No. 24-1288

In the Supreme Court of the United States

MONIKA KAPOOR, PETITIONER

v.

VINCENT F. DEMARCO, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to judicial review of the Department of State's determination that petitioner was not more likely than not to be tortured upon extradition to India.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D.N.Y.):

Kapoor v. *Dunne*, No. 12-cv-3196 (May 8, 2014)

United States v. *Kapoor*, No. 11-MJ-456 (Apr. 17, 2012)

United States Court of Appeals (2d Cir.):

Kapoor v. *Dunne*, No. 14-1699 (June 2, 2015)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 132 F.4th 595. The memorandum and order of the district court (Pet. App. 36a-42a) is unreported but is available at 2022 WL 4357498.

JURISDICTION

The judgment of the court of appeals was entered on March 26, 2025. The petition for a writ of certiorari was filed on June 13, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2011, the United States filed a complaint seeking petitioner's extradition to India to face charges relating to forgery and fraud. Pet. App. 11a. In 2012, a federal magistrate judge in the United States District Court for

the Eastern District of New York certified that petitioner was extraditable pursuant to treaty. 2012 WL 1318925. On habeas review, a district court determined that petitioner is subject to extradition and denied relief. 2014 WL 1803271, at *2-*5. The court of appeals affirmed. 606 Fed. Appx. 11, 12.

After the Secretary of State denied petitioner's requests that extradition be denied based on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, petitioner filed another habeas petition. Pet. App. 13a-14a. The district court denied relief, *id.* at 36a-42a, and the court of appeals affirmed, *id.* at 1a-35a. Justice Sotomayor subsequently denied petitioner's application for a stay pending disposition of her petition for certiorari. 2025 WL 1536565, at *1. Petitioner was thereafter extradited to India.

1. a. Under 18 U.S.C. 3184, when the government files a complaint charging a person in the United States with having committed a crime in a foreign state covered by an extradition treaty, a judge may issue an arrest warrant for the fugitive. If the judge determines that the government's "evidence of criminality" is "sufficient to sustain the charge under the provisions of the proper treaty," then the judge "shall certify * * * to the Secretary of State" that the Secretary may issue a surrender warrant. 18 U.S.C. 3184.

A judge's certification that an extradition warrant may issue is not subject to direct appeal. *In re Metzger*, 46 U.S. (5 How.) 176, 191 (1847); see *In re Oteiza y Cortes*, 136 U.S. 330, 333-334 (1890). But this Court has permitted habeas review of extradition certifications,

limited to determining whether the judge "had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925).

Thereafter, the decision whether to surrender the fugitive is committed to the Secretary of State. See 18 U.S.C. 3186 (providing that the Secretary of State "may" deliver the fugitive to the foreign government after issuance of an extradition certification). Under longstanding principles, the Secretary of State's decision to surrender a fugitive despite claims that the fugitive will face mistreatment in the requesting state is not subject to judicial review. See *Neely* v. *Henkel (No. 1)*, 180 U.S. 109, 122 (1901) (recognizing that United States constitutional protections do not apply in foreign prosecutions); *Munaf* v. *Geren*, 553 U.S. 674, 700 (2008) ("Habeas corpus has been held not to be a valid means of inquiry into the treatment the [fugitive] is anticipated to receive in the requesting state.") (citation and emphasis omitted).

Courts refer to that limitation as the "rule of non-inquiry." See, e.g., *United States* v. *Kin-Hong*, 110 F.3d 103, 110 (1st Cir.), stay denied, 520 U.S. 1206 (1997). That rule is animated by respect for the unique province of the Executive Branch in evaluating claims of possible future mistreatment at the hands of a foreign state, its ability to obtain assurances of proper treatment (if warranted), and its capacity to provide for appropriate monitoring overseas of a fugitive's treatment. See, e.g., *Munaf*, 553 U.S. at 702 (explaining that "[t]he Judiciary is not suited to second-guess such determinations").

b. In 1984, the United Nations General Assembly adopted the Convention Against Torture. Article 3 of the Convention provides that no state party shall "extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Art. 3, 1465 U.N.T.S. 114. The Senate gave its advice and consent to the Convention subject to the declaration that "Articles 1 through 16 of the Convention are not self-executing." 136 Cong. Rec. 36,198 (1990).

