No. 24-1288

In the Supreme Court of the United States

MONIKA KAPOOR, PETITIONER,

v.

VINCENT 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

REPLY BRIEF FOR THE PETITIONER

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For five years, the government was content to let India's extradition request for petitioner sit idle, making no effort to advance the district-court proceedings. When the district court eventually ordered a hearing to see what was going on, it remarked that the government did "not have an appetite to move this along." Stay App. 103a. Yet when petitioner applied for a stay of the Second Circuit's mandate to pause her extradition for just a few months while this Court considered her certiorari petition, suddenly everything became urgent. According to the government, any further delay in the extradition now (somehow) threatened to "impair [the] foreign relations" of the United States. Stay Op. 27. And when a stay was denied, the government rushed petitioner out of the country, extraditing her less than a week after the district court ordered her surrender—all while the instant petition was pending.

The government now tries to capitalize on its own opportunism, claiming that it has successfully mooted this case. But this case is not moot, and this Court can and should grant the petition to review the pressing issues that it raises. This Court has never held that an extradition moots a pending habeas petition. The government's mootness argument confuses the custody requirement of the habeas statutes with the live-controversy requirement of Article III. And the argument is factually unsupported in any event.

On the merits, the government's statutory arguments defy both text and context. And its Suspension Clause argument defies history, citing no Founding Era authority whatsoever.

As to certworthiness, the Second Circuit expressly "part[ed] ways" with the Ninth over critical questions concerning the authority of federal courts to hear torture claims by individuals facing extradition. Pet. App. 26a. The government is wrong that the circuit conflict here is "narrow." On the contrary, the courts have reached polar opposite conclusions over the questions presented.

The petition should be granted.

I. The Case Is Not Moot

The government's lead argument is that "petitioner's habeas claims have become moot because she already has been extradited to India."[1] BIO10. To

[1] The government moved to remand petitioner to custody the day after the Second Circuit issued its decision. This Court vacated its administrative stay on May 30, 2025, and the Second Circuit issued its mandate that same day. On July 2, the district court granted the government's motion to remand petitioner.

petitioner's knowledge, this Court has never held that an extradition moots the claims presented in a habeas petition, and the government cites no authority from this Court holding that it does.

On the contrary, the Court's precedents show that this case is still live. The custody requirement for habeas, on which the government rests its mootness argument (at 11), "requires that the applicant must be 'in custody' *when the application for habeas corpus is filed*." *Carafas* v. *LaVallee*, 391 U.S. 234, 238 (1968) (emphasis added). And custody "at the time the petition was filed * * * is all the 'in custody' provision of [the habeas statute] requires." *Spencer* v. *Kemna*, 523 U.S. 1, 7 (1998) (quoting *Maleng* v. *Cook*, 490 U.S. 488, 490-491 (1989), which interpreted 28 U.S.C. § 2241 the same way). Petitioner was undeniably in custody when she filed her habeas petition; she thus satisfies the custody requirement.

The government confuses the *custody* requirement for habeas relief with Article III's *mootness* requirements. They are different legal concepts. "[T]he custody requirement is satisfied so long as the petitioner is in custody at the time of filing the petition," which is "a matter distinct from mootness in the technical or constitutional sense." 13C *Wright and Miller's Federal Practice and Procedure* § 3533.4.1 (3d ed. 2025). Indeed, in *Spencer*, this Court explained that the habeas petitioner in that case satisfied the statute's "in custody" requirement because he "was incarcerated * * * at the time the petition was filed." 523 U.S. at 7. Thus, the Court

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Dkt. 41, No. 16-cv-05834 (E.D.N.Y.). The government extradited her on July 8.

held, release from custody did not necessarily moot his petition. See *id.* at 7-8 (addressing collateral consequences).

The cases from this Court cited by the government do not say otherwise. See BIO11. The issue in *Rumsfeld* v. *Padilla*, 542 U.S. 426 (2004), was whether Padilla had "properly file[d] his habeas petition in the Southern District of New York." *Id.* at 430. The answer was "no," this Court explained, because Padilla had named the wrong respondent, *id.* at 442, and had filed in the wrong court, *id.* at 447. None of that is disputed here.

