No. 25A-____

In the Supreme Court of the United States

TAHAWWUR RANA, APPLICANT

v.

JAMES ENGLEMAN, INTERIM WARDEN, METROPOLITAN DETENTION CENTER

EMERGENCY APPLICATION FOR STAY PENDING LITIGATION OF PETITION FOR WRIT OF HABEAS CORPUS

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PARTIES TO THE PROCEEDING

The applicant (petitioner-appellant below) is Tahawwur Rana, a citizen of Canada and Pakistan.

The respondent (respondent-appellee below) is James Engleman, in his official capacity as Interim Warden of the Metropolitan Detention Center in Los Angeles, California.

RELATED PROCEEDINGS

United States Supreme Court:

Rana v. Jenkins, No. 24-550 (docketed Nov. 13, 2024)

United States Court of Appeals (9th Cir.):

Rana v. Engleman, No. 25-1053 (docketed Feb. 19, 2025)

Rana v. W.Z. Jenkins, II, No. 23-1827 (docketed Aug. 15, 2023)

United States District Court (C.D. Cal.):

Rana v. James Engleman, No. 2:23-cv-04223-DSF

In the Matter of the Extradition of Tahawwur Hussain Rana,

No. 2:20-cv-7309-DSF (JC)

In the Matter of the Extradition of Tahawwur Hussain Rana,

No. 2:20-mj-2630

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court's Rules 22 and 23, the All Writs Act, 28 U.S.C. § 1651, and 28 U.S.C. § 2101(f), Petitioner Tahawwur Rana respectfully applies for a stay of his extradition and surrender to India pending litigation (including exhaustion of all appeals) on the merits of his February 13, 2025 petition for a writ of habeas corpus asserting, *inter alia*, that his extradition to India violates United States law, specifically 8 U.S.C. § 1231 implementing the terms of the United Nations Convention Against Torture, because there are substantial grounds for believing that, if extradited to India, petitioner will be in danger of being subjected to torture. A stay is necessary, and needed on an emergency basis, because the government is

likely to surrender petitioner to India if a stay is not granted, which would moot petitioner's habeas petition and prevent any further proceedings thereon. Counsel for the United States has represented to counsel for petitioner that it will not surrender petitioner to Indian authorities before the Court acts on the instant application.

INTRODUCTION

This case arises from the United States' determination to extradite petitioner, a now 64-year-old Pakistani-Canadian former physician of failing health, to India, where he is nearly certain to suffer torture and death, purportedly so he can be charged there with supporting a series of 2008 attacks by Lashkar-e-Tayyiba in Mumbai, charges of which a U.S. jury acquitted him in 2011. Whether authorized or not under the U.S.-India Extradition Treaty, the United Nations Convention Against Torture ("CAT"), as incorporated into U.S. law through statutes passed by Congress and regulations adopted by the State Department, expressly prohibits the extradition of "any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." 8 U.S.C. § 1231 note. Year after year, *the State Department itself* has issued reports documenting human rights abuses in the Indian criminal justice system, including arbitrary or unlawful killings, rape, and torture or cruel, inhuman, or degrading treatment or punishment by the Indian government (including, but not limited to, administration of electrical shocks, waterboard, asphyxiation, and stress positions during interrogation).

Nevertheless, on February 12, 2025, the day Indian Prime Minister Narendra Modi arrived in Washington to meet with President Trump, the very same State Department notified counsel for Dr. Rana that the Secretary of State had decided to authorize his surrender to India anyway. Doing so in the face of its own extensive documentation of the Indian government's abuses runs directly counter to the CAT as implemented in U.S. law.

Petitioner, therefore, seeks a writ of habeas corpus to prevent his extradition in violation of U.S. law. But to be able to pursue that claim at all, his extradition must be stayed. If not, the case will be moot, the claim will not be litigated or reviewed by the courts, and petitioner will be cast out and left to his fate. The government has resisted any delay in petitioner's surrender, and the district court and court of appeals have denied petitioner's requests for a stay, on the basis that petitioner's claim necessarily fails based solely upon a brief, non-specific, and wholly conclusory declaration by a State Department official asserting that the decision to surrender petitioner "complies with the United States' obligations under the Convention and its implementing statute and regulations." If it is the case that the Executive Branch can establish the legality of its conduct merely by its own ipse dixit that it has conducted itself lawfully, then the Great Writ is a dead letter and the Judicial Branch is powerless to adjudicate the simple question whether the Executive Branch has, in fact, complied with the law. In this case, the Executive has not done so and petitioner only asks that he be permitted the opportunity to prove that it has

not done so and he will, in fact, be subjected to torture (likely to the point of death) if surrendered to India.

STATEMENT

1. On October 18, 2009, a grand jury in the Northern District of Illinois indicted petitioner on three counts of conspiracy to provide material support to terrorism in India: one count with respect to the 2008 Mumbai attacks that resulted in the deaths of 166 people, injuries to 239 others and more than $1 billion in property damage; one count of supporting an allegedly planned attack in Denmark that never took place; and one count of supporting Lashkar-e-Tayyiba generally, each in violation of 18 U.S.C. §§ 2339A and/or 2339B.