In implementing Article 3 of the Convention Against Torture, Congress enacted Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, Subdiv. B, Tit. XXII, § 2242, 112 Stat. 2681-822 to 2681-823 (8 U.S.C. 1231 note). Section 2242(a) declares it to be the "policy of the United States not to 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, regardless of whether the person is physically present in the United States." § 2242(a), 112 Stat. 2681-822. The next subsection directs "the heads of appropriate agencies" to "prescribe regulations to implement the obligations of the United States under Article 3" of the Convention. § 2242(b), 112 Stat. 2681-822.

Under that statutory authority, the Secretary of State has promulgated a final rule addressing extradition and the government's obligations under the Convention Against Torture. See 22 C.F.R. 95.2(a). The regulations explain that, in implementing those obligations, the Secretary considers whether it "is more likely than not" that the fugitive will be tortured if extradited.

22 C.F.R. 95.2(b). The regulations also prescribe procedures for the Secretary to review allegations of torture. See 22 C.F.R. 95.3. And they provide that the Secretary's surrender decisions "are matters of executive discretion not subject to judicial review." 22 C.F.R. 95.4. The FARRA bars judicial review of those regulations, and it expressly states that the statute does not create jurisdiction for judicial review of claims under the Convention, the statute, "or any other determination made with respect to the application of the policy set forth in [Section 2242(a)]," except as part of the review of a final order of removal in immigration proceedings, or if authorized by the implementing regulations promulgated pursuant to the statute. § 2242(d), 112 Stat. 2681-822.

Congress again addressed judicial review of claims under the Convention Against Torture when it enacted 8 U.S.C. 1252(a)(4) as part of the REAL ID Act of 2005, Pub. L. No. 109-13, § 106(a)(1)(B), 119 Stat. 310. That provision states:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28 * * * or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with [8 U.S.C. 1252] shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

8 U.S.C. 1252(a)(4).

2. Petitioner is a citizen of India who entered the United States in 1999 and overstayed her visa. Pet.

App. 10a. In March 2010, petitioner was placed in immigration removal proceedings, and petitioner applied for asylum, withholding of removal, and relief under the Convention Against Torture. *Ibid.*

In April 2010, an Indian court issued a warrant for petitioner's arrest on charges related to allegations that petitioner and her brothers defrauded the Indian government of roughly $679,000. 2012 WL 1318925, at *1, *5-*6; Pet. App. 10a-11a. In particular, the Indian government alleged that petitioner and her brothers used forged documents to obtain various licenses from Indian foreign trade authorities that were used to import duty-free gold. *Ibid.*

The Indian government formally requested petitioner's extradition under the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of India, June 25, 1997, S. Treaty Doc. No. 30, 105th Cong., 1st Sess., T.I.A.S. No. 12,873 (1997) (entered into force July 21, 1999). Pet. App. 11a. The United States filed an extradition complaint in the Eastern District of New York, and a magistrate judge certified the extradition request. *Ibid.* Petitioner's immigration proceedings were held in abeyance pending resolution of the extradition proceedings. *Ibid.*

Petitioner was arrested, arraigned, and released on bail. Pet. App. 11a. Petitioner filed a petition for a writ of habeas corpus, but the district court denied the petition, rejecting petitioner's assertions that the charges against her were not extraditable offenses and not supported by probable cause. 2014 WL 1803271, at *2-*4; Pet. App. 12a. The court of appeals affirmed. 606 Fed. Appx. at 12.

In July 2015, petitioner submitted materials to the Department of State and requested that it deny the Indian government's extradition request on the theory that she would be at risk of harm in India. Pet. App. 12a. In September 2015, the Secretary granted India's request for extradition and issued a warrant authorizing petitioner's surrender to India. *Ibid.*; see 18 U.S.C. 3186. The Assistant Legal Adviser for Law Enforcement and Intelligence at the State Department provided a letter and sworn declaration describing the Department's conclusions and detailing the State Department's processes to ensure that an extradition complies with the United States' obligations under the Convention Against Torture. See 22-2806 Gov't C.A. App. 268-275.

