

## APPENDIX

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**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8<sup>th</sup> day of May, two thousand twenty-five.

Before: William J. Nardini,  
Steven J. Menashi,  
Eunice C. Lee,  
*Circuit Judges.*

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Monika Kapoor,

**ORDER**

Petitioner - Appellant,

Docket No. 22-2806

v.

Vincent F. DeMarco, United States Marshal  
for the Eastern District of New York, Roberto  
Cordeiro, Chief Pretrial Services Officer for  
the Eastern District of New York,

Respondents - Appellees.

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Appellant moves for a stay of the Court's mandate pending the filing and disposition of a petition for a writ of certiorari.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

A circular official seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26<sup>th</sup> day of March, two thousand twenty-five.

Before: William J. Nardini,  
Steven J. Menashi,  
Eunice C. Lee,  
*Circuit Judges.*

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Monika Kapoor,

Petitioner - Appellant,

v.

Vincent F. DeMarco, United States Marshal for  
the Eastern District of New York, Roberto  
Cordeiro, Chief Pretrial Services Officer for the  
Eastern District of New York,

Respondents - Appellees.

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**JUDGMENT**

Docket No. 22-2806

The appeal in the above captioned case from a judgment of the United States District Court for the Eastern District of New York was argued on the district court's record and the parties' briefs.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's judgment dismissing Appellant Kapoor's petition is AFFIRMED.

For the Court:  
Catherine O'Hagan Wolfe,  
Clerk of Court


22-2806  
*Kapoor v. DeMarco*

In the  
United States Court of Appeals  
For the Second Circuit

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August Term, 2023  
No. 22-2806

MONIKA KAPOOR,  
*Petitioner-Appellant,*

*v.*

VINCENT F. DEMARCO,  
UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK,  
AND  
ROBERTO CORDEIRO,  
CHIEF PRETRIAL SERVICES OFFICER FOR THE EASTERN DISTRICT OF NEW  
YORK,  
*Respondent-Appellees.*

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On Appeal from a Judgment of the United States District Court for  
the Eastern District of New York.

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ARGUED: APRIL 12, 2024  
DECIDED: MARCH 26, 2025

Before: NARDINI, MENASHI, and LEE, *Circuit Judges.*

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Petitioner-Appellant Monika Kapoor is an Indian citizen facing extradition from the United States to face criminal charges in India. The United States District Court for the Eastern District of New York (Robert M. Levy, *Magistrate Judge*) determined that Kapoor was extraditable under the two countries' bilateral extradition treaty. The Secretary of State then issued a surrender warrant after rejecting Kapoor's claims that she will likely be tortured if returned to India, and that her extradition would therefore violate the Convention Against Torture. Kapoor filed a petition for a writ of habeas corpus in the district court, challenging the Secretary's decision. The district court (Frederic Block, *District Judge*) denied Kapoor's petition, finding that 8 U.S.C. § 1252(a)(4), added by the REAL ID Act of 2005, divested the court of jurisdiction to hear her claim. Kapoor appealed.

We agree with the district court. The Convention is not a self-executing treaty, and the courts can review claims arising under it only as authorized by Congress. Consistent with the test articulated by the Supreme Court in *I.N.S v. St. Cyr*, 533 U.S. 289 (2001), Section 1252(a)(4) contains a clear statement that permits claims under the Convention to be raised exclusively in petitions for review of immigration removal orders, and specifically and unambiguously bars judicial review of such claims in habeas proceedings except in limited circumstances not presented here. This construction of the statute does not violate the Suspension Clause in the extradition context because of the longstanding "rule of non-inquiry," which precludes American habeas courts from considering the anticipated treatment of an extraditee like Kapoor in the country to which she is being extradited. We therefore AFFIRM.

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DANIEL I. PHILLIPS, Gell & Gell, New York,  
NY, *for Petitioner-Appellant*.

MEREDITH A. ARFA (Susan Corkery, *on the brief*), Assistant United States Attorneys, for John J. Durham, United States Attorney for the Eastern District of New York, Brooklyn, N.Y., for Respondent-Appellees.

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WILLIAM J. NARDINI, *Circuit Judge*:

Petitioner-Appellant Monika Kapoor is an Indian citizen facing extradition from the United States to face criminal charges in India. The United States District Court for the Eastern District of New York (Robert M. Levy, *Magistrate Judge*) determined that Kapoor was extraditable under the two countries' bilateral extradition treaty. The Secretary of State subsequently issued a surrender warrant after rejecting Kapoor's claims that she would likely be tortured if returned to India, and that her extradition would therefore violate the United Nations Convention Against Torture (the "Convention" or "CAT") as implemented by the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"). Kapoor then filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the Secretary's determination that she be extradited. In her petition, Kapoor renewed the CAT claim she had presented to the Secretary. The district court (Frederic Block, *District Judge*) denied Kapoor's petition, finding that 8 U.S.C. § 1252(a)(4) divested the court of jurisdiction to hear her claim. Kapoor now appeals.

We agree with the district court. This Court previously determined in *Wang v. Ashcroft*, 320 F.3d 130 (2d Cir. 2003), that FARRA did not divest federal courts of habeas jurisdiction to review claims under the Convention, in a case brought by an individual challenging his immigration removal order. Two years after our decision in *Wang*, Congress enacted § 106(a)(1)(B) of the REAL ID Act of 2005, codified at 8 U.S.C. § 1252(a)(4), which expressly provides that notwithstanding any other provision of law “including section 2241 of Title 28, or any other habeas corpus provision,” a petition for review of an immigration removal order under 8 U.S.C. § 1252 is the “sole and exclusive means for judicial review of any cause or claim under the [Convention],” with limited exceptions not applicable here. We conclude that consistent with the test articulated by the Supreme Court in *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001), Section 1252(a)(4) contains a clear statement that specifically and unambiguously bars federal courts from exercising habeas jurisdiction to review CAT claims in extradition cases. This construction of the statute does not run afoul of the Suspension Clause of the U.S. Constitution because it does not preclude the review of claims historically protected by the writ of habeas corpus. Under the longstanding “rule of non-inquiry,” those like Kapoor facing extradition have never been able to obtain habeas relief based on their anticipated treatment in a receiving country, which is at the heart of a CAT claim.

We therefore AFFIRM.

## I. Background

### A. The Extradition Process

Extradition is the formal process by which a person is surrendered by one country to another <sup>1</sup> to face prosecution, or to serve a sentence after conviction, for criminal charges. Extradition typically occurs pursuant to a treaty. <sup>2</sup> The statutes governing extradition create a multi-step procedure that divides responsibility for extradition between the Secretary of State and the courts. *See*

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<sup>1</sup> The Fifth Circuit has upheld extradition to an international criminal tribunal where authorized by statute. *See Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999) (upholding extradition to the International Criminal Tribunal for Rwanda pursuant to an executive agreement implemented by statute).

<sup>2</sup> The Supreme Court has explained that “the power to provide for extradition is a national power . . . [b]ut, albeit a national power, it is not confided to the Executive in the absence of treaty or legislative provision.” *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 8 (1936). Congress has outlined the procedures for international extradition at 18 U.S.C. Chapter 209, §§ 3181-3196. Section 3181(a) provides that those statutory provisions generally apply only “during the existence of any treaty of extradition” between the United States and a foreign government. Section 3181(b) also authorizes, in very limited circumstances, extradition “in the exercise of comity” and in the absence of an extradition treaty.

The extradition process should not be confused with the immigration removal process. The extradition process, governed by Chapter 209 of Title 18 of the United States Code, exclusively governs the transfer of persons for the purpose of criminal proceedings, and depending on the relevant treaty, *see* 28 U.S.C. § 3196, may apply to U.S. citizens or foreign citizens. The immigration removal process, by contrast, is governed by various provisions found in Title 8 of the Code; does not depend on whether the person to be removed faces criminal proceedings abroad; and is necessarily limited to those who are not U.S. nationals or citizens. *See* 8 U.S.C. §§ 1229, 1229a (governing removal of “alien”); *id.* § 1101(a)(3) (defining “alien”).



*generally* Restatement (Fourth) of Foreign Relations Law § 428 (Am. L. Inst. 2018) (outlining extradition procedures). The process generally begins<sup>3</sup> with the submission of a formal extradition request by the foreign government to the United States Department of State through the diplomatic channel.<sup>4</sup> The State Department determines whether the request complies with the applicable treaty, and if so, transmits the request to the Office of International Affairs (“OIA”) in the Criminal Division of the United States Department of Justice. *See* U.S. Dep’t of Just., Just. Manual § 9-15.700.<sup>5</sup> OIA then considers whether the request satisfies the conditions for extradition. *See id.* If so, OIA forwards it to the United States Attorney for the judicial district in which the person being sought is located. *See id.*

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<sup>3</sup> Most modern extradition treaties also allow a requesting state to preliminarily seek the provisional arrest of a person in cases of urgency, based on a streamlined application that may be submitted either through the diplomatic channel or in other, more direct, ways. *See, e.g.*, Treaty on Extradition, It.-U.S., art. XII, Oct. 13, 1983, 35 U.S.T. 3023 (allowing transmission of provisional arrest request through diplomatic channel or directly between U.S. Department of Justice and Italian Ministry of Justice, including through the communication facilities of the International Criminal Police Organization (Interpol)); *see also* 18 U.S.C. § 3187 (authorizing provisional arrest and detention). Such temporary detention allows time for a requesting state to assemble and transmit its formal request for extradition.

<sup>4</sup> *E.g.*, Treaty on Extradition, India-U.S., art. 9(1), June 25, 1997, T.I.A.S. No. 12873 (hereinafter, the “Treaty”) (“All requests for extradition shall be submitted through the diplomatic channel.”); *id.* at 9(2)–(4) (listing supporting materials that must be included in an extradition request).

<sup>5</sup> <https://www.justice.gov/jm/jm-9-15000-international-extradition-and-related-matters#9-15.700> [<https://perma.cc/79D6-GNX4>].

The United States Attorney then files a complaint based on the extradition request with the appropriate court<sup>6</sup> and applies for an arrest warrant. 18 U.S.C. § 3184 (authorizing judicial officer to “issue his warrant for the apprehension of the person so charged”). Although the complaint is filed by the United States, we have recognized that it is really “acting for and on behalf of the demanding country, which is the real party in interest.” *Skaftouros v. United States*, 667 F.3d 144, 154 n.15 (2d Cir. 2011) (internal quotation marks and alteration omitted). The court then holds a hearing to consider whether the “evidence of criminality” presented by the foreign government is “sufficient to sustain the charge[s]” for which extradition is requested. 18 U.S.C. § 3184. The court’s inquiry is a limited one, aimed solely at ascertaining extraditability—that is, the person’s eligibility for extradition. The court must determine only “whether a valid treaty exists; whether the crime charged is covered by the relevant treaty; and whether the evidence marshaled in support of the complaint for extradition is sufficient under the applicable standard of proof.” *Skaftouros*, 667 F.3d at 154–55 (quoting *Cheung v. United States*, 213 F.3d 82, 88 (2d Cir. 2000)). The hearing is “not to be regarded as in the nature of a final trial by which the prisoner could be convicted or acquitted of the crime charged against

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<sup>6</sup> Section 3184 authorizes filing of the complaint with “any justice or judge of the United States, or any magistrate judge authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State.” As a matter of longstanding practice, such complaints are typically filed in the geographically relevant United States District Court. The complaint may be filed in the United States District Court for the District of Columbia “if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States.” 18 U.S.C. § 3184.

him,” *id.* at 155 (quoting *Benson v. McMahon*, 127 U.S. 457, 463 (1888)), nor is it “the occasion for an adjudication of guilt or innocence,” *id.* (quoting *Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981)). Rather, the extradition hearing is “essentially a preliminary examination to determine whether a case is made out which will justify the holding of the accused and his surrender to the demanding nation.” *Lo Duca v. United States*, 93 F.3d 1100, 1104 (2d Cir. 1996) (quoting *Ward v. Rutherford*, 921 F.2d 286, 287 (D.C. Cir. 1990)).<sup>7</sup>

If the court deems the evidence sufficient to sustain the charge under the applicable treaty, the court “shall certify the same” to the Secretary of State. 18 U.S.C. § 3184. Because the judicial officer’s

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<sup>7</sup> The person sought may choose not to contest the extradition request, either by consenting to extradition or waiving it entirely. If the person *consents* to extradition, the court will enter a finding of extraditability and the Secretary of State will issue a surrender warrant as usual. Consent may benefit the person sought by shortening the extradition process somewhat and reducing any period of detention; but it does not pretermite the process entirely. Because the person is being transferred through the formal extradition process, she will enjoy the attendant protections of the “rule of specialty,” which generally prohibits a requesting state from prosecuting or punishing the extradited person for charges beyond those contained in the surrender warrant. See *United States v. Rauscher*, 119 U.S. 407, 424 (1886) (interpreting U.S. law to conclude that the extraditee may “be tried only for the offense with which he is charged in the extradition proceedings, and for which he was delivered up”); U.S. Dept. of State, 7 Foreign Affairs Manual § 1631.4, <https://fam.state.gov/FAM/07FAM/07FAM1630.html> [<https://perma.cc/T873-RNJS>] (Fugitives who “consent to extradition . . . trigger[] the protection of the rule of specialty.”). Alternatively, if the person *waives* extradition, then she is transferred to the requesting state outside the extradition process. The benefit to the person sought is usually a much speedier transfer to the requesting state; the downside to her is that the rule of specialty and any other treaty protections do not apply. See, e.g., *United States v. DiTommaso*, 817 F.2d 201, 211-12 (2d Cir. 1987).

certificate of extraditability does not adjudicate the person's guilt or innocence, but "serve[s] only to insure that his culpability will be determined in another and, in this instance, a foreign forum," it is not considered a final order that can be appealed directly under 28 U.S.C. § 1291. *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir. 1976). Rather, the court's finding of extraditability is subject only to limited review through a habeas proceeding. As we have explained: "The rule has long been accepted that a habeas judge can only 'inquire whether the magistrate 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.'" *Id.* (quoting *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925)).

Upon a judicial finding of extraditability, the Secretary of State must then decide whether to order the person extradited, by issuing a warrant for the person's surrender to the requesting state. In making this decision, the Secretary has "final authority to extradite the fugitive, but is not required to do so." *Lo Duca*, 93 F.3d at 1103; *see also* 18 U.S.C. § 3186 ("Secretary of State *may* order the person . . . to be delivered to any authorized agent of such foreign government") (emphasis added); *United States v. Kin-Hong*, 110 F.3d 103, 109 (1st Cir. 1997) (noting that the Secretary may decline to extradite a fugitive "on any number of discretionary grounds, including but not limited to, humanitarian and foreign policy considerations").