2. Petitioner pled not guilty and proceeded to trial. On June 9, 2011, a jury acquitted petitioner of the charge of providing material support to terrorism in India and specifically found that his conduct did not cause any deaths. However, the jury convicted him of the other two charges unrelated to the Mumbai attacks. The trial court sentenced petitioner to a term of 168 months imprisonment.

3. On June 9, 2020, following a series of hospitalizations and in the midst of the COVID pandemic, the Northern District of Illinois ordered that Dr. Rana be immediately released on compassionate grounds in light of his serious health conditions, releasing him with approximately just over a year remaining to serve on his sentence.

4. Instead of permitting his release to proceed as the court had ordered, the very next day, June 10, 2020, the government sought a warrant for the provisional

arrest of petitioner with a view towards extraditing him to India under the terms of the U.S.-India Extradition Treaty to face charges there of conspiring to carry out the 2008 Mumbai attacks.

5. Petitioner opposed his extradition, arguing, among other things, that Article 6 of the Treaty, the *non bis in idem* or double jeopardy provision, expressly precluded petitioner's extradition to face charges for the very thing of which a U.S. jury had acquitted him and that the U.S. was bound by its own prior interpretation and application of that provision in refusing to extradite David Headley, who had *actually been convicted* of substantial involvement in and/or support of the 2008 Mumbai attacks.

6. Nevertheless, on May 16, 2023, a magistrate judge in the Central District of California determined that extradition was authorized under the Treaty. (Attachment A.)

7. On May 31, 2023, petitioner filed a petition for writ of habeas corpus challenging the magistrate judge's decision. Despite petitioner's acquittal, the United States' reversal of its own interpretation of Article 6 of the Treaty and Dr. Rana's various arguments challenging the legality of his extradition, the district court denied his petition on August 10, 2023. The Court of Appeals for the Ninth Circuit affirmed that decision on August 15, 2024.

8. Meanwhile, on various dates in 2023, 2024, and 2025, counsel for petitioner made submissions to the Secretary of State requesting that, even if he had the power to do so under the Treaty, the Secretary ultimately deny surrender of

petitioner for extradition to India. (*See* Attachment B, Exh. A thereto.) Specifically, petitioner's counsel detailed the multiple reports issued by the State Department itself documenting human rights abuses in the Indian criminal justice system, including "credible reports of arbitrary or unlawful killings, including extrajudicial killings; enforced disappearances; torture or cruel, inhuman, or degrading treatment or punishment by the government." (*Id.*) Among other horrifying conduct, the State Department has reported Indian authorities' use of electric shocks to sensitive body parts to elicit confessions, physical abuse and rape by police (including attacks resulting in death), and the use of waterboarding, asphyxiation and stress positions (including suspension from the ceiling) in interrogations. (*See id.*) Counsel further noted that petitioner is not likely to survive such treatment in light of his continually-declining health, which includes multiple acute and life-threatening diagnoses, including a 3.5 cm abdominal aortic aneurysm at immediate risk of rupture under conditions of stress or physical exertion, two other bilateral iliac aneurysms further exacerbating risk of catastrophic internal hemorrhage, multiple documented heart attacks, Parkinson's disease with cognitive decline, a mass suggestive of bladder cancer, stage 3 chronic kidney disease, and a history of chronic asthma, COPD, and multiple COVID-19 infections. (*See id.*)

9. This Court denied Dr. Rana's petition for writ of certiorari relating to his original habeas petition on January 21, 2025. That same day, newly-confirmed Secretary of State Marco Rubio met with Indian External Affairs Minister Dr. Subrahmanyam Jaishankar.

10. On February 12, 2025, Indian Prime Minister Narendra Modi arrived in Washington to meet with the President. That same day, counsel received a letter from Oliver Lewis, the Assistant Legal Adviser Law Enforcement and Intelligence at the Department of State, stating that "on February 11, 2025, the Secretary of State decided to authorize Mr. Rana's surrender to India, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between the United States and India." (Attachment B, Exh. B thereto.)

11. On February 13, 2025, counsel requested from the State Department the complete administrative record on which Secretary Rubio based his decision to authorize Dr. Rana's surrender to India. Counsel also requested immediate information of any commitment the United States has obtained from India with respect to Dr. Rana's treatment. The government declined to provide any information in response to these requests.

12. Also on February 13, 2025, petitioner filed an Emergency Second Petition for Habeas Corpus Pursuant to 18 U.S.C. § 2241 and Injunctive Relief (Attachment B) and an Emergency Ex Parte Application for Stay on February 13, 2025.

13. That same day, February 13, Prime Minister Modi and President Trump met and issued a joint statement specifically announcing the U.S. would be extraditing petitioner to India.

14. On February 14, 2025, as part of its response to petitioner's stay application, the government submitted to the district court a two-page, five-

paragraph declaration executed by Mr. Lewis. (Attachment C.) In the declaration, Mr. Lewis reports that Secretary Rubio "authorized" petitioner's extradition while declaring generally that "[a] decision by the Department of State to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that the fugitive is not more likely than not to be tortured if extradited, or an assessment that the fugitive's claim, although invoking the Convention, does not meet the Convention's definition of torture as set forth in 22 C.F.R. § 95.1(b)." (*Id.* ¶¶ 2, 4.)

