen subjected Dr. Romagoza to electric shots to his ears, tongue, testicles, anus and the edges of his wounds until he lost consciousness. 2nd Amend. Compl. at ¶¶ 17-18. The Guardsman forced him to regain consciousness by kicking him and burning him with cigarettes. *Id.* at ¶ 17. Additionally, the Guardsmen sodomized Dr. Romagoza with foreign objects and subjected him to additional electric shocks, water torture, and asphyxiation with a hood containing calcium oxide. *Id.* at ¶

[6] Since the underlying facts that gave rise to the suit in *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006) do not appear in the published decision, citations are from the Second Amended Complaint.

19. After Dr. Romagoza's release, he fled El Salvador and came to the United States in 1983 where he received political asylum and later became a naturalized citizen. *Id.* at ¶¶6, 23-24.

At the time of Dr. Romagoza's torture, General José Garcia served as Minister of Defense of El Salvador and General Vides Cassanova served as the Director General of the Salvadoran National Guard. *Arce v. Garcia*, 434 F.3d 1254, 1256 (11th Cir. 2006). Both men eventually left El Salvador and settled in South Florida, where they became permanent residents of the United States in 1989. *Id.* In 1999, Dr. Romagoza brought suit against the two generals under the TVPA and a federal jury found them liable. *Id.* at 1256-1257. The case marked the first time any of the former Salvadoran military who have settled in the United States had been held accountable for the mass atrocities committed against the civilian population of El Salvador. The case inspired several more Salvadoran survivors to seek accountability against their perpetrators.[7]

3. The Torture of Cecilia Santos

On September 25, 1980, university student Cecilia Santos was in the restroom at a shopping mall in San Salvador, El Salvador, when she heard a loud noise that sounded like an explosion. *Chavez v. Carranza*, 413 F. Supp. 2d 891, 895 (D. Tenn. 2005). Two guards entered the restroom and falsely accused Ms. Santos of having planted a bomb. *Id.* Soon after, she was driven to the headquarters of the National Police where she was interrogated and tortured. *Id.* At one point, one of the men raped her with a foreign object. *Id.* at 896. Her interrogators stuck sulphuric acid up her nose and dripped acid on her hand. *Id.* They also hooked wires to her fingers that administered electric shocks. *Id.* After her release, Ms. Santos fled El Salvador, sought political asylum in the United States and later became a naturalized citizen.

[7] The *amicus curiae* has represented torture survivors and families of those extrajudicially killed in two subsequent cases brought against former Salvadoran officials found to be living in the United States. *See Doe v. Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004); *Chavez v. Carranza*, 413 F. Supp. 2d 891, 895 (D. Tenn. 2005).

Vice Minister of Defense Colonel Nicolas Carranza had command over the National Police responsible for Ms. Santos' torture. *Chavez*, 413 F. Supp. 2d at 894. In 1984, Colonel Carranza also moved to the United States and set up residence in Memphis, Tennessee. *Id.*

Ms. Santos sued Colonel Carranza under the TVPA and accused him of having command responsibility for her torture. *Chavez*, 413 F. Supp. 2d at 894. After a federal jury found him liable, Ms. Santos said, "[Carranza] and the others will now get the message that they just cannot go and do anything they want with impunity. They are not above the law." *Action News 5* (WMC-TV Memphis television broadcast, Nov. 18, 2005).

B. Restricting Claims Under the TVPA to an Enumerated Exception Under the FSIA Will Virtually Nullify the TVPA

The enumerated exceptions under the FSIA are so narrow that if courts analyzing TVPA claims are required to find one, the TVPA is rendered a practical nullity. Such a course would reward corrupt and repressive regimes for their longevity and actually encourage, rather than deter, future abuses. In other words, the district court's ruling would immunize all former officials who committed the alleged acts abroad under a corrupt and entrenched regime that has not been designated as a state sponsor of terror, yet continues to control the reigns of power.[8] This result leads to political and foreign relations considerations interfering in the decision about whether immunity applies, contrary to the intent behind the FSIA. *See Verlinden B.V. v. Cent. Bank of Nig.*, 461 U.S. 480, 488 (1983) (quoting H.R. Rep. No. 94-1487, at 7 (1976)) ("In 1976, Congress passed the Foreign Sovereign Immunities Act in order to free the Government from the case-by-case diplomatic pressures, to clarify the governing standards, and to '[assure] litigants

[8] The United States government currently identifies only five countries as state sponsors of terrorism: Cuba, Iran, North Korea, Sudan and Syria. *See* U.S. Department of State, State Sponsors of Terrorism, http://www.state.gov/s/ct/c14151.htm (last visited Aug. 20, 2007).

that . . . decisions are made on purely legal grounds and under procedures that insure due process.'")

If restricted to the enumerated exceptions of the FSIA, justice under the TVPA disappears from the reach of a large class of victims. The enumerated exceptions are extremely narrow, such that the surviving cases would be so few as to render the TVPA completely ineffective.

