No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MONIKA KAPOOR,

Applicant,

v.

VINCENT F. DEMARCO, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK, ROBERT CORDEIRO, CHIEF PRETRIAL SERVICES OFFICER FOR THE EASTERN DISTRICT OF NEW YORK,

Respondents.

EMERGENCY APPLICATION FOR STAY OF MANDATE AND JUDGMENT PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

This application arises from the United States Court of Appeals for the Second Circuit.

Applicant is Monika Kapoor, a citizen of India.

Respondents are Vincent F. DeMarco, in his official capacity as United States Marshal for the Eastern District of New York, and Robert Cordeiro, in his official capacity as Chief Pretrial Services Officer for the Eastern District of New York.

The proceedings below were:

1. *Kapoor* v. *Dunne*, No. 16-cv-5834 (E.D.N.Y. Sept. 20, 2022)
2. *Kapoor* v. *DeMarco*, No. 22-2806 (2d Cir. Mar. 26, 2025)

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TO THE HONORABLE SONIA M. SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to Rule 23 of the Rules of this Court and 28 U.S.C. §§ 1651, 2101(f), Applicant Monika Kapoor respectfully applies for a stay of the mandate and judgment of the United States Court of Appeals for the Second Circuit associated with its March 26, 2025, judgment (App., *infra*, 2a) to stay her extradition, pending the consideration and disposition of her forthcoming petition for a writ of certiorari and further proceedings in this Court.

Absent a stay from this Court, the mandate of the Second Circuit will issue on May 19, 2025, resulting in a substantial risk that Ms. Kapoor will be extradited.

INTRODUCTION

This case presents a circuit split concerning federal courts' jurisdiction over claims for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, by persons facing international extradition. In the decision below, the Second Circuit held that Congress has stripped federal courts of habeas jurisdiction over CAT claims by extraditees and, in so holding, the court expressly acknowledged that it was "part[ing] ways" with the Ninth Circuit to join the D.C. and Fourth Circuits. Interwoven with that acknowledged statutory split are weighty questions about the scope of the habeas privilege protected by the Suspension Clause of the U.S. Constitution. Ms. Kapoor—who credibly fears torture if extradited to her home country of India, and whose meritorious CAT claim has never been given a fair shake—respectfully

requests a stay of the Second Circuit's mandate to give her the opportunity to file a petition for writ of certiorari presenting those questions. Without a stay, Ms. Kapoor will almost certainly be extradited and lose that opportunity.

Ms. Kapoor fled India with her two young children in 1999 to escape abuse and torture at the hands of politicians who had targeted her family. App., *infra*, 67a. Her brothers had started a jewelry import-export business several years earlier. When the business proved successful, it became the target of extortive demands by authorities. *Id.* at 90a. And when those demands were not met, Ms. Kapoor and her family became the object of retribution. *Ibid.* On more than fifteen occasions, government agents forced their way into Ms. Kapoor's home and detained her for extended periods, without any access to food, water, or toilet facilities. *Id.* at 65a-67a. During those detentions, she was held in isolation, screamed at, and verbally abused by government agents. *Ibid.* Those agents threatened Ms. Kapoor with both physical and sexual harm. *Ibid*. They also threatened to kidnap her children. Ms. Kapoor's husband was also repeatedly detained by the authorities and suffered abuse at their hands. *Ibid.* To escape the torment, and because she feared for her life and the lives of her children, she came to the U.S., where she ultimately overstayed her visa.

In March 2010, Ms. Kapoor was placed in immigration removal proceedings. She applied for asylum, withholding of removal, and relief under CAT, asserting that she would be tortured if returned to India. In April 2010, *immediately following her request for protection in the United States*, the Indian government initiated criminal process against Ms. Kapoor in the Court of the Metropolitan Magistrate in New Delhi.

The arrest warrant asserted an assortment of property crimes—including forgery and "dishonestly inducing delivery of property"—alleging that she and her brothers defrauded the Indian government. See App., *infra*, 14a. In October 2010, the Indian government submitted an extradition request to the U.S. Department of State, which had the effect of freezing her immigration proceedings. *Id.* at 15a. Ms. Kapoor was arrested, arraigned, and released on bail pending resolution of her extradition proceedings. Now, almost fifteen years later, despite having pending (but frozen) immigration proceedings, and despite having filed multiple habeas petitions, all courts—immigration and Article III alike—have refused to hear her CAT claim.

Most recently, in the decision below, the Second Circuit held that Congress had stripped federal courts of habeas jurisdiction over CAT claims by extraditees (sometimes referred to as "relators") like Ms. Kapoor. And the Second Circuit further held that such jurisdiction-stripping did not violate the Suspension Clause. A stay of the mandate and judgment associated with that decision is warranted for the following reasons:

First, there is a reasonable probability that this Court would grant Ms. Kapoor's forthcoming petition for a writ of certiorari. The Second Circuit itself acknowledged that the circuits are split on the statutory jurisdiction-stripping question. Because the Ninth's Circuit's decision was informed, in part, by concerns of constitutional avoidance, the statutory issue is necessarily intertwined with questions about the scope of the habeas privilege protected by the Suspension Clause. Those questions are important and recurring.

Second, there is fair prospect that this Court will reverse the Second Circuit. The majority of circuit judges that have considered the issue *disagree* with the conclusion reached by the Second Circuit below. Moreover, there is a long, established history that habeas is the proper—indeed the only—vehicle for someone to challenge an international extradition.