And *Church of Scientology* v. *United States*, 506 U.S. 9 (1992), *supports* petitioner. It reaffirms the principle that a case is moot only where it is "*impossible* for the court to grant *any effectual relief whatever* to a prevailing party." *Id.* at 12 (internal quotation marks omitted; emphasis added). This Court also affirmed that core principle in *Chafin* v. *Chafin*, 568 U.S. 165 (2013), which addressed mootness involving persons removed abroad. In holding that the dispute in *Chafin* was "still very much alive," *id.* at 173, this Court explained that neither the district court's alleged lack of authority to order the return (a merits issue) nor the foreign country's possible disregard of the return order (irrelevant to mootness) mooted the case. See *id.* at 174-175.

Here, as in *Chafin*, "[n]o law of physics prevents" petitioner's return from India. 568 U.S. at 175. The federal courts can still order effective relief. Specifically, the courts can order the government to facilitate her return—a common remedy for those transferred unlawfully. See *Ramirez* v. *Sessions*, 887

F.3d 693, 707 (4th Cir. 2018) (directing government "to facilitate Ramirez's return to the United States" from El Salvador); *Gordon* v. *Barr*, 965 F.3d 252, 261 (4th Cir. 2020) (similar); *Nunez-Vasquez* v. *Barr*, 965 F.3d 272, 287 (4th Cir. 2020) (directing government "to return Nunez-Vasquez to the United States"); *Orabi* v. *Att'y Gen.*, 738 F.3d 535, 543 (3d Cir. 2014) (similar).

Thus, in the immigration context, "[a]liens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return." *Nken* v. *Holder*, 556 U.S. 418, 435 (2009). Indeed, just last Spring, with no noted dissents, this Court affirmed an order directing the government to "facilitate" the return of a foreign national held by his own foreign government. See *Noem* v. *Abrego Garcia*, No. 24A949 (Apr. 10, 2025). The courts can (and should) do the same here.

The government suggests that it may be "impossible" for petitioner to get effective relief. BIO11. But there is nothing in the record—no evidence—to support such a factual assertion. And there needs to be. See, *e.g.*, *Doe* v. *Shibinette*, 16 F.4th 894, 905 (1st Cir. 2021) (remanding for factual determination bearing on mootness); *Lumbermens Mut. Cas. Co.* v. *RGIS Inventory Specialists, LLC*, 356 Fed. Appx. 452, 454 (2d Cir. 2009) ("[T]he question of mootness is, at least in part, factual, dependent as it is on the terms and circumstances.").

The Court should not entertain the government's self-serving and factually unsupported claim that it cannot do anything to help petitioner. The government is responsible for extraditing petitioner

while this Court's review was pending—and it can take steps to facilitate her return. The government may not *want* to do so, but that does not make it "impossible" for this Court to grant relief.

II. The Decision Below Is Wrong

1. The general federal habeas statute, 28 U.S.C. § 2241, extends the writ to detention "in violation of the * * * laws or treaties of the United States"—a category that indisputably includes the Convention Against Torture (CAT) and its implementing statute, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). Neither Section 2242(d) of FARRA nor 8 U.S.C. § 1252(a)(4) strips federal courts of Section 2241's grant of habeas jurisdiction over CAT claims by extraditees. The decision below holding otherwise is wrong, and the government's arguments in defense of the decision lack merit.

With respect to Section 2242(d) of FARRA, the government argues that the statutory language "nothing in this section [*i.e.*, Section 2242 of FARRA] shall be construed as providing any court jurisdiction" operates to "foreclose" (BIO13) habeas jurisdiction under 28 U.S.C. § 2241.

That's not what the text says. The text sets a rule of construction for reading Section 2242 of FARRA—and only Section 2242 of FARRA. That rule is: don't construe Section 2242 to provide jurisdiction. But petitioner does not argue that *Section 2242* provides jurisdiction in this case. Rather, she argues that *another statute*—28 U.S.C. § 2241—provides jurisdiction. And Section 2242 of FARRA says nothing whatsoever about the habeas statute (or any other). The Second Circuit agrees. See *Wang* v. *Ashcroft*, 320 F.3d 130, 141 (2d Cir. 2003) (holding

that Section 2242 does not divest federal courts of habeas jurisdiction over CAT claims).