15. On February 19, 2025, the district court denied the request for a stay. (Attachment D.)

16. That same day, February 19, petitioner filed a notice of appeal and a further emergency stay application with the court of appeals. On February 21, 2025, the court of appeals refused petitioner's request for a stay. (Attachment E.)

17. Counsel has conferred with counsel for the government regarding petitioner's requests for a stay. While the government opposes the request, it has represented that, so long as petitioner files such a request with the Court prior to February 28, 2025, the government will not surrender petitioner unless the Court denies the request.

REASONS FOR GRANTING THE APPLICATION

Under the Court's Rules and the All Writs Act, 28 U.S.C. § 1651, a single Justice or the Court may grant a stay. In deciding whether to issue such a stay, the Court or a Circuit Justice considers whether four Justices are likely to vote to grant

certiorari if the court of appeals ultimately rules against the applicant; whether five Justices would then likely conclude that the case was erroneously decided below; and whether, on balancing the equities, the injury asserted by the applicant outweighs the harm to the other parties or the public. *See San Diegans for the Mt. Soledad Nat'l War Mem'l v. Paulson*, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers).

In determining whether to grant a stay, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009).

Where (as here) there is a clear threat of surrender prior to the outcome of a legal challenge to extradition, numerous courts have granted stays in habeas cases. *See, e.g.*, *United States v. Lui Kin-Hong*, 110 F.3d 103, 121 (1st Cir. 1997); *Romeo v. Roache*, 820 F.2d 540, 541 (1st Cir. 1987); *see also Ntakirutimana v. Reno*, 184 F.3d 419, 423 n.7 (5th Cir. 1999); *Smith v. Hood*, 121 F.3d 1322, 1327 (9th Cir. 1997); *Then v. Melendez*, 92 F.3d 851, 853 n.1 (9th Cir. 1996); *Spatola v. United States*, 925 F.2d 615, 617 (2d Cir. 1991); *Pukulski v. Hickey*, 731 F.2d 382, 383 (6th Cir. 1984); *In re Assarsson*, 670 F.2d 722, 724 n.2 (7th Cir. 1982); *Tavarez v. U.S. Attorney General*, 668 F.2d 805, 811 (5th Cir. 1982); *Artunes v. Vance*, 640 F.2d 3 (4th Cir. 1981); *Liuksila v. Turner*, No. 16-cv-00229 (APM), 2018 WL 6621339, at *1 (D.D.C. Dec. 18, 2018); *Martinez v. United States*, No. 3: 14-CV-00174, 2014 WL 4446924, at *2-6

(M.D. Tenn. Sept. 9, 2014); *Nezirovic v. Holt*, No. 7:13CV428, 2014 WL 3058571, at *2 (W.D. Va. July 7, 2014); *Zhenli Ye Gon v. Holt*, No. 7:11-cv-00575, 2014 WL 202112 at *1-2 (W.D. Va. Jan. 17, 2014); *Noriega v. Pastrana*, No. 07-CV-22816-PCH, 2008 WL 331394, at *1 (S.D. Fla. Jan. 31, 2008).

As detailed below, all four factors weigh in favor of a stay in this case.

A. Petitioner Is Likely to Succeed on the Merits

"To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor." *Momenta Pharm., Inc. v. Amphastar Pharm., Inc.*, 834 F. Supp. 2d 29, 30 (D. Mass. 2011) (quoting *Eon–Net, L.P. v. Flagstar Bancorp, Inc.*, 222 Fed. Appx. 970, 971–72 (Fed. Cir. 2007)). The first two factors—likelihood of success and irreparable harm—are "the most critical," *Nken*, 556 U.S. at 434, but they operate on a sliding scale such that a strong showing on one may offset a lesser showing on the other. *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) ("the predicted harm and the likelihood of success on the merits must be juxtaposed and weighed in tandem"). As the Court has recognized, the factors "contemplate individualized judgments in each case, [and] the formula cannot be reduced to a set of rigid rules." *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987).

In any event, showing a strong likelihood of success does not require an applicant to show that success is more likely than not. Though varying formulations have been employed, "[r]egardless of how one expresses the requirement, the idea is

that in order to justify a stay, a petitioner must show, at a minimum, that [he] has a substantial case for relief on the merits." *Leiva–Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011).

1. Petitioner's Extradition Violates the Convention Against Torture and FARRA Because Petitioner Is Likely to Be Tortured

Petitioner's extradition to India is unlawful because it violates the CAT, a treaty signed and ratified by the United States and implemented by Congress as part of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), 8 U.S.C. § 1231 note. Under the CAT and the FARRA, the United States may not "expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." FARRA § 2242(a); 8 U.S.C. § 1231 note. By "incorporat[ing] the language of CAT itself, enacting as U.S. domestic policy the international obligation the United States undertook in ratifying CAT" and then "direct[ing] the Executive 'to implement the obligations of the United States under' CAT and specif[ying] how such implementation ought to occur," "the text and structure of the [FARRA] confirm that it *does* impose a binding obligation on the Secretary of State not to extradite individuals likely to face torture." *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 987-88 (9th Cir. 2012) (Berzon, C.J., concurring in part and dissenting in part) (emphasis in original).