## B. The Convention Against Torture

The Convention provides that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” CAT, art. III, Dec. 10, 1984, 1465 U.N.T.S. 85 (1984).<sup>8</sup> The Convention is a non-self-executing treaty—by its own force, it confers no rights that are enforceable in U.S. courts. *See Pierre v. Gonzales*, 502 F.3d 109, 114 (2d Cir. 2007); *see also* 136 Cong. Rec. S17486–01, S17492 (daily ed. Oct. 27, 1990) (“[T]he provisions of Articles 1 through 16 of the Convention are not self-executing.”). Following ratification of the Convention, Congress enacted FARRA, which broadly articulated American “policy” as follows:

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.

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<sup>8</sup> For purposes of the Convention, torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” CAT, art. I.

Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231). In addition, Congress directed the heads of the appropriate agencies to “prescribe regulations to implement the obligations of the United States under Article 3.” FARRA § 2242(b).

Pursuant to FARRA, the Department of State promulgated a series of regulations that outline its CAT obligations when extraditing fugitives. The regulations identify the Secretary of State as “the U.S. official responsible for determining whether to surrender a fugitive to a foreign country by means of extradition.” 22 C.F.R. § 95.2(b). They state that “to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, 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 when appropriate in making this determination.” *Id.* They further state that “[i]n each case where allegations relating to torture are made[,] . . . 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). And, they provide that “[d]ecisions of the Secretary concerning surrender of fugitives for extradition are matters of executive discretion not subject to judicial review.” *Id.* § 95.4.

### **C. Procedural History**

Monika Kapoor is an Indian citizen who entered the United States in 1999 and overstayed her visa. In March 2010, Kapoor was

placed in immigration removal proceedings. She subsequently applied for asylum and withholding of removal and relief under the Convention. On April 26, 2010, an Indian court issued a warrant for Kapoor's arrest based on the following five violations of the Indian Penal Code ("IPC"):

1. Cheating and dishonestly inducing delivery of property, in violation of IPC § 420;
2. Forgery of valuable security, will, etc., in violation of IPC § 467;
3. Forgery for the purpose of cheating, in violation of IPC § 468;
4. Using as genuine a forged document, in violation of IPC § 471; and
5. Criminal conspiracy to commit the aforementioned offenses, in violation of IPC § 120B.

These violations stem from allegations that Kapoor and her two brothers forged documents for jewelry transactions and then used those documents to obtain licenses from the Indian government to import raw materials duty free. As a result of that purported scheme, the Indian government allegedly lost approximately \$679,000. In October 2010, the Indian government submitted a formal request to the Department of State for Kapoor's extradition pursuant to the Treaty on Extradition between the United States and India. Article 2 of the Treaty defines an extraditable offense to be one that is

punishable in both India and the United States by imprisonment for a period of more than one year or by a more severe penalty.

On May 2, 2011, the United States filed a complaint in the United States District Court for the Eastern District of New York, seeking an arrest warrant based on India's extradition request. A magistrate judge issued a warrant for Kapoor that same day. Kapoor was arrested, arraigned, and released on bail pending the resolution of the extradition proceedings. Kapoor's immigration proceedings were held in abeyance pending the resolution of the extradition proceedings.

On July 28, 2011, the magistrate judge held an extradition hearing to determine whether to grant the government's request for a certificate of extraditability. The only argument that Kapoor raised at the proceeding was that there was no probable cause to sustain the charges against her. On April 17, 2012, the magistrate judge granted the government's request and certified the extradition request. *In re Extradition of Kapoor*, No. 11-M-456 (RML), 2012 WL 1318925 (E.D.N.Y. Apr. 17, 2012). In granting the request, the magistrate judge concluded that the Indian government's proof met the probable cause standard for each of the five charges against Kapoor. *Id.* at \*5–6. The magistrate judge denied, however, the government's motion to revoke Kapoor's bond and remand Kapoor into custody until the completion of the extradition process.

On June 27, 2012, Kapoor filed her first of three petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In that petition,



Kapoor argued that the magistrate judge erred by excluding certain evidence that she offered at the extradition hearing and that the Treaty's dual criminality requirement had not been satisfied. On May 7, 2014, the district court denied the petition, concluding that the magistrate judge properly excluded Kapoor's proffered evidence and that dual criminality was shown. *Kapoor v. Dunne*, No. 12-cv-3196 (FB), 2014 WL 1803271 (E.D.N.Y. May 7, 2014). Kapoor appealed the district court's decision, and on June 2, 2015, this Court affirmed the denial of the petition. *Kapoor v. Dunne*, 606 F. App'x 11, 12 (2d Cir. 2015).

On July 24, 2015, Kapoor submitted materials to the Secretary of State, requesting that the Secretary deny the Indian government's extradition request because Kapoor would be at risk of harm if surrendered to India. On September 18, 2015, the State Department granted India's request and issued a warrant authorizing Kapoor's surrender to India under 18 U.S.C. § 3186 and the Treaty (the "Surrender Warrant"). Upon Kapoor's request, the Department provided an explanation for the Surrender Warrant via a letter dated September 25, 2015. In that letter, the Department confirmed that it reviewed all materials submitted directly to the Department as well as the pleadings and filings submitted to the district court. The Department explained that under the Convention,

the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation

involves consideration of “whether a person facing extradition from the U.S. ‘is more likely than not’ to be tortured in the State requesting extradition.”

Gov’t App’x 268. The Department then confirmed “that the decision to surrender Monika Kapoor to India complies with the United States’ obligations under the Convention and its implementing statute and regulations.” *Id.* at 269.

On October 7, 2015, Kapoor filed a second habeas petition pursuant to 28 U.S.C. § 2241, challenging the Department’s extradition decision. With her petition, Kapoor provided additional evidence in support of her CAT claim. After the Department agreed to consider any new materials in support of Kapoor’s CAT claim, Kapoor withdrew the petition without prejudice to renewal if the Department decided not to deny extradition.

By a letter dated August 4, 2016, the Department notified Kapoor that it decided to reaffirm the prior authorization of Kapoor’s surrender. The Department stated that it reviewed the supplemental materials that Kapoor submitted directly to the Department on October 15, 2015, as well as the materials submitted to the district court in support of her second habeas petition. The Department again confirmed “that the decision to surrender Monika Kapoor to India complies with the United States’ obligations under the Convention and its implementing statute and regulations.” *Id.* at 277.

On October 25, 2016, Kapoor filed a third habeas petition pursuant to 28 U.S.C. § 2241, which is the petition at issue in this appeal. Kapoor asked the district court to grant the following relief:

1. Assume jurisdiction over her claims, including humanitarian and torture claims;
2. Grant a preliminary injunction prohibiting her extradition or surrender to Indian authorities “while this matter is pending in the Courts”;
3. Enter an order regarding depositions Kapoor offered to give in the United States to the Indian government;
4. Grant a writ of habeas corpus directing the United States to release Kapoor from “executive detention”; and
5. Grant any further just and proper relief.

Kapoor alleged that the Secretary’s decision to extradite her violated her procedural and substantive due process rights, CAT, and FARRA. In particular, Kapoor contended that she would likely be tortured if returned to India and that the Secretary erred by finding the contrary. On December 29, 2016, the United States filed an opposition to the petition.

On November 17, 2021, Kapoor filed a motion to supplement the record. In the motion, Kapoor stated that two of the charges against her—specifically, the violations of IPC §§ 467 and 468—had been dismissed. Additionally, she stated that her two co-defendants (her brothers) resolved the remaining three charges by paying fines. She attached a letter from an Indian law firm, which stated that the

Indian court indicated that it would permit Kapoor to resolve the three remaining charges with fines. Thus, Kapoor argued that she was no longer being charged with an extraditable offense because none of the charges against her required imprisonment.

On November 18, 2021, the district court held oral argument and directed the parties to file supplemental briefing on the relevant issues, including the issue of whether the district court had jurisdiction to review the Secretary's determination of Kapoor's CAT claim. After the hearing, the Indian government provided a series of updates which confirmed that Kapoor was no longer charged with violations of IPC §§ 467 and 468 but clarified that the extradition request was still valid because the remaining charges against Kapoor are punishable by terms of imprisonment exceeding one year.

On January 26, 2022, Kapoor filed a supplemental brief pursuant to the district court's request at oral argument. Kapoor argued that the district court had jurisdiction to adjudicate her CAT claim. She also argued that the district court's certification of the extradition request was stale because of the dismissal of the two charges under IPC §§ 467 and 468 and because the remaining charges could be resolved by fines (and thus became non-extraditable offenses).

In a letter dated February 7, 2022, the Indian government stated that it (and the Indian court) never offered to resolve the remaining charges against Kapoor with a fine and that it was "misleading and false" for Kapoor to state that her co-defendants resolved the

remaining three charges by only paying fines. Gov't App'x 292. The Indian government clarified that the Indian court imposed fines on the co-defendants and considered that the co-defendants had already spent considerable time in custody and sentenced them to time served. The Indian government also confirmed the information provided in its previous updates.

On March 4, 2022, the Department notified Kapoor that (1) it received the February 7, 2022, letter from the Indian government; and (2) on March 3, 2022, it issued an amended warrant for Kapoor's surrender for the remaining three charges (the "Amended Surrender Warrant") after reviewing all pertinent information including the materials submitted to the district court. The Department later confirmed in a sworn declaration that in connection with issuing the Amended Surrender Warrant, it reviewed all the materials that Kapoor submitted to the district court and to the Department through March 3, 2022. The declaration further stated that the decision to issue the Amended Surrender Warrant "was based on the Department's analysis that no information received subsequent to the issuance of the initial surrender warrant in this case would require the Department to reassess its prior analysis regarding Ms. Kapoor's claims that she would likely be tortured or mistreated if extradited." *Id.* at 298 ¶ 8. The declaration confirmed that the Amended Surrender Warrant "complies with the United States' obligations under the Convention and its implementing statute and regulations." *Id.*

On March 8, 2022, Kapoor filed an amended supplemental brief, which was substantially the same as her initial supplemental

brief. In her amended supplemental brief, Kapoor acknowledged the Amended Surrender Warrant. She argued that her case required further review for staleness. In particular, she requested that the district court review whether there still is an extraditable offense and whether the court's certificate of extraditability should be revoked. In support of her argument, she claimed that there was new evidence from the Indian court proving that the two charges against her had been dismissed but that there had been no new determination from the Department since 2016. On April 28, 2022, the United States filed a supplemental memorandum, arguing that the district court did not have jurisdiction to review Kapoor's CAT claim, among other things.

On September 20, 2022, the district court denied Kapoor's petition for lack of subject matter jurisdiction. *Kapoor v. Demarco*, No. 16-cv-5834 (FB), 2022 WL 4357498 (E.D.N.Y. Sept. 20, 2022). The district court acknowledged that although this Court previously held that FARRA did not deprive federal courts of jurisdiction to address CAT claims raised in habeas petitions, Congress had enacted 8 U.S.C. § 1252(a)(4) through the REAL ID Act. Citing D.C. Circuit precedent, the district court stated that Section 1252(a)(4) established that an individual facing extradition "possesses no statutory right to judicial review of conditions in the receiving country." *Id.* at \*2 (quoting *Omar v. McHugh*, 646 F.3d 13, 18 (D.C. Cir. 2011)). The district court further held that the lack of judicial review on this issue does not violate the Suspension Clause of the Constitution, because the writ was not historically available to those facing extradition based on claims of conditions in the receiving country.

This appeal followed.

## II. Discussion

In reviewing the denial of a habeas petition brought pursuant to 28 U.S.C. § 2241, this Court examines de novo legal questions affecting subject matter jurisdiction. *See Wang*, 320 F.3d at 139–40.

A district court may grant a writ of habeas corpus when a petitioner is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Kapoor’s habeas petition rests on the central claim that the Department of State failed to conduct a meaningful review of her claim that she will likely be tortured if she is extradited to India, in violation of the Convention.<sup>9</sup> Because CAT is not a self-executing treaty, Kapoor must rely on the rights “contained in [the Convention’s] implementing statutes and

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<sup>9</sup> We understand Kapoor’s habeas petition to be seeking release from detention that is ongoing because of the Secretary’s decision. Given that Kapoor is subject to a court order releasing her on bond with restrictive conditions, she is in custody for the purposes of habeas corpus. *See Hoffler v. Bezio*, 726 F.3d 144, 153 n.8 (2d Cir. 2013) (“We note only that the Supreme Court has broadly construed ‘custody’ for purposes of habeas corpus, so as to reach restraints on liberty even when a defendant is not in actual, physical custody, as for example when he is subject to the court’s criminal jurisdiction though released on bail or on his own recognizance.”) (internal quotation marks and citations omitted). The Supreme Court has emphasized that “[h]abeas has traditionally been a means to secure release from unlawful detention” rather than “to obtain authorization to stay in this country.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). For that reason, a different petitioner, not detained or released on bond or other restrictions, might not be able to meet the custody requirement. *See also id.* at 117 (“The writ simply provided a means of contesting the lawfulness of restraint and securing release.”); *id.* at 122 (explaining that the petitioner had no right to habeas review because “the legality of his detention [was] not in question”).

regulations.” *Yuen Jin v. Mukasey*, 538 F.3d 143, 159 (2d Cir. 2008). That implementing statute is FARRA.

As noted above, FARRA provides that “[i]t 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 . . . .” FARRA § 2242(a). As originally enacted, FARRA also contained a provision that expressly authorized review of CAT claims through the procedures outlined for petitions for review of immigration removal orders, but otherwise limited other forms of judicial review:

Notwithstanding any other provision of law, . . . nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, . . . except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. [§] 1252).

FARRA § 2242(d).

We have previously considered whether this statutory provision limits individuals contesting removal orders based on CAT claims to petitions for review filed directly in the Court of Appeals and bars them from raising such claims in habeas petitions. In *Wang*, we held that FARRA was not sufficiently “specific and unambiguous” to bar habeas jurisdiction over such claims, explaining that “a statute must, at a minimum, explicitly mention either ‘habeas corpus’ or ‘28



U.S.C. § 2241' in order to limit or restrict [habeas] jurisdiction." 320 F.3d at 141 (internal quotation marks omitted).

Two years after our decision in *Wang*, Congress clarified FARRA through the REAL ID Act of 2005. As relevant here, the REAL ID Act added a new paragraph to 8 U.S.C. § 1252 limiting judicial review of CAT claims. The new provision, codified at 8 U.S.C. § 1252(a)(4), added specific references to both Section 2241 and to "habeas corpus," as we had indicated in *Wang* would be necessary to foreclose habeas review:

Notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28, United States Code, 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 [8 U.S.C. § 1252] shall be the sole and exclusive means for judicial review of any cause or claim under [the Convention] . . . .

Pub. L. No. 109–13, § 106(a)(1)(B), 119 Stat. 231, 310 (2005) (codified at 8 U.S.C. § 1252(a)(4)) (emphasis added). Accordingly, we now consider whether the language of Section 1252(a)(4) is sufficient to bar Kapoor from raising her CAT claims in a habeas petition.<sup>10</sup>

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<sup>10</sup> In her petition, Kapoor represents that her habeas action also "arises under" the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et. seq.*, but fails to develop any claim under the APA. In any case, the APA states that review of an agency decision is not available to the extent that: "(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law."