The government responds to that plain-text reading in a footnote. BIO14 n.2. There, it speculates about possible congressional purposes for including a rule of construction in Section 2242 of FARRA. But where the meaning of the text is plain, there is "no warrant to elevate vague invocations of statutory purpose over the words Congress chose." *Southwest Airlines Co.* v. *Saxon*, 596 U.S. 450, 463 (2022). And in any event, the government is simply wrong to suggest that Section 2242(d)'s rule of construction would be "redundant" if the general habeas statute already conferred jurisdiction. See BIO14 n.2. Without the rule of construction in paragraph (d), some courts may have inferred that Section 2242 provides courts jurisdiction to entertain freestanding CAT claims by aliens wanting their claims adjudicated outside of the immigration system. Paragraph (d) tells courts that Section 2242 should not "be construed" to confer such jurisdiction. But that rule of construction is perfectly consistent with petitioner's claim that a detainee facing extradition can ask the court to adjudicate her CAT claim under 28 U.S.C. § 2241.

The government's textual arguments regarding 8 U.S.C. § 1252(a)(4) fare no better. The government declares that Section 1252(a)(4) "cannot be read to bar only claims that challenge final orders of removal." BIO14. Of course it can. Look at the title of the section, "Judicial review of orders of removal." Look at the surrounding provisions discussing "general orders of removal," "a final order of removal," and "operation of an order of removal." See Pet. 22-23, 25.

Look at the more than twenty uses of the word "alien" in Section 1252. That all shows that Section 1252 is laser-focused on circumscribing judicial review in the *immigration system*—not extraditions.

The surrounding statutory context thus overwhelmingly favors petitioner. The government ignores all that context. Instead, it argues only that Section 1252(a)(5) already covers CAT challenges to orders of removal, and so our reading would render Section 1252(a)(4) "pointless." BIO14. Not so. Sections 1252(a)(4) and (a)(5) have distinct legal meanings and focus on entirely different things. Section 1252(a)(4) limits judicial review of the CAT "cause or claim" of someone facing removal—meaning, review of the *legal entitlement* held by the alien. Section 1252(a)(5), by contrast, is focused on limiting judicial review of the "order of removal"—*i.e.*, the *legal decree* of the immigration judge.

But both subsections apply only in the immigration context. Indeed, both subsections cross-reference Section 1252(e), an exception allowing habeas review of determinations whether the petitioner is an alien, subject to removal, or lawfully admitted or granted asylum. Those are all *immigration* determinations.

The whole point of Section 1252 is to "consolidate review of challenges to orders of removal in the courts of appeals." *Delgado* v. *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (per curiam). Thus, it makes sense to *channel* CAT challenges to removal orders to petitions for review in the court of appeals—and exclude duplicative actions in the district court. But while CAT claims often arise in the immigration context, they do not only arise in such contexts.

Imagine, for example, an American citizen who is wrongly swept up in an extradition proceeding and, among other things, claims that she would be tortured in the receiving country. Such a claim would necessarily never be adjudicated in an immigration removal proceeding. Yet under the government's theory, that citizen would have *no forum* whatsoever for judicial review of her CAT claim; the undocumented alien would possess more rights than the citizen. Section 1252(a)(4), which consolidates review *in the court of appeals*, the established forum for immigration appeals, does not dictate such an absurd result.

In sum, the government's statutory arguments fail on their own terms, even before considering this Court's guidance from *INS* v. *St. Cyr*, 533 U.S. 289 (2001), which the government fails even to mention. Under *St. Cyr*, courts are "obligated" to construe statutes to preserve habeas jurisdiction where such interpretations are "fairly possible." *Id.* at 300. *St. Cyr* thus forecloses the government's reading of the statutes.