"U.S. Department of State country reports are the most appropriate and perhaps the best resource for information on political situations in foreign nations." *Sowe v. Mukasey*, 538 F.3d 1281, 1285 (9th Cir. 2008) (internal quotation marks

omitted). With respect to India, the State Department's own previous reports extensively detail the kind of treatment petitioner can expect at the hands of the Indian government. Among other facts, the State Department's 2023 Human Rights Report for India (issued in April 2024) reveals systematic human rights violations in India's criminal justice system, confirming "credible reports of: arbitrary or unlawful killings, including extrajudicial killings; enforced disappearances; torture or cruel, inhuman, or degrading treatment or punishment by the government; [and] harsh and life-threatening prison conditions[.]" (Attachment F at 1; *see also* pp. 6-9.) Notably, "the government took minimal credible steps or action to identify and punish officials who may have committed human rights abuses." (*Id.* at 2.) The documented forms of abuse within Indian detention facilities demonstrate a comprehensive pattern of human rights violations that place petitioner at imminent risk of torture:

a. Beatings and Physical Abuse: According to the 2022 State Department Human Rights Report, detainees frequently suffer severe physical abuse, with reports of custodial deaths and rape by police.

b. Electrocution: The report confirms authorities' use of torture to coerce confessions, including electric shocks to sensitive body parts.

c. Sexual Violence: The report documents incidents of sexual violence perpetrated by authorities against detainees.

d. Waterboarding and Asphyxiation: Human rights organizations have documented cases of simulated drowning and forced asphyxiation.

e. Forced Positions and Suspension: Reports indicate detainees are forced into painful positions for extended periods or suspended from the ceiling.

(Attachment G at 5-6; *see also* Human Rights Watch, World Report 2023, *available at* https://www.hrw.org/world-report/2023/country-chapters/india.)

There can be no doubt that these types of conduct rise to the level of the torture prescribed by the CAT. *See* 22 C.F.R. § 95.1(b) (defining "torture" to include, *inter alia*, any act "by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him … information or a confession, punishing him …, or intimidating or coercing him"). Further, these are the State Department's own reports and could well be conclusive of the issue on their own. *See Jie Cui v. Holder*, 712 F.3d 1332, 1338 n. 3 (9th Cir. 2013) ("a petitioner can demonstrate eligibility for CAT relief despite an adverse credibility finding if the State Department reports, standing alone, compel [ ] the conclusion that [petitioner] is more likely than not to be tortured upon return …") (alterations in original) (internal citation and quotation marks omitted); *Nuru v. Gonzales*, 404 F.3d 1207, 1219 (9th Cir. 2005) (examining the State Department's country report for Eritrea, acknowledging that "[i]t is well-accepted that country conditions alone can play a decisive role in granting relief under [the Convention Against Torture]," and noting that Eritrean country report described major human rights violations committed by members of the military and police, including that "Eritrean police occasionally resort to torture and physical beatings of prisoners …").

The likelihood of torture in this case is even higher though as petitioner faces acute risk as a Muslim of Pakistani origin charged in the Mumbai attacks. The Human Rights Watch 2023 World Report documents that the "BJP-led government continued its systematic discrimination and stigmatization of religious and other minorities, particularly Muslims," alongside "persistent allegations of torture and

extrajudicial killings." (Human Rights Watch, World Report 2023, *supra.*) Further, petitioner's severe medical conditions render extradition to Indian detention facilities a de facto death sentence in this case. Medical records from July 2024 confirm multiple acute and life-threatening diagnoses, including a 3.5 cm abdominal aortic aneurysm at immediate risk of rupture under conditions of stress or physical exertion, two other bilateral iliac aneurysms further exacerbating risk of catastrophic internal hemorrhage, multiple documented heart attacks, Parkinson's disease with cognitive decline, a mass suggestive of bladder cancer, stage 3 chronic kidney disease, and a history of chronic asthma, COPD, and multiple COVID-19 infections. (*See* Attachment B, Exh. A thereto.)

Accordingly, petitioner certainly has raised a credible, if not compelling, factual case that there are indeed substantial grounds for believing he would be in danger of torture if surrendered to Indian authorities. Further, because of his Muslim religion, his Pakistani origin, his status as a former member of the Pakistani Army, the relation of the putative charges to the 2008 Mumbai attacks, and his chronic health conditions he is even more likely to be tortured than otherwise would be the case, and that torture is very likely to kill him in short order. Petitioner should, at the very least, receive a considered hearing on the merits of his CAT claims, and the courts should not accept at face value the State Department's implied conclusion in this case that directly contradicts years' worth of its own country reports about the increasingly-autocratic government in India.