The letter stated that, "[f]ollowing a review of all pertinent information, including the materials submitted directly to the Department of State and pleadings and filings * * * submitted * * * on behalf of [petitioner], * * * Under Secretary Sherman decided to authorize [petitioner's] surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India." Gov't C.A. App. 268. The letter further explained that "[t]he Department carefully and thoroughly considers both claims cognizable under the Convention and * * * humanitarian claims and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns." *Ibid.* The letter concluded: "As the official responsible for managing the Department's responsibilities in cases of international extradition, I confirm that the decision to surrender [petitioner] to India complies with the United

States' obligations under the Convention and its implementing statute and regulations." *Id.* at 269.

Petitioner then filed a second petition for a writ of habeas corpus, but withdrew that petition "without prejudice" after the government agreed to consider new materials in support of petitioner's claim under the Convention Against Torture. Pet. App. 13a. After further consideration, the State Department again determined that petitioner's extradition would "compl[y] with the United States' obligations under the Convention and its implementing statute and regulations." Gov't C.A. App. 277. The Department explained that, "[f]ollowing a review of all pertinent information, including [petitioner's] newly-provided materials, Deputy Secretary Blinken decided to reaffirm the prior authorization of [petitioner]'s surrender." *Id.* at 276.

3. In October 2016, petitioner filed a third petition for a writ of habeas corpus, which included a request that the district court overturn the Secretary's determination that her extradition complied with the Convention Against Torture. Gov't C.A. App. 41-45. The district court denied the petition. The court concluded that the REAL ID Act foreclosed jurisdiction to review the Department of State's determinations regarding compliance with the Convention, and that the absence of judicial habeas review did not violate the Suspension Clause. Pet. App. 36a-42a.

The court of appeals affirmed. Pet. App. 1a-35a. The court agreed with the district court that the REAL ID Act bars courts from exercising habeas jurisdiction over Convention Against Torture claims raised by individuals facing extradition. *Id.* at 23a-24a. The court observed that, because the Convention "is a non-self-executing treaty," petitioner "must rely on the rights contained in

the Convention's implementing statutes and regulations." *Id.* at 26a n.14. And the court recognized that 8 U.S.C. 1252(a)(4) "specifically and unambiguously" precludes a court from exercising habeas jurisdiction over a fugitive's Convention claim because "[t]he statute makes clear that a petition for review of a final order of removal is the 'sole and exclusive means for judicial review' for 'any' [Convention] claim" notwithstanding "'section 2241 of Title 28, or any other habeas corpus provision.'" Pet. App. 3a, 22a (quoting 8 U.S.C. 1252(a)(4)) (emphasis omitted).

The court of appeals also rejected petitioner's claim that the Suspension Clause entitled her to habeas review of her torture claim. Pet. App. 27a-34a. The court observed that "fugitives like [petitioner] facing extradition have not traditionally been able to maintain a habeas claim based on their anticipated treatment in a receiving country" because the "rule of non-inquiry" has historically "'bar[red] courts from evaluating the fairness and humaneness of another country's criminal justice system, requiring deference to the Executive Branch on such matters.'" *Id.* at 27a (citation omitted); see *id.* at 31a-36a (citing cases). That "historical tradition," the court explained, "means [petitioner] does not present a claim implicating the type of habeas review protected by the Suspension Clause." *Id.* at 33a.

4. The court of appeals denied petitioner's motion for a stay of the mandate pending a petition for a writ of certiorari. C.A. Order (May 8, 2025). Petitioner then submitted a stay application to Justice Sotomayor, who likewise denied it. See 2025 WL 1536565, at *1. The district court subsequently ordered petitioner into the custody of the U.S. Marshals Service. See 16-cv-5834 D. Ct. Doc. 42 (July 2, 2022). This Office is informed

that she was extradited to India on July 8, 2025 and is no longer in federal custody.

ARGUMENT

Petitioner renews her contentions (Pet. 13-34) that she is entitled to judicial review of the Secretary of State's rejection of her Convention Against Torture claim and that the court of appeals' contrary decision violates the Suspension Clause of the Constitution. But this petition is moot because petitioner has now been extradited to India. In any event, the decision below is correct and this case does not implicate any disagreement in the courts of appeals. This Court has previously denied a petition for a writ of certiorari raising a similar claim, *Trinidad y Garcia* v. *Thomas*, 568 U.S. 1114 (2013) (No. 12-6615), and the same course is warranted here.