Third, a stay is necessary to prevent irreparable harm to Ms. Kapoor. Without a stay, the Second Circuit's mandate will issue on May 19. At that point, there is a substantial risk that she will be extradited to India, where she will likely be tortured.

Finally, the balance of the equities favors a stay of the mandate and judgment. The acute and irreversible harm that would befall Ms. Kapoor without a stay far exceeds the "harm" to respondents—a short delay in carrying out the extradition. Indeed, as the district court noted below, the government is principally responsible for the length of these extradition proceedings. The equities favor Ms. Kapoor and a stay.

OPINIONS BELOW

The Second Circuit's decision (App., *infra*, 3a-39a) is reported at 132 F.4th 595. The decision of the district court (App., *infra*, 41a-47a) is unreported but available at 2022 WL 4357498.

JURISDICTION

The Second Circuit entered judgment and an accompanying written decision on March 26, 2025. Ms. Kapoor did not move for a rehearing en banc. The Second Circuit denied her motion to stay its mandate on May 8, 2025. This Court has

authority to stay the Second Circuit's judgment and mandate pending the filing and disposition of a writ of certiorari. 28 U.S.C. §§ 1651(a), 2101(f).

STATEMENT OF THE CASE

A. Legal Background

1. Under 18 U.S.C. § 3184, when the government files a complaint charging a person in the United States with a crime allegedly committed in a foreign state covered by an extradition treaty, a judge may issue an arrest warrant for the person so charged. If the judge determines that the government's "evidence of criminality" is "sufficient to sustain the charge under the provisions of the proper treaty," the judge "shall certify * * * to the Secretary of State" that the Secretary may issue a surrender warrant. *Ibid*. That certification is not subject to direct appeal, *In re Metzger*, 46 U.S. (5 How.) 176, 191 (1847), and under the so-called "rule of non-contradiction," the extraditee is prohibited from presenting evidence in the proceeding that contradicts the evidence offered by the requesting foreign country, *Noeller* v. *Wojdylo*, 922 F.3d 797, 807 (7th Cir. 2019). Upon a certification of extraditability, the Secretary of State makes the final decision whether to surrender the accused to the foreign state. 18 U.S.C. § 3186.

Because the certification proceedings are circumscribed, "[a] petition for habeas corpus is the only means available to challenge an international extradition order." 15B Charles Alan Wright et al., *Federal Practice and Procedure* § 3918.3 & n.20 (2d ed. 2025 update); see also *Vitkus* v. *Blinken*, 79 F.4th 352, 362 (4th Cir. 2023) ("Because a certification order is not a final appealable order under 28 U.S.C. § 1291,

an extraditee * * * can only challenge such an order in federal court by pursuing habeas corpus relief under 28 U.S.C. § 2241.").

2. In 1984, the United Nations General Assembly adopted CAT. CAT Article 3 provides that no party state 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. Article 3 directs the "competent authorities," in making that determination, to "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." *Ibid.*

3. CAT is a non-self-executing treaty. Thus, Congress—following ratification of CAT—enacted the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), which states, in relevant part:

> It shall 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.

Pub. L. No. 105-277, Div. G, § 2242(a), 112 Stat. 2681-822 (codified as note to 8 U.S.C. § 1231).

Under FARRA, the State Department promulgated regulations outlining its CAT obligations when evaluating the torture claims of an extraditee. Among other things, those regulations require the government to consider "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). The regulations further provide that

"appropriate policy and legal offices [shall] review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant." *Id.* § 95.3(a). But the determination resulting from that opaque process is, at least according to the regulations, a "matter[] of executive discretion not subject to judicial review." *Id.* § 95.4.

Congress addressed the judicial review of claims under CAT in the immigration context when it enacted 8 U.S.C. § 1252(a)(4) as part of the REAL ID Act of 2005 (REAL ID ACT), Pub. L. No. 109-13, Div. B, § 106(a)(1)(B), 119 Stat. 302, 310. That provision—in a section titled "Judicial review of orders of removal," and appearing in a subchapter titled "Immigration"—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 this section 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).

B. Proceedings Below

Ms. Kapoor applied for relief under CAT in March 2010. In April 2010, after her request for CAT relief, the Indian government initiated criminal process against Ms. Kapoor in the Court of the Metropolitan Magistrate in New Delhi. The arrest warrant alleged various property crimes, including forgery and "dishonestly inducing delivery of property." App., *infra*, 14a. In October 2010, the Indian government

submitted an extradition request to the U.S. Department of State, which had the effect of freezing her immigration proceedings. *Id.* at 14a-15a.

In May 2011, Ms. Kapoor was arrested, arraigned, and released on bail pending resolution of the extradition proceedings. The district court issued its extradition certification in April 2012. See *In re Extradition of Kapoor*, No. 11-M-456 (RML), 2012 WL 1318925 (E.D.N.Y. Apr. 17, 2012). By letter dated September 25, 2015, the State Department notified Ms. Kapoor of its decision to surrender her to India. App., *infra.*, 92a. Although the State Department's letter and attached declaration recounted the extradition process and cited the legal standard under CAT, neither contained any discussion concerning the actual merits of Ms. Kapoor's CAT claim, nor any analysis of the evidence that Ms. Kapoor had submitted in support of her claim. See *id.* at 92a-101a. Instead, the letter and accompanying declaration both baldly asserted that her extradition complied with CAT following review of "all pertinent information." *Id.* at 92a, 96a. The State Department issued Ms. Kapoor another, equally conclusory letter in August 2016. *Id.* at 100a.