2. The CAT and FARRA Create Enforceable Rights Which May Be Asserted Through Habeas Corpus

By arguing that the "rule of non-inquiry" makes challenges under the CAT "non-justiciable" and/or beyond the courts' authority the government seeks to shield the arbitrary exercise of executive discretion, the very thing the provisions of CAT expressly foreclose, and which the writ of habeas corpus and the Constitution's Suspension Clause were designed to prevent. The CAT is a treaty signed and ratified by the United States, 136 Cong. Rec. 36,198 (1990), and implemented by Congress as part of the FARRA. Specifically, FARRA requires that "the appropriate agencies … prescribe regulations to implement the obligations of the United States[.]" 8 U.S.C. § 1231 note. The Department of State has adopted regulations requiring that, "[i]n each case where allegations relating to torture are made …, appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant." 22 C.F.R. § 95.3(a). An extraditee may be surrendered only after the Secretary makes a determination regarding possible torture. *Id.* § 95.2-3. Specifically, before extradition can occur, the Secretary must consider the extraditee's torture claim and find it not "more likely than not" that the extraditee will face torture. *Id.* § 95.2. Therefore, among other things, CAT and FARRA "create[ ] a substantive right against extradition if it is 'more likely than not' that the petitioner will be tortured." *Taylor v. McDermott*, 516 F. Supp. 3d 94, 107 (D. Mass. 2021).

"CAT and its implementing regulations are binding domestic law, which means that the Secretary of State *must* make a torture determination before surrendering

an extraditee who makes a CAT claim." *Trinidad y Garcia*, 683 F.3d at 956 (emphasis in original). Further, "FARRA and its regulations generate interests cognizable as liberty interests under the Due Process Clause[.]" *Id.* Accordingly, an extraditee has a Due Process right that "entitles him to *strict compliance* by the Secretary of State with the procedure outlined in the regulations," a right which the courts have the power to enforce through habeas jurisdiction, the Administrative Procedure Act, and/or under "the Constitution itself." *Id.* at 957 (emphasis added); *see also Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1016-17 (9th Cir. 2000) ("An extraditee ordered extradited by the Secretary of State who fears torture upon surrender … may state a claim cognizable under the APA that the Secretary of State has breached her duty, imposed by the FARR Act, to implement Article 3 of the Torture Convention.").

The Suspension Clause of the Constitution expressly preserves the writ of habeas corpus, U.S. Const. art. I, § 9, cl. 2, and 28 U.S.C. § 2241 makes the writ of habeas corpus available to all persons "in custody in violation of the Constitution *or laws or treaties of the United States*." 28 U.S.C. § 2241(c)(3) (emphasis added). Whatever the separation-of-powers or policy considerations that animated the 19th century origins of the rule of non-inquiry, the United States' commitment to the CAT and codification of its provisions into U.S. law changed all of that. As explained by the Fourth Circuit:

> Certainly, prior to the CAT and the FARR Act, the conclusion of the Supreme Court that individuals being extradited are not constitutionally entitled to any particular treatment abroad rendered evidence of the treatment they were likely to receive irrelevant in the context of a claim on habeas that their detention contravened federal law. It stood to reason that, absent any federal right to particular

> treatment in the requesting country, any refusal of extradition based on the treatment a fugitive was likely to receive would have to be made by the Executive. However, the FARR Act now has given petitioners the foothold that was lacking when the Court decided *Neely [v. Henkel*, 180 U.S. 109 (1901)].

Mironescu v. Costner, 480 F.3d 664, 671 (4th Cir. 2007).

As another court held, "[w]here a petitioner claims that the Secretary has violated his statutory obligations under the FARR Act, the court has both the authority and the responsibility to ensure that his discretion to extradite—and, therefore, to detain the petitioner spending extradition—is being exercised within the parameters of law established by Congress." *Taylor v. McDermott*, 516 F. Supp. 3d 94, 110 (D. Mass. 2021) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004)). "This is ***exactly*** the type of claim that is addressed through habeas corpus: the writ's very foundation is as a check on the arbitrary exercise of executive discretion." *Id.* at 107 (emphasis added). As explained in a lengthy discussion in one of the separate opinions in *Trinidad y Garcia* itself,

> [T]he judicially developed rule of non-inquiry was not developed in, and does not have direct application to, judicial enforcement of obligations imposed by statute upon executive officials. The rule bars judicial examination of extraditions once it is determined that they are not contrary to the Constitution, laws, or treaties of the United States. It does not hold that we must refrain from reviewing claims that an extradition is, in fact, unlawful.

683 F.3d at 996 (Berzon, C.J., concurring in part and dissenting in part). Meaningful judicial review clearly is available to ensure the Secretary's compliance with domestic law, including the Secretary's own statutory and regulatory obligations.

3. Habeas Corpus Mandates More Than Just Accepting the Secretary's Own Ipse Dixit of Compliance with CAT and FARRA

Neither the district court nor the court of appeals took issue with either of the above points, but nevertheless found petitioner's requests for a stay to have "virtually no chance of success on the merits of his petition" (Attachment D at 1) and to not demonstrate "a substantial case for relief on the merits" (Attachment E at 6) based upon the view that a State Department official's conclusory assertion of compliance "is sufficient to discharge the Secretary's duties" (*id.* at 5) and end the matter before it has even begun. In a declaration submitted to the district court, the Assistant Legal Adviser for Law Enforcement and Intelligence reported that Secretary Rubio had "authorized" petitioner's extradition and declared, in conclusory fashion, "I confirm that the decision to surrender Tahawwur Hussain Rana to India complies with the United States' obligations under the Convention and its implementing statute and regulations." (Attachment C, ¶¶ 2, 5.) Neither Mr. Lewis nor the government have provided any explanation regarding the basis for that determination or what was considered in making it. They have indicated to counsel that they will not be providing any further information.

