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5 Attorney for Defendant
TAHAWWUR RANA

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8

9 TAHAWWUR RANA,

10 Petitioner,

11 v.

12 JAMES ENGLEMAN, INTERIM
WARDEN, METROPOLITAN
13 DETENTION CENTER,

14 Respondent.

Case No. 2:23-cv-04223-DSF

**PETITIONER TAHAWWUR
RANA’S EMERGENCY SECOND
PETITION FOR HABEAS CORPUS
PURSUANT TO 18 U.S.C. § 2241
AND INJUNCTIVE RELIEF**

15
16 Petitioner Tahawwur Rana, by and through his counsel of record, Christy
17 O’Connor, hereby files this second petition for habeas corpus under 18 U.S.C. § 2241
18 and for injunctive relief.

19 Petitioner Rana is currently detained at the Metropolitan Detention Center in Los
20 Angeles, for which respondent Engleman serves as interim warden. This petition is
21 based on the attached memorandum of points and authorities, on the files and records in
22 this case, and on any further briefing, argument, or evidence the Court may allow.

23 Respectfully submitted,

24 CHRISTY O’CONNOR
25 The Law Office of Christy O’Connor
26

27 DATED: February 13, 2025

By /s/ Christy O’Connor

28 Christy O’Connor
Attorney for Tahawwur Rana

MEMORANDUM OF LAW

PROCEDURAL BACKGROUND

1
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3 1. On May 16, 2023, United States Magistrate Judge Jacqueline Chooljian
4 issued a Certification of Extraditability and Order of Commitment with respect to
5 Petitioner Rana, providing that he "remain in the custody of the U.S. Marshal for this
6 District, to be held pending final disposition of this matter by the Secretary of State,
7 and pending his potential surrender to the Government of India." (Case No. 2:20-cv-
8 7309-DSF, Doc. 105.)

9 2. On August 10, 2023, the United States District Court for the Central
10 District of California denied Rana's petition for a writ of habeas corpus challenging the
11 extradition order. (Case No. 2:23-cv-04223-DSF, Doc. 18.)

12 3. On August 18, 2023, the District Court granted Rana's motion for a stay of
13 extradition pending appeal. (Case No. 2:23-cv-04223-DSF, Doc. 24.)

14 4. On August 15, 2024, the Ninth Circuit Court of Appeals affirmed the
15 District Court's denial of Rana's habeas petition. (Case No. 23-1827, Doc. 40.)

16 5. On September 23, 2024, the Ninth Circuit denied Rana's petition for
17 rehearing en banc. (Case No. 23-1827, Doc. 42.)

18 6. On September 30, 2024, the Ninth Circuit stayed its mandate for forty-five
19 days to permit Rana to file a petition for a writ of certiorari in the Supreme Court of the
20 United States. (Case No. 23-1827, Doc. 46.)

21 7. On November 13, 2024, Rana filed a petition for a writ of certiorari with
22 the Supreme Court of the United States. (No. 24-550.)

23 8. On January 21, 2025, the Supreme Court denied Rana's petition for a writ
24 of certiorari, thereby affirming the Ninth Circuit's decision.

25 9. On January 21, 2025, Petitioner made a third submission to the Secretary
26 of State, (previously sent on August 14, 2023, and again on August 16, 2024 to the
27 former Secretary of State), requesting that he deny surrender of Dr. Rana, urging denial
28 of his extradition on the grounds that: (a) he was previously acquitted by a U.S. jury for

1 the same alleged conduct; (b) his co-conspirator David Headley was shielded from
2 extradition under the same treaty provisions; (c) India's documented human rights
3 abuses, especially against Muslims, make it "more likely than not" that he will be
4 subjected to extreme torture in violation of CAT; and (d) his severe and deteriorating
5 medical conditions make extradition a likely death sentence. Exhibit A (incorporated by
6 reference herein).

7 10. As referenced in that submission, the U.S. State Department's 2023
8 Human Rights Report reveals systematic human rights violations in India's criminal
9 justice system, confirming "credible reports of arbitrary or unlawful killings, including
10 extrajudicial killings; enforced disappearances; torture or cruel, inhuman, or degrading
11 treatment or punishment by the government." Notably, "the government took minimal
12 credible steps or action to identify and punish officials who may have committed
13 human rights abuses." Dr. Rana faces acute risk as a Muslim of Pakistani origin
14 charged in the Mumbai attacks. The Human Rights Watch 2023 World Report
15 documents that the "BJP-led government continued its systematic discrimination and
16 stigmatization of religious and other minorities, particularly Muslims," alongside
17 "persistent allegations of torture and extrajudicial killings."

18 11. The documented forms of abuse within Indian detention facilities
19 demonstrate a comprehensive pattern of human rights violations that place Petitioner
20 Rana at imminent risk of torture:

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

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

26 c. Sexual Violence: The report documents incidents of sexual violence
27 perpetrated by authorities against detainees.
28

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

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

5 12. Further, Petitioner Rana's severe medical conditions render extradition to
6 Indian detention facilities a de facto death sentence. Medical records from July 2024¹
7 confirm multiple acute and life-threatening diagnoses:

8 a. Abdominal Aortic Aneurysm: A 3.5 cm aneurysm at immediate risk of
9 rupture under conditions of stress or physical exertion.

10 b. Bilateral Iliac Aneurysms: 2.7 cm and 2.1 cm aneurysms further
11 exacerbating risk of catastrophic internal hemorrhage.

12 c. Cardiovascular Disease: Multiple documented myocardial infarctions,
13 placing him at imminent risk of cardiac arrest under duress.

14 d. Neurodegenerative Disease: MRI-confirmed Parkinson's disease with
15 cognitive decline, increasing susceptibility to coercive interrogation techniques.

16 e. Malignancy: Suspicious bladder mass with 7mm wall thickening,
17 suggestive of bladder cancer, requiring medical intervention unavailable in
18 Indian detention facilities.

19 f. End-Stage Kidney Disease: Stage 3 chronic kidney disease necessitating
20 imminent dialysis, with rapid deterioration expected under conditions of poor
21 sanitation and inadequate medical care.

22 g. Severe Pulmonary Compromise: Documented history of chronic asthma,
23 COPD, and multiple COVID-19 infections, substantially increasing the risk of
24 fatal respiratory failure in overcrowded, unsanitary, and poorly ventilated
25 detention environments.

26
27 ¹ Petitioner's abdominal aortic aneurysm, bilateral iliac aneurysms, and
28 suspicious bladder mass were not detailed in his most recent submission to Secretary
Rubio. Petitioner will supplement the record with medical records in his possession
should the Court grant the instant stay and allow supplemental briefing.