In interpreting a statutory provision, our analysis begins with the plain meaning of the text. *See Williams v. MTA Bus Co.*, 44 F.4th 115, 127 (2d Cir. 2022). “[W]here a provision precluding [judicial] review is claimed to bar habeas review, the [Supreme] Court has required a particularly clear statement that such is Congress’[s] intent.” *Demore v. Kim*, 538 U.S. 510, 517 (2003). “Implications from statutory text or legislative history are not sufficient to repeal habeas jurisdiction; instead, Congress must articulate specific and unambiguous statutory directives to effect a repeal.” *St. Cyr*, 533 U.S. at 299. Additionally, “if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible, [courts] are obligated to construe the statute to avoid such problems.” *Id.* at 299–300 (internal quotation marks and citation omitted).

The questions before us, therefore, are whether Section 1252(a)(4) specifically and unambiguously precludes a court from exercising habeas jurisdiction over Kapoor’s CAT claim, and if so, whether the statute unconstitutionally suspends the writ of habeas corpus.

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§§ 701(a)(1)–(2). To the extent Kapoor attempts to bring her CAT claims under the APA, she cannot do so. Because we find that habeas review of Kapoor’s CAT claims is barred by Section 1252(a)(4), Kapoor cannot circumvent this jurisdictional bar by invoking the APA. *See Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (holding petitioner could not bring APA claim in district court to challenge removal order because Section 1252(a)(5) divested district courts of jurisdiction over challenges to removal orders).

Section 1252(a)(4) contains a clear statement of congressional intent to bar all habeas jurisdiction over CAT claims, with narrowly delineated exceptions not relevant here.<sup>11</sup> The statute states that “[n]otwithstanding . . . section 2241 of Title 28, or any other habeas corpus provision, . . . a petition for review [of a final order of removal] shall be the *sole and exclusive* means for judicial review of *any* cause or claim under [CAT] . . . .” 8 U.S.C. § 1252(a)(4) (emphases added). By its explicit reference to both 28 U.S.C. § 2241 and “any other habeas corpus provision,” Section 1252(a)(4) plainly bars habeas review of CAT claims. *Id.*; see *St. Cyr*, 533 U.S. at 312. The 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” CAT claim. 8 U.S.C. § 1252(a)(4).

Kapoor argues that this provision can be construed as precluding habeas review of challenges only to final orders of removal without affecting habeas jurisdiction in extradition cases. But the language of Section 1252(a)(4) is far more expansive than Kapoor contends. The paragraph makes clear that a petition for review of a final order of removal is the only means of judicial review for “*any* cause or claim under [the Convention].” 8 U.S.C. § 1252(a)(4) (emphases added). “[T]he word ‘any’ has an expansive meaning. . . . Here, ‘any’ means that the provision applies to [claims] ‘of whatever

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<sup>11</sup> Section 1252(a)(4) provides that a petition for review of a final order of removal is the only means of judicial review over CAT claims “except as provided in subsection (e).” Section 1252(e) provides aliens in expedited removal proceedings certain additional forms of judicial review including narrow habeas review of particular claims.

kind.’” *Patel v. Garland*, 596 U.S. 328, 338 (2022) (internal quotation marks and citations omitted). This broad language encompasses CAT claims like Kapoor’s made in the extradition context and therefore bars habeas review of those claims.

Moreover, Kapoor’s interpretation of Section 1252(a)(4) would render that provision superfluous in light of Section 1252(a)(5). Section 1252(a)(5) provides that a petition for review is the only means of judicial review over final orders of removal, subject to the same exception provided in Section 1252(a)(4).<sup>12</sup> 8 U.S.C. § 1252(a)(5). Thus, Section 1252(a)(5) already precludes habeas review of nearly all challenges to final orders of removal. *See Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008). 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 Kapoor suggests, would render the former paragraph pointless. *See City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) (“The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”) (internal quotation marks omitted). Both sections were added or amended in the REAL ID Act to expressly bar habeas review subject to the same exceptions. It would be more than passing strange to imagine that Congress intended, in the very same legislation, to enact one paragraph that does nothing more than is already achieved by another. Thus, the meaning of Section 1252(a)(4) must be different than that of Section 1252(a)(5), and the language of Section 1252(a)(4)

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<sup>12</sup> Like Section 1252(a)(4), Section 1252(a)(5) also provides that a petition for review is the only means of judicial review of challenges to final orders of removal “except as provided in subsection (e).”

plainly bars *any* habeas review of CAT claims, unless specifically excluded, even beyond the review of final orders of removal.

In reaching this conclusion, we recognize that we are not the first Court of Appeals to consider the effect of the REAL ID Act on federal courts' habeas jurisdiction over CAT claims. The D.C. and Fourth Circuits have both held that extraditees do not have the right to habeas review of CAT claims, while the Ninth Circuit has allowed for the barest review of such claims.

We agree with the D.C. Circuit that the REAL ID Act bars habeas review of an extraditee's CAT claims. Writing for the court, then-Judge Kavanaugh emphasized that Section 1252(a)(4) plainly "states that only immigration transferees have a right to judicial review of conditions in the receiving country, during a court's review of a final order of removal." *Omar*, 646 F.3d at 18. The D.C. Circuit thus held that in light of Section 1252(a)(4), military transferees like the plaintiff—and extraditees like Kapoor—possess no statutory right to judicial review of conditions in a receiving country.

The Fourth Circuit has similarly held that extraditees may not obtain habeas review of CAT claims, though it relied exclusively on Section 2242(d) of FARRA. *Mironescu v. Costner*, 480 F.3d 664, 676 (4th Cir. 2007).<sup>13</sup> As explained above, our Court has previously adopted a

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<sup>13</sup> The Fourth Circuit also determined that the rule of non-inquiry on its own did not bar habeas review of the Secretary of State's extradition decision. *Mironescu*, 480 F.3d at 673. The Fourth Circuit reasoned that because FARRA imposed an obligation on the Secretary not to extradite individuals if they are

narrower construction of FARRA § 2242(d), so we are precluded from following the Fourth Circuit’s analytical path. *See Wang*, 320 F.3d at 139–41. But we ultimately reach the same destination in light of the later-enacted Section 1252(a)(4), which, unlike FARRA § 2242(d), expressly prohibits habeas review of CAT claims.

On the other hand, the Ninth Circuit sitting *en banc* could not agree on a coherent approach. In a short *per curiam* opinion that generated five lengthy concurrences and dissents, that Circuit held that the REAL ID Act could be “construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction,” and therefore allows for exceedingly narrow habeas review of CAT claims brought by extraditees. *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956–57 (9th Cir. 2012). The majority held that a district court may do no more than confirm that the Secretary of State had actually considered the extraditee’s CAT claim and found it was not “more likely than not” that the extraditee will face torture if extradited. *Id.* at 957. For the reasons explained above, we are unpersuaded by the Ninth Circuit’s interpretation of the REAL ID Act. We read the plain language of Section 1242(a)(4) to unequivocally bar *any* habeas review of CAT claims in extradition

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likely to face torture, a court could review that decision because the rule of non-inquiry historically only applied absent any federal right to particular treatment in the requesting country. *Id.* at 671–73. As the Fourth Circuit stated, “FARR[A] now has given petitioners the foothold that was lacking when the [Supreme] Court decided [earlier cases].” *Id.* at 671. Although, as discussed below, we do not agree with this analysis, it is of no moment because we conclude Section 1252(a)(4) bars review in any event.

proceedings, and thus we (like the D.C. and Fourth Circuits) part ways with our sister Circuit.

Accordingly, we find that Section 1252(a)(4) is sufficiently clear and unambiguous to bar our habeas jurisdiction over Kapoor's claims under the Convention.<sup>14</sup> Our inquiry then becomes whether application of Section 1252(a)(4) to bar habeas review of CAT claims in the extradition context violates the Suspension Clause of the Constitution.<sup>15</sup>

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<sup>14</sup> Because we conclude that Congress has expressly barred federal habeas review of extradition-based CAT claims, we need not decide whether absent such a bar, there would be an individual right to raise such a claim. As we explain above, the Convention is a non-self-executing treaty—instead, claimants must rely on the rights contained in the Convention's implementing statute and regulations. FARRA sets forth a policy that the United States comply with the Convention and directs the Secretary to prescribe regulations to implement the obligations of the United States under Article 3 of the Convention. FARRA § 2242(a)–(b). Those regulations, in turn, disclaim the creation of any personal rights. 22 C.F.R. § 95.4. Whether an extraditee could nonetheless bring a CAT claim under FARRA pursuant to its policy statement or directive to the Secretary, absent the bar currently in place under Section 1252(a)(4), is a question we do not address here. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 288 (2002) (holding that a statute that “speak[s] only in terms of institutional policy and practice . . . cannot give rise to individual rights”) (internal quotation marks omitted).

<sup>15</sup> Because we determine that Section 1252(a)(4) unambiguously bars habeas review of CAT claims in the extradition context, we have no occasion to consider the constitutional avoidance doctrine, which applies only “where an alternative interpretation of the statute is fairly possible.” *St. Cyr*, 533 U.S. at 300 (internal quotation marks omitted). In any event, as we proceed to explain, the rule of non-inquiry has always precluded judicial review in extradition proceedings of claims based on anticipated treatment in a receiving country. Accordingly, no serious constitutional concern is raised by Section 1252(a)(4).



Kapoor argues that judicial consideration of the CAT claim in her habeas petition is guaranteed by the Suspension Clause. The Suspension Clause provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const., art. I, § 9, cl. 2. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention . . . .” *St. Cyr*, 533 U.S. at 301; *see also Swain v. Pressley*, 430 U.S. 372, 386 (1977) (Burger, C.J., concurring in part and concurring in the judgment) (noting that “the traditional Great Writ was largely a remedy against executive detention”). Thus, Section 1252(a)(4) would violate the Constitution if it precluded the type of habeas review historically protected by the Suspension Clause. We find no such violation arises because fugitives like Kapoor facing extradition have not traditionally been able to maintain a habeas claim based on their anticipated treatment in a receiving country under the rule of non-inquiry.

The rule of non-inquiry “bars courts from evaluating the fairness and humaneness of another country’s criminal justice system, requiring deference to the Executive Branch on such matters.” *Hilton v. Kerry*, 754 F.3d 79, 84–85 (1st Cir. 2014) (internal quotation marks omitted). Clear articulation of the doctrine can be traced back to Supreme Court cases that initially set the narrow parameters for habeas relief in the context of extradition generally. In these cases, the Supreme Court limited its habeas review to “an inquiry as to whether, under the construction of the act of congress and the treaty entered



into[,] . . . there was legal evidence before the commissioner to justify him in exercising his power to commit the person accused to custody.” *Benson*, 127 U.S. at 463; *see also In re Oteiza y Cortes*, 136 U.S. 330, 334 (1890) (confirming narrow scope of habeas review in extradition proceedings); *Ornelas v. Ruiz*, 161 U.S. 502, 508–09 (1896) (same).

With these general principles established, the Supreme Court first had occasion to consider, in *Neely v. Henkel*, 180 U.S. 109 (1901), the scope of habeas proceedings in extradition cases with respect to claims based on the conditions in the country requesting extradition. In *Neely*, a habeas petitioner claimed that his extradition to Cuba was unconstitutional because it would allow his trial there to be conducted without “all of the rights, privileges, and immunities that are guaranteed by the Constitution.” *Id.* at 122. Speaking for the Court, Justice Harlan rejected the claim:

When an American citizen commits a crime in a foreign country, he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty stipulations between that country and the United States.

*Id.* at 123; *see also Glucksman v. Henkel*, 221 U.S. 508, 512 (1911) (“We are bound by the existence of an extradition treaty to assume that the trial will be fair.”).

Most recently in *Munaf v. Geren*, the Supreme Court reaffirmed this point while considering the habeas petition of a U.S. citizen

whom the military detained in Iraq and intended to transfer to Iraqi custody. 553 U.S. 674, 700–01 (2008). Though the Court expressed “serious concern” over the petitioner’s allegation that his military transfer to Iraqi custody would likely result in torture, the Court stated that such a concern is to be “addressed by the political branches, not the Judiciary.”<sup>16</sup> *Id.* at 700. The Court noted that the “Judiciary is not suited to second-guess such determinations—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.” *Id.* at 702 (citing *The Federalist* No. 42, p. 279 (J. Cooke ed. 1961) (J. Madison)). “In contrast, 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.”<sup>17</sup> *Id.*

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<sup>16</sup> In *Munaf*, the Supreme Court reserved judgment on a hypothetical “extreme case in which the Executive has determined that a detainee [in custody] is likely to be tortured but decides to transfer him anyway.” 553 U.S. at 702; *see id.* at 706 (Souter, J., concurring). This case does not present that issue. Here, the Department of State has acknowledged that the Convention obligated the United States “not to extradite a person to a country ‘where there are substantial grounds for believing that he would be in danger of being subjected to torture’” and confirmed on three separate occasions that the decision to surrender Kapoor “complies with the United States’ obligations under the Convention.” Gov’t App’x 268–69, 274–77, 298 ¶ 8.

<sup>17</sup> This historical division also dovetails with the statutory framework of extradition mapped out above—legal issues such as the sufficiency of evidence regarding the crime charged and interpretation of the applicable treaty are reserved for the judicial officer while determinations about the conditions of the country requesting extradition are reserved for the Department of State. “Both institutional competence rationales and our constitutional structure, which places

The Supreme Court's reasoning in *Munaf* applies with equal force in the extradition context, where nearly all transfers occur pursuant to bilateral treaties signed by the President and ratified by two-thirds of the Senate. In approving extradition treaties, the political branches have made a determination that extradition to specific treaty partners is generally warranted and appropriate while still reserving the Secretary of State's ability to withhold extradition based on any number of considerations, such as the United States' need to comply with its obligations under the Convention or other exceptions enumerated in the treaties themselves.

Like the Supreme Court, this Court has not explicitly identified the rule of non-inquiry by name, but it has repeatedly applied the rule in substance to bar judicial consideration of a receiving country's conditions in the context of habeas proceedings initiated by extraditees. See *Skaftouros*, 667 F.3d at 157 ("[C]onsideration of the procedures that will or may occur in the requesting country is not within the purview of a habeas corpus judge.") (internal quotation marks omitted); *Ahmad v. Wigen*, 910 F.2d 1063, 1067 (2d Cir. 1990) ("The interests of international comity are ill-served by requiring a foreign nation . . . to satisfy a United States district judge concerning the fairness of its laws and the manner in which they are enforced. It is the function of the Secretary of State to determine whether extradition should be denied on humanitarian grounds.") (citation omitted); *Sindona v. Grant*, 619 F.2d 167, 174 (2d Cir. 1980) ("[T]he

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primary responsibility for foreign affairs in the [E]xecutive [B]ranch, support this division of labor." *Kin-Hong*, 110 F.3d at 110 (citing *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319–22 (1936)).

degree of risk to [the petitioner's] life from extradition is an issue that properly falls within the exclusive purview of the executive branch.”); *Gallina v. Fraser*, 278 F.2d 77, 78 (2d Cir. 1960)<sup>18</sup> (“[W]e have discovered no case authorizing a federal court, in a habeas corpus proceeding challenging extradition from the United States to a foreign nation, to inquire into the procedures which await the relator upon extradition.”).