Nevertheless, the district court and court of appeals found this sufficient to end the matter under *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012) (en banc). In that case, a majority of the *en banc* panel held that CAT and FARRA required, at the very least, a declaration "signed by the Secretary or a senior official properly designated by the Secretary" attesting "that she has complied with her obligations" under the CAT and FARRA and the regulations thereunder, specifically that

appropriate policy and legal offices have made the required review, analysis and recommendation and the Secretary has considered the extraditee's torture claim and found it not "more likely than not" that the extraditee will face torture. 683 F.3d at 957. Because the State Department had provided only "a generic declaration outlining the basics of how extradition operates at the Department and acknowledging the Department's obligations under the aforementioned treaty, statute and regulations," but giving no indication that the Department "had actually complied with those obligations," the *en banc* panel remanded the case. *Id.*

The government and the lower courts here take from this that so long as the Executive *says* that it complied with its obligations, that is the end of the matter. But "the FARR Act creates a *substantive* right not to be extradited to torture, and, accordingly, under the Suspension Clause, that substantive right requires the court to consider more than procedural adequacy on habeas review. *Taylor*, 516 F. Supp. 3d at 111-13 (emphasis added). "[T]he Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004). As detailed by Judge Berzon in his opinion in *Trinidad y Garcia* concurring in part and dissenting in part from the majority opinion of the *en banc* panel, courts "have the authority—and, indeed, the obligation—to review the Secretary of State's determination and to decide—under a standard highly deferential to the Secretary and procedures carefully tailored to ensure the protection of the Secretary's diplomatic concerns—

whether it is more likely than not that petitioners … will be tortured if extradited." 683 F.3d at 986. In fact, exactly this is done *all the time* when the Executive seeks to remove a person from the country, with State Department country reports often being a significant component of the evidence in those cases. *See, e.g.*, *Nasrallah*, 590 U.S. at 579-87; *Konou v. Holder*, 750 F.3d 1120, 1125 (9th Cir. 2014); *Sowe*, 538 F.3d at 1285; *Nuru v. Gonzales*, 404 F.3d 1207, 1219 (9th Cir. 2005).

In the extradition context though, the government claims a bare-bones, perfunctory declaration is the extent of the process to which petitioner is entitled. But this provides no opportunity to assess the sufficiency of the government's evidence or its weighing of the extraditee's evidence against any other relevant evidence.[1] Substantive review of the Secretary's determination, by contrast, "only strengthens our constitutional system of checks and balances, as well as the Great Writ of habeas corpus." *Trinidad y Garcia*, 683 F.3d at 1008 (Pregerson, C.J., concurring in part and dissenting in part). Indeed, it is not solely a matter of due process, but the force of the Constitution's Suspension Clause. The "Great Writ," the writ of habeas corpus, is so foundational to modern principles of liberty that our Constitution does not merely guarantee the availability of the writ, but rather *presupposes its existence* and strictly limits the circumstances under which Congress may suspend it. *See* U.S. Const. art. I, § 9, cl. 2. "[T]he Suspension Clause necessitates more than due process;

[1] Mr. Lewis' declaration is exceedingly non-specific, does not even directly state that Secretary Rubio made the specific determination CAT requires him to make or that any of the analysis, reports and recommendations required by the regulations were done. All that it says is that "Secretary of State Rubio authorized [petitioner's] extradition" (Attachment C ¶ 2) and that "the decision to surrender [petitioner] to India complies with the United States' obligations under the Convention and its implementing statute and regulations." (Attachment C ¶ 5.)

it requires 'a meaningful opportunity to contest the factual basis for [the] detention before a neutral decisionmaker.'" *Taylor*, 516 F. Supp. 3d at 110 (quoting *Hamdi*, 542 U.S. at 510).

Further, the adequacy of this "meaningful opportunity" to demonstrate the unlawfulness of one's detention depends on "the rigor of any earlier proceedings": for example, "when a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is more pressing." *Boumediene v. Bush*, 553 U.S. 723, 782-83 (2008). Under such circumstances, for the habeas corpus "to function as an effective and proper remedy … the court that conducts the habeas proceeding must have the means to correct errors that occur during the [prior] proceedings." *Id.* at 786. "If a detainee can present reasonable available evidence demonstrating there is no basis for his continued detention, he must have the opportunity to present this evidence to a habeas corpus court." *Id.* at 790. Meaningful review of an executive agency's factual determinations regarding the likelihood of torture in another country, and compliance with the CAT, are not anathema to our federal system. Indeed, exactly such substantive review occurs regularly in removal proceedings. *See Nasrallah v. Barr*, 590 U.S. 573, 587 (2020).

