

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TAHAWWUR RANA,
Petitioner,

v.

JAMES ENGLEMAN,
Respondent.

2:23-cv-4223-DSF

Order DENYING Ex Parte
Application for Stay (Dkt. 35)

Petitioner Tahawwur Rana moves, ex parte, for a stay of extradition pending consideration of his second petition for a writ of habeas corpus.

A request for a stay of removal of an alien – in this case, extradition – is analyzed under the common standard for granting an injunction: “(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, 434 (2009).

Petitioner’s application for a stay fails, if for no other reason, because he has demonstrated virtually no chance of success on the merits of his petition. In his petition, as relevant here, Petitioner challenges the State Department’s determination that his extradition would not violate the Convention Against Torture (CAT). Under binding Ninth Circuit precedent, Petitioner cannot succeed on this claim.

Under the relevant regulations, an extraditee has limited procedural rights under the CAT. “The process due here is that prescribed by the statute and implementing regulation: The Secretary must consider an extraditee’s torture claim and find it not more likely than not that the extraditee will face torture before extradition can occur. An extraditee thus possesses a narrow liberty interest: that the Secretary comply with his or her statutory and regulatory obligations. Trinidad y Garcia v. Thomas, 683 F.3d 952, 957 (9th Cir. 2012) (en banc) (cleaned up). The State Department must do more than submit “a generic declaration outlining the basics of how extradition operates at the Department and acknowledging the Department’s obligations under the [CAT], statute and regulations.” Id. It must “indicat[e] that it actually complied with those obligations in [the specific] case.” Id. “If the district court receives such a declaration, it shall determine whether it has been signed by the Secretary or a senior official properly designated by the Secretary. If so, the court’s inquiry shall have reached its end and [the extraditee’s] liberty interest shall be fully vindicated. His substantive due process claim is foreclosed by Munaf v. Geren The doctrine of separation of powers and the rule of non-inquiry block any inquiry into the substance of the Secretary’s declaration.” Id.

The Ninth Circuit has recently considered what must be in the declaration from the State Department in order to satisfy the regulatory requirements. Sridej v. Blinken, 108 F.4th 1088 (9th Cir. 2024). First, the declaration must state that the Secretary of State or a senior official designated by the Secretary determined that extradition would not violate the CAT. Contrary to language in Trinidad y Garcia suggesting otherwise, it is not necessary that the declaration be signed by either the Secretary or relevant senior official; it must only represent that such an authorized person made the determination. Id. at 1093. The declaration also does not need to include a “case-specific explanation for the extradition decision.” Id. “A declarant with knowledge that the Secretary or his designee has made the determination required by the CAT need only verify that the Secretary has complied with her obligations.” Id.

The declaration of Oliver Lewis, Assistant Legal Advisor for Law Enforcement and Intelligence at the State Department, complies with the requirements laid out in Sridej. Lewis states:

Following a review of all pertinent information, including pleadings and filings submitted by Rana to various courts in the course of the litigation in this case, the relevant court decisions, and Rana's submissions to the Department of State, on February 11, 2025, Secretary of State Rubio authorized Tahawwur Hussain Rana's extradition pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between the United States and India.

Lewis Decl. (Dkt. 36-1), ¶ 2. This is substantively indistinguishable from the declaration approved of in Sridej. See 108 F.4th at 1092.

Petitioner nonetheless argues that Trinidad y Garcia and Sridej are irreconcilable with the reasoning in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Loper Bright does not even call into question those previous decisions, let alone abrogate them. Loper Bright abandoned the Chevron doctrine that required deference to administrative agencies in the interpretation of ambiguous statutory language. Neither Trinidad y Garcia nor Sridej was based on deference to the State Department on matters of statutory interpretation.¹ Both cases decided, as a matter of *judicial* interpretation, the requirements of the relevant regulations. There is no indication that those interpretations were due to deference to the State Department. To the degree that deference is an issue, it is deference to the Secretary's *factual* determinations, which Trinidad y Garcia and Sridej found was required by statute, regulation, and the rule of non-inquiry.

¹ In fact, the en banc court in Trinidad y Garcia explicitly did *not* defer to the government's interpretation of the REAL ID Act, which the government argued barred all habeas relief relating to the CAT in the context of extradition. See 683 F.3d at 956.

The State Department has provided a declaration indicating that the Secretary of State approved Petitioner's extradition after a review of all relevant information, and Petitioner is barred from challenging the substantive adequacy of that decision. Therefore, Petitioner has virtually no chance of success on the merits of his petition. The ex parte application for a stay pending resolution of the petition is DENIED. Given the petition's lack of merit the request for a stay to allow Petitioner to seek a stay from the Ninth Circuit is also DENIED.

IT IS SO ORDERED.

Date: February 19, 2025

A handwritten signature in blue ink that reads "Dale S. Fischer". The signature is written in a cursive style with a horizontal line underneath.

Honorable Dale S. Fischer
United States District Judge