1 13. Third, the legal climate in India renders any defense effectively
2 impossible. As documented by Human Rights Watch, attorneys defending individuals
3 accused of terrorism-related offenses—particularly those linked to the 2008 Mumbai
4 attacks—have been physically attacked, threatened, or assassinated. Defense attorneys
5 for Ajmal Kasab, a co-defendant in the Mumbai attacks, were systematically targeted
6 through violent mob threats and professional retaliation. Attorney Shahid Azmi, who
7 represented co-defendants in the case, was assassinated in February 2010. This
8 documented pattern of reprisal against defense attorneys makes it impossible for
9 Petitioner Rana to secure competent and independent legal representation.

10 14. Before an extradition can occur, the Secretary must consider an
11 extraditee's torture claim and find it not "more likely than not" that the extraditee will
12 face torture. 22 C.F.R. § 95.2. The Department of State has not provided any
13 documentation that such a determination was made in accordance with the Secretary's
14 statutory and regulatory obligations, particularly in light of the overwhelming evidence
15 that Dr. Rana faces near-certain torture and death in Indian custody.

16 15. Despite the substantial claims presented to him, the Secretary of State
17 authorized extradition, seemingly without meaningful engagement with the evidence.
18 On February 12, 2025, counsel for Rana received a letter from the U.S. Department of
19 State stating that the Deputy Secretary of State had authorized Rana's surrender to
20 India pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between the United
21 States and India. Exhibit B.

22 16. On February 13, 2025, counsel for Rana requested from the State
23 Department the complete administrative record on which Secretary Rubio based his
24 decision to authorize Dr. Rana's surrender to India. Counsel also requested immediate
25 information of any commitment the United States has obtained from India with respect
26 to Dr. Rana's treatment. At the time of this filing, counsel has received no response.

27 17. Indian media have published news articles that a team from the National
28 Investigation Agency of India would be traveling to Los Angeles by the end of January

1 to arrange for the extradition of Dr. Rana. *See, e.g.,* Mukesh, Ranjan, *NIA team to soon*
2 *visit US to bring back Mumbai terror attack accused Tahawwur Rana*, The New
3 Indian Express, (Jan. 28, 2025, 8:04 a.m.),
4 [https://www.newindianexpress.com/nation/2025/Jan/28/nia-team-to-soon-visit-us-to-](https://www.newindianexpress.com/nation/2025/Jan/28/nia-team-to-soon-visit-us-to-bring-back-mumbai-terror-attack-accused-tahawwur-rana-2)
5 [bring-back-mumbai-terror-attack-accused-tahawwur-rana-2](https://www.newindianexpress.com/nation/2025/Jan/28/nia-team-to-soon-visit-us-to-bring-back-mumbai-terror-attack-accused-tahawwur-rana-2).

6 18. The authorization of Rana’s extradition by the U.S. Department of State
7 coincides with Indian Prime Minister Narendra Modi's visit to Washington DC for a
8 three-day visit to the United States from February 12 to February 14, 2025. The
9 possible transfer of Rana to Indian custody in the immediate days after notice of the
10 Secretary’s decision would deprive Rana of the opportunity to receive and review the
11 administrative record and to seek judicial review of the Secretary’s decision.

12 19. 28 U.S.C. § 2241 makes the writ of habeas corpus available to all persons
13 “in custody in violation of the Constitution or laws or treaties of the United States.” 28
14 U.S.C. § 2241(c)(3).

15 20. Further, the Administrative Procedure Act (“APA”) guarantees judicial
16 review by federal courts of "final agency action for which there is no other adequate
17 remedy in a court." 5 U.S.C. § 704.

18 21. Historically, a decision regarding extradition by the Secretary of State has
19 been subject to judicial review only under the APA’s arbitrary and capricious standard
20 and to determine whether the Secretary has complied with his statutory and regulatory
21 obligations, including where (as here) the person to be extradited claims that they will
22 be subjected to extreme torture or inhumane treatment in violation of the Convention
23 Against Torture (“CAT”) and § 2242 of the Foreign Affairs Reform and Restructuring
24 Act (“FARR Act”). *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956-57 (9th Cir.
25 2012); *Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1013-15 (9th Cir. 2000).

26 22. The Supreme Court’s recent decision in *Loper Bright Enterprises v.*
27 *Raimondo*, 144 S. Ct. 2244 (2024) fundamentally transforms this framework, eliminating
28 *Chevron* deference and undercutting any judicial obligation to defer to the State

1 Department’s analysis. While the Secretary retains authority to make CAT
2 determinations, *Loper Bright* calls for the Court to review exercise its own independent
3 judgment about whether the Secretary has complied with his statutory and regulatory
4 obligations. *See also Memorial Hermann Accountable Care Organization v.*
5 *Commissioner of Internal Revenue*, 120 F.4th 215, 219 (5th Cir. October 28, 2024)
6 (citing *Loper Bright* in declining to defer to the Treasury Department’s interpretation of
7 tax regulations).

8 23. Accordingly, Rana respectfully requests that the Court order that the
9 transfer and surrender of the Petitioner to Indian custody be delayed until Rana has had
10 a full and fair opportunity to receive and review the State Department administrative
11 record, present and support his challenges to the Secretary’s decision, and have those
12 challenges heard by the Court in accordance with U.S. law and procedure.

13 24. Further, Rana requests that the Court set aside the Secretary’s decision as
14 in violation of U.S. law and applicable statutes and regulations and that the Court
15 reverse the Magistrate Judge’s Extradition Certification and Order of Commitment
16 (Case No. 2:20-cv-7309-DSF, Doc. 66) and the District Court’s denial of habeas
17 corpus. (Case No. 2:23-cv-04223-DSF, Doc. 33.)

18 **JURISDICTION AND VENUE**

19 25. Jurisdiction is proper in this Court, *inter alia*, pursuant to 28 U.S.C. § 1331
20 and 28 U.S.C. § 2241.

21 26. Venue is appropriate in this Court because Petitioner Rana is being held in
22 custody in Los Angeles, California.

23 27. On May 31, 2023, Petitioner filed a previous Petition for Write of Habeas
24 Corpus by a Person in Federal Custody Pursuant to 28 U.S.C. § 2241. Dkt. No. 1. On
25 August 10, 2023, United States District Judge Dale S. Fischer issued a Memorandum
26 and Order denying the prior petition. Dkt. No. 18.

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COUNT I

Petitioner’s Extradition is in Violation of U.S. Law

28. Petitioner realleges and incorporates the above paragraphs as if fully set forth herein.

29. The extradition of Petitioner to India would violate the United Nations Convention Against Torture (“CAT”), the International Covenant on Civil and Political Rights (“ICCPR”), § 2242 of the Foreign Affairs Reform and Restructuring Act (“FARR Act”) and other fundamental notions of due process (including the right to a speedy trial the right not to be subjected to lengthy and coercive interrogation in the absence of counsel, protection against cruel and unusual punishment, the presumption of innocence, and the right against self-incrimination).