Ms. Kapoor's immigration case has been held in abeyance in light of India's extradition request, and therefore no court has adjudicated the merits of her CAT claim. She has since filed three habeas petitions under 28 U.S.C. § 2241. Her third petition, filed in 2016, is the petition at issue in the decision below.

Among other things, Ms. Kapoor's habeas petition claims that she will be tortured if returned to India. App., *infra*, 56a-57a. The petition and its supporting documents describe the factual basis for that claim, allege that the U.S. State

Department has ignored evidence supporting her claim of likely torture, and allege that the State Department has failed to make any genuine factual findings as to her likely torture in India. See *id.* at 56a. Ms. Kapoor's habeas petition seeks release from executive detention and an injunction restraining her custodians from extraditing her, and it asks the district court to "[a]ssume jurisdiction over this matter and consider" the facts and evidence in support of her CAT claim. *Id.* at 59a.

The district court denied Ms. Kapoor's habeas petition in September 2022. Relying on the D.C. Circuit's decision in *Omar* v. *McHugh*, 646 F.3d 13 (D.C. Cir. 2011), the district court held that 8 U.S.C. § 1252(a)(4) prohibits judicial review of her CAT claim through a habeas proceeding. App., *infra*, 45a. The district court further held that its reading of Section 1252(a)(4) to withhold habeas review did not effect a suspension of the writ of habeas corpus in violation of the Constitution's Suspension Clause. *Id.* at 46a.

On March 26, 2025, the Second Circuit "affirm[ed] the district court's dismissal of Kapoor's petition." App., *infra*, 39a.

First, the Second Circuit held that "Section 1252(a)(4) bars courts from exercising habeas jurisdiction over CAT claims raised by individuals facing extradition." App., *infra*, 39a. In reaching that conclusion, the panel expressly disagreed with the Ninth Circuit's decision in *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952 (9th Cir. 2012) (en banc) (per curiam). There, the Ninth Circuit held that Section 28 U.S.C. § 2241 provides a remedy to a person challenging the legality of extradition proceedings under CAT—and that the REAL ID Act addresses only "final orders of

removal, without affecting federal habeas jurisdiction" over petitions challenging the legality of extradition. *Id.* at 956; see *id.* at 958 (Thomas, J., concurring) ("[T]he REAL-ID Act's jurisdiction-stripping provisions do *not* remove federal habeas jurisdiction over petitions that do not directly challenge a final order of removal."). The panel in this case expressly "part[ed] ways" with the Ninth Circuit, and instead agreed with the D.C. Circuit that extraditees may not obtain habeas review of CAT claims. App., *infra*, 28a, 30a (citing *Omar*, 646 F.3d 13).

Second, the Second Circuit held that application of Section 1252(a)(4) to bar habeas review of CAT claims brought by extraditees does not violate the Suspension Clause. App., *infra*, 39a. Section 1252(a)(4), the panel explained, would violate the Constitution only if it precluded the type of habeas review historically protected by the Suspension Clause. But under the "rule of non-inquiry"—which "bars courts from evaluating the fairness and humaneness of another country's criminal justice system" and "requir[es] deference to the Executive Branch on such matters"—extraditees "have not traditionally been able to maintain a habeas claim based on their anticipated treatment in a receiving country." *Id.* at 31a.

Ms. Kapoor moved for a stay pending the filing of her petition for certiorari on April 25, 2025. The panel denied that motion on May 8, 2025. Absent a stay, the Court's mandate will issue on May 19, 2025. See Fed. R. App. P. 40(d)(1) & 41(b).

REASONS FOR GRANTING THE STAY

Under 28 U.S.C. § 2101(f), this Court may stay proceedings pending the filing and disposition of a petition for a writ of certiorari. To obtain such a stay, an applicant must show "(1) a reasonable probability that four Justices will consider the issue

sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Ibid.*

Ms. Kapoor satisfies those requirements.

First, there is at least a reasonable probability that this court will grant certiorari. Ms. Kapoor's forthcoming petition will present two questions: (1) whether Section 1252(a)(4) bars habeas review of CAT claims; and (2) if so, whether that removal of habeas jurisdiction violates the Suspension Clause. Those are important questions on which the Courts of Appeals—and judges within the Courts of Appeals—are intractably split. The decision below further entrenches those divisions, delaying much-needed clarity in an important area of law.

Second, there is at least a fair prospect of reversal. Eleven judges from the Ninth and D.C. Circuits have issued or joined opinions in open disagreement with the Second Circuit's decision. A number of those judges have opined that Section 1252(a)(4) does not withdraw habeas jurisdiction from CAT claims, while others have opined that it does but that such claims must nevertheless be heard because Congress has not suspended the writ. Given the degree of disagreement over those questions within the judiciary, there is at least a "fair prospect" that this Court would reverse the judgment below.

Third, the balance of harms and equities weighs heavily in Ms. Kapoor's favor. Without a stay, there is a high likelihood that the government will seek to extradite Ms. Kapoor while her petition for certiorari is pending. There is also a high likelihood, as she alleges in her habeas petition, that she will be tortured upon her return to India. Those are quintessential irreparable harms. By contrast, the harms to the government from a stay are exceedingly modest. A short delay to the government's extradition efforts is well worth giving Ms. Kapoor an opportunity to vindicate her constitutional and statutory rights.