1. As the parties anticipated during the stay proceedings, petitioner's habeas claims have become moot because she already has been extradited to India. See 24A1108 Gov't Opp. to Emerg. Stay 28 (agreeing with petitioner "that absent a stay, she may be extradited and her case would almost certainly be mooted"); 24A1108 Appl. 2, 25-26. That alone is a dispositive reason to deny the petition for a writ of certiorari.

A petition for a writ of habeas corpus seeks to secure release from "the person who has custody over" the petitioner. 28 U.S.C. 2242; see 28 U.S.C. 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). The petition thus seeks relief from the "immediate custodian" who has "the ability to produce the prisoner's body before the habeas court." *Rumsfeld* v. *Padilla*, 542 U.S. 426, 435 (2004). E.g., *Edwards* v. *Vannoy*, 593 U.S. 255, 285

n.1 (2021) (noting that relief is directed to custodians); accord *Brown* v. *Davenport*, 596 U.S. 118, 127-128 (2022).

When a habeas petitioner challenging her detention pending extradition is extradited and leaves federal custody, the custodian against whom the petitioner sought a writ no longer has "the ability to produce the prisoner's body," *Rumsfeld*, 542 U.S. at 434-435, and therefore it is "impossible for the court to grant" the petitioner's requested relief, *Church of Scientology* v. *United States*, 506 U.S. 9, 12 (1992). Extradition thus moots a habeas petition. See, e.g., *Vitkus* v. *Blinken*, 79 F.4th 352, 367 (4th Cir. 2023); *Horvath* v. *U.S. Sec'y of State*, No. 22-13517, 2023 WL 8235157, at *1 (11th Cir. Nov. 28, 2023) (per curiam); *Venckiene* v. *United States*, 929 F.3d 843, 864 (7th Cir.), cert. denied, 140 S. Ct. 379 (2019); *Lindstrom* v. *Graber*, 203 F.3d 470, 474 (7th Cir. 2000); *Artukovic* v. *Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986).

Here, petitioner sought a writ of habeas corpus to obtain "release from executive detention and an injunction restraining her custodians from extraditing her." Pet. 10-11. Following the court of appeals' decision, petitioner sought a stay from this Court, alleging that "[w]ithout a stay, [petitioner] will almost certainly be extradited and lose [the] opportunity" to litigate a petition for certiorari. 24A1108 Appl. 2. After this Court denied petitioner's application for a stay on May 30, 2025, petitioner was extradited and left federal custody. Because "[t]he object of the habeas corpus proceeding * * * directed against" the federal custodian is now impossible, and "no jurisdiction" exists over an Indian government custodian, petitioner has "nothing to gain from the further prosecution of the appeal." *Lindstrom*, 203 F.3d at 474; see *Subias* v. *Meese*, 835 F.2d 1288,

1289 (9th Cir. 1987) (observing that "jurisdiction must exist over the prisoner's custodian").[1]

2. Regardless, the court of appeals correctly recognized that petitioner is not entitled to judicial review of the Department of State's determination that petitioner was not more likely than not to be tortured upon extradition to India. The FARRA provisions implementing Article 3 of the Convention Against Torture make clear that Congress did not grant federal courts jurisdiction to review claims under the Convention outside the context of a final order of removal entered in an immigration case. Specifically, Section 2242(d) of the FARRA instructs that "[n]otwithstanding any other provision of law," and except as provided by certain regulations, "nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention" Against Torture, "except as part of the review of a final order of removal" pursuant to 8 U.S.C. 1252. 8 U.S.C. 1231 note. Section 2242 thus "provide[d] for judicial review of [Convention]

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[1] Vacatur of the court of appeals decision also would not be appropriate under *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950). Summary vacatur under *Munsingwear* is an equitable determination designed to "prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *Id.* at 41; see *U.S. Bancorp Mortg. Co.* v. *Bonner Mall P'ship*, 513 U.S. 18, 29 (1994). Given petitioner's extradition, no reasonable likelihood exists that the court of appeals decision will have any future legal consequences for petitioner. In addition, *Munsingwear* vacatur is appropriate only if the petition would have been granted absent mootness, and this case does not warrant this Court's review for the reasons explained below. See pp. 12-21, *infra*; *Camreta* v. *Greene*, 563 U.S. 692, 712 (2011) (explaining *Munsingwear* applies only as to "those who have been prevented from obtaining the review to which they are entitled") (citation omitted).

claims 'as part of the review of a final order of removal,'" *Nasrallah* v. *Barr*, 590 U.S. 573, 580 (2020) (citation omitted), but not otherwise, unless granted by regulation.