30. The Secretary must consider an extraditee’s torture claim and find it not “more likely than not” that the extradite will face torture before extradition can occur. 22 C.F.R. § 95.2. The Department of State has not provided any documentation that such a determination was made in accordance with the Secretary’s statutory and regulatory obligations.

31. Accordingly, the extradition of Petitioner is in violation of United States Law.

COUNT II

Petitioner’s Extradition is in Violation of the *Non Bis* Clause of the Extradition Treaty with India

32. Petitioner realleges and incorporates the above paragraphs as if fully set forth herein.

33. Petitioner’s extradition would violate the United States-India extradition treaty because Rana has been tried and acquitted in the United States District Court for the Northern District of Illinois for charges based on the identical conduct for which India seeks to prosecute him. Extradition is therefore barred under Article 6(1) of the Treaty, which declares that “[e]xtradition shall not be granted when the person sought

1 has been convicted or acquitted in the Requested States for the offense for which
2 extradition is requested.”

3 **COUNT III**

4 **Petitioner’s Extradition is Unsupported by Probable Cause**
5 **in Violation of the Extradition Treaty with India**

6 34. Petitioner realleges and incorporates the above paragraphs as if fully set
7 forth herein.

8 35. Petitioner’s extradition would violate the United States-India extradition
9 treaty because the materials submitted by the government of India – consisting
10 principally of transcripts and exhibits from Rana’s trial in the Northern District of
11 Illinois—fail to establish probable cause that he committed the offenses for which India
12 has charged him. Petitioner Rana’s extradition thus fails to satisfy Article 9.3(c) of the
13 Treaty.

14 **COUNT IV**

15 **Unconstitutional Arrest and Confinement without Probable Cause**
16 **in Violation of the Fourth Amendment to the Constitution**

17 36. Petitioner realleges and incorporates the above paragraphs as if fully set
18 forth herein.

19 37. The Fourth Amendment to the United States Constitution provides, among
20 other things, that “no warrants shall issue, but upon probable cause.”

21 38. At a minimum, to establish probable cause, the government must allege
22 facts establishing that Petitioner Rana committed a crime subject to extradition. *See,*
23 *e.g., Parretti v. United States*, 122 F.3d 758, 771 (9th Cir. 1997), *withdrawn under the*
24 *fugitive disentitlement doctrine*, 143 F.3d 508 (9th Cir. 1998).

25 39. As alleged above, the government has never presented evidence to
26 establish probable cause that he committed the offenses for which India has charged
27 him. His extradition is thus in violation of the Fourth Amendment.
28

1 **COUNT IV**

2 **Violation of Due Process and the Opportunity for Meaningful Review**

3 40. Petitioner realleges and incorporates the above paragraphs as if fully set
4 forth herein.

5 41. The State Department’s actions in authorizing extradition mere days
6 before Petitioner Rana is to be surrendered would violate the Petitioner’s constitutional
7 right to due process and meaningful judicial review.

8 42. The State Department has failed to provide the administrative record
9 necessary for proper judicial review of the extradition determination.

10 43. Courts have consistently recognized that due process concerns in
11 extradition proceedings are properly considered through habeas corpus review. *See*
12 *Plaster v. United States*, 720 F.2d 340 (4th Cir. 1983).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner requests that the Cour immediately grant the
15 following relief:

- 16 a. Issue a Writ of Habeas Corpus and/or any appropriate order immediately
- 17 halting the transfer of Petitioner to the custody of the government of India;
- 18 b. Issue a Writ of Habeas Corpus finding the Secretary of State’s decision to
- 19 surrender Petitioner for extradition is in violation of U.S. law;
- 20 c. Issue a Writ of Habeas Corpus reversing the decision certifying
- 21 Petitioner’s extraditability;
- 22 d. Set a reasonable briefing schedule so that the parties may brief these issues
- 23 more fully;
- 24 e. Grant Petitioner such other and further relief as the Court may deem just
- 25 and appropriate.
- 26
- 27
- 28

EXHIBIT A

LAW OFFICE OF **JOHN D. CLINE**

January 21, 2025

VIA EMAIL TO EXTRADITION@STATE.GOV

The Honorable Marco Rubio
Secretary of State, United States of America
c/o Department of State, Office of the Legal Adviser
for Law Enforcement and Intelligence

Re: Dr. Tahawwur Rana--Extradition Submission

Dear Secretary Rubio:

I am writing to ask that you deny surrender of my client, Dr. Tahawwur Rana, for extradition to India.

I wrote to former Secretary of State Blinken on August 14, 2023 and again on August 16, 2024 to request that he deny surrender of Dr. Rana. Those submissions are attached as Exhibits A and B. I write to you now in the wake of the Supreme Court's decision today denying Dr. Rana's petition for a writ of certiorari and effectively ending judicial proceedings in this country. For the reasons stated in my submissions to Secretary Blinken and summarized below, I respectfully ask that you decline to extradite Dr. Rana. I ask as well for an opportunity to meet with you and explain in more detail the basis for my request.

In summary, extradition should be denied for four reasons:

1. Dr. Rana was previously tried and acquitted in federal court in Chicago for the same conduct on which India now seeks to prosecute him--his alleged assistance with the November 2008 terrorist attack in Mumbai, India. His extradition to India would mark the first time in this country's history that a person tried and acquitted in a United States court was surrendered to another country to face a second trial for the same conduct on which an American jury acquitted him. Extraditing Dr. Rana to face the death penalty in India would set a shocking precedent that would call into question the finality of what has until now been sacrosanct: acquittal by a jury of ordinary American citizens following a full and fair trial.

2. In the case of Dr. Rana's alleged co-conspirator, David Headley, the Department of Justice agreed that Article 6(1) of the extradition treaty between the United States and India barred extradition for prosecution based on the same conduct for which Headley had been convicted in United States federal court. It then changed its position in Dr. Rana's case and maintained that extradition would be barred under Article 6(1) only if the elements of the crimes charged in the two countries were identical. The federal courts declined to apply the doctrine of judicial estoppel to bar this switch in positions, but the fundamental unfairness remains: the government interpreted the treaty in Headley's case

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to bar extradition of an admitted mastermind of the Mumbai attacks, while adopting an entirely different interpretation to achieve the extradition of a man who was acquitted by a jury and, even by the government's account (which we strongly dispute and which the Chicago jury rejected), played at most a peripheral role in Headley's plot.

3. The State Department's annual Human Rights Reports have repeatedly decried India's record of extrajudicial violence, especially against Muslims. For example, the 2023 Human Rights Report, issued in April 2024, declares in its Executive Summary that "[s]ignificant human rights issues included 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" The Report adds that "[t]he government took minimal credible steps or action to identify and punish officials who may have committed human rights abuses."