As the Court reiterated only this past term, "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. … And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, *while ensuring that the agency acts within it*." *Loper Bright Enterprises v.*

Raimondo, 603 U.S. 369, 413 (2024) (emphasis added). Unquestioned acceptance of a conclusory assertion of compliance with the law is not judicial deference; it is judicial acquiescence.

There can be no substantive review of any kind, at any level of deference, if no record, explanation, or justification is provided by the Secretary and the courts refuse to even consider the evidence that a person is likely to be tortured, *even where that evidence comes in the form of the State Department's own previous reports*.

4. The Arguments Advanced by the Government and Lower Courts Make Habeas Review a Pointless Exercise

In this case, the government has argued, and the lower courts have held, that any review or inquiry with respect to petitioner's CAT claim is foreclosed so long as some official in the State Department submits a sworn declaration that makes a conclusory assertion of compliance with CAT and FARRA. The government submitted such a declaration in response to petitioner's request for a stay and claims that is the end of the matter. The government's arguments, and the lower courts' rulings with respect to petitioner's stay request thus merged with a merits determination, concluding that since the State Department says it complied with the law there is no need for the courts to do anything at all.

This logic flies in the face of not only federal statutes and regulations, but the Constitution itself. As detailed previously, FARRA creates a substantive right not to be "expel[led], extradite[d], or otherwise … involuntary[ly] return[ed]" to a country in which there is a substantial likelihood the person will be subjected to torture. U.S. law further mandates that the Secretary of State make a case-specific determination

before surrendering any extraditee who makes a CAT claim, and that this determination include a process by which "appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant." 22 C.F.R. § 95.3(a); *see also Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1016-17 (9th Cir. 2000) (emphasizing requirement of individualized review). At the very least, the Due Process clause entitles petitioner to strict compliance with the procedure outlined in the regulations, *Trinidad y Garcia*, 683 F.3d at 957, and, as detailed above, the Suspension Clause further necessitates a meaningful opportunity to contest the factual basis for any such determination. *See Taylor*, 516 F. Supp. 3d at 110-12.

Even setting all of that aside though, the government's and the Ninth Circuit's approach fails to account for the circumstances of any individual case and provides no explanation for how it is that substantive review of CAT determinations (employing State Department country reports) is standard where a person challenges their deportation or removal, but is not available in any meaningful way where the person is to be extradited. In the case principally relied upon by the government and the courts below, *Sridej v. Blinken*, 108 F.4th 1088 (9th Cir. 2024), a three-judge panel of the Ninth Circuit interpreted *Trinidad y Garcia* as dictating that further review of the petitioner's CAT claim was foreclosed by the submission of a declaration from a mid-level State Department official stating merely that the Secretary or Deputy Secretary had authorized the individual's extradition and that the decision "complies with the United States' obligations under the Convention and its implementing

statue and regulations."

Whatever the merits of the per curiam opinion issued by a divided Ninth Circuit in *Trinidad y Garcia* on its own terms or the *Sridej* panel's application of that ruling to cut off review of a CAT claim, neither case involved a situation as stark or compelling as that which faces petitioner. In *Trinidad y Garcia*, the petitioner was a Philippine national to be extradited to the Philippines to stand trial on a charge of kidnapping and, in *Sridej*, a Thai citizen was to be extradited to Thailand to face charges that she had defrauded her former employer there by stealing electronics. Neither case involved an individual belonging to a religious minority from a neighboring country with a history of tension, mistrust, and conflict who was requested to be extradited to face prosecution for involvement in a high-profile terrorist attack of enormous emotional and political significance for the requesting state. Indeed, the State Department reports, compelling as they are in this case, are only the beginning of petitioner's well-founded fears of torture. Petitioner is to be sent into a hornet's nest where he will be (and already has been, in the joint statement by Prime Minister Modi and President Trump) pointed to as a target of national, religious, and cultural animosity whose punishment is of the highest national interest.

The fact of the decision to surrender does not, and indeed cannot, alone suffice to prove the legality of that decision.[2] If all CAT and the Suspension Clause required

[2] In fact, one of the two alternative "decisions" suggested by Mr. Lewis (*i.e.*, that, by some unstated linguistic or legal gymnastics, that the treatment to which petitioner is likely to be subjected "does not meet the Conventions definition of torture as set forth in 22 C.F.R. § 95.1(b)") would be a question of law, to which no deference of any kind is owed by the courts. *Loper Bright*, 603 U.S. at 387.

for the executive branch to defend its action was to declare, in vague, generalized and conclusory fashion, that the Secretary has complied with his legal obligations, then judicial review is a charade and the writ of habeas corpus is gutted entirely. In any constitutional system that values the separation of powers, the Executive Branch's mere say-so cannot alone be sufficient to establish the legality of its conduct.

B. Petitioner Will Suffer Irreparable Harm if a Stay Is Not Granted

The government has not promised to wait beyond the Court's action on this request to surrender petitioner, thus if a stay is not granted, petitioner faces surrender, prosecution and associated loss of liberty while at the same time losing ability to have his claim that his extradition is unlawful under the CAT heard by U.S. courts. Such consequences constitute irreparable harm. *Liuksila*, 2018 WL 6621339 at *1; *Nezirovic,* 2014 WL 3058571 at *2; *Zhenli Ye Gon*, 2014 WL 202112 at *1.