With respect to regulations, the FARRA also requires the "heads of the appropriate agencies" to prescribe regulations implementing Article 3 of the Convention. § 2242(b), 112 Stat. 2681-822 (8 U.S.C. 1231 note). Under that statutory authority, the State Department has promulgated regulations that provide that, when appropriate, "the Department considers 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); see 22 C.F.R. 95.1(b) (defining torture). The regulations also state that the Secretary's surrender decisions are "matters of executive discretion not subject to judicial review." 22 C.F.R. 95.4. And the regulations themselves are shielded from judicial review by Section 2242(d)'s preclusion of review of claims under the Convention, the statute, "or any other determination made with respect to the application of the policy [on torture] set forth in subsection (a)." FARRA § 2242(d), 112 Stat. 2681-822 (8 U.S.C. 1231 note).

The FARRA and its implementing regulations thus foreclose the form of review that applicant seeks: habeas corpus review of a Convention determination committed by regulation to the Secretary. And if any doubt remained about the congressional bar on such review, the REAL ID Act of 2005 eliminated it. In amending 8 U.S.C. 1252, Congress provided in Section 1252(a)(4) that, "[n]otwithstanding any other provision of law * * * *including section 2241 of title 28*,"—which provides for petitions for writs of habeas corpus—"*or any*

other habeas corpus provision," a petition for review of a final order of removal in immigration proceedings "shall be the sole and exclusive means for judicial review of *any* cause or claim under the United Nations Convention Against Torture." 8 U.S.C. 1252(a)(4) (emphases added); see 28 U.S.C. 2241. As this Court has repeatedly explained, the "word 'any' has an expansive meaning." *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (citation omitted). Thus, "[e]ven if the [FARRA] had extended a judicial review right to extradition or military transferees * * * , a subsequent statute—the REAL ID Act of 2005—made clear that those kinds of transferees have no such right." *Omar* v. *McHugh*, 646 F.3d 13, 18 (D.C. Cir. 2011).

Contrary to petitioner's contention (Pet. 22), Section 1252(a)(4) cannot be read to bar only claims that challenge final orders of removal, and to leave open the door to habeas claims in extradition cases. Even if the broad phrase "any cause or claim" admitted of any doubt, context forecloses petitioner's interpretation. As the court of appeals explained, the very next paragraph, Section 1252(a)(5), "already precludes habeas review of nearly all challenges to final orders of removal." Pet. App. 23a. "To hold that Section 1252(a)(4) does the same but only for a subset of claims already covered by Section 1252(a)(5), as [petitioner] suggests, would render the former paragraph [*i.e.*, Section 1252(a)(4)] pointless." *Ibid.*[2]

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[2] Petitioner also posits that Section 2242 of the FARRA might have merely been stating that it does not provide "an affirmative grant of habeas jurisdiction," which "already existed * * * under the general federal habeas statute." Pet. 22 (emphasis omitted). That is an untenable interpretation. Congress would have had no

The applicable authorities thus foreclose the form of review that petitioner seeks: habeas corpus review of a Convention determination committed to the Secretary. It is "of course a matter of serious concern" whether a person will be tortured if he is transferred to another country for prosecution. *Munaf* v. *Geren*, 553 U.S. 674, 700 (2008). But as this Court has recognized, "[e]ven with respect to claims that detainees would be denied constitutional rights if transferred, * * * it is for the political branches, not the Judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Id.* at 700-701.

3. The court of appeals was likewise correct that the Suspension Clause does not require habeas review of the Secretary's repeated determinations that petitioner is not likely to suffer torture after extradition. Absence of habeas jurisdiction does not violate the Suspension Clause when the relief requested "falls outside the scope of the common-law habeas writ." *Department of Homeland Sec.* v. *Thuraissigiam*, 591 U.S. 103, 118 (2020). The historical scope of relief does not extend to issues concerning the treatment that a fugitive will receive in a foreign state after extradition. See *Munaf*, 553 U.S. at 696, 700.