2. To the extent that either Section 2242(d) of FARRA or 8 U.S.C. § 1252(a)(4) purports to bar habeas review of CAT claims by extraditees, any such bar would violate the privilege of the writ of habeas corpus enshrined in the Suspension Clause. The government's view, shared by the Second Circuit, is based on the so-called rule of non-inquiry, which assumes that transferees have not been able to use habeas to inquire into the conditions of the receiving country. BIO15-17. That view is ahistorical. Indeed, while the government employs the labels "longstanding" and "historical" for the rule, it

conspicuously fails to cite *any* relevant Founding Era authority. See BIO15-17 (citing cases only back to 1901).

As explained (Pet. 26-29), the habeas privilege at the Founding was not cabined by any rule of non-inquiry—any such rule arose later, and only by implication from the fact that American courts were hesitant to scrutinize other countries' *legal procedures* in transferee cases. But English courts at the founding *did* inquire into a transferee's treatment in a receiving jurisdiction. Pet. 28-29.

Habeas has "long been the appropriate vehicle" in extradition. *Trump* v. *J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). It is thus *the government* that turns a blind eye to "guidance from history in considering the scope of habeas corpus." BIO18. The government also overreads *Munaf* v. *Geren*, 553 U.S. 674 (2008), which did not address the scope of the habeas right protected by the Suspension Clause, only the Due Process Clause, see *id.* at 692; expressly reserved judgment on any role of the CAT and FARRA, *id.* at 703 n.6; and did not purport to undertake a deep historical review of rights of extraditees at the Founding. Moreover, the government's invocation of Justice Kavanaugh's recognition of the "history and precedent of using habeas corpus to review transfer claims" is conclusory. *J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring). The government simply proclaims that that history of habeas challenges to transfers somehow does not apply to this case. Indeed, the government goes so far as to say that its reading of Section 1252(a)(4) to bar habeas review does not violate the Suspension Clause because "judicial

review is statutorily barred." BIO18. That is entirely circular.

III. There Is An Undisputed Circuit Split

In the decision below, the Second Circuit expressly deepened a circuit split concerning federal court jurisdiction in international extradition proceedings. Such a decision cries out for this Court's review.

The government does not (and cannot) dispute the existence of a split. Instead, it tries to minimize the split as "narrow tension." BIO19. But the circuits are not narrowly divided by degree; they are divided on a binary basis as to the jurisdiction-stripping effect of two federal statutes. Do either Section 2242(d) or 8 U.S.C. § 1252(a)(4) strip the federal courts of habeas jurisdiction over CAT claims by extraditees—yes or no? The Second, D.C., and Fourth Circuits say "yes," while the Ninth Circuit says "no." That's not a narrow disagreement—it's two polar opposite conclusions on a threshold jurisdictional question.

To the extent that the divergent approaches can be characterized as "narrow," that narrowness arises not from the questions presented in this petition, but from the Ninth Circuit's modest understanding about the scope of legal interest conferred by FARRA's implementing regulation, 22 C.F.R. § 95.2. The Ninth Circuit held that "FARRA and its regulations generate interests cognizable as liberty interests." *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (per curiam). Citing 22 C.F.R. § 95.2, the court said that "[a]n extraditee thus possesses a narrow liberty interest: that the Secretary comply with her statutory and regulatory obligations." *Id.* at 957. In other words, any narrowness flows from the Ninth Circuit's view about the scope of the

substantive legal right held by extraditees, and not the issues presented in this petition—whether Section 2242(d) or 8 U.S.C. § 1252(a)(4) strips courts of jurisdiction.

It is for that reason that the government's (debatable) claim (at 19-20) that petitioner still would have lost under the Ninth Circuit's approach is a non-sequitur. The Second Circuit decided the case at the antecedent jurisdictional step—and so never reached the scope of petitioner's legal interest under FARRA and its regulations. That is not a reason to deny certiorari; it's a reason to grant certiorari.

The government's view is, in essence, that this Court should *never* review the threshold jurisdictional question that has divided the courts of appeals because judicial review of CAT determinations by the executive will always be a veritable nullity in any event. This Court should reject that cynical premise, clear up the undisputed jurisdictional split, and allow the circuits to assess the subsequent merits question about the underlying rights held by the extraditee. "[J]urisdictional rules should be clear." *Lapides* v. *Board of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002). And in *this* context, the need for clarity is at its zenith.

* * *

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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