I. There Is a Reasonable Probability That This Court Will Grant Certiorari

A. The Second Circuit's Decision Deepens an Unresolved Three-Way Circuit Split

Among the reasons this Court grants writs of certiorari is that a Court of Appeals "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10(a); see also Stephen M. Shapiro et al., *Supreme Court Practice* § 4.4 (11th ed. 2019) (*Supreme Court Practice*) ("The Supreme Court often * * * will grant certiorari where the decision of a federal court of appeals * * * is in direct conflict with a decision of another court of appeals on the same matter of federal law." (emphasis omitted)); *Thompson* v. *Keohane*, 516 U.S. 99, 106 (1995) (acknowledging "grant[ ] [of] certiorari to end the division of authority" on habeas question "[b]ecause uniformity among federal courts is important on questions of this order").

As the decision below acknowledged, there is a clear circuit split on the question whether the federal courts possess habeas jurisdiction over CAT claims

asserted by extradition relators. See App., *infra*, 28a-30a. The Second Circuit's decision deepened that split by joining the D.C. and Fourth Circuits in opposition to the approach taken by the Ninth. *Id.* at 30a. ("[W]e (like the D.C. and Fourth Circuits) part ways with our sister Circuit.").

In the decision below, the Second Circuit held that Section 1252(a)(4) removes federal habeas jurisdiction over CAT claims by individuals in extradition proceedings. The D.C. Circuit has likewise held that, under Section 1252(a)(4), "extradition or military transferees * * * have no such right" to judicial review of conditions in the receiving country. *Omar*, 646 F.3d at 18; but see *id.* at 26-27 (Griffith, J., concurring in the judgment) (stating that constitutional habeas confers jurisdiction over CAT claims). Similarly, the Fourth Circuit reached the same ultimate conclusion, but instead of relying on Section 1252(a)(4), it concluded that a different statute—Section 2242(d) of FARRA—removed habeas jurisdiction over CAT claims by relators. See *Mironescu* v. *Costner*, 480 F.3d 664, 674 (4th Cir. 2007).

The Ninth Circuit, by contrast, has held that "FARRA lacks sufficient clarity to survive the 'particularly clear statement' requirement" articulated in *INS* v. *St. Cyr*, 533 U.S. 289 (2001), and that Section 1252(a)(4) is thus "construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction." *Trinidad y Garcia*, 683 F.3d at 956. Accordingly, in the Ninth Circuit, an extraditee may obtain habeas review of the Secretary of State's determination that their surrender to the requesting country will not violate CAT and its implementing regulations.

Other courts have also expressed disagreement with the conclusion reached below. In *Aguasvivas* v. *Pompeo*, the First Circuit intimated its view that federal courts retain habeas jurisdiction over CAT claims notwithstanding the rule of non-inquiry. See *Aguasvivas* v. *Pompeo*, 984 F.3d 1047, 1052 n.6 (1st Cir. 2021) ("We have no reason to believe that any principle of non-inquiry implicates federal court jurisdiction—much less Article III jurisdiction.").[1] And in *Taylor v. McDermott*, a district court in the District of Massachusetts recently construed Section 1252(a)(4) to avoid conflict with the Suspension Clause, as the Ninth Circuit did in *Trinidad y Garcia*. See *Taylor* v. *McDermott*, 516 F. Supp. 3d 94, 109 (D. Mass. 2021) ("[T]o avoid a construction that violates the Suspension Clause, the court concludes that it has jurisdiction to hear the Taylors' claims brought under the Convention Against Torture, as implemented by the FARR Act."). Those decisions underscore the vast scope of disagreement on the two questions Ms. Kapoor will present in her certiorari petition.

This circuit split is clear, well-established, and will not resolve without the Court's intervention.

B. The Second Circuit's Decision Likewise Raises Substantial Questions Concerning the Scope of the Suspension Clause

In addition to the circuit split over the statutory provisions, the decision below also raises the fundamental question whether a bar to habeas review of CAT claims in the extradition context (under the Second Circuit's reading of Section 1252(a)(4))

[1] The First Circuit avoided deciding that issue, however, because it held that the government failed to file the necessary documents to support an extradition request. *Id.* at 1063.

violates the Suspension Clause. Though that question is not strictly the subject of an inter-circuit split, it has been the subject of intra-circuit divisions. And more importantly, through the canon of constitutional avoidance and this Court's guidance in *St. Cyr*, the lurking Suspension Clause issue has greatly influenced how courts have construed the relevant statutory provisions.

In *Omar*, two members of the panel—then-Judge Kavanaugh and Judge Ginsburg—concluded that, even under its jurisdiction-stripping interpretation, Section 1252(a)(4) still does not violate the Suspension Clause. That's because, in those judges' view, "[t]hose facing extradition traditionally have not been able to maintain habeas claims to block transfer based on the conditions in the receiving country" under the "rule of non-inquiry." 646 F.3d at 19. But Judge Griffith characterized the majority's view of habeas jurisdiction as "too cramped." *Id.* at 27 (Griffith, J., concurring in the judgment). Under Judge Griffith's interpretation, the Suspension Clause entitles a habeas petitioner to review of "the merits of his [CAT] claim" under FARR because the scope of the writ at common law embraced statutory claims. *Id.* at 27-29. Ultimately, however, Judge Griffith concluded that the detainee in *Omar* would not prevail on such a claim because he was already in Iraq, and thus could not be "transferred" to Iraq in violation of the statute. *Id.* at 29. Here, however, because Ms. Kapoor is located in the United States and not in the requesting country, removing habeas jurisdiction from her CAT claim would likely violate the Suspension Clause under Judge Griffith's view.