At most, a habeas court's role in the extradition context—based on a *statutory* conferral of habeas rights, not the Constitution, see *Thuraissigiam*, 591 U.S. at 128-130—has been the far more limited one of reviewing the complaint to determine whether the request falls within the scope of the treaty and is supported by probable cause. See *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925). Petitioner had access to the jurisdiction of the

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need for a provision of the FARRA disavowing the redundant addition of a procedure that "already existed."

habeas court to contest those issues and fully litigated them. See 606 Fed. Appx. 11. The Constitution requires no more.

As this Court recognized in *Munaf*, there is a longstanding tradition of judicial reluctance to inquire into the treatment a fugitive would face in a foreign legal system if extradited. See, *e.g.*, *Neely* v. *Henkel (No. 1)*, 180 U.S. 109, 122 (1901). The petitioners in *Munaf* sought habeas relief to enjoin their transfer to Iraqi authorities to face trial in Iraqi courts "because their transfer to Iraqi custody is likely to result in torture." 553 U.S. at 700. The Court explained that "[s]uch allegations are of course a matter of serious concern, but in the present context that concern is to be addressed by the political branches, not the Judiciary." *Ibid.* In doing so, the Court relied on principles announced in extradition cases, including that "[h]abeas corpus has been held not to be a valid means of inquiry into the treatment the relator is anticipated to receive in the requesting state." *Ibid.* (citation and emphasis omitted).

Munaf noted that the Solicitor General had represented that "it is the policy of the United States *not* to transfer an individual in circumstances where torture is likely to result," and that such determinations rely on "'the Executive's assessment of the foreign country's legal system'" and its "'ability to obtain foreign assurances it considers reliable.'" 553 U.S. at 702 (quoting Gov't Br. at 47, *Munaf*, *supra*, No. 06-1666). But the Court emphasized that "[t]he Judiciary is not suited to second-guess * * * determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area." *Ibid.* "In contrast," the

Court explained, "the political branches are well situated to consider sensitive foreign policy issues, such as whether there is a serious prospect of torture at the hands of an ally, and what to do about it if there is." *Ibid.*

Thus, as a matter of historical practice that was reaffirmed in *Munaf*, no valid claim exists that a habeas court's refusal to second-guess the Secretary of State's Convention Against Torture determination violates the Suspension Clause. *Omar*, 646 F.3d at 19 ("Those facing extradition traditionally have not been able to maintain habeas claims to block transfer based on conditions in the receiving country."); see, e.g., *United States* v. *Kin-Hong*, 110 F.3d 103, 110 (1st Cir.), stay denied, 520 U.S. 1206 (1997).[3] There is good reason for that longstanding rule of non-inquiry in the extradition context. The rule of non-inquiry does not prevent fugitives from having their torture or other treatment claims carefully considered; on the contrary, its role is to protect the ability for such claims to be considered by the branch of government most capable of assessing and addressing likely conditions fugitives will face if extradited. See pp. 3-4, *supra*. And just as courts have an established practice of non-inquiry, the Executive Branch has well-

[3] *Munaf* noted that it did not have before it "a more extreme case in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway." 553 U.S. at 702. Nor is that "extreme case" presented here. The United States recognizes its obligation under the Convention Against Torture not to surrender a fugitive who is more likely than not to be tortured in the receiving state. And the State Department declaration in this case expressly represented that "[t]he Secretary will not approve an extradition whenever the Secretary determines that it is more likely than not that the particular fugitive will be tortured in the country requesting extradition." Gov't C.A. App. 271.

established procedures for diligently considering and addressing claims regarding treatment in extradition cases, as this case demonstrates. The Department of State has reviewed petitioner's torture claim in this case more than once, based on a careful and longstanding approach consistent with the United States' treaty obligations, the FARRA and 18 U.S.C. 3186, and the State Department's regulations at 22 C.F.R. Part 95.

Petitioner's reliance (Pet. 27) on *Trump* v. *J.G.G.*, 604 U.S. 670 (2025) (per curiam), is misplaced. In *J.G.G.*, this Court explained that certain detainees' "[c]hallenges to removal" under the Alien Enemies Act (AEA) (50 U.S.C. 21), "must be brought in habeas," not under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), because their "claims for relief 'necessarily imply the invalidity' of their confinement and removal under" the AEA. *J.G.G.*, 604 U.S. at 672 (citation omitted). In a concurring opinion, Justice Kavanaugh observed that habeas corpus was "the appropriate vehicle" for the detainees' AEA-related claims "given the history and precedent of using habeas corpus to review transfer claims." *Id.* at 674. But the Court did not hold that an alien facing extradition is entitled to judicial review of every determination made by the Executive Branch—including determinations as to which judicial review is statutorily barred and would be historically anomalous. To the contrary, *J.G.G.* underscores that the Court seeks guidance from history in considering the scope of habeas corpus. See *id.* at 672; *id.* at 674 (Kavanaugh, J., concurring).