Other circuits, too, have held that the rule of non-inquiry prohibits habeas review of the anticipated treatment of individuals in a foreign country requesting extradition. *See Hilton*, 754 F.3d at 84–85; *Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006) (“Under the traditional doctrine of ‘non-inquiry,’ such humanitarian considerations are within the purview of the executive branch and generally should not be addressed by the courts in deciding whether a petitioner is extraditable.”); *Venckiene v. United States*, 929 F.3d 843, 855 (7th Cir. 2019) (“Under the settled and general rule of non-inquiry, in extradition, discretionary judgments and matters of

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<sup>18</sup> In *Gallina*, which was decided by our Court in 1960, we speculated about a possible exception to the rule of non-inquiry in extreme cases when “the relator, upon extradition, would be subject to procedures or punishment so antipathetic to a federal court’s sense of decency as to require reexamination of the principle set out above.” *Gallina*, 278 F.2d at 79. Other courts have noted the hypothetical “exception” we mentioned in *Gallina*, but none has applied it. *See Hilton*, 754 F.3d at 87 (“No court has yet applied such a theoretical *Gallina* exception. . . . [W]e decline to apply such an exception.”); *Hoxha v. Levi*, 465 F.3d 554, 564 n.14 (3d Cir. 2006) (stating that the *Gallina* exception “remains theoretical, however, because no federal court has applied it to grant habeas relief in an extradition case”). We likewise have no occasion to address such an exception because this case is governed by Congress’s express prohibition of habeas review of CAT claims.

political and humanitarian judgment are left to the executive branch.”) (internal quotation marks and brackets omitted); *Santos v. Thomas*, 830 F.3d 987, 1007 n.9 (9th Cir. 2016) (“[T]he rule [of non-inquiry] bars the judiciary from preventing the surrender of a fugitive on the basis of humanitarian considerations once extradition has been certified, reserving that decision to the Secretary of State.”).

In light of this history, the rule of non-inquiry and the separation-of-powers principles animating that rule must inform our determination of whether Kapoor’s petition falls within the protection of the Suspension Clause. See *Boumediene v. Bush*, 553 U.S. 723, 746 (2008) (“The separation-of-powers doctrine, and the history that influenced its design, . . . must inform the reach and purpose of the Suspension Clause.”). Kapoor claims that the Department of State failed to meaningfully review her allegation that she will likely be tortured if she is extradited to India. Though her claim is framed as a question of law—*i.e.*, whether the Department met its obligation under the Convention—the claim would require our Court to review the evidence available to the Department when it made its extradition determination. Kapoor effectively asks this Court to review the conditions of the country requesting her extradition and determine how she is likely to be treated if returned<sup>19</sup>—the precise type of

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<sup>19</sup> See Appellant Br. at 18 (“Petitioner alleges that her extradition would represent illegal government conduct, given that her CAT claim remains adjudicated by any *Court*”) (emphasis added); *id.* at 23–24 (arguing for habeas review of her CAT claim because the “executive does not have unfettered power to extradite[] Monika Kapoor to torture or inhumane treatment”); Appellant Reply Br. at 3 (arguing that this Court has jurisdiction because “[n]o court has made any

question barred by the rule of non-inquiry and that courts have therefore declined to address in the extradition context. *See Munaf*, 553 U.S. at 700 (stating that the fear of torture in a receiving country is “a matter of serious concern, but . . . that concern is to be addressed by the political branches, not the Judiciary”).

The historical tradition of refusing to consider habeas petitions challenging the conditions of the country requesting extradition means Kapoor does not present a claim implicating the type of habeas review protected by the Suspension Clause. *See 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.”); *id.* at 24 (“Congress has no constitutional obligation to grant extradition and military transferees . . . a right to judicial review of conditions in the receiving country.”); *see also Thuraissigiam*, 591 U.S. at 112, 117–20 (finding that a statute that eliminated jurisdiction over habeas petition did not violate the Suspension Clause because the petitioner sought relief that fell outside the historical scope of the writ of habeas corpus). Because Kapoor’s use of the writ of habeas corpus would not have been cognizable historically, there is no constitutional rule that would bar Section 1252(a)(4)’s divestment of our habeas jurisdiction to hear her extradition-based CAT claim.

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determination on [Kapoor’s] CAT claim” and, instead, they have “relied on the letters from the Secretary of State’s office regarding her [CAT] claim”).

Accordingly, we conclude that Section 1252(a)(4) deprives this Court of habeas jurisdiction to hear Kapoor's CAT claim.<sup>20</sup>

### III. Conclusion

The United States has adhered to the Convention Against Torture and there is no question that it has thereby bound itself to the treaty's obligation not to return anyone to a country where she is

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<sup>20</sup> Kapoor also claims that the district court violated her due process rights by: (i) first finding that it had jurisdiction to review her CAT claim during oral argument but then denying jurisdiction in its ruling on the petition, and (ii) failing to address the due process arguments she raised at oral argument and in supplemental briefing. We find these arguments unpersuasive.

*First*, the district court's remarks during oral argument and its decision to ask for additional briefing on the question of jurisdiction make clear that its habeas jurisdiction over Kapoor's CAT claim was an open question the court was still considering. *See* App'x 31.

*Second*, Kapoor failed to articulate a colorable due process claim that would otherwise be sufficient to warrant exercise of habeas jurisdiction. Kapoor's arguments amount to nothing more than the claim that the Indian extradition request was stale because two of the charges against her were dismissed, and the three remaining charges could be resolved by fines (and are therefore not extraditable offenses). However, the Secretary of State provided an Amended Surrender Warrant based only on the three remaining charges, and additional correspondence from the Indian government clarified that those charges are still punishable by imprisonment exceeding one year. The Treaty defines an extraditable offense to be one that "is punishable . . . for a period of more than one year" of imprisonment. Treaty, art. 2. Thus, it does not matter what Kapoor's *actual punishment* may turn out to be; it only matters that the offense is *punishable* by imprisonment of more than one year. *See Yau-Leung v. Soscia*, 649 F.2d 914, 919 (2d Cir. 1981) (discussing a similar treaty provision and concluding that the provision "appears concerned not with the penalties received by any criminal, but with the possible penalties, since such penalties supply a measure of the seriousness with which the crime is regarded").

more likely than not to be tortured. Our holding today affirms only that Congress has decided that, in the context of extradition, compliance with that obligation is entrusted to the Secretary of State rather than the courts.

In sum, we hold as follows:

- (1) Section 1252(a)(4) bars courts from exercising habeas jurisdiction over CAT claims raised by individuals facing extradition.
- (2) Application of Section 1252(a)(4) to bar habeas review of CAT claims brought by extraditees does not violate the Suspension Clause, because the rule of non-inquiry has historically precluded courts from reviewing the anticipated treatment of an individual in a foreign country requesting extradition.

We therefore AFFIRM the district court's dismissal of Kapoor's petition.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MONIKA KAPOOR,

Petitioner,

-against-

VINCENT F. DEMARCO, United States Marshal  
for the Eastern District of New York, and  
ROBERTO CORDEIRO, Chief Pretrial Services  
Officer for the Eastern District of New York,

Respondents.  
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A Memorandum and Order of Honorable Frederic Block, United States District Judge,  
having been filed on September 20, 2022, denying the petition for a writ of *habeas corpus*; it is

ORDERED and ADJUDGED that the petition for a writ of *habeas corpus* is denied.

Dated: Brooklyn, NY  
September 21, 2022

Brenna B. Mahoney  
Clerk of Court

By: /s/Jalitzia Poveda  
Deputy Clerk

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ SEP 21 2022 11

JUDGMENT **BROOKLYN OFFICE**  
16-CV-5834-FB

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MONIKA KAPOOR,

Petitioner,

-against-

VINCENT F. DEMARCO, United States  
Marshal for the Eastern District of New  
York, and ROBERTO CORDEIRO,  
Chief Pretrial Services Officer for the  
Eastern District of New York,

Respondents.

-----X

*Appearances:*

*For the Petitioner:*

AMY NUSSBAUM GELL  
Gell & Gell  
299 Broadway, Suite 620  
New York, New York 10007

*For the Respondents:*

MEREDITH A. ARFA  
Assistant United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

**BLOCK, Senior District Judge:**

The Secretary of State has ordered Monika Kapoor extradited to India to face criminal charges there. In response, Kapoor filed a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241.

To bring the case up to date, the Court held oral argument on November 18, 2021, and allowed the parties to file supplemental post-argument briefs. Having considered all the parties' written submissions, as well as their oral arguments, the

Court denies the petition.

## I

Kapoor is a native and citizen of India. She entered the United States in approximately 1999 and overstayed her visa. She was placed in removal proceedings in March 2010. She applied for asylum, withholding of removal and relief under the United Nations Convention Against Torture (“CAT”).

In April 2010, an Indian court issued a warrant for Kapoor’s arrest based on five violations of the Indian Penal Code. In October 2010, the Indian government submitted a formal request for extradition to the United States. In response, the United States government sought an arrest warrant and judicial certificate of extraditability. As a result of the extradition proceedings, the removal proceedings were held in abeyance.

Kapoor was arrested and released on bail. Magistrate Judge Levy held an extradition hearing and, on April 17, 2012, certified that Kapoor was extraditable. He declined to revoke her bail.

Kapoor then filed a petition for a writ of *habeas corpus* challenging Magistrate Judge Levy’s certification. The Court denied the petition. *See Kapoor v. Dunne*, No. 12-CV-3196, 2014 WL 1803271 (E.D.N.Y. May 7, 2014). The Second Circuit affirmed. *See Kapoor v. Dunne*, 606 F. App’x 11 (2d Cir. 2015).

Kapoor then asked the Department of State to deny extradition on the ground that she would face serious harm if returned to India. On September 18, 2015, then-Deputy Secretary of State Antony Blinken issued an extradition surrender warrant.

A letter sent to Kapoor a week later explained that the decision was made “[f]ollowing a review of all pertinent information, including the materials directly submitted to the Department of State.” Resps.’ Mem. of Law, Ex. F. It further noted that CAT obligated the United States “not to extradite a person to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture” and that “this obligation involves consideration of whether a person facing extradition from the U.S. is more likely than not to be tortured in the State requesting extradition.” *Id.* (internal quotation marks omitted). It concluded by “confirm[ing] that the decision to surrender Monika Kapoor to India complies with the United States’ obligations under the Convention and its implementing statute and regulations.” *Id.*

On October 7, 2015, Kapoor filed a petition for a writ of *habeas corpus* challenging the Secretary of State’s extradition decision. After the Secretary of State agreed to consider any new materials Kapoor wished to submit in support of her CAT claim, she withdrew the petition without prejudice to renewal if the Secretary did not deny extradition.

On August 4, 2016, a letter from the Department of State advised Kapoor that it had “decided to reaffirm the prior authorization” of her extradition. Pet., Ex. G. It stated that the decision had been made “[f]ollowing a review of all pertinent information, including th[e] newly-provided materials,” and once again “confirmed that the decision to surrender Monika Kapoor to India complies with the United States’ obligations under the Convention [Against Torture] and its implementing statute and regulations.” *Id.*

In response, Kapoor filed the present *habeas* petition. Magistrate Levy continued her bail pending resolution of the petition.

## II

Kapoor’s central claim is that she will likely be tortured if returned to India, in violation of CAT. While the United States is a signatory to that treaty, it is not self-executing. *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003). “Unless a treaty is self-executing . . . , it does not, in and of itself, create individual rights that can give rise to habeas relief.” *Id.* Rather, Kapoor must rely on rights “containing in [the treaty’s] implementing statutes and regulations.” *Yuen Jin v. Mukasey*, 538 F.3d 143, 159 (2d Cir. 2008).

CAT was implemented by the Foreign Relations Authorization Act (“FRAA”), which declares that the United States will not “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. 105-277, § 2242(a), 112 Stat. 2681 (1998). It then declares, however, that “nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).” *Id.* § 2242(d).

In *Wang*, the Second Circuit held that this statutory provision did not deprive federal courts of jurisdiction to address CAT claims in the context of a habeas corpus petition. *See* 320 F.3d at 141. Two years later, Congress passed the REAL ID Act, which provides that “a petition for review filed with an appropriate court of appeals . . . 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). The D.C. Circuit has held that “the REAL ID Act thus confirms that [a detainee] possesses no statutory right to judicial review of conditions in the receiving country.” *Omar v. McHugh*, 646 F.3d 13, 18 (D.C. Cir. 2011).

Kapoor argues that Congress cannot constitutionally suspend the writ of

habeas corpus. It is true that the Constitution's Suspension Clause protects access to the writ unless it is suspended "in cases of rebellion or invasion." However, the clause "protects the writ as it existed when the Constitution was drafted and ratified." *Boumediene v. Bush*, 553 U.S. 723, 746 (2008). As *Omar* explains, the writ was not historically available to those facing extradition: "Those facing extradition traditionally have not been able to maintain habeas claims to block transfer based on conditions in the receiving country. Rather, applying what has been known as the rule of non-inquiry, courts historically have refused to inquire into conditions an extradited individual might face in the receiving country." 646 F.3d at 19 (citing *Munaf v. Geren*, 553 U.S. 674 (2008), and *Neely v. Henkel*, 180 U.S. 109 (1901)).

It does not follow that Kapoor has no venue to raise her CAT claim. FRAA directs "the heads of the appropriate agencies [to] prescribe regulations to implement the obligations of the United States under [CAT.]" Pub. L. 105-277, § 2242(b). The Secretary of State has done so in the context of extradition:

- (a) In each case where allegations relating to torture are made or the issue is otherwise brought to the Department's attention, appropriate policy and legal offices 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.
- (b) Based on the resulting analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive, or to surrender the

fugitive subject to conditions.

22 C.F.R. § 95.3. The Ninth Circuit has held that this procedure creates a “narrow liberty interest” under which the Secretary of State “*must* make a torture determination before surrendering an extraditee who makes a CAT claim.” *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956-57 (9th Cir. 2012) (en banc). Beyond that, however, “[t]he doctrine of separation of powers and the rule of non-inquiry block any inquiry into the substance of the Secretary’s declaration.” *Id.* at 957 (citing *Munaf*, 553 U.S. 674). No circuit court has afforded any broader habeas review to extraditees.

In this case, the State Department has twice affirmed that it considered Kapoor’s claim but decided that her extradition would not violate CAT. Having ensured that the department made the requisite determination, the Court can award no further relief.

### III

Accordingly, the petition for a writ of *habeas corpus* is denied.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
September 20, 2022



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
Monika Kapoor,  
A079-131-162,  
PETITIONER,

V.