The 2023 Human Rights Watch World Report for India makes similar findings. The HRW World Report declares that the BJP-led government "continued its systematic discrimination and stigmatization of religious and other minorities, particularly Muslims," a finding of particular significance because Dr. Rana is Muslim. The HRW World Report also found that "[a]llegations of torture and extrajudicial killings persisted." HRW's recent 2024 World Report for India demonstrates that torture, extrajudicial killings, and violence against Muslims continue unabated.

Given the findings in the 2023 State Department Human Rights Report and the 2023 and 2024 Human Rights Watch World Reports, which echo previous annual reports, it is impossible to conclude that it is not "more likely than not" that Dr. Rana will face torture if surrendered--a finding that is required before extradition can be granted. 22 C.F.R. § 95.2(b); see *Trinidad v. Thomas*, 683 F.3d 952, 956-57 (9th Cir. 2012). This is especially so because Dr. Rana is a Muslim of Pakistani origin charged with participating in the worst terrorist attack in India's history. He is sure to suffer the harshest and most degrading treatment Indian authorities can inflict.

4. Finally, Dr. Rana's health, which has been declining for years, has continued to worsen after almost five years of incarceration in the notorious Metropolitan Detention Center in Los Angeles. He was diagnosed in 2024 with Parkinson's disease and is already showing signs of progression, including cognitive impairment and worsening persistent bilateral tremors. He routinely suffers from memory issues, disorientation, urinary frequency, and heightened cold sensitivity.

Dr. Rana has a mass in his bladder that is suspicious for cancer. He also suffers from coronary artery disease, stage 3 chronic kidney disease (CKD), latent tuberculosis (TB), chronic sinus disease, bronchitis, asthma, chronic obstructive pulmonary disease (COPD), hypothyroidism, psoriasis, an enlarged prostate, noise-induced hearing loss, degenerative joint disease, internal hemorrhoids, various musculoskeletal injuries, and calcium deficiency. While incarcerated, Dr. Rana has experienced two heart attacks, a

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vasovagal syncopal episode, multiple episodes of delirium, a tear in his right meniscus, and contracted COVID-19 at least three times. He has undergone several medical procedures, including cardiac catheterization, an angiogram, angioplasty, and the insertion of a cardiac stent.

Dr. Rana's CKD will eventually necessitate dialysis or a kidney transplant, and he remains at significant risk for another heart attack, stroke, diabetes, tuberculosis, and future episodes of delirium and vasovagal events. He is also undergoing a workup for bladder cancer, with a CT scan expected later this year. If bladder cancer is confirmed, he would require surgery and chemotherapy. Additionally, his chronic asthma and COPD put him at ongoing risk for severe respiratory complications, especially given his multiple COVID-19 infections, which have further compromised his lung function. Given the inhumane conditions in Indian prisons and without regular access to a team of medical specialists, his current medications, and medical intervention, it is almost certain that Dr. Rana would die in India while awaiting trial.

For these reasons, explained more fully in my attached submissions to Secretary Blinken, we respectfully urge you to deny surrender of Dr. Rana to India. As I noted at the outset, I respectfully request the opportunity to meet with you to address the concerns outlined in this letter.

Thank you for considering my submissions on Dr. Rana's behalf.

Very truly yours,



John D. Cline

Counsel for Tahawwur Hussain Rana

EXHIBIT A

ATTACHMENT B

LAW OFFICE OF **JOHN D. CLINE**

August 14, 2023

VIA EMAIL TO EXTRADITION@STATE.GOV

The Honorable Antony J. Blinken
Secretary of State, United States of America
c/o Department of State, Office of the Legal Adviser
for Law Enforcement and Intelligence

Re: Dr. Tahawwur Rana--Extradition
Submission

Dear Secretary Blinken:

I am writing to request that you deny surrender of my client, Dr. Tahawwur Rana, for extradition to India. I base this request on four grounds, discussed in more detail below. First, Dr. Rana was charged, tried, and acquitted in the United States District Court for the Northern District of Illinois for exactly the same conduct for which the Government of India ("GOI") now seeks to prosecute him. To our knowledge, Dr. Rana's case marks the first time in this country's history that a person tried and acquitted in a United States court would be surrendered to another country to face a second trial for the same conduct on which an American jury acquitted him. Adding to the gravity of the matter, Dr. Rana faces the death penalty in India, generally carried out by hanging the defendant by the neck from a rope until dead.

Second, and relatedly, in the case of Dr. Rana's alleged co-conspirator, David Headley, the United States Department of Justice agreed that Article 6(1) of the extradition treaty between the United States and India barred extradition for prosecution based on the same conduct for which Headley had been convicted in United States federal court. The Department of Justice then changed its position in Dr. Rana's case and argued successfully for a far narrower interpretation of Article 6(1). No court has yet called upon the Department of Justice to explain its change of position, and it has refused to do so voluntarily.

Third, as the State Department has repeatedly documented in its annual human rights reports, India has a deplorable record of extrajudicial violence, including torture and inhumane prison conditions. Dr. Rana, a Canadian citizen, is a Muslim born in Pakistan and charged with involvement in the 2008 Mumbai attacks. It is highly probable--and certainly "more likely than not," 22 C.F.R. § 95.2(b)--that if he is extradited, he will be subjected to treatment and conditions that violate the Convention Against Torture. Even if Dr. Rana survives until trial, it is doubtful that he will find a lawyer in India willing to take his case, given that the last lawyer to represent a Mumbai defendant was assassinated shortly before the verdict.

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Fourth, Dr. Rana's poor health, after more than three years of substandard medical care while incarcerated in the notorious Metropolitan Detention Center in Los Angeles, leaves him especially vulnerable to the abuse and mistreatment he will undoubtedly face in India.

For all these reasons, explained in more detail below, we ask that you deny surrender of Dr. Rana for extradition to India.

PROCEDURAL HISTORY

Dr. Rana was previously prosecuted in the United States District Court for the Northern District of Illinois. *United States v. Rana et al.*, Case No. 1:09-cr-00830 (N.D. Ill.). The second superseding indictment ("SSI") charged him in three counts. Count 9 charged him with conspiring to provide material support to terrorism in India. SSI at 16 (Doc. 16-2).¹ The alleged conspiracy began "in or about late 2005" and continued "through on or about October 3, 2009." SSI at 16, ¶ 2. Dr. Rana's alleged co-conspirators included David Headley and others. The centerpiece of the alleged conspiracy was the attack conducted by Lashkar e Tayyiba ("Lashkar") on various locations in Mumbai in November 2008, resulting in the death of 164 persons. SSI at 11, ¶ 29.

Count 9 incorporates by reference paragraphs 3 through 33 of Count 1. SSI at 17, ¶ 3. Those paragraphs allege conduct that mirrors the allegations in the GOI extradition request.

Count 11 charged Dr. Rana with conspiracy to provide material support to terrorism in Denmark. SSI at 30. Count 12 charged Dr. Rana with providing material support to Lashkar, both in India and in Denmark. SSI at 32.