The Ninth Circuit's decision in *Trinidad y Garcia* likewise generated conflicting views of the Suspension Clause issue, which also influenced the per curiam's statutory analysis. Judge Tallman—joined by Judges Ikuta, Clifton, and M. Smith—relied on this Court's instruction in *St. Cyr* to give jurisdiction-preserving interpretations to statutes where such interpretations are "fairly possible." *Trinidad y Garcia*, 683 F.3d at 972 (Tallman, J., dissenting). Those judges, therefore, would read Section 1252(a)(4) as applying "only to those claims seeking judicial review of orders of removal," *ibid.*, thereby preserving habeas jurisdiction over CAT claims and avoiding conflict with the Suspension Clause.[2] Judge Thomas—joined by Judges Wardlaw and Berzon—offered another view. Those judges viewed Section 1252(a)(4) as leaving habeas jurisdiction entirely unaffected, avoiding the Suspension Clause problem without resorting to *St. Cyr*'s interpretive guidance. *Id.* at 959 (Thomas, J., concurring).

Thus, the Suspension Clause issue raised by Ms. Kapoor's forthcoming petition is intertwined with, and a cause of, the clear split among the circuits.

C. The Questions Presented Are Important and Recurring

The basis for certiorari is strengthened where the conflict involves an important and recurring question of law. *Supreme Court Practice* §§ 4.4(A)-(C). Such is the case here.

The question whether Congress has stripped federal courts of habeas jurisdiction over CAT claims in the extradition context lies squarely at the

[2] The district court in *Taylor v. McDermott*, 516 F. Supp. 3d 94 (D. Mass. 2021), reached the same interpretation.

intersection of individual liberties, federal judicial power, and foreign relations—and it matters greatly to a great many people. It matters to the extradition relator, who has due process rights and substantive rights under U.S. and international law. For that individual, habeas is the only avenue for their CAT claim. See 15B Charles Alan Wright et al., *Federal Practice and Procedure* § 3918.3 & n.20 (2d ed. 2025 update) ("A petition for habeas corpus is the only means available to challenge an international extradition order."). It matters to the judiciary, which requires certainty about the scope of its authority to adjudicate disputes over those rights. And it matters to the executive branch, which must manage the relationship with the requesting foreign country and effectuate the extradition request in accordance with law—and, in so doing, must have a clear understanding of the extent to which a court may review its actions.

Moreover, questions implicating the scope of habeas corpus are, by their very nature, substantial. Across generations, this Court and individual Justices have, time and again, extolled the importance of the Great Writ—the "only writ explicitly protected by the Constitution." *Holland* v. *Florida*, 560 U.S. 631, 649 (2010) (noting "[t]he importance of the Great Writ"); see, *e.g.*, *Lonchar* v. *Thomas*, 517 U.S. 314, 322 (1996) (invoking "the history of the Great Writ"); *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 275 (1973) (Powell, J., concurring) ("There has been a halo about the 'Great Writ' that no one would wish to dim."); *Burns* v. *Wilson*, 346 U.S. 137, 148 (1953) (op. of Frankfurter, J.) (invoking "proper regard for habeas corpus, 'the great writ of

liberty'"); *Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 95 (1868) (characterizing the writ as "the best and only sufficient defence of personal freedom").

This Court in recent years has also granted certiorari on questions adjacent to those to be presented in Ms. Kapoor's petition, demonstrating that there is a reasonable probability that four Justices will vote to grant certiorari here. See *Department of Homeland Sec.* v. *Thuraissigiam*, 591 U.S. 103 (2020) (question presented in petition was "whether, as applied to respondent, Section 1252(e)(2) is unconstitutional under the Suspension Clause"); *Nasrallah* v. *Barr*, 590 U.S. 573 (2020) (question presented in petition was "[w]hether, notwithstanding Section 1252(a)(2)(C), the courts of appeals possess jurisdiction to review factual findings underlying denials of withholding (and deferral) of removal relief").

Finally, the issue is a recurring one. Though public data on the specifics of extradition are scarce, the Department of Justice reports that it received more than 500 extradition requests in 2019 alone, only about 20 percent of which were for allegedly violent crimes. See U.S. Dep't of Just., *FY 2019 Annual Performance Report / FY 2021 Annual Performance Plan*, at 58, https://perma.cc/QF4F-2HPX (explaining that approximately one-fifth of the more than 500 requests received were for fugitives wanted for violent crimes). That volume of extradition activity demands clarity.

These questions are likely to continue recurring without the Court's intervention. The current administration has made immigration and extradition enforcement a high priority, as the procedural history of this case demonstrates. Ms. Kapoor's petition sat dormant in the district court for nearly *five years* from December

2016 to October 2021 without any attempt by the government to move it along. But just *one day* after the Second Circuit issued its decision—and well before May 19, the date the mandate will issue—the government filed a motion to remand Ms. Kapoor into custody. Motion (ECF No. 34), *Kapoor* v. *Dunne*, No. 16-cv-5834 (E.D.N.Y. Mar. 27, 2025). It is likely that the government will take a similarly aggressive posture against other extraditees who assert CAT claims. This Court can aid such extraditees (and the government) by bringing much-needed clarity to this area of the law.