Further, if extradited, petitioner is likely to be tortured and treated in a way that violates the CAT and U.S. law implementing it. Indeed, given petitioner's underlying health conditions and the State Department's own findings regarding treatment of prisoners, it is very likely Dr. Rana will not survive long enough to be tried in India. Courts have recognized the poor conditions under which a petitioner will be held can themselves constitute irreparable harm warranting a stay. *Martinez*, 2014 WL 4446924 at *4. Here, it is not only that the habeas proceedings will be mooted and petitioner will be surrender absent a stay; the very real and likely immediate consequence is the end of petitioner's life through one means or another.

Below the government cited to this Court's opinion in *Munaf v. Geren*, 553 U.S. 674 (2008), for the proposition that allegations of probable mistreatment abroad do not automatically entitle a person to a stay or injunction, but instead that "concern is to be addressed by the political branches, not the judiciary." *Munaf*, however, is inapposite as the petitioners in that case *had not asserted a CAT claim* and the Court expressly declined to address whether the outcome would have been different had they done so. In *Munaf*, the court was presented with habeas petitions brought by two U.S. citizens who had voluntarily traveled to Iraq and committed crimes there. 553 U.S. at 679. They were detained by the U.S. military in Iraq and were to be transferred to Iraqi custody. *Id.* The Court held that it could not enjoin the U.S. military from transferring individuals detained within the territory of a foreign sovereign to that sovereign for criminal prosecution, emphasizing (in the language the government selectively quotes) that "prudential concerns," such as international comity and respect for the sovereignty of foreign states, "render[ed] invalid attempts to shield citizens from foreign prosecution" in such circumstances. *Id.* at 693.

The petitioners in *Munaf*, however, *did not raise a claim for relief under the FARRA*, and this Court explicitly declined to consider the merits of such a claim. 553 U.S. at 703 n.6. Moreover, this Court also expressly left open the question whether the result would change in "a more extreme case in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway." *Id.* at 702; *see also id.* at 706 (Souter, J. concurring) (suggesting he "would extend the caveat to a case in which the probability of torture is well documented,

even if the Executive fail[ed] to acknowledge it"). Accordingly, *Munaf* does not weigh against a stay here since that case did not involve a FARRA claim at all and involved the wholly different scenario of individuals detained by the military on foreign soil. If anything, *Munaf* lends support to petitioner's critique of *Sridej* and the lower courts' narrow interpretation of *Trinidad y Garcia* in that this Court indicated that, *even in the absence of a CAT claim*, an extreme case of the Executive transferring an individual in the clear face of likely torture could establish grounds for habeas relief, even in the case of individuals detained by the military overseas. That is very much the case here, and petitioner has asserted a CAT claim through a habeas petition.

C. The Government and Public Interest Weigh in Favor of a Stay.

The third and fourth factors—harm to the opposing party and the public interest—merge when the government is the opposing party. *Nken*, 556 U.S. at 435. "There is a public interest in ensuring that a person is not wrongfully surrendered to face prosecution abroad." *Liuksila*, 2018 WL 6621339 at *2 (citing *Nken*, 556 U.S. at 436). Further, while the United States may have an interest in promptly fulfilling its legal obligations to its treaty partners, it still must comply with its own law in doing so. Staying extradition to allow a petitioner "to seek appellate review of his claims that the extradition is unlawful clearly is in the public interest." *Martinez*, 2014 WL 4446924 at *6. As explained by one court:

> The court agrees that the United States' honoring of its treaty obligations is extremely important. But it does not agree that allowing an extraditee to obtain review of his legal claims interferes with the United States' ability to comply with its treaty obligations. This country prides itself on the legal process it affords those accused of crimes, even though that legal process takes time to complete.

Id. at *5.

The contention here is that the Secretary's decision, purportedly on February 11, 2025, to surrender Dr. Rana violates the CAT and FARRA. Those provisions of U.S. law and the writ of habeas corpus are meaningless if the Executive is permitted to whisk petitioner away before he has had a chance for his claims to be fully heard. It is contrary to the public interest to allow unfettered Executive discretion to extradite persons to torture without any meaningful review of the basis for such a decision where *federal law expressly prohibits extradition in such circumstances.*

CONCLUSION

The issues raised by petitioner merit full and careful consideration, and the stakes are enormous for him. The very least the U.S. courts owe the petitioner is a full chance to litigate these issues, including exercising their appellate rights, before he is consigned to the fate that awaits him at the hands of the Indian government. But if a stay is not entered, there will be no review at all, and the U.S. courts will lose jurisdiction, and petitioner will soon be dead. Therefore, we respectfully request that this Court enter an Order staying the extradition and surrender of petitioner pending a full and considered hearing on petitioner's claims by the district court, circuit court, and, if necessary, a writ of certiorari to and further proceedings before this Court.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tillman J. Finley, certify that I have caused to be served a copy of the foregoing Emergency Application for Stay Pending Litigation of Petition for Writ of Habeas Corpus and all attachments thereto on the below counsel of record for the United States by first class U.S. mail, postage prepaid and by email where indicated:

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