The jury acquitted Dr. Rana on Count 9 (conspiracy to provide material support to terrorism in India) and convicted him on Count 11 (conspiracy to provide material support to terrorism in Denmark). The jury also convicted Dr. Rana on Count 12 (providing material support to Lashkar), but it did not find that death resulted from his conduct. Verdict Form (Doc. 16-4). In light of the verdicts on Counts 9 and 11, the Illinois district court concluded that the jury found Dr. Rana guilty on Count 12 of providing material support to Lashkar in Denmark but not in connection with the Mumbai massacre in India. Sentencing Tr. at 35 ("THE COURT: They specifically found that Dr. Rana did not cause any deaths, which eliminates the Mumbai massacre from the case, it seems to me.") (Doc. 16-5). Because of this finding, the district court declined to apply the terrorism enhancement at § 3A1.4 of the United States Sentencing Guidelines.

On January 7, 2013, the Illinois court sentenced Dr. Rana to 168 months in prison. On June 9, 2020, based in part on Dr. Rana's declining health, the court granted Dr. Rana's

¹ Filings in the extradition court proceedings are cited as "Doc." followed by the ECF (docket) number.

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motion for compassionate release and ordered him released immediately. Exhibit A (Doc. 16-7).

On June 10, 2020, the extradition magistrate in the United States District Court for the Central District of California signed a provisional arrest warrant with a view to extraditing Dr. Rana to India to face charges there. Doc. 1. Dr. Rana was taken immediately into custody on the warrant and transferred from FCI Terminal Island (where he was serving his sentence) to the Metropolitan Detention Center in Los Angeles, where he has resided ever since.

The charges for which the GOI seeks extradition consist of conspiracy to commit various offenses, including to wage war, to murder, to commit two forms of forgery, and to commit a terrorist act (Charge 1); waging war (Charge 2); conspiracy to wage war (Charge 3); murder (Charge 4); committing a terrorist act (Charge 5); and conspiracy to commit a terrorist act (Charge 6). Doc. 67 at 25-26 (summarizing charges).² It is undisputed that those charges rest on the same conduct alleged in Count 9 of the Illinois case, on which Dr. Rana was acquitted.

Dr. Rana opposed extradition before the extradition magistrate on two grounds: that extradition was barred under the non bis in idem, or double jeopardy, provision of the United States-India extradition treaty (Article 6(1) of the treaty) and that the GOI submission--based largely on the trial record from the Illinois case--failed to establish probable cause that Dr. Rana had committed the offenses charged in India.

On May 16, 2023, the extradition magistrate rejected Dr. Rana's arguments and certified him for extradition. Exhibit B. On May 31, Dr. Rana filed a petition for writ of habeas corpus in the United States District Court for the Central District of California, again raising the double jeopardy and probable cause issues. The district court denied the petition on August 10. Exhibit C. Dr. Rana filed his notice of appeal to the United States Court of Appeals for the Ninth Circuit that same day. Dr. Rana will shortly file a motion to stay extradition pending the outcome of his appeal.

REASONS TO DENY SURRENDER

I. DR. RANA HAS BEEN ACQUITTED IN A UNITED STATES DISTRICT COURT FOR THE CONDUCT ON WHICH THE GOI SEEKS TO TRY HIM A SECOND TIME.

Dr. Rana was acquitted in United States District Court for the Northern District of Illinois on charges based on the identical conduct for which the GOI now seeks to extradite, try, and execute him. The extradition thus raises an important and unsettled question of law: Does the word "offense" in the non bis in idem (double jeopardy) provision of the

² The United States government did not seek extradition on objects 2, 7, and 8 of the Charge 1 conspiracy or on Charge 7. Doc. 67 at 26.

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United States-India extradition treaty--and scores of other similarly worded extradition treaties--refer to the underlying *conduct* charged in the United States and India proceedings, or to the *elements* of the crimes charged in the two jurisdictions? The Ninth Circuit, where Dr. Rana's habeas appeal will be heard, has never addressed this question. The two Circuits that have--the Second and the Fourth--have reached opposite conclusions. Compare *Sindona v. Grant*, 619 F.2d 167 (2d Cir. 1980) (conduct), with *Gon v. Holt*, 774 F.3d 207 (4th Cir. 2014) (elements). See also *United States v. Trabelsi*, 845 F.3d 1181, 1189-93 (D.C. Cir. 2017) (declining to adopt either test).

The extradition magistrate adopted the Fourth Circuit's view and found that the non bis in idem provision--Article 6(1) of the United States-India Treaty--posed no obstacle to Dr. Rana's extradition. Exhibit B at 35. The habeas court adopted the magistrate's analysis in a brief order. Exhibit C.

We will contend on appeal to the Ninth Circuit that the lower courts erred. The language of the treaty, long-established principles of treaty interpretation, the government's interpretation of Article 6(1) in the proceedings involving Dr. Rana's alleged co-conspirator David Headley, and international law all establish that the word "offense" refers to conduct (as in *Sindona*) rather than elements (as in *Gon*).

Regardless of the outcome of this important legal question, our country's commitment to basic fairness should preclude extradition. The Department of Justice, with all of its resources, prosecuted Dr. Rana for exactly the same conduct on which the GOI bases its extradition request. A jury of Americans voted unanimously to acquit him. It would be a shocking breach of our traditions if this country, for the first time in its history, were to surrender a person tried and acquitted in a United States court to another country to face a second trial--and potentially the death penalty--based on the same conduct.

II. EXTRADITION FOR A SECOND TRIAL ON THE SAME CONDUCT WOULD BE ESPECIALLY UNFAIR BECAUSE THE DEPARTMENT OF JUSTICE HAS INTERPRETED THE TREATY AS BARRING THE EXTRADITION OF DR. RANA'S ALLEGED CO-CONSPIRATOR, DAVID HEADLEY.

David Headley, Dr. Rana's alleged co-conspirator, pleaded guilty and testified against Dr. Rana. In a section of the Headley plea agreement titled "Extradition," the Department of Justice agreed that "[p]ursuant to Article 6 of [the Treaty], defendant shall not be extradited to the Republic of India . . . for any offenses for which he has been convicted in accordance with this plea." Plea Agreement at 20, ¶ 9 (Doc. 16-6). The extradition section continues: "The defendant and the United States Attorney's Office accordingly agree" that if Headley pleads guilty to a series of offenses, "then the defendant shall not be extradited to the Republic of India . . . for the foregoing offenses, *including conduct within the scope of those offenses for which he has been convicted in accordance with this plea*, so long as he fully discloses all material facts concerning his role with

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respect to these offenses and abides by all other aspects of this agreement." *Id.* (emphasis added).