The decision below is an ideal vehicle to resolve the circuit split and to clarify the scope of the rule of non-inquiry. The Second Circuit cleanly held that Section 1252(a)(4) removes habeas jurisdiction from CAT claims. App., *infra*, 39a. It also cleanly held that Section 1252(a)(4)'s habeas bar does not violate the Suspension Clause under the rule of non-inquiry. *Ibid.* And it did so in a published, precedential decision. The Second Circuit's rulings on those questions were outcome-dispositive, and the facts of this case are typical of how these issues are raised and litigated in extradition proceedings.

II. There Is a Fair Prospect That This Court Will Reverse

If this Court grants Ms. Kapoor's petition for certiorari, there is a fair prospect that it will reverse the Second Circuit. See *In re Roche*, 448 U.S. 1312, 1314 n.1 (1980) (Brennan, J., in chambers) ("Where review is sought by the more discretionary avenue of writ of certiorari, * * * the consideration of prospects for reversal dovetails, to a greater extent, with the prediction that four Justices will vote to hear the case."). Indeed, of the individual circuit judges that have considered these issues thus far, the

majority of them have concluded that federal courts retain habeas jurisdiction over CAT claims by relators.[3]

1. It is likely that a majority of this Court would conclude that FARRA does not contain a sufficiently clear statement to remove habeas jurisdiction and that Section 1252(a)(4) is confined to precluding habeas review of final orders of removal—and not extradition challenges under CAT. Absent habeas review, Ms. Kapoor will never receive judicial review of her claim that her extradition would violate CAT. That would raise "a serious constitutional question" requiring—under this Court's guidance in *St. Cyr*—that the Court consider whether "an alternative interpretation" of Section 1252(a)(4) is "fairly possible." *Trindad y Garcia*, 683 F.3d at 971-972 (Tallman, J., dissenting) (quoting *St. Cyr*, 533 U.S. at 299–300). It is plausible that the Court would confine Section 1252(a)(4) to final orders of removal—an interpretation that is indeed "fairly possible."

As the *en banc* Ninth Circuit concluded, "[n]either the REAL ID Act (8 U.S.C. § 1252(a)(4)) nor FARRA (8 U.S.C. § 1231 note) repeals all federal habeas jurisdiction over Trinidad y Garcia's claims." *Trinidad y Garcia*, 683 F.3d at 956. "FARRA lacks sufficient clarity to survive the 'particularly clear statement' requirement" and "[t]he REAL ID Act can be construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction." *Ibid.*

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[3] Eleven circuit judges—Judges Griffith, Ikuta, M. Smith, Clifton, Tallman, Thomas, Berzon, Graber, Wardlaw, Pregerson, and Fletcher—have concluded there *is* jurisdiction. By contrast, only eight circuit judges—then-Judge Kavanaugh, along with Judges Ginsburg, Kozinski, Nardini, Menashi, Lee, Wilkins, and Widener—have concluded that there is no jurisdiction.

Judge Tallman—joined by Judges Clifton, M. Smith, and Ikuta—elaborated further. There "are a number of indicators that Congress intended § 1252(a)(4) to be applicable only in the immigration context." *Id.* at 972. For example, the House Committee Report explicitly stated that Congress did not intend to "preclude habeas review over challenges to detention that are independent of challenges to removal orders." H.R. Rep. No. 72, 109th Cong., 1st Sess. 175 (2005). Instead, the bill was intended to "eliminate habeas review *only over challenges to removal orders*." *Ibid.* (emphasis added). The statutory notes to Section 1252 likewise confirm that "[t]he amendments made by subsection (a) * * * shall apply to * * * final administrative order[s] of removal, deportation, or exclusion," REAL ID Act § 106(b), 119 Stat. 311 (codified as note to 8 U.S.C. § 1252)—*but not* to extradition orders.

Moreover, the section title itself ("Judicial review of orders of removal") and the subchapter title ("Immigration") "only further reaffirm the cabining of this section's effect." *Trinidad y Garcia*, 683 F.3d at 972 (Tallman, J., dissenting); see also *Almendarez-Torres* v. *United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (citation and internal quotation marks omitted)). As the district court in *Taylor* put it, "it is highly improbable that Congress intended the REAL ID Act—the point of which was to consolidate review of immigration claims into a direct review process—to revoke the courts' jurisdiction in non-immigration cases where direct review is unavailable." *Taylor*, 516 F. Supp. 3d at 109.

All of these indicators support the "fairly possible" interpretation that Section 1252(a)(4)'s habeas bar applies only to final orders of removal. *St. Cyr*, 533 U.S. at 300. If, however, this Court were to conclude that Section 1252(a)(4) strips habeas jurisdiction over CAT claims (as the Second Circuit held here, in conflict with the Ninth Circuit), a majority of this Court would still likely find that that elimination of habeas review violates the Suspension Clause.

