UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 21 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAHAWWUR HUSSAIN RANA,

Petitioner - Appellant,

v.

JAMES ENGLEMAN, Interim Warden, Metropolitan Detention Center,

Respondent - Appellee.

No. 25-1053

D.C. No.
2:23-cv-04223-DSF
Central District of California,
Los Angeles

ORDER

Before: M. SMITH and BADE, Circuit Judges, and FITZWATER, District Judge.*

Petitioner-Appellant Tahawwur Hussain Rana's Emergency Application for Stay of Extradition Pending Appeal (Dkt. 7) is **denied**.

After the mandate issued in this case, Rana requested that the Secretary of State deny his surrender for extradition to India. On February 11, 2025, the Secretary of State authorized Rana's extradition pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between the United States and India. Rana then filed his second § 2241 habeas petition alleging, among other things, that his extradition to India would violate the Convention Against Torture (CAT) and the Foreign Affairs Reform and Restructuring Act (FARRA). Rana then filed an emergency

* The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

application for a stay of extradition pending resolution of his second § 2241 petition, which the Government opposed. The district court denied Rana's request for a stay. Specifically, it concluded that Rana was not entitled to a stay because "he has demonstrated virtually no chance of success on the merits of his petition."

Rana then filed a motion in this court entitled "Petitioner's Emergency Application for Stay of Extradition Pending Appeal." Rana requests that we issue an emergency order staying extradition pending full consideration of Rana's second § 2241 petition. The Government opposes this request but has represented that it will not surrender Rana for extradition before February 25, 2025.

We deny Rana's motion. As the district court properly concluded, Rana is not entitled to a stay of extradition pending resolution of his second § 2241 habeas petition. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). "It is instead 'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.'" *Id.* (alteration in original) (quoting *Virginian Ry. Co.*, 272 U.S. at 672–73). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433–34.

Four factors govern whether a court should grant a stay: (1) whether the applicant has made a strong showing that he is likely to succeed on the merits;

ATTACHMENT E

(2) whether the applicant will be irreparably injured absent a stay; (3) whether a stay would substantially injure other parties interested in the proceeding; and (4) whether a stay would be in the public interest. *Id.* at 434. "The first two factors . . . are the most critical." *Id.* Where, as here, the Government is the party opposing a stay, the third and fourth factors merge. *See Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (per curiam).

We begin and end our analysis with the first factor, likelihood of success on the merits. "[I]n order to justify a stay, a petitioner must show, at a minimum, that [he] has a substantial case for relief on the merits." *Id.* at 968. Rana has not made this showing, so he is not entitled to a stay.

Besides asserting claims that we have already passed upon, Rana's second § 2241 habeas petition primarily asserts that extraditing him to India would violate the CAT as well as regulations and legislation requiring the Secretary of State to consider an extraditee's torture claims before authorizing extradition.

"Congress implemented the CAT as part of the [FARRA], which 'declares it "the policy of the United States not to . . . extradite . . . any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture."'" *Sridej v. Blinken*, 108 F.4th 1088, 1090 (9th Cir. 2024) (omissions in original) (quoting *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc) (per curiam)). As part of the FARRA, Congress

required the Department of State to "prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT]." *Id.* (alteration in original) (quoting 8 U.S.C. § 1231 note(b)). One such implementing regulation provides that, to fulfill the United States's obligations under the CAT, the Secretary of State must consider "the question of whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition." 22 C.F.R. § 95.2(b). Thus, "the regulations provide that 'the Secretary of State *must* make a torture determination before surrendering an extraditee who makes a CAT claim' and must 'find it not "more likely than not" that the extraditee will face torture.'" *Sridej*, 108 F.4th at 1091 (quoting *Trinidad y Garcia*, 683 F.3d at 956–57).

The CAT and its implementing regulations are "binding domestic law," and an extraditee "possesses a narrow liberty interest" in the Secretary of State complying with those regulations. *Id.* (quoting *Trinidad y Garcia*, 683 F.3d at 956–57). Accordingly, "the record must contain evidence that the Secretary complied with his obligations." *Id.* If it does, "the extraditee's 'liberty interest shall be fully vindicated.'" *Id.* Crucially, though, "'[t]he doctrine of separation of powers and the rule of non-inquiry block any' substantive review beyond ensuring the Secretary's 'compliance with [his] obligations under domestic law.'" *Id.* (second alteration in original) (quoting *Trinidad y Garcia*, 683 F.3d at 957). Thus,

if the record indicates that the Secretary complied with his obligations, we cannot question the propriety of the Secretary's decision.

Here, the Government submitted a declaration from Oliver Lewis, the Assistant Legal Adviser for Law Enforcement and Intelligence in the Office of the Legal Adviser for the Department of State. The declaration recognized the Secretary's duties under the CAT and "confirm[ed] that the decision to surrender Tahawwur Hussain Rana to India complies with the United States' obligations under the [CAT] and its implementing statute and regulations." This declaration, which is indistinguishable from the one we approved of in *Sridej*, is sufficient to discharge the Secretary's duties, and we cannot second-guess the Secretary's decision that Rana is not more likely than not to face torture if returned to India. *See* 108 F.4th at 1092–93.

Rana's counterarguments are unpersuasive. He ignores our recent decision in *Sridej* and relies too heavily on separate opinions from *Trinidad y Garcia* rather than engaging with the portions of that decision adverse to him. We are also unpersuaded by his argument that the Supreme Court's opinion in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), changes the amount of deference that is owed to the Secretary of State in these circumstances. Simply put, *Loper Bright* did not call the doctrine of non-inquiry into question; instead, that case dealt only with the deference owed to agency interpretations of ambiguous statutes. *See*

603 U.S. at 378–79. Rana reads far too much into the Supreme Court's *Loper Bright* decision.

Accordingly, we conclude that Rana has not demonstrated a substantial case for relief on the merits of his second § 2241 habeas petition, so his request for a stay is denied. Furthermore, given the lack of merit in Rana's request, we deny his alternative request to stay for the period of time necessary to seek a stay from the Supreme Court.