During Headley's plea colloquy on March 18, 2010, the district court inquired whether protection from extradition to India was a benefit of the plea agreement. Then-United States Attorney for the Northern District of Illinois Patrick J. Fitzgerald explained the meaning of the extradition provision. United States Attorney Fitzgerald declared that the extradition provision "says *if the conduct is conduct within the scope of those offenses* for which he has been convicted in accordance with the plea, then *according to the treaty, he would not be extradited.*" Headley Plea Tr. at 21 (emphasis added) (Doc. 79-2). Thus, in the Headley plea proceedings the Department of Justice interpreted Article 6(1) to bar extradition for Indian charges based on the underlying conduct to which Headley pled guilty, and not merely for charges that had the same elements as the statutes to which he pled.

Having taken the position in Headley's plea proceedings that the word "offense" in Article 6(1) refers to conduct, rather than elements, the Department of Justice reversed course in Dr. Rana's case. It did not discover a new principle of interpretation that it overlooked in the Headley proceedings, nor was there a change in the law. Rather, the Department of Justice repudiated its previous position (that "offense" in Article 6(1) refers to the underlying conduct) and adopted an entirely different position (that "offense" refers to the elements of crimes) solely to obtain the result it sought--the extradition of Dr. Rana to India.

The Department of Justice contended before the extradition magistrate that it is not bound by the interpretation of Article 6(1) that United States Attorney Fitzgerald gave the federal court in Illinois. Doc. 79 at 27 n.19. It suggested that United States Attorney Fitzgerald was mistaken and implied that his interpretation did not have the imprimatur of the United States government. The Department argued, in essence, that the federal prosecutors in Illinois made the non-extradition provision a benefit of Headley's plea. But the Department's position in this respect directly contradicts its own Justice Manual. Paragraph 9-15.800 of the Manual outlines the problems that can arise from a non-extradition provision in a plea agreement and declares: "Prosecutors may not agree either formally or informally to prevent or delay extradition or removal unless they submit a written request for authorization, and receive an express written approval from the Assistant Attorney General, Criminal Division." *Id.* United States Attorney Fitzgerald, a highly respected prosecutor, undoubtedly communicated with the Assistant Attorney General, Criminal Division as the Manual requires. Dr. Rana has repeatedly asked the Department of Justice to disclose United States Attorney Fitzgerald's relevant communications. It has refused to do so, and the courts thus far have declined to intervene.

The blatant and unexplained disparity in treatment between Headley and Dr. Rana is shameful. Under any view of the evidence, Headley is far more culpable in the Mumbai attack than Dr. Rana. He has pled guilty for his role, while Dr. Rana has been acquitted. Yet the Department of Justice has interpreted Article 6(1) of the extradition treaty to protect

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Headley from the brutality that would await him in India while interpreting the same provision in a far narrower way to ensure that Dr. Rana endures those torments. Such disparity undermines respect for the law and eviscerates the principle of equal treatment that is the foundation of our democracy.

III. IF EXTRADITED TO INDIA, DR. RANA WOULD BE SUBJECTED TO TORTURE IN VIOLATION OF THE CONVENTION AGAINST TORTURE.

Article 3.1 of the Convention Against Torture prohibits the extradition of a person to another country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." "Torture" is defined in Article 1.1 as "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 for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Congress has implemented the CAT, 8 U.S.C. § 1231 note, and the State Department has issued regulations applying the CAT to extraditions, 22 C.F.R. §§ 95.2, 95.3. Under those regulations, the Secretary of State "*must* make a torture determination before surrendering an extraditee who makes a CAT claim." *Trinidad v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (emphasis in original). Under the CAT and its implementing provisions, extradition of Dr. Rana is barred unless and until the Secretary of State determines that it is not "more likely than not" that he will face torture if surrendered to India. 22 C.F.R. § 95.2(b); *see Trinidad*, 683 F.3d at 957.

It is impossible to make that finding here, given India's deplorable history of extrajudicial violence, torture, and abuse. The State Department's India 2022 Human Rights Report ("2022 State Department Report," attached as Exhibit D) lists as "[s]ignificant human rights issues" credible reports of "unlawful and arbitrary killings, including extrajudicial killings by the government or its agents; torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials; [and] harsh and life-threatening prison conditions." 2022 State Department Report at 1. The Report cites "reports the government or its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and terrorists." *Id.* at 2.

The 2022 State Department Report notes that "[t]he law prohibits torture and other abuses, but there were credible reports that government officials employed them. The law does not permit authorities to admit coerced confessions into evidence, but some nongovernmental organizations (NGOs) reported authorities used torture to coerce

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confessions." *Id.* at 5. The Report adds: "There were reports that police beatings of prisoners resulted in custodial deaths There were reports of abuse in prisons by guards and inmates, as well as reports of rape of detainees by police." *Id.*

The 2022 State Department Report observes that "[p]rison conditions were frequently life threatening, most notably due to extreme overcrowding, inadequate sanitary conditions, and lack of medical care." *Id.* at 6. The Report adds, "Prisons were often severely overcrowded. . . . Food, medical care, sanitation and environmental conditions frequently were inadequate in prisons. Potable water was not universally available. Prisons and detention centers remained underfunded and understaffed and lacked sufficient infrastructure. Prisoners were sometimes physically mistreated." *Id.* In line with these findings, you are reported to have remarked in April 2022 that the United States was "monitoring some recent concerning developments" in India, including "a rise in human rights abuses by some government, police, and prison officials." Shubhajit Roy, *Monitoring some recent concerning developments in India, including rights abuse: Antony Blinken*, *The Indian Express*, Apr. 13, 2022, available at <https://indianexpress.com/article/india/us-monitoring-some-recent-concerning-human-rights-violations-in-india-blinken-7865377/>.

Dr. Rana is especially likely to face the torture and abuse described in the 2022 State Department Report because he is a Muslim of Pakistani origin accused of participating in the worst terrorist attack in India's history. A Human Rights Watch report from 2011, shortly after a spate of terrorist violence in India, including the 2008 Mumbai attacks, "focus[ed] primarily on torture and other abuses committed by the police against alleged Muslim militants" and "found that mistreatment of suspects detained in connection with the 2008 bombings occurred at every stage of custody, from police lockups where many were tortured, to jails where they were beaten, to courthouses where magistrates often ignored their complaints." Human Rights Watch, *The "Anti-Nationals": Arbitrary Detention and Torture of Terrorism Suspects in India*, Feb. 1, 2011, available at <https://www.hrw.org/report/2011/02/01/anti-nationals/arbitrary-detention-and-torture-terrorism-suspects-india>.

Matters have only become worse for Muslims in India since the 2011 Human Rights Watch report. As the Human Rights Watch 2023 World Report observes, "The [BJP]-led government continued its systematic discrimination and stigmatization of religious and other minorities, particularly Muslims. BJP supporters increasingly committed violent attacks against targeted groups. The government's Hindu majoritarian ideology was reflected in bias in institutions, including the justice system" Human Rights Watch, *World Report 2023: India*, available at <https://www.hrw.org/world-report/2023/country-chapters/india>. Similarly, the State Department's 2022 Report on International Religious

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Freedom: India listed "numerous reports during the year of violence by law enforcement authorities against members of religious minorities in multiple states," including acts of violence against Muslims. *See* Exhibit E.