2. In the decision below, the Second Circuit—echoing the *Omar* majority—held that the "historical tradition of refusing to consider habeas petitions challenging the conditions of the country requesting extradition [*i.e.*, the rule of non-inquiry] means Kapoor does not present a claim implicating the type of habeas review protected by the Suspension Clause." App., *infra*, 37aa. But that view of the Suspension Clause's historical scope, like the *Omar* majority's view, is "too cramped." *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment).

As this Court explained in *St. Cyr*, the writ of habeas corpus "[a]t its historical core" served "as a means of reviewing the legality of Executive detention." 533 U.S. at 301. Early cases involving the writ were "not limited to challenges to the jurisdiction of the custodian, but encompassed detentions based on errors of law, including the erroneous application or *interpretation of statutes*." *Id.* at 302 (emphasis added). Indeed, at common law, "the writ of habeas corpus extended to all detention '*contra legem terrae*,' *i.e.*, against the law of the land," *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment) (quoting 1 Edward Coke, *The Second Part of the Institutes of the Laws of England* 54 (Williams S. Hein Co. 1986) (1642))—meaning

that it was "efficacious . . . in all manner of illegal confinement," *ibid.* (quoting 3 William Blackstone, *Commentaries* 131 (1768)). Thus, "[e]ighteenth-century English habeas courts would order the release of prisoners whose detention violated a statute." *Ibid.* (collecting cases).

Ms. Kapoor's challenge to her extradition under CAT fits squarely within that historical practice. See *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment) ("If the Suspension Clause 'protects the writ as it existed in 1789,' then it surely allows a prisoner to argue that his transfer violates an act of Congress." (quoting *St. Cyr*, 533 U.S. at 301)). The Second Circuit erred in holding otherwise. Citing *Munaf* v. *Geren*, 553 U.S. 674 (2008), the Second Circuit concluded that Ms. Kapoor's CAT claim raises "the precise type of question barred by the rule of non-inquiry and that courts have therefore declined to address in the extradition context." App., *infra*, 36a-37a. But the Second Circuit overread the Court's decision. As Judge Griffith correctly recognized, "*Munaf* examined the historical pedigree of the right against transfer to torture only because the petitioner in that case argued that their transfers would violate due process, a claim that triggers inquiry into the historic roots of the asserted right." *Omar*, 646 F.3d at 28 (Griffith, J., concurring in the judgment). Thus, "[t]he Court did not have occasion to consider whether the Suspension Clause entitles prisoners to raise claims based on recently enacted statutes," like CAT. *Ibid.* Indeed, this Court in *Munaf* expressly held open the possibility that a military detainee might successfully challenge his transfer under CAT via habeas. *Munaf*, 553 U.S. at 703 n.6; *Omar*, 646 F.3d at 28 (Griffith, J., concurring in the judgment) (recognizing that

the Court in *Munaf* "reserv[ed] [the] question of whether Omar could successfully challenge his transfer under the FARR Act").

Moreover, this Court recently granted the government's application to vacate the D.C. Circuit's orders in *Trump* v. *J.G.G.*, 604 U.S. ___, No. 24A931 (Apr. 7, 2025). In its per curiam order, the Court explained that detainees' claims challenging their confinement and removal under the Alien Enemies Act "fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Id.* at 2. Justice Kavanaugh wrote separately to "add * * * that the use of habeas for transfer claims is not novel," but appears "[i]n the extradition context" where it has "long been the appropriate vehicle." *Id.* at 5 (Kavanaugh, J., concurring).

As Justice Kavanaugh explained, "going back to the English Habeas Corpus Act of 1679, if not earlier, habeas corpus has been the proper vehicle for detainees to bring claims seeking to bar their transfers." *Id.* at 5-6. "[I]n extradition cases the courts have consistently afforded habeas inquiry to examine the lawfulness of magistrates' decisions permitting the executive to detain aliens for removal to another country at the request of its government." Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 Colum. L. Rev. 961, 994-1003 (1998) (chronicling pre-Founding Era common law and nineteenth-century examples). Given the historical pedigree of habeas as the vehicle to challenge unlawful extraditions, given that at common law the writ extended to all detention *contra legem terrae*, and given that CAT—a duly ratified treaty—is law of the land, a

statute that purports to strip habeas jurisdiction to review an extradition for compliance with CAT violates the privilege of the writ of habeas corpus.

* * *

The Court does not need to find that the Second Circuit actually erred in order to grant Ms. Kapoor's requested stay. At this juncture, Ms. Kapoor need demonstrate only "a fair prospect" of reversal by a majority of this Court. *Maryland* v. *King*, 567 U.S. 1301, 1302 (Roberts, C.J., in chambers) (citation omitted). It is hard to deny such a prospect here. Eleven judges from the Ninth and D.C. Circuits—joined by a district court and, at least in principle, a panel of the First Circuit[4]—have taken issue with one, the other, or both of the Second Circuit's holdings on the questions to be presented in Ms. Kapoor's petition. Given "the considered analysis of courts on the other side of the split, there is a fair prospect that this Court will reverse the decision below." 567 U.S. at 1303.