III. Sovereign Immunity Under the FSIA Does Not Apply to Former Foreign Officials Acting Outside the Scope of Their Authority and in Violation of International and National Law

This Court and others have extended immunity under the FSIA to individuals but never to officials who act outside the scope of their legal authority. In *Jungquist v. Al Nahyan*, this Court stated,

> Individuals acting in their official capacities are considered "agenc[ies] or instrumentalit[ies] of a foreign state"; these same individuals, however, are not entitled to immunity under the FSIA for *acts that are not committed in an official capacity.*

115 F.3d 1020, 1027 (D.C. Cir. 1997) (alterations in original) (emphasis added). *Jungquist* applies the analysis of *Chuidian v. Philippine National Bank*, 912 F.2d 1095(9th Cir. 1990), *aff'd*, 976 F.2d 561 (9th Cir. 1992) and concludes that the inquiry into whether an act is committed within an individual's official capacity "focuses on the nature of the individual's alleged actions . . . [and] whether the [official] was authorized in his official capacity to so interfere." *Junguist*, 115 F. 3d at 1028 (citing *Chuidian*, 912 F.2d at 1106-07).

The *Chuidian* court held that when officials engage in acts beyond the scope of their authority, sovereign immunity does not apply:

> Sovereign immunity similarly will not shield an official who acts beyond the scope of his authority. "[W]here the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions."

Chuidian, 912 F.2d at 1106 (quoting *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 689 (1949)) (alteration in original). Other circuits agree. *See also Velasco v. Gov't of Indonesia*, 370 F.3d 392, 399 (4th Cir. 2004) ("The FSIA . . . does not immunize an official who acts beyond the scope of his authority."); *Byrd v. Corporacion Forestal y Indus. de Olancho S.A.*, 182 F.3d 380, 388 (5th Cir. 1999) ("The FSIA's protections cease, however, when the individual officer acts beyond his official capacity."); *Guevara v. Republic of Peru*, 468 F.3d 1289, 1305 (11th Cir. 2006).

The predicate acts of the TVPA, torture and extrajudicial killing, are violations of the national laws of all countries and international law norms. Such acts, as recognized by Congress in enacting the TVPA, can never be considered activity that falls within the scope of an official's legal authority. Thus, a former foreign official facing accusations of torture or extrajudicial killing is not entitled to immunity under the FSIA. *See Hilao v. Estate of Marcos (In re Estate of Ferdinand Marcos, Human Rights Litigation)*, 25 F.3d 1467, 1472 (9th Cir. 1994) ("[A]cts of torture, execution, and disappearance were clearly acts outside of [the defendant's] authority as President."); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1198 (S.D.N.Y. 1996) (FSIA inapplicable because acts of torture "fall beyond the scope" of defendant's official authority); *Xuncax v. Gramajo*, 886 F. Supp. 162, 175-76 (D. Mass. 1995) (FSIA inapplicable because acts of torture, summary execution, arbitrary detention, disappearance and cruel, inhuman or degrading treatment "exceed anything that might be considered to have been lawfully within the scope of Gramajo's official authority").

The district court in this case failed to examine whether the defendant was acting within his lawful authority and instead considered only whether the defendant's actions were "personal or private in nature." 466 F. Supp. 2d at 130-31. This analysis makes no sense because

allegations of human rights violations such as torture and extrajudicial killing *always* require some sort of state action. *See Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1247 (11th Cir. 2005) ("The text of the Torture Victim Protection Act expressly requires the element of state action."). The state action requirement distinguishes torture and extrajudicial killing actionable under the TVPA from assault and murder.

By failing to consider whether the defendant was acting within his lawful authority, the district court ruled in contravention of caselaw analyzing the FSIA in the TVPA context. The court disregarded precedent and ignored clear and contrary legislative intent.

IV. CONCLUSION

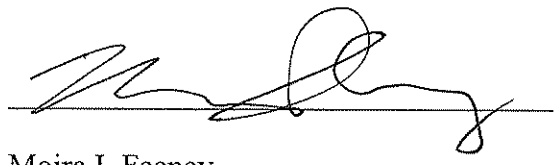
In order to implement Congress's intent to provide redress to victims of torture and extrajudicial killing whose perpetrators seek safe haven in the United States, and to avoid the virtual nullification of the TVPA , this Court should not apply the FSIA where a former foreign official acts outside the scope of his authority and in violation of the law of the foreign state and international law norms. No explicit exception to the FSIA is required in those circumstances because the FSIA does not apply at all. To require an exception would deny a large class of victims with valid TVPA claims access to the courts.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a) (7) (B) because this brief contains 4,900 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a) (7) (B) (iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a) (5) and the type style requirements of Fed. R. App. P. 32(a) (6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 12 point Times New Roman.

Dated: August 31, 2007



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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury that:

On August 31, 2007, I served a true copy of the Brief for the Center for Justice & Accountability as *Amicus Curiae* in Support of the Plaintiff-Appellant and Reversal of the District Court's Decision by first class mail or equivalent on the following persons:

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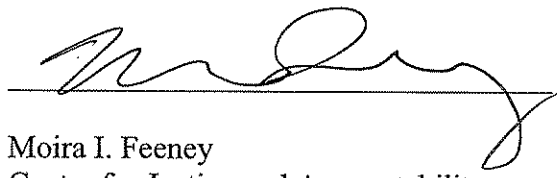

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