The culture of extrajudicial violence, particularly against Muslims, has made it virtually impossible for Dr. Rana to find a competent lawyer in India willing to represent him. Efforts to obtain Indian counsel have been met either with flat rejection or with requests for huge fees to compensate for the danger to which the lawyer would subject himself and his family by taking such an unpopular case. These lawyers are not exaggerating the risk; as the Human Rights Watch "Anti-Nationals" report observes:

Lawyers defending Muslim terrorism suspects also came under attack for being unpatriotic. After the 2008 bombings, several such lawyers were physically attacked or threatened by Hindu extremists, many of them fellow lawyers. In the high-profile case of Ajmal Kasab, the lone surviving gunman from the 2008 Mumbai attack, one lawyer was threatened by mobs, another was removed from the board of a prestigious Muslim foundation, and a third received a death threat for representing the defendant. Two lawyers had to defy the local bar association to defend suspects in the 2010 Pune attack. In February 2010, Shahid Azmi, who was representing a number of IM suspects as well as an Indian co-defendant in the Mumbai attack, was shot dead by gunmen.

Small wonder that even the most courageous defense lawyers in India will not touch Dr. Rana's case.

We could go on; every reputable organization that has studied human rights in India--including, for example, Amnesty International, the Council on Foreign Relations, and the United Nations Office of the High Commissioner on Human Rights--has found extrajudicial killings, torture, inhumane and degrading treatment, and dangerously foul prison conditions, all of which land with increasingly vicious force on Muslims accused of serious crimes. The bottom line is this: no one could credibly find that it is not "more likely than not" that Dr. Rana will face torture, as defined in Article 1.1 of the CAT, if surrendered to India. 22 C.F.R. § 95.2(b). To the contrary, it is a near certainty that he will undergo prolonged torture and die a gruesome death long before any trial can take place. Article 3.1 of the CAT thus bars Dr. Rana's extradition.

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IV. DR. RANA'S POOR HEALTH, EXACERBATED BY THREE YEARS OF SUBSTANDARD MEDICAL CARE, INCREASES THE DANGER OF SUBJECTING HIM TO INCARCERATION IN INDIA.

The "frequently life threatening" prison conditions cited in the 2022 State Department Report are particularly dangerous for Dr. Rana because of his extremely poor health.

In June 2020, the judge who presided over Dr. Rana's trial in the United States District Court for the Northern District of Illinois reduced his sentence to time served, citing his "serious, chronic, and incurable" health conditions. Exhibit A. Dr. Rana's health problems have since worsened and include coronary artery disease, chronic kidney disease (CKD), latent tuberculosis (TB), bronchitis, asthma, hypothyroidism, enlarged prostate, noise-induced hearing loss, osteoarthritis, internal hemorrhoids, various musculoskeletal injuries, and calcium deficiency. While incarcerated, he experienced two heart attacks and a subsequent vasovagal event, multiple episodes of delirium, contracted COVID at least three times, and has undergone cardiac catheterization, angiogram, angioplasty, and insertion of a cardiac stent. Dr. Rana will require dialysis or a kidney transplant for CKD, and is at significant risk for another heart attack, stroke, diabetes, tuberculosis, and future episodes of delirium and vasovagal events.

Given the inhumane conditions in Indian prisons and without regular access to a team of medical specialists, his current medications, and medical intervention, it is almost certain that Dr. Rana would die there while awaiting trial. Overcrowding and unsanitary conditions will likely exacerbate his asthma and potentially lead to reactivated TB. Indeed, in a New Delhi prison, the severe issues with overcrowding and sanitation compelled the Indian Supreme Court to endorse the immediate release of nearly 3000 inmates with asthma, TB, and cancer.³ Comorbidity with CKD further places Dr. Rana at higher risk of reactivation of latent TB due in part to immunosuppression.⁴ Inadequacies in nutrition will

³ See Pritam Pal Singh, *Coronavirus: To Decongest Jail, Tihar Releasing Inmates with Cancer, Asthma, TB*, The Indian Express, April 19, 2020, <https://indianexpress.com/article/cities/delhi/coronavirus-to-decongest-jail-tihar-releasing-inmates-with-cancer-asthma-tb-6369660/>.

⁴ See K. Romanowski, E.G. Clark, A. Levin, V. J. Cook & J.C. Johnston, *Tuberculosis and Chronic Kidney Disease: An Emerging Global Syndemic*, *Kidney Int.* 2016 Jul;90(1):34-40. doi: 10.1016/j.kint.2016.01.034. Epub 2016 May 10. PMID: 27178832; J. Xiao, J. Ge, D. Zhang, X. Lin, X. Wang, L. Peng & L. Chen, *Clinical Characteristics and Outcomes in Chronic Kidney Disease Patients with Tuberculosis in China: A Retrospective Cohort*

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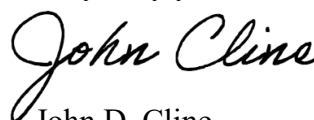
further worsen his kidney function. Interrogation, torture, and abuse will further increase the risk of a cardiac event/stroke, and subsequently death.

CONCLUSION

For these reasons, we respectfully urge you to deny surrender of Dr. Rana to India. His surrender would contravene basic principles of double jeopardy and equal treatment under the law, violate the Convention Against Torture, and almost certainly result in his death. At a minimum, you should withhold any decision on surrender until Dr. Rana's appeal has been briefed, argued, and decided by the United States Court of Appeals for the Ninth Circuit.

Thank you for considering this submission.

Very truly yours,



John D. Cline
Counsel for Tahawwur Hussain Rana

Attachments

Study, Int. J. Gen. Med. Aug. 19, 2022;15:6661-6669. doi: 10.2147/IJGM.S367090. PMID: 36016982; PMCID: PMC9398214.

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600 Stewart Street, Suite 400, Seattle, Washington 98101

ATTACHMENT B

EXHIBIT B

LAW OFFICE OF **JOHN D. CLINE**

August 16, 2024

VIA EMAIL TO EXTRADITION@STATE.GOV

The Honorable Antony J. Blinken
Secretary of State, United States of America
c/o Department of State, Office of the Legal Adviser
for Law Enforcement and Intelligence

Re: Dr. Tahawwur Rana--Supplemental
Extradition Submission

Dear Secretary Blinken:

I wrote to you on August 14, 2023 to request that you deny surrender of my client, Dr. Tahawwur Rana, for extradition to India. I make this supplemental submission in the wake of the Ninth Circuit's decision yesterday affirming the district court's denial of Dr. Rana's petition for a writ of habeas corpus. I incorporate the points in my previous submission and add the following for your consideration.