III. Ms. Kapoor Will Suffer Irreparable Harm Absent a Stay of the Mandate

The equities overwhelmingly favor a stay of the Second Circuit's mandate and judgment. Without a stay, there is a substantial risk that the government will extradite Ms. Kapoor to India while her petition for certiorari is pending. Indeed, the government filed a "motion to remand Monika Kapoor into custody to facilitate extradition", ECF No. 34, *Kapoor* v. *Dunne*, No. 16-cv-5834 (E.D.N.Y. Mar. 27, 2025), the day after the Second Circuit issued its decision—as clear an indication as any

[4] See *Aguasvivas*, 984 F.3d at 1052 n.6 ("We have no reason to believe that any principle of non-inquiry implicates federal court jurisdiction—much less Article III jurisdiction."); *Taylor*, 516 F. Supp. 3d at 109 (finding habeas jurisdiction to review CAT claims).

that it intends to extradite her as soon as possible. That alone constitutes irreparable harm. See *Manrique* v. *Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023) ("Irreparable injury is obvious: Once extradited, Toledo's appeal will be moot."); *Vitkus* v. *Blinken*, 79 F.4th 352, 367 (4th Cir. 2023) (finding that a petitioner's "extradition during ongoing litigation" would constitute irreparable harm); *Demjanjuk* v. *Meese*, 784 F.2d 1114, 1118 (D.C. Cir. 1986) (noting that "the imminent extradition of petitioner to Israel may qualify as a threat of irreparable harm"); *Quintanilla* v. *United States*, 582 Fed. Appx. 412, 414 (5th Cir. 2014) (per curiam) (assuming that "extradition while an appeal of the denial of habeas corpus is pending would constitute irreparable harm").

What is more, Ms. Kapoor has credibly claimed that she will face torture if extradited to India. App., *infra*, 90a-91a. That too is irreparable harm. See *Antonio* v. *Garland*, 38 F.4th 524, 526 (6th Cir. 2022) (stating that the prospect that petitioner "will likely be tortured if he is removed" was "a remarkably strong satisfaction of the irreparable-harm factor"); *Huisha-Huisha* v. *Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) (affirming finding that plaintiffs asserting CAT claims "will suffer irreparable harm if they are expelled to places where they will be persecuted or tortured"); *Leiva-Perez* v. *Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (per curiam) ("extortion and beatings" that petitioner feared if deported "would certainly constitute irreparable harm").

The factual basis supporting Ms. Kapoor's claim that she will face torture if returned to India is described in detail in her habeas petition and in the supporting evidence filed in the district court. App., *infra*, 65a-67a; 90a-91a. As discussed above,

her brothers and their jewelry business became the target of corrupt politicians with connections to the party currently wielding political power. See *id.* at 90a. As a result, she—and other members of her family—were repeatedly targeted, harassed, and tortured by police and government agents. *Ibid*. She was frequently arrested and detained for extended periods without food or water, threatened with and subjected to attempted sexual assault, and received death threats. *Id.* at 65a-67a. She credibly fears that she would be subject to the same abuses—and more—if forcibly returned to India. Moreover, Ms. Kapoor is a 53-year-old housewife, a beloved mother, the primary caretaker for her ailing husband, and a cherished member of her community in New York. Despite living much of the last fifteen years in custody or with substantial movement restrictions, she has never presented a flight risk.

The harms on the other side of the scale pale in comparison. While the harm to Ms. Kapoor is her extradition to India and likely torture, the harm to the government is a short delay in carrying out her extradition—a delay that is *de minimis* when viewed within the full chronology of this case. From December 2016, when it filed its brief in response to Ms. Kapoor's habeas petition, until October 2021—almost five full years—the government was apparently content to let this case simply sit in the district court. The government did nothing in that period to advance the case; it was not until October 2021, when the district court scheduled a hearing on the issue, that the government made a push to extradite Ms. Kapoor.[5]

[5] The district court raised the government's delay repeatedly during oral argument, commenting that "[o]bviously the Government does not have an appetite to move this along" and observing (in the third person) that it wasn't until "Judge Block picked up this file five year[s] later because it's pending on his calendar and

Staying the Second Circuit's mandate to give Ms. Kapoor an opportunity to file a petition for a writ of certiorari will not meaningfully delay her extradition proceedings. Ms. Kapoor's petition is due on June 24, 2025. A stay, if granted, would extend the proceedings somewhere from a few months (if the Court denies the petition after its conference in September 2025) to at most a little over a year (if the Court grants certiorari and issues a decision in late October Term 2025). Such a modest delay is entirely appropriate given the stakes for—and possible irreparable harm to—Ms. Kapoor in the absence of a stay.

IV. The Court Should Issue an Administrative Say to Allow It to Fully Consider the Application

The Court should grant an administrative stay to enable full consideration of the merits of this stay application. Ms. Kapoor filed this application just seven days after the Second Circuit's order, and the Second Circuit's mandate will issue on May 19, 2022. Given that timing—and the irreparable harm that Ms. Kapoor would suffer if extradited—the Court should grant a brief administrative stay of the Second Circuit's mandate and judgment while it considers this application.

CONCLUSION

The Court should grant the motion and stay the mandate and judgment in this case, to prevent Ms. Kapoor's extradition pending the Supreme Court's disposition of Ms. Kapoor's forthcoming petition for a writ of certiorari. Ms. Kapoor also respectfully

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five years later you say, we made a decision, but it hasn't done anything to implement it." App., *infra*, 112a. Indeed, the district court questioned whether the government had waived its ability to extradite Ms. Kapoor altogether by virtue of its delay. *Id.* at 113a ("It sounds like there's a waiver of what arguably would have been the [enforcement] rights half a decade ago.").

asks the Court to administratively stay the issuance of the mandate and judgment pending disposition of this Application.

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Respectfully submitted,

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