4. Petitioner identifies no court that would have reached a different conclusion in this case, as no court has permitted substantive review of the Department of State's determinations that extradition complies with

the government's obligations under the Convention Against Torture. Petitioner acknowledges (Pet. 14-19) that the D.C. and Fourth Circuits—like the court of appeals here—have found no jurisdiction to review such claims. See *Omar*, 646 F.3d at 17-18; *Mironescu* v. *Costner*, 480 F.3d 664, 673-677 (4th Cir. 2007), cert. dismissed, 552 U.S. 1135 (2008). And contrary to petitioner's suggestion (Pet. 14-17), this case does not implicate the narrow tension between the Ninth Circuit's decision in *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952, 957 (9th Cir. 2012) (en banc) (per curiam), cert. denied, 568 U.S. 1114 (2013), and the approaches of those other circuits.

In *Trinidad*, the Ninth Circuit took the view that the Secretary of State had submitted a "generic declaration" that acknowledged the State Department's obligations under the Convention Against Torture but gave "no indication that [the Department] actually complied with [its] obligations" under the Secretary's regulations. 683 F.3d at 957. The Ninth Circuit concluded that the record thus included "no evidence that the Secretary has complied with the procedures in [that particular] case." *Ibid.* The court remanded to the district court "so that the Secretary of State may augment the record by providing a declaration that she has complied with her obligations," which could be signed "by the Secretary or a senior official properly designated by the Secretary." *Ibid.* "If so," the court made clear, "the court's inquiry shall have reached its end." *Ibid.*

Here, unlike in *Trinidad*, the record already contains two letters and a declaration from the Assistant Legal Adviser for Law Enforcement and Intelligence, who is "the official responsible for managing the [Department of State's] responsibilities in cases of international extradition." Gov't C.A. App. 269, 275; see *id.* at

268-275. Petitioner does not dispute that the Assistant Legal Adviser is a "senior official properly designated by the Secretary" to confirm that the State Department has complied with its duties, *Trinidad*, 683 F.3d at 957. And the Assistant Legal Adviser explicitly "confirm[ed] that the decision to surrender [petitioner] to India complies with the United States' obligations under the Convention and its implementing statute and regulations." Gov't C.A. App. 269, 275.

Petitioner asserts (Pet. 9-10) that the Assistant Legal Adviser's letters and declaration are "conclusory" because they do not include a "discussion concerning the actual merits of petitioner's [torture] claim" or "analysis of the evidence that [petitioner] had submitted in support of her claim." But the Ninth Circuit has made clear that, under its rule, "a declarant with knowledge * * * need only verify that the Secretary 'has complied with her obligations.'" *Sridej* v. *Blinken*, 108 F.4th 1088, 1093 (9th Cir.) (citation omitted) (finding that a declaration from the Assistant Legal Adviser similar to the one here "clears th[e] hurdle"), stay appl. denied, No. 24A236 (Sept. 6, 2024); *Rana* v. *Engleman*, No. 25-1053, 2025 WL 719820, at *2 (9th Cir. Feb. 21, 2025) (same), stay appl. denied, 145 S. Ct. 1896 (2025). Thus, as the district court recognized (Pet. App. 41a), the result here would be the same in the Ninth Circuit as it was in the courts below. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).[4]

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[4] Petitioner does not identify any court of appeals that agrees with her view of the Suspension Clause. She instead asserts (Pet. 19)

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2025

"conflicting views on the question whether removing habeas jurisdiction over [torture] claims by extraditees would violate the Suspension Clause" based on the separate writings of panel members whose views did not muster a majority. See Pet. 19-21 (citing *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment); *Trinidad*, 683 F.3d at 959 (Thomas, J., concurring); *id.* at 972 (Tallman, J., dissenting)). Those separate writings do not create a conflict of authority. Cf. *California* v. *Rooney*, 483 U.S. 307, 311 (1987) (per curiam) ("This Court 'reviews judgments, not statements in opinions.'") (citation omitted).