1. I noted in my initial submission that Dr. Rana's extradition to India "marks the first time in this country's history that a person tried and acquitted in a United States court would be surrendered to another country to face a second trial for the same conduct on which an American jury acquitted him." Nothing has changed in the intervening year. The court of appeals' decision does not cite a single prior case where a person acquitted in the United States has been extradited for trial overseas on the same conduct, nor did the government cite such a case in its appellate brief. Extraditing Dr. Rana to face the death penalty in India would set a shocking precedent that would call into question the finality of what has until now been sacrosanct: acquittal by a jury of ordinary American citizens following a full and fair trial.

2. My initial submission pointed out that in the case of Dr. Rana's alleged co-conspirator, David Headley, the Department of Justice agreed that Article 6(1) of the extradition treaty between the United States and India barred extradition for prosecution based on the same conduct for which Headley had been convicted in United States federal court. It then changed its position in Dr. Rana's case. The court of appeals declined to apply the doctrine of judicial estoppel to bar this switch in positions, but the fundamental unfairness remains: the government interpreted the treaty in Headley's case to bar extradition of an admitted mastermind of the Mumbai attacks, while adopting an entirely different interpretation to achieve the extradition of a man who was acquitted by a jury and, even by the government's account, played at most a peripheral role in Headley's plot.

3. My initial submission outlined India's deplorable record of extrajudicial violence, especially against Muslims. I noted that "[i]t is highly probable--and certainly 'more likely than not,' 22 C.F.R. § 95.2(b)--that if he is extradited, he will be subjected to

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treatment and conditions that violate the Convention Against Torture." Since I last wrote, India's conduct has, if anything, become even worse. The State Department's India 2023 Human Rights Report, issued in April 2024, declares in its Executive Summary that "[s]ignificant human rights issues included 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" The Report adds that "[t]he government took minimal credible steps or action to identify and punish officials who may have committed human rights abuses." The body of the 2023 Report details the basis for these findings.

The 2023 Human Rights Watch World Report for India makes similar findings. The HRW Report declares that the BJP-led government "continued its systematic discrimination and stigmatization of religious and other minorities, particularly Muslims," a finding of particular significance because Dr. Rana is Muslim. The HRW Report also found that "[a]llegations of torture and extrajudicial killings persisted."

Given the findings in the 2023 Department of State and Human Rights Watch reports, which echo previous annual reports, it is impossible to conclude that it is not "more likely than not" that Dr. Rana will face torture if surrendered--a finding that is required before extradition can be granted. 22 C.F.R. § 95.2(b); *see Trinidad v. Thomas*, 683 F.3d 952, 956-57 (9th Cir. 2012). This is especially so because Dr. Rana is a Muslim of Pakistani origin charged with participating in the worst terrorist attack in India's history. He is sure to suffer the harshest and most degrading treatment Indian authorities can inflict.

4. Finally, Dr. Rana's health, which was declining when I last wrote, has continued to worsen after another year of incarceration in the notorious Metropolitan Detention Center in Los Angeles. He was diagnosed this year with Parkinson's disease and has a mass in his bladder that is suspicious for cancer. Dr. Rana also suffers from coronary artery disease, stage 3 chronic kidney disease (CKD), latent tuberculosis (TB), chronic sinus disease, bronchitis, asthma, chronic obstructive pulmonary disease (COPD), hypothyroidism, psoriasis, an enlarged prostate, noise-induced hearing loss, degenerative joint disease, internal hemorrhoids, various musculoskeletal injuries, and calcium deficiency.

While incarcerated, Dr. Rana has experienced two heart attacks, a vasovagal syncopal episode, multiple episodes of delirium, a tear in his right meniscus, and contracted COVID-19 at least three times. He has undergone several medical procedures, including cardiac catheterization, an angiogram, angioplasty, and the insertion of a cardiac stent. He routinely suffers from memory issues, disorientation, arm tremors, urinary frequency, and heightened cold sensitivity.

Looking ahead, Dr. Rana's CKD will eventually necessitate dialysis or a kidney transplant, and he remains at significant risk for another heart attack, stroke, diabetes, tuberculosis, and future episodes of delirium and vasovagal events. He is also undergoing a workup for bladder cancer, with a CT scan scheduled later this year. If bladder cancer is

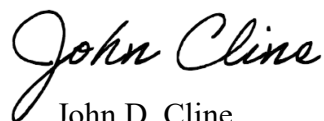
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confirmed, he would require surgery and chemotherapy. Additionally, his chronic asthma and COPD put him at ongoing risk for severe respiratory complications, especially given his multiple COVID-19 infections, which have further compromised his lung function. As I previously noted, given the inhumane conditions in Indian prisons and without regular access to a team of medical specialists, his current medications, and medical intervention, it is almost certain that Dr. Rana would die while awaiting trial. This danger is especially acute with the advent and rapid spread of mpox, which the World Health Organization has designated a global health emergency.

For these reasons, and for the reasons in my initial submission, we respectfully urge you to deny surrender of Dr. Rana to India.

Thank you for considering my submissions on Dr. Rana's behalf.

Very truly yours,



John D. Cline
Counsel for Tahawwur Hussain Rana

EXHIBIT B



United States Department of State

Washington, D.C. 20520

February 11, 2025

John Cline
Law Office of John Cline
600 Stewart Street, Suite 400
Seattle, Washington 98101
cline@johnclinelaw.com

Dear Mr. Cline:

I am writing in relation to the Secretary of State's determination of whether to extradite Tahawwur Rana to India. Following a review of all pertinent information, including the materials and filings submitted in the litigation in this case, as well as the submissions made directly to the Department of State on behalf of Mr. Rana, 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.

As a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention"), the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation involves consideration of "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition."

A decision to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that the claimed "torture" does not meet the definition set forth in 22 C.F.R. § 95.1(b) or a determination that the fugitive is not "more likely than not" to be tortured if extradited. Claims that do not come within the scope of the Convention also may raise significant humanitarian issues. The Department carefully and thoroughly considers both claims cognizable under the Convention and such humanitarian claims and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns.

ATTACHMENT B

As the official responsible for managing the Department's extradition responsibilities, I confirm that the decision to surrender Mr. Rana to India complies with the United States' obligations under the Convention and its implementing statute and regulations.

In light of the concerns you identified regarding Mr. Rana's health conditions in your submissions to the Department, if there is any additional or updated medical information you would like us to share with the Government of India to facilitate its planning for his treatment during his transit to India and his arrival in India, we would be happy to provide that to Indian authorities. However, with the issuance of this warrant, Mr. Rana may be surrendered to Indian authorities at any time, so we would need to receive any such information as soon as possible.

Thank you,



Oliver Lewis
Assistant Legal Adviser
Law Enforcement and Intelligence