CHARLES DUNNE, United States  
Marshal for the Eastern District of New York,

-and-  
ROBERTO COREDERO, Chief Pretrial Services  
Officer for the Eastern District of New York

RESPONDENTS.  
-----X

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO  
28 U.S.C. §2241, 2242.

Previously Filed and Withdrawn Without Prejudice to Renew under 1:15-cv-05793

16-Civ--

Individual  
Monika Kapoor  
A079-131-162  
26 Federal Plaza  
New York, New York 10278

COMES NOW, PETITIONER, Monika KAPOOR hereby petitions this Court for a “writ  
of habeas corpus” pursuant to Title 28 U.S.C. §2241 (c ) (3) to remedy Petitioner’s  
unlawful monitoring and submission to detention by Respondents in light of the new  
evidence, court procedures and appellate procedures which have not yet been exhausted.

In support of the petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is on a GPS monitoring system under the control of the Respondents and the Pretrial Services Officer. The Motion to Change Custody Status currently pending before Judge Levy who has thus far continued her GPS monitored release pending the submission of this Writ of Habeas Corpus and other forms of relief that she may have. Petitioner is under the direct control of Respondents and their agents. Therefore, this Court has jurisdiction over Petitioner's place of confinement.

#### JURISDICTION

2. This action arises under the Constitution of the United States and Immigration and Naturalization Act ("INA"), 8 U.S.C. §1101 et seq. as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRAIRA"), Pub. L. No. 104-208, 110 stat. 1570, the implementing statutes of the Convention Against Torture in the Foreign Affairs Reform and Restructuring Act ("FARRA"), 28 U.S.C. §2242(d) and the Administrative Procedures Act ("APA"), 5 .S.C. §701 et. seq.
3. This Court has jurisdiction under 28 U.S.C. §2241, act 1 & 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1331, as Petitioner is presently in custody under the color of the United States, and such custody violates the Constitution, laws and treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. §2241.

4. Petitioner has exhausted all administrative remedies to the extent that she is being allowed to exhaust at this time. Petitioner appealed the denial by the Immigration Judge to take the case out of abeyance to the Board of Immigration Appeals. That denial was upheld by the Board of Immigration Appeals and Petitioner currently has a Petition for Review pending before the Second Circuit Court of Appeals. The Office of Immigration Litigation, Civil Division of the US Attorney General's Office made a Motion to Dismiss because there was no final order in the underlying immigration case. Petitioner argued that the Immigration Judge and the BIA's refusal to allow Ms. Kapoor and her family to go forward and thus denying them relief is tantamount to a final order given the posture of the remainder of the case before the District Courts and the Department of State. The Department of State has filed a letter in August 2016 denying Kapoor's request for humanitarian and torture related relief that was made prior to and pursuant to withdrawal of the previous writ of habeas corpus.
5. The most recent decision by the Department of State is a rush to judgment without the benefit of being provided with any determination by an Immigration Judge on the Convention Against Torture claim and without any factual or substantive review of that claim by the Department of State. Petitioner argues that FARRA allows the review of the Department of State claim by this Court for its substantive and procedural issues. Petitioner also argues that although the asylum and extradition procedures are separate

hearings, they are supposed to be parallel and the decisions are to be informed and cognizant of one another. Petitioner requested that the Department of State wait for the completion of the administrative hearing before the Immigration Judge (and any subsequent appeals) as required by the Constitution of the United States, Due Process and Suspension Clauses and the FARRA implementing statutes.

6. Further, basic background documentation about the torture of women in India, coerced confessions and prison conditions has been submitted and the probability of torture is well documented. Therefore, as noted by Justices Robert and Souter stated in Boumediene even if the Executive fails to acknowledge the well documented probability of torture, FARA Act requires relief.
7. Evidence was presented that one of the parties that had threatened Ms. Kapoor and tortured her in the past has become the Principal Secretary of the Prime Minister of India. Both Ms. Kapoor's brothers remain in India and are not in detention. This case revolves around the alleged failure to pay tariffs for gold, a wholly monetary issue that should not take priority over a torture claim.
8. Additionally, Kapoor has learned that another man named in the asylum application, SM Diwan, as a person who was taking money and requiring more money from Kapoor's family, has had cases reopened and is under indictment for bribery and corruption.

9. There is considerable reason to believe that this is a politically motivated extradition based on the above coupled with the fact that the extradition proceedings were not started until the other cases against SW Diwan case began to move forward. The very high level politicians that Ms. Kapoor accused of unduly extorting money from her brothers and other corrupt activities have a clear motive to torture her for a confession and otherwise help exonerate themselves and silence Ms. Kapoor. The article dated June 29, 2015 shows that upwards of 25 accused and witnesses to a massive political scandal have been killed in mysterious circumstances during the investigation of the scandal.
10. There is ongoing evidence that Kapoor's Indian lawyers have filed a case which asks for dismissal of the extradition warrant as well as her proclaimed offender status. A full hearing in India took place on that motion on October 5, 2015. The case was re-set for decision within one week, October 11, 2015. The case has been reset constantly and it is now clear that that case is being dragged until Ms. Kapoor enters India again. The proof of the hearing dates has been submitted. If relief is granted, this would effectively stop the extradition procedure. The Indian attorneys have assured the Petitioner that a decision has not yet been issued. There is also proof that a plea bargain is currently being discussed between the parties. See attached letters from counsel in India and copies of initial plea bargain request in November 2014.

11. There is evidence regarding the humanitarian request based on a report by Dr. Mark Silver which sets forth the issues with Ms. Kapoor's mental and physical health.
12. Petitioner Monika Kapoor is a native and citizen of India. Petitioner entered the United States in approximately 1999 as a visitor in New York and thereafter she was out of proper immigration status. Ms. Kapoor was arrested and taken into custody by immigration on or about February 2010 and placed in Elizabeth Detention Center because Ms. Kapoor was allegedly in extradition proceedings. Ms. Kapoor alleged and proved that no extradition warrants had been filed in the United States and that procedure was not being followed. As a result, Kapoor filed for asylum, withholding and relief under the Convention against Torture. She was placed into removal proceedings in March 2010. Her removal proceedings are still pending before Immigration Judge Brennan. Ms. Kapoor is scheduled for a Master calendar hearing date on May 10, 2017 at 9:00 a.m. This case has been held continuously in abeyance since 2011. Petitioner's family also has asylum, withholding and Convention Against Torture claims that are currently tied to Ms. Kapoor's claim and therefore are only scheduled for an Master calendar hearing on the May 2017 date and time noted above. These claims have also been pending for many years.

13. On April 26, 2010, the Court of the Metropolitan Magistrate in New Delhi, India issued a warrant for the arrest of Monika Kapoor.
14. On October 29, 2011, the Embassy of the Republic of India presented the United States with a request for Ms. Kapoor's extradition. Pursuant to that request, on or about May 2, 2011, the United States filed a complaint and affidavit in support of an application for arrest in accordance with the 1997 Indian Extradition Treaty. An arrest warrant was issued that same day.
15. Ms. Kapoor was arrested pursuant to the warrant on May 6, 2011 and arraigned before Magistrate Judge Robert Levy. Kapoor made an application for bail and Judge Levy set conditions for release upon briefing and oral argument.
16. On June 28, 2011 Kapoor filed a motion to dismiss the request for extradition. On April 17, 2012, Magistrate Levy denied the request.
17. Kapoor filed a Writ of Habeas Corpus based on the limited issue of whether the crime was extraditable and whether the refusal to consider explanatory evidence was a denial of her rights to Due Process.
18. The Writ was denied by Judge Bloch in May 2014, appealed to the Second Circuit Court of Appeals and on June 2, 2015, the Second Circuit Court of

Appeals affirmed in a summary order agreeing with the lower courts that it could not consider Kapoor's evidence of her innocence under the rule of non-contradiction. See Kapoor v. Dunne, \_\_\_ F. App'x \_\_\_, 2015 WL 346114 (2d Cir. June 2, 2015).

19. On or about July 24, 2015, former counsel for Kapoor made a request to decline the extradition to the Department of State. Kapoor argued that the evidence did not show probable cause, humanitarian concerns regarding her family and finally, because of Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). The new response by the Executive Branch fails to acknowledge the probability of torture presented and fails to acknowledge the need for the case to move forward pursuant to the CAT implementing regulations in the FARRA Act.
20. On or about September 25, 2015, the Department of State issued a decision declining all the requests.
21. Petitioner Kapoor filed a Writ of Habeas Corpus. That writ was withdrawn without prejudice because the Department of State decided to revisit their decision.
22. In August 2016, the Department of State issued a short decision again denying allowing this extradition to move forward. This decision was violative of Ms.



Kapoor's Due Process and Substantive rights under the Constitution, CAT and FARRA Acts.

#### ALLEGATIONS

23. The Department of State has ignored or failed to acknowledge all of the evidence regarding Ms. Kapoor's claim. The Department of State review and the decision are in violation of Ms. Kapoor's procedural due process and substantive rights. These rights can be reviewed by this Court pursuant to a Supreme Court case. Petitioner's claim for Convention against Torture relief before an Immigration Judge (along with her claims for asylum and withholding) are currently pending with a master calendar hearing scheduled for May 10, 2017. Any decision by the Department of State is supposed to be cognizant of that proceeding particularly as it relates to the CAT claim. However, the underlying claim has been held in abeyance by the Immigration Judge.
24. Further, basic background documentation about the human rights violations, treatment and torture of women in India, coerced confessions, prison conditions and extrajudicial torture and murder by the Indian authorities was submitted and needs to be acknowledged and considered in any CAT determination. A Convention Against Torture determination must include all relevant information. This claim does not as there has been no testimony and

no factual findings. This is in direct contravention to the FARRA statutes which implement the Convention Against Torture under 28 U.S.C. §2242.

25. Evidence is being presented that one of the parties that Ms. Kapoor claimed threatened and tortured her in the past has become the Principal Secretary of the newly elected Prime Minister of India. See article on PK Mishra attached hereto. Prime Minister Modi was himself banned from travel to the United States because of the human rights violations that occurred during the Gujrat Riots resulting in more than 1000 deaths while Modi was the Chief Minister of the State of Gujrat. The ban on Mr. Modi entering the United States was overturned in late 2013 when, according to the Human Rights Watch, it became clear that he would become Prime Minister. Shockingly, this evidence has not been acknowledged and has been ignored.
26. Kapoor's Indian lawyers have filed a case which asks for dismissal of the extradition warrant as well as her proclaimed offender status. Upon information and belief, if granted, this would effectively stop the extradition procedure. However, that case has been delayed by the government in India. The charges on which she is being extradited would therefore also be dismissed. It is Petitioner's contention that the case has been needlessly delayed in order to insure that she is present in the country. As Ms. Kapoor has noted that she will cooperate with the case and will do depositions here in the United States, the continued delay is another means to target her and

shows that the prosecution of this non-violent and only monetary based case is political in nature. This also shows that it is possible that the government of India's refusal to accept this deposition shows that they are putting pressure on her to testify in a certain way.

27. Ms. Kapoor alleges that this clearly politically motivated prosecution which will not pursue any depositions in the United States triggers a political offense exception. Ms. Kapoor's international attorneys have provided a letter which states that there is a plea bargain pending in this case which will have a direct impact for Ms. Kapoor.
28. Ms. Kapoor will immediately be arrested upon her arrival in India pursuant to the Non-Bailable Warrant of Arrest. This fact coupled with the evidence of custodial torture and treatment must be considered in the CAT determination.
29. Dr. Mark Silver evaluated Ms. Kapoor. He has submitted a report regarding her issues with mental and physical health. Dr. Silver notes that he believes that her level of active suicidality will worsen if returned to India and she will not be able to get adequate treatment of her mental health and physical issues. This is evidence for the humanitarian request. Also included is proof that Ms. Kapoor continues to need medical assistance. This requirement for medical assistance as a part of her daily living is

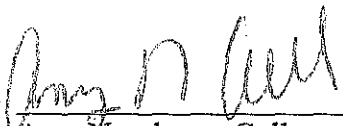
PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this court grant the following relief:

1. Assume jurisdiction over this matter and consider the decisions, facts, evidence and evidence previously submitted together with the Summary Briefing being filed herewith;
2. Enter a preliminary injunction- restraining order directing Respondents to refrain from extraditing Ms. Kapoor or handing her over to the Indian authorities while this matter is pending in the Courts;
3. Enter an Order stating that the deposition of Ms. Kapoor in the United States is being offered and since it may satisfy the Indian government's purposes to obtain testimony from Ms. Kapoor alleviating the need for Ms. Kapoor's physical presence in India without endangering her life further;
4. Grant Petitioner a Writ of Habeas Corpus directing the Respondents to immediately release Petitioner from executive detention;
5. Grant any other and further relief that this Court deems just and proper.

I affirm, under penalties of perjury, that the foregoing is true and correct.

RESPECTFULLY SUBMITTED THIS 24<sup>TH</sup> DAY OF October 2016.

  
\_\_\_\_\_  
Amy Nussbaum Gell  
Gell & Gell  
299 Broadway, Suite 620  
New York, New York 10007  
Tel: 212-619-2859

FOR PETITIONER  
Monika Kapoor  
A079-31-162

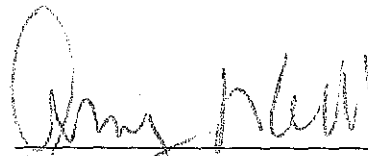
CERTIFICATE OF SERVICE

I, Amy Nussbaum Gell hereby certify that on this 25th day of October 2016, a copy of the foregoing petition for a writ of Habeas Corpus pursuant to 28 U.S.C. §2241 was sent in the manner so noted to :

Eastern District of New York  
United States District Court  
US Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

BY ECF and personal service on October 25, 2016

Nathan Reilly, Esq., Assistant U.S. Attorney  
United States Attorney's Office  
271 Cadman Plaza  
Brooklyn, NY 11201  
[Nathan.reilly@usdoj.gov](mailto:Nathan.reilly@usdoj.gov)  
By ECF and UPS on October 25, 2016

  
\_\_\_\_\_  
Amy Nussbaum Gell

Mark S. Silver MA, MSW, LCSW, PsyD, JD  
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(T) 917-608-1346  
(F) 646-349-2561

RE: KAPOOR, MONIKA

#### PROFESSIONAL CREDENTIALS

My name is MARK SOLOMON SILVER. I am a New York State Licensed Clinical Social Worker. I have a Combined Specialist Bachelor of Arts degree in History and Political Science from the University of Toronto and a Master of Arts degree in Political Science from the University of Western Ontario. I have also completed a Master of Social Work at the University of Toronto, a post-graduate Certificate Program in Family Therapy at Smith College, and a Doctor of Psychology at the Southern California University for Professional Studies. In addition, I hold a Juris Doctor from the City University of New York, Queens College, and I am admitted to practice law in the states of New York and New Jersey and the Southern and Eastern Districts of New York.

I previously had a private practice in psychotherapy and healthcare consultation. For about two and a half years, I served as the Quality Assurance Coordinator for Mishkon, a residential and homecare program for persons with developmental disabilities and mental retardation. I have worked in mental health for the inpatient psychiatric unit at North General Hospital and the New Hope Guild outpatient clinic. My clinical internships were in day hospital psychiatry and general outpatient psychotherapy.

Additionally, I have published more than a dozen papers on forensic social work and mental health practice in criminal and immigration consultation for attorneys in various academic and practice journals, and I have lectured on various aspects of these subjects. I am the author of Handbook of Mitigation in Criminal and Immigration Forensics: Humanizing the Client Towards a Better Legal Outcome. Revised Fourth Edition. (2014).

For about the past ten years, I have worked as a consultant for law firms throughout the United States conducting psychosocial evaluations and writing formal reports in forensic and mitigation immigration and criminal cases. To date I have worked on more than 2000 such cases in forensic immigration and criminal practice and consultation. I have worked with clients from about forty countries throughout the world on various individual, family, and mental health issues related to criminal conduct and deportation. I have also provided expert testimony in several dozen of these cases.

#### MATERIAL / REASON for REFERRAL

The content of the following forensic psychosocial report is based on two interviews with the family and Monika Kapoor conducted on September 30 and October 1, 2015. Affidavits, medical reports, and other relevant information were made available to this evaluator. Appropriate mental health and physical follow-up with continuing care has been recommended concerning general and specific functioning, as outlined in the body of this report. The content of the present report is dependent on the completeness and

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RE: KAPOOR, MONIKA

honesty of the information provided by those persons who this evaluator spoke as well as any documentation reviewed. If there are any omissions or inconsistencies in this report, or if new information should become available, I reserve the right to modify the content of this report. At the outset of the evaluation the client was informed and agreed to the format and nature of the evaluation, and that the forensic evaluation was undertaken in a neutral and objective manner in the context of the client's legal case, such that the therapist patient privilege may not be covered, but confidentiality may be covered under another legal privilege.

#### REFERRAL SOURCE

Amy Gell, Esq.  
Gell & Gell  
299 Broadway, Suite 620  
New York, NY 10007  
Tel: 212-619-2859  
Fax: 212-964-9485

#### CLIENT DATA & FAMILY

Name: Monika Kapoor  
Date of Birth: February 17, 1972  
Place of Birth: India  
Status: pending  
Address: 88-33 Ranson St., Queens Village, NY 11427  
Phone: 212-518-7282

Name: Atul Kapoor

[REDACTED]

Name: Mehak Kapoor

[REDACTED]



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RE: KAPOOR, MONIKA

Name: Raghav Kapoor



## PSYCHOSOCIAL REPORT

### FAMILY HISTORY

#### Personal Background

Monika Kapoor was born in New Delhi, India on February 17, 1972 with normal developmental milestones. Monika reports that she grew up in a loving and caring family and her best memories are of occasions when her extended family would gather for religious holidays and other celebrations. Monika says that her family served as her "community" and almost all of her activities occurred within the context of her family.

#### Parents

Monika's mother, a housewife, died in 2001 at age 56 due to a sudden cardiac arrest. Monika has felt a deep sense of loss that she could not be with her mother in the last weeks of her life, or even attend her funeral. She also fears that the overwhelming anxiety and stress because of the government persecution that Monika and her family members suffered contributed to her mother's early demise. Monika's father, a jeweler, is now 76 years old and suffers from a heart condition. Monika remains quite concerned for her father's health as well.

#### Siblings

Monika has a brother who died in 2000 apparently of cardiac arrest, though he suffered from congenital mental retardation and developmental disabilities without even the ability to provide for his own basic needs, such as toileting. Monika has 2 other brothers, Rajma and Rajan, who continue to reside in India.

#### Education / Work

Monika reports that she was generally a good student, completed high school, and then began a bachelor honors program in college studying philosophy. However, she did not complete the program because she married. Monika has no work history in either India or



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RE: KAPOOR, MONIKA

the United States. Monika has wished to continue her college education in the United States, but she has been overwhelmed with depression and anxiety and feels unable to function.

#### Arranged Marriage

Monika reports that she married her husband on February 6, 1991 through an arranged marriage, as they did not know each other well before the marriage, though arranged marriages are quite common in their culture and they trusted their elder's judgment. She says that their families knew one another, lived in the same area, and had similar life experiences and cultural expectations. They have carved out for themselves a life-long commitment of trust and love.

#### Children

Atul and Monika have two children. Mehak was born [REDACTED] and Raghav was born on [REDACTED] both in India. [REDACTED] Neither has ever returned to India. Mehak completed a bachelor of science in economics at John Jay College for Criminal Justice and she hopes to attend law school. She is currently working for the mayor's office in the contract service division. Raghav is a sophomore student at Nassau Community College and hopes to complete his undergraduate degree at Baruch or Binghamton University. Monika and her family members deeply fear being separated from one another. Atul was extremely supportive of Monika throughout the interview who was anxious and restless, and he calmed her by reassuring her that their family would be safe.

#### Religious Upbringing

Monika reports that she was raised in a traditional Hindu home and attended temple every week with her family. Monika internalized her family's spirituality and became interested in her faith when she grew older. She feels that it provides her with comfort, community contacts, and facilitates greater introspection. Monika now prays for the health and safety of her family members and for guidance in her life. She says that her faith is still strong despite the extreme emotional hardship, trauma, depression, and anxiety that she has suffered due to persecution in India. She feels that her faith has at times been her only salvation and anchor without which she would have given into total despair and helplessness long ago.

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RE: KAPOOR, MONIKA

PERSECUTION in INDIA

#### Background

In 1994, Monika's brothers formed a company called Monika Overseas. Monika says that her brothers and father worked in a jewelry import export business manufacturing jewelry in India and then their father would sell the finished product in the United States. Monika emphasized that she had no other understanding or connection with her father or brother's work or the business in any shape or form. Monika agreed to have her brothers open up a company under her name because in her culture she remained extremely deferential to her brothers and father given the paternalistic nature of her culture and society, and because of the reality that women truly remain second-class citizens in India socially, politically, religiously, and in many other aspects of their family and community. Monika's daughter noted, paradoxically, that it is considered good fortune to use a girl's name in a business venture. As noted above, Monika has never worked in this business or in any other way, but rather was supported by her husband who worked as a merchant seller of garments.

#### Threats Against Life

Monika's father would often visit the United States on business and her brother, Rajiv, fearful for his life relocated to the United States in 1998 and remained here until 2003. Monika wrote a letter to the Minister's office in India asking for help and protection but a response/protection was never received. The threat emanated predominantly from the DRI (Directorate of Revenue Intelligence) and its agents. Monika says that he ostensibly returned to India because of the deaths of their mother and younger brother. Monika's other brother, Rajan, was also in the United States for several months in 2000 fearful for his own safety. Monika believes that because Rajiv was in the United States and physically inaccessible that she and her immediate family members became targets of harm, persecution, torture, and other human rights violations.

#### Illegal Detentions

Monika reports that on more than 15 occasions government workers from the equivalent of the IRS would force their way into her home, detain her without a warrant, repeatedly hold her without cause, prohibit her from access to legal counsel, and hold her without access to food or water, toilet facilities, or other basic necessities. Monika also emphasized that her husband, Atul, was also detained on multiple occasions. She says that every time she was taken her husband would accompany her, however her interrogators refused to permit her contact with her husband or anyone else.

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Physical Abuse

Monika reports that physical abuse that she suffered predominantly occurred through the illegal detentions, isolation, and physical threats. At other times, her interrogators would yell at her face, pull her hair, and threaten her with physical harm and even death to herself and her family members. She would listen to her interrogators casually speak about how easy it would be to kidnap her children from the home and they would never be heard from again. She recalled at least one interrogator who tried to touch her on her chest area and another man encouraged the interrogator to take her outside and remove her clothing. Monika noted that there were no women interrogators. Monika notes that the harassment never ended because when she was permitted to return to her home she was followed and friends and family in the community were accosted or threatened as well to the point that she thought she was a complete pariah in her community but also felt that she should ostracize herself fearing that the persecution could harm not only herself and her immediate family members, but also friends and family in the larger community. Monika also recalled at one point the government agents breaking into her home and literally coming up to her mother's bedroom and bed where she was sleeping and forcefully pulling off the blankets frightening everyone terribly finally. Monika noted that government agents took her phone diary and would randomly call friends and family in the community causing her to feel even greater fear, sadness, loneliness, anxiety, and a deep sense of uncertainty believing that she or others could be further persecuted or even murdered by government agents.

Atul clarified that unlike Monika, he did suffer direct physical torture by having objects throwing at his head, such as books, being slapped and hit, and made to stand naked in a humiliating fashion. Interrogators also burned Atul's skin by extinguishing their lit cigarettes on his arm.

Monika says that she felt she could not move around freely without feeling intimidated by the government agents hostile presence and she feels that this served to help control her. She says that their moods were quite labile and they could be calm at one moment and angry, and dangerous at the next instant with unpredictable and erratic behavior.

Psychological & Emotional Abuse

Monika suffered from psychological and emotional torture by the agents of the government, including mental cruelty, isolation, taunting, degradation, and demeaning actions. Monika says that they could be quite manipulative, coercive, controlling, and would act without any contrition whatsoever, and without any consideration for the safety of her young children. Monika was made to feel isolated and alone even within her own home and community, especially given that she had few friends and no family members



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to whom she could turn for shelter or assistance. Monika and her family members tried to explain that the level of corruption and ineptitude among the government is so high in India that there is really no consideration whatsoever for human rights, especially as the government is either unwilling or unable to protect its own people. She felt that her torturers prevented her from speaking about their dangerous threats and the anxiety that she felt over this controlling action meant that she could not think clearly or behave in a way that was healthy for her. She felt that she was left with no one to turn to and was ashamed that in her own community and home she felt sad and lonely, yet still had considerable obligations toward the children and their home. Additionally, she felt too ashamed to even tell anyone about the level of depression and anxiety that she suffered. Monika also emphasized that she felt her willpower completely give out at some point and she wrote whatever the government agent, Mishra, dictated to her.

#### Verbal Abuse

Monika reports that the government agents would employ various verbal abuses and refer to her using disgusting expletives, which Monika was ashamed to repeat with this evaluator. Monika says that they also insulted her person, family, and she is very sensitive about such language and profanities and they would repeat these words as he knew they were embarrassing to her due to her. The verbal abuse caused her to feel badly about herself and she questioned her sense of self-worth and began to believe the derogatory language used towards her. Monika says that they somehow knew what words were the most hurtful to her and the most cutting. Interestingly, Monika says that wall of verbal abuse was terrible torture she says that the worst part about this was the actual screaming and yelling, which she says still reverberates in her ears even today.

#### Immigration to the United States

Monika relocated with her children to the United States on October 16, 1999 because she feared death by Indian government members and the police in India. Atul followed soon afterwards. However, Atul hoped that because Monika came here that matters would become more clam, such that Atul returned yet he soon discovered that the dangers remained very real all the same. Moreover, the government persecution had terribly damaged Atul's ability to manage his personal affairs, including his garment business, which essentially went out of business. Finally, Atul's father died of a heart attack in June 2000, which Atul partly attributes to psychological abuse by government authorities in India. Atul then arrived here on February 8, 2000. Atul, who ran a successful business in India, has no doubt that the persecution by government agents in India was linked to politics and bribery at a high level. In the United States, Atul has worked as a distributor of wholesale market goods barely making ends meet. Monika too believes that high government officials were instrumental in orchestrating the abuses and persecution that

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she and her family members suffered and because she has specifically named specific government employees that if forced to return to India that she and / or her family members will be further tortured or perhaps murdered.

## MONIKA'S MENTAL & MEDICAL HEALTH ISSUES

### Medical Issues

Monika suffers from a wide range of serious and chronic healthcare issues, however she emphasized strongly that she believes that her chronic depression and uncertainty and anxiety related to the fear of deportation and being a victim of further persecution in India has greatly exacerbated her negative healthcare issues.

Monika suffers from osteoporosis for which she is prescribed Meloxicam / Mobic and Motrin. Monika also has a history of numbness in her toes, feet, legs, for which she is prescribed Gabapentin. Monika is unable to sit for long periods, she must change positions, and even during the present evaluation she was forced to stand for several minutes due to severe pain and discomfort. Monika has also experienced considerable shortness of breath with feelings similar to choking. She believes that this is also greatly related to her panic attacks and generalized anxiety. Monika has high blood pressure (hypertension) and may require medication for this as well. Overall, Monika feels tired all the time and receives B12 pills and injections. She has frequent headaches with dizziness, nausea, and feels of the room around her is spinning. Monika also has significant weight gain, which she believes informs the above problems as well.

### Mental Health Care

Monika has been totally overwhelmed with anxiety and depression due to clinical trauma that she suffered in India in the context of government persecution. She is followed by a psychotherapist at Advanced Center Psychotherapy located in Jamaica Estates, New York. She has also been followed by a psychiatrist there and she is prescribed or medication for this issue – Xanax 0.25mg. Monika's primary care physician has also noted her psychiatric issues: Dr. Syed S. Qadri located at 267-01 Hillside Ave. Floral Park, NY 11004 (718-343-7790). Monika suffers from the following mental health issues.

### Posttraumatic Stress Disorder

Most people who survive severely traumatic events will develop PTSD. Survivors of combat are the most frequent victims. But it is also encountered in those who have experienced other disasters, both natural and contrived. These include rape, floods,

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abductions, and airplane crashes, as well as the threats that may be posed by kidnapping or hostage situation—and also survivors of domestic violence. Children can have PTSD as a result of inappropriate sexual experience, whether or not actual injury has occurred. PTSD can be diagnosed even in those who have learned about severe trauma, (or its threat) suffered by someone to whom they are close—children, spouses, or other close relatives. After some delay (symptoms usually don't develop immediately after the trauma), the person in some way relives the traumatic event and tries to avoid thinking about it. There are also symptoms of physiological hyperarousal, such as exaggerated startle response. Patients with PTSD also express negative feelings such as guilt or personal responsibility. Aside from the traumatic event itself, other factors may play a role in development of PTSD. Individual factors include the person's innate character structure and genetic inheritance. Relatively low intelligence and low educational attainment are positively associated with PTSD. Environmental influences also include relatively low socioeconomic status and membership in the minority racial or ethnic group. In general, the more horrific or more enduring the trauma, the greater will be the likelihood of developing PTSD. The risk runs to one quarter of the survivors of heavy combat and two thirds of former prisoners of war those who have experienced natural disaster such as fires or floods are generally less likely to develop symptoms. Overall lifetime prevalence of PTSD is estimated at about 9%, though European researchers usually report lower overall rates.

*Criterion A: stressor*

The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: (1 required)

1. Direct exposure.
2. Witnessing, in person.
3. Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.
4. Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

There can be no question that Monika has been the victim of government persecution in India in which there has been direct threats to her safety in many respects, including threats of death to immediate family members—such that she has suffered feelings of helplessness, shock, horror, and trauma.



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*Criterion B: intrusion symptoms*

The traumatic event is persistently re-experienced in the following way(s): (1 required)

1. Recurrent, involuntary, and intrusive memories. Note: Children older than 6 may express this symptom in repetitive play.
2. Traumatic nightmares. Note: Children may have frightening dreams without content related to the trauma(s).
3. Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness. Note: Children may reenact the event in play.
4. Intense or prolonged distress after exposure to traumatic reminders.
5. Marked physiologic reactivity after exposure to trauma-related stimuli.

Monika has persistently reexperienced trauma through recurrent, involuntary, and intrusive memories that have plagued her focus and thinking. Monika has suffered with traumatic nightmares reliving what she suffered due to government persecution in India noted in the above sections. Monika has also experienced episodic flashbacks due to overwhelming stress and anxiety given these memories of her experiences. Monika also continually re-experiences the trauma when she is exposed to reminders, such as news regarding India, violence, and the years of living without status has made her feel chronically unstable, unsafe, anxious, and afraid given the uncertainty of their lives if forced to return to India.

*Criterion C: avoidance*

Persistent effortful avoidance of distressing trauma-related stimuli after the event: (1 required)

1. Trauma-related thoughts or feelings.
2. Trauma-related external reminders (e.g., people, places, conversations, activities, objects, or situations).

Monika has made persistent efforts to avoid trauma-related stimuli, including avoiding conversations, people, places, activities, situations, and almost anything else reminds her of the abuse and victimhood that she suffered because of government persecution and torture in India. For this reason, Monika has never returned to India even for a brief visit and in many ways has led an extremely isolated life, although has found incredible comfort and solace remaining a vibrant member of her Hindu Temple nearby.

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*Criterion D: negative alterations in cognitions and mood*

Negative alterations in cognitions and mood that began or worsened after the traumatic event: (2 required)

1. Inability to recall key features of the traumatic event (usually dissociative amnesia; not due to head injury, alcohol or drugs).
2. Persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g., "I am bad," "The world is completely dangerous.").
3. Persistent distorted blame of self or others for causing the traumatic event or for resulting consequences.
4. Persistent negative trauma-related emotions (e.g., fear, horror, anger, guilt or shame).
5. Markedly diminished interest in (pre-traumatic) significant activities.
6. Feeling alienated from others (e.g., detachment or estrangement).
7. Constricted affect: persistent inability to experience positive emotions.

Monika reports an inability to recall key features of the traumas due to possible alterations in cognition because of mental health issues, but also because of the need to block out these extremely painful memories. Monika now retains persistent negative beliefs and expectations about herself and the world believing that she will never find happiness in India given realistic ongoing fears of government persecution. Monika retains a deep sense of horror about what has occurred, anger at her family in India to some extent, and shame that she ever found herself in a situation where she was made to feel as a victim with torturers who did not care about her health or safety. Monika has had marked diminished interest in daily activities because of her depression and anxiety, including those activities that she previously enjoyed on a regular basis. Monika basically feels quite alienated from others and this detachment and estrangement has further made her feel isolated and depressed. She has also shown a constricted affect, that is, a persistent inability to experience positive emotions.

*Criterion E: alterations in arousal and reactivity*

Trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event: (2 required)

1. Irritable or aggressive behavior.
2. Self-destructive or reckless behavior.
3. Hypervigilance.
4. Exaggerated startle response.
5. Problems in concentration.



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6. Sleep disturbance.

Monika reports that the trauma from the traumatic torture in which she was a victim has resulted in her hypervigilance about her surroundings, low sense of trust in others, and an acute sense of guardedness. She has an exaggerated startle response feeling quite unsafe all the time and has considerable problems with concentration and focus, and very poor sleep. She also feels quite fatalistic fearing that she will never be able to enjoy a meaningful life in India and a sense of chronic numbness—both physically and emotionally. Overall, these symptoms have continued for more than one month with significant symptom-related distress or functional impairment (e.g., social and occupational). These disturbances are not due to medication, substance use, or other illness.

Major Depressive Disorder

Mood refers to a sustained emotion that colors the way we view life. Recognizing when mood is disordered is extremely important, because as many as 20% of adult women and 10% of adult men may have the experience at some time during their lives. The prevalence of mood disorder seems to be increasing in both sexes, accounting for half or more of a mental health practice. Mood disorders can occur in people of any race, age, or socioeconomic status, but they are more common among those who are single and who have no "significant other." Mood disorders are also more likely for someone who has relatives with similar problems. Many patients lose appetite and weight. More than three fourths report trouble with sleep. Typically they awaken early in the morning, long before it is time to arise, and yet some patients even sleep more than usual. Depressed patients will usually complain of fatigue, which they may express as tiredness or low-energy. Their speech or physical movements may be slowed; sometimes there is marked pause before answering a question or initiating an action. This is called psychomotor retardation. Speech may be very quiet, and sometimes inaudible. Some patients simply stop talking completely except in response to a direct question. At the extreme, complete muteness may occur. At the other end of extreme, some depressed patients feel so anxious that they become agitated. Agitation may be expressed as handwringing, pacing, or an inability to sit still. The ability of depressed patients to evaluate oneself subjectively plummets; this shows up as low self-esteem or guilt. Some patients develop trouble with concentration (real or perceived) so severe that sometimes an incorrect diagnosis of dementia may be made. Thoughts of death, death wishes, and suicidal ideas are the most serious depressive symptoms of all because there is a real risk that the person will successfully act upon them. Other important symptoms may include crying spells, phobias, obsessions, and compulsions. Patients may admit to feeling hopeless, helpless, or worthless. Anxiety symptoms, especially panic attacks, can be so prominent that they blind clinicians to the underlying depression. A patient may increase alcohol use when

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depressed, yet this can lead to difficulty in sorting out the differential diagnosis. A small minority of patients may lose contact with reality and develop delusions or hallucinations. The psychotic features can be either mood congruent (for example, a depressed man feel so guilty that he imagines he has committed some awful sin) or mood incongruent (a depressed person who imagines persecution by the FBI is not experiencing a typical theme of depression). The depression must be serious enough to cause material distress or to impair the individual's work or school performance, social life, (withdrawal or discord), or some other area functioning, including sex.

- (1) Monika reports a depressed mood most of the day, nearly every day, as indicated by subjective feelings of sadness and emptiness and crying.
- (2) Monika reports markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day.
- (3) Monika says she has had a poor appetite with erratic appetite.
- (4) Monika reports significant difficulty staying or falling asleep with terrifying nightmares in which family members are harmed.
- (5) Monika reports psychomotor retardation nearly every day feeling particularly slow down.
- (6) Monika reports fatigue or loss of energy nearly every day.
- (7) Monika, as a victim of abuse and torture, internalized various feelings that resulted from the abuse she suffered. Victims of such harm often feel shame, humiliation, and even self-blame for having become intimately involved with a violent person and Monika's presentation and thoughts reflect this reality. In her relationship she was made to feel worthless, powerless, and yet remained helpless and trapped in a dangerous environment.
- (8) Monika reports diminished ability to think or concentrate, or indecisiveness, nearly every day.

#### Suicidality

Suicidality may be either active or passive. Active suicidality occurs when the person has a plan to end her own life, such as by the ingestion of medications. Active suicidality most often is characterized by deep psychological pain or despair and a hopeless belief that nothing in the person's life can improve in any meaningful way. Passive suicidality concerns thoughts of death or dying and may include the person stating that they wonder what it would be like never having to wake up so that their pain would vanish. Passive suicidality is usually more ideational, while active suicidality is often accompanied by a thought out plan that may or may not be realistic or even coherent. Monika has at times felt overwhelming psychological pain and helpless feelings of despair feelings that it would be better if she died and hoped to simply sleep and sleep so that this pain would be over. Monika stated: "I have lost all my confidence. I have lost myself."

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Panic Attacks & Generalized Anxiety

Monika reports that she suffers from intermittent panic attacks, discreet periods of intense anxiety precipitated by either frightening thoughts or contextual issues, and which are characterized by heart palpitations, sweating, trembling, shortness of breath, chest pain, "stomach" pains, dizziness, feelings of unreality, and fear of loss of control or death. She feels generally anxious and irritable. Monika noted that she is constantly fearful for the safety of her children even though they are young adults, responsible, and lead praiseworthy lives. She often checks on their whereabouts, well-being, and behaviors. Monika's anxiety has also led her to various compulsive and obsessive conduct and thoughts. For example, Monika will check and recheck that the doors locked and she will check and recheck that the stove is off and other daily safety features given an internal sense of never feeling truly safe, secure, or stable in her life.

Concern for Family Members

Although Monika remains extremely concerned about her husband and children as an extension or manifestation of the serious and chronic trauma that she suffered as a victim of persecution in India, Monika also has realistic and concrete concerns about her husband's health because he was also a victim of torture in India, but also because he suffers from various medical and physical problems, including hypertension, weight loss, hyperlipidemia, constant sweating, weakness, fatigue, and Monika and the children noted that Atul essentially has suffered a "nervous breakdown" over the years due to overwhelming psychological fears and anxiety related to the uncertainty of the immigration case.

Mehak and Raghav have both suffered chronic depression and anxiety because of their fears regarding the safety of their parents and also themselves. Mehak has done her best to focus on her college education and developing a career in public policy, but she has experienced low blood pressure, unstable appetite and sleep, weight gain, and she and her brother were particularly traumatized when their mother was taken into immigration services custody. She says that they remain an extremely close family. Raghav suffers from obesity, which he directly attributes to overeating as a means to quell overwhelming depression related to the uncertainty of the immigration case. His obesity has also lead to secondary problems, including difficulty with walking, hyperlipidemia, and very poor self-image.



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#### Somatic Symptom Disorder

The criteria for somatic symptom disorder require only a single somatic symptom, but it must cause distress or markedly impairment in the patient's functioning. Nonetheless, the classical patient has a pattern of multiple physical and emotional symptoms that can affect various (often many) areas of the body, including pain symptoms, problems with breathing or heartbeat, abdominal complaints, and/or menstrual disorders. Of course, conversion symptoms (body dysfunction such as paralysis or blindness that has no anatomical physiological cause) may also be encountered. Treatment that usually helps symptoms that are caused by actual physical disease is usually ineffective in the long run for these patients. Somatic Symptom Disorder may begin early in adolescence and last for many years sometimes an entire lifetime. Often overlooked by healthcare professionals, this condition affects about 1% of all women and it occurs less often than in men, though the actual ratio is unknown, considering that the definition of somatic symptom disorder has only just been written. Somatic symptom disorder may account for about 7% of mental health clinic patients and perhaps nearly that percentage of hospitalized mental health patients. It has a strong tendency to run in families. Transmission is probably both genetic and environmental and it may be more frequent patients in low skills that socioeconomic status and less education. Half or more of patients with symptoms somatic symptom disorder have anxiety and mood symptoms. Monika reports that she is generally anxious with significant somatic complaints, including pain in her neck, shoulders, and back. Many of the other somatic problems without clear medical etiology, are noted in the medical section above, and also requires serious consideration.

#### Mental Status Exam

Monika Kapoor is a 43-year-old woman who appears her chronological age. She is alert, fully oriented, fully cooperative, and a good historian. Her voice modulation and social skills in general were good. Monika was pleasant to speak with during the interview and could clearly convey the horrific depression and anxiety that she has experienced both because of persecution in India and chronically since her arrival in the United States. She was totally overwhelmed with feelings of despair and pain and required considerable time to collect her thoughts and compose herself. Her remote and recent memory is generally good. Psychomotor activity can be characterized by normal movements and activity level, although she says that on a daily level she feels very listless with little interest in moving about. There is a negligible degree of conceptual disorganization evident associated with the persecution that she suffered in India. Thought content can be characterized by significant preoccupations with fears regarding the health and safety of herself and her immediate family members because of immigration case. Attitude can be described as cooperative and interested in the present evaluation. Attention and

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concentration is characterized by an impaired ability to attend and maintain focus at times. She was appropriately dressed, made good eye contact, and had no inappropriate movements.

Her ideational productivity was normal and her intelligence, as per the interview, was judged to be within normal parameters. She denied having problems with the use of alcohol, illegal substances, or drugs of any kind and denied any history of hallucinations, delusions, or other mental derailments. There was no evidence of major distortions of thinking, visible cognitive or functional impairments but of combined anxious-depressive symptomatology resulting from the aforementioned legal matters pertaining to this case.

Monika's speech is clear and coherent, though in a low tone. She admits that her mood is often depressed and she feels anxious, as she fears for her future well-being. Her affect was sad and tearful during the interview and she wanted to better understand how her own government in India could ever persecute an innocent individual without any regard for the well-being of either herself or even her children. She says that her thoughts now are constantly preoccupied with the current immigration case and the fear that she will be deported to India where she will be further persecuted or even murdered. She says that she often prays for her future health and safety and mercy and compassion from the DHS. Her thoughts are clear and coherent despite the pain she endures. She denies suicidal ideation at this time. She denies a concrete plan of self-harm at this time. Her insight and judgment are fair.

Based on the foregoing interview, Monika's presentation is consistent with:

Major Depressive Disorder  
Generalized Anxiety Disorder  
Posttraumatic Stress Disorder  
Panic Disorder  
Somatic Symptom Disorder

## CONCLUSION

Monika and her family members suffered various human rights violations and persecution, including direct threats against their lives by the Indian government, such that Monika and her family members were forced to relocate to the United States for safety.

Monika stated: "the overwhelming corruption and injustice in India will mean that we will never be safe if we are deported. The police, the government, and the criminal justice system are all corrupt and inept." There is no question that in India Monika's sense of safety, security, and stability were fundamentally undermined by

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Mitigation & Forensics  
(T) 917-608-1346  
(F) 646-349-2561

RE: KAPOOR, MONIKA

threats against her life and the lives of her family member by the Indian government.

There is no question that Monika arrived in the United States suffering serious psychiatric trauma that has remained chronic and psychologically, physically, and emotionally debilitating to her, including on-going thoughts of suicide.

Monika's strong outer exterior belies a fantastically fragile and vulnerable individual who reasonably believes that if she and/or her family members are deported to India that she and/or her family members will suffer further government persecution, or even death.

Detention / custody is not the appropriate manner for Monika given her serious medical and psychiatric issues, as she unquestionably requires the constant support, care, and love of her family members who provide for her immediate needs, reminder to take medications, and monitor her health and safety. This evaluator believes that Monika is not a risk of flight in any manner. It is imperative that she continues to visit her current healthcare providers as she has developed a therapeutic relationship with them. Monika and her family members rightly fear that if she were forced to return to custody that her medical, physical, and psychiatric health would rapidly decline.

*Mark Silver*

Mark S. Silver, MA, MSW, LCSW, PsyD, JD

Report Completed on October 1, 2015

This evaluator spoke by phone with the client and her daughter who confirm that the above information remains accurate.

*Mark Silver*

Mark S. Silver, MA, MSW, LCSW, PsyD, JD

Update Noted on August 9, 2016

Department of Homeland Security  
U.S. Citizenship and Immigration Services

U.S. Department of Justice  
Executive Office for Immigration Review

OMB No. 1615-0067; Expires 03/31/10

# I-589, Application for Asylum and for Withholding of Removal

**START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.**

**NOTE:** Check this box if you also want to apply for withholding of removal under the Convention Against Torture. ☒

## Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) [REDACTED]		2. U.S. Social Security Number (if any) [REDACTED]	
3. Complete Last Name Kapoor		4. First Name Monika	5. Middle Name
6. What other names have you used (include maiden name and aliases)? NONE			
7. Residence in the U.S. (where you physically reside) C/O ICE Custody		Telephone Number ( )	
Street Number and Name 625 Evans Street		Apt. Number	
City Elizabeth	State NJ	Zip Code 07201	
8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):		Telephone Number ( )	
Street Number and Name		Apt. Number	
City	State	Zip Code	
9. Gender: <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	10. Marital Status: <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		
11. Date of Birth (mm/dd/yyyy) 02/17/1972	12. City and Country of Birth New Delhi, India		
13. Present Nationality (Citizenship) Indian	14. Nationality at Birth Indian	15. Race, Ethnic, or Tribal Group Asian	16. Religion Hindu
17. Check the box, a through c, that applies: a. <input type="checkbox"/> I have never been in Immigration Court proceedings. b. <input checked="" type="checkbox"/> I am now in Immigration Court proceedings. c. <input type="checkbox"/> I am not now in Immigration Court proceedings, but I have been in the past.			
18. Complete 18 a through c. a. When did you last leave your country? (mmm/dd/yyyy) 10/16/1999 b. What is your current I-94 Number, if any? [REDACTED] c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.) Date 10/16/1999 Place JFK, NY Status B1 Date Status Expires: April 15, 2000 Date 09/12/1998 Place JFK, NY Status B1 Date _____ Place _____ Status _____			
19. What country issued your last passport or travel document? India		20. Passport # Travel Document #	
21. Expiration Date (mm/dd/yyyy)			
22. What is your native language (include dialect, if applicable)? Hindi		23. Are you fluent in English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
24. What other languages do you speak fluently? Hindi, Punjabi			
For EOIR use only.			
Action:		For USCIS use only. Decision:	
Interview Date: _____		Approval Date: _____	
Asylum Officer ID#: _____		Denial Date: _____	
		Referral Date: _____	





**Part A. II. Information About Your Spouse and Children**Your spouse ☐ I am not married. (Skip to **Your Children** below.)

1. Alien Registration Number (A-Number) (if any) N/A		2. Passport/ID Card No. (if any)		3. Date of Birth (mm/dd/yyyy) [REDACTED]		4. U.S. Social Security No. (if any) [REDACTED]		
5. Complete Last Name Kapoor			6. First Name Atul		7. Middle Name		8. Maiden Name Atul Kapoor	
9. Date of Marriage (mm/dd/yyyy) 02/06/1991			10. Place of Marriage New Delhi, India			11. City and Country of Birth New Delhi, India		
12. Nationality (Citizenship) Indian			13. Race, Ethnic, or Tribal Group Asian			14. Gender <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		
15. Is this person in the U.S.? <input checked="" type="checkbox"/> Yes (Complete Blocks 16 to 24.) <input type="checkbox"/> No (Specify location):								
16. Place of last entry into the U.S. JFK, NY			17. Date of last entry into the U.S. (mm/dd/yyyy) 02/06/2000		18. I-94 No. (if any)		19. Status when last admitted (Visa type, if any) B1	
20. What is your spouse's current status? NONE		21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)			22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		23. If previously in the U.S., date of previous arrival (mm/dd/yyyy) 12/2000	
24. If in the U.S., is your spouse to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input checked="" type="checkbox"/> No								

**Your Children.** List all of your children, regardless of age, location, or marital status.☐ I do not have any children. (Skip to **Part A. III., Information about your background.**)☒ I have children. Total number of children: 2

(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A-Number) (if any) N/A		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed) Single		4. U.S. Social Security No. (if any) N/A		
5. Complete Last Name Kapoor			6. First Name Mehak		7. Middle Name		8. Date of Birth (mm/dd/yyyy) [REDACTED]	
9. City and Country of Birth New Delhi, India			10. Nationality (Citizenship) Indian		11. Race, Ethnic, or Tribal Group Asian		12. Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
13. Is this child in the U.S.? <input checked="" type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location):								
14. Place of last entry in the U.S. JFK, NY			15. Date of last entry in the U.S. (mm/dd/yyyy) 10/16/1999		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any) B1	
18. What is your child's current status? NONE		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)			20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input checked="" type="checkbox"/> No								





**Part A. II. Information About Your Spouse and Children (Continued)**

1. Alien Registration Number (A-Number) (if any) N/A		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed) Single		4. U.S. Social Security No. (if any) N/A	
5. Complete Last Name Kapoor		6. First Name Raghav		7. Middle Name		8. Date of Birth (mm/dd/yyyy) [REDACTED]	
9. City and Country of Birth New Delhi, India		10. Nationality (Citizenship) Indian		11. Race, Ethnic, or Tribal Group Asian		12. Gender <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S. ? <input checked="" type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S. JFK, Ny		15. Date of last entry into the U.S. (mm/dd/yyyy) 10/16/1999		16. I-94 No. (If any)		17. Status when last admitted (Visa type, if any) B1	
18. What is your child's current status? NONE		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input checked="" type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (If any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S. ? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

**Part A-III Information About Your Background**

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
F1/5 Model Town,	New Delhi		India	02/91	10/99

2. Provide the following information about your residences during the past 5 years. List your present address first.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
88-33 Ransom St, 2nd Fl	Queens Village	NY	USA	12/08	01/10
3105 74th St, 2nd Fl	E. Elmhurst	NY	USA	03/01	12/08

3. Provide the following information about your education, beginning with the most recent.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
DR Girls College	College	New Delhi, India	01/89	01/90

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)
NONE			

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Kavita Khanna	India	<input checked="" type="checkbox"/> Deceased
Father Ramesh K. Khanna	India	<input type="checkbox"/> Deceased Queens Village, NY, USA
Sibling Rajan Khanna	New Delhi, India	<input type="checkbox"/> Deceased India
Sibling Rajev Khanna	India	<input type="checkbox"/> Deceased India
Sibling Sanjeev Khanna	India	<input checked="" type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased

**Part B. Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- |   |   |
|---|---|
| <input type="checkbox"/> Race                   | <input checked="" type="checkbox"/> Political opinion                       |
| <input checked="" type="checkbox"/> Religion    | <input checked="" type="checkbox"/> Membership in a particular social group |
| <input checked="" type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention                      |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

Please See Attached

- B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

Please See Attached



**Part B: Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☐ No

☒ Yes

If "Yes," explain the circumstances and reasons for the action.

Please See Attached

- 3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No

☒ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

Please See Attached

- B. Do you or your family members continue to participate in any way in these organizations or groups?

☐ No

☒ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

Please See Attached

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No

☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

Please See Attached



**Part C. Additional Information About Your Application**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☒ No

☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☒ No

☐ Yes

- B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No

☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No

☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.





**Part C. Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No

☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No

☒ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

Please See Attached

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

☒ No

☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



**Part D: Your Signature**

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name.

Write your name in your native alphabet.

Did your spouse, parent, or child(ren) assist you in completing this application? ☐ No ☐ Yes (If "Yes," list the name and relationship.)

(Name)

(Relationship)

(Name)

(Relationship)

Did someone other than your spouse, parent, or child(ren) prepare this application?

☐ No

☒ Yes (If "Yes," complete Part E.)

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim?

☒ No

☐ Yes

Signature of Applicant (The person in Part A.I.)

[ \_\_\_\_\_ ]

02/12/2010

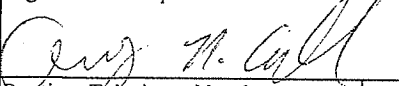
Sign your name so it all appears within the brackets

Date (mm/dd/yyyy)

**Part E: Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child**

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer



Print Complete Name of Preparer

Amy N. Gell

Daytime Telephone Number

( 212 ) 619-2859

Address of Preparer: Street Number and Name

299 Broadway,

Apt. No.

620

City

New York

State

NY

Zip Code

10007



**Part F. To Be Completed at Asylum Interview, if Applicable**

*NOTE: You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).*

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_\_ to \_\_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Asylum Officer

**Part G. To Be Completed at Removal Hearing, if Applicable**

*NOTE: You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.*

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered \_\_\_\_\_ to \_\_\_\_\_ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Write Your Name in Your Native Alphabet

\_\_\_\_\_  
Signature of Immigration Judge





## Supplement A, Form I-589

A-Number (If available)

Date

Applicant's Name

Applicant's Signature

**List All of Your Children, Regardless of Age or Marital Status**

(NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

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18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
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Supplement B, Form I-589

**Additional Information About Your Claim to Asylum**

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

*NOTE: Use this as a continuation page for any additional information requested. Copy and complete as needed.*

Part \_\_\_\_\_

Question \_\_\_\_\_



**Monika Kapoor's Statement**

My name is Monika Kapoor. I am a thirty eight year old married women with two great children, age 18 (girl) and age 14 (boy). I came to the United States in October 1999 with my two children in order to save my family from the unfair persecution, harassment and torture inflicted upon us by government agencies and police based on a false accusation that I was involved in a fraudulent business matter. These accusations related to a business that my brothers ran and opened in my name in 1994. I had nothing to do with the operation of this business, nor did I gain financially from its activities. I only opened the initial bank account in 1994.

I believe that these claims were instigated by partners of my brother Sh. Ranjeev Khanna (originally partners with him in another enterprise). The names of these people are Mr. Hans Sardana, Sh. S.M Diwan, Chairman of STC and Sh. P.K. Mishra, Deputy Director of DRI. (Directorate of Revenue Intelligence). According to my brothers and based on what I know these individuals who were politicians and bureaucrats started making undue and outrageous demands on all of my brother's business' including the one opened in my name. When these demands were not met these individuals started to threaten and torture and coerce me and my family; and as I result I was forced to leave the country. Eventually, years after I left, they actually got the CBI to bring a case in court and put an Interpol Warrant Against me; however, I only learned of the this Interpol Warrant just recently when I was taken into Immigration Custody. I believe that the motives of these corrupt individuals are political and financial.

In any event, I am innocent of any wrongdoing. I only lent my name to the company. To all my belief and knowledge, I was not a signatory to any of these alleged fraudulent transactions. I think that I was initially dragged into this matter in 1999, by the DRI and corrupt police in order to pressurize and hurt my brothers. My fear is not of honest prosecution in court but that I will be arrested, traumatized, persecuted and tortured by police and government officials if I go back to India now. My family will be left without me.

My husband and I have already had a very bad experience with Indian police. Now things will be much worse:

My two brothers are named Rajan Khanna and Rajiv Khanna. In 1994, they asked if they could form a company in my name, Monika Kapoor Overseas. As a loyal sister I agreed. I did not do this for financial gain, nor did I think anything would be wrong with the business. My brother's ran everything and after the company was formed I believe that they signed my name on all of the paperwork. According to my brother Rajan Khanna, sometime Monika Overseas was formed, my brother Sh. Rajeev Khanna started a new business with Sh. Uday Sardana that involved (1)Sh. Haans Sardana (2) Sh. S.M. Diwanof STC and (3) Sh P.K. Mishra, Deputy Director of DRI ( the Directorate of Revenue Intelligence) as silent investor/partners in the partnership business. According to my brothers these men made started to make outrageous demands for advantages and shares of all of my brother's businesses. I was not privy to any of this at the time.

In 1999 for the first time in my life I had terrible problems. Apparently, they were pressuring my brother, but when he left the country, they came after me. They got the police involved. Police and DRI people started picking me up all the time and taking me in for questioning and harassment. They threatened me and my husband with jail. They threatened to hurt my family. They kept me for hours and mentally tormented me. I kept telling them that I didn't know anything but they were so threatening that I finally signed false papers, saying that I signed some documents when I did not. Immediately thereafter, on October 16, 1999, I left the country for the United States with my two young children. My husband stayed behind for a couple of weeks, but he too was picked up six or seven times. He was also threatened with arrest and a false case. My husband, like me was terrified. We are honest and decent people. My husband then came to the United States in November 1999. In order to wind up affairs he went back in secret for about a month and returned in February 2000. Neither of us have left the United States since that time.

In 2003, these men were able to get enough political strength to get the Central Bureau of Investigations involved. I was even named in the case, though they admitted that I had nothing to do with running the business. They falsely alleged that I signed papers and received money from my brothers for this. It is not true. After the case was brought, in 2003, my brothers were able to get a low anticipatory bonds and all of these years they have continued to travel the world on visa's and they have continued in business. An Inter Pol Warrant was issued against me in hopes that I can be coerced and tortured into getting my brothers to be falsely convicted.

My husband and I have never been involved with politics, however, my brother's were in BJP. I know that their enemies have strong connections and considerable influence in the Congress Party. It is our belief that the Congress Party connections actually facilitated the criminal court case and the Interpol warrant. All of the political links and backroom connections with politicians and police are complicated and not fully clear to me at this time.

I am a mother, a wife, a daughter and a caregiver. My family is very dependent upon me and so scared to lose me. I terrified of this corrupt political and beurocratic machinery in India and their helpers-the Indian police. I would be glad to answer any questions in a legitimate court proceeding in the United States, but I beg you not to send me back to this corrupt, brutal system in India. I literally beg for your help. I am an honest and decent woman. I have a good family. I am not a thief or a liar.

Thank you for your consideration of my claim.





United States Department of State  
Washington, D.C. 20520

September 25, 2015

Yuanchung Lee  
Federal Defenders of New York, Inc.  
52 Duane Street, 10<sup>th</sup> Floor  
New York, New York 10007

Re: Extradition of Monika Kapoor

Dear Mr. Lee:

The Department of State is in receipt of your communication of July 24, 2015, submitting materials for the Secretary of State's consideration regarding the determination of whether to extradite Monika Kapoor. The Department is also in receipt of your email of September 21, 2015, in which you state that you had been informed of the Department's decision and requested a copy of the "denial."

Following a review of all pertinent information, including the materials submitted directly to the Department of State and pleadings and filings, including those submitted to the U.S. District Court for the Eastern District of New York on behalf of Monika Kapoor, on September 18, 2015, Under Secretary Sherman decided to authorize Monika Kapoor's surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India.

As a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention"), the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation involves consideration of "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition."

A decision by the Department to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that that fugitive is not more likely than not to be tortured if extradited or an assessment that the fugitive's claim, though invoking the Convention, does not meet the Convention's definition of torture as set forth in 22 C.F.R. 95.1(b), and does not trigger a "more likely than not" determination. Claims that do not come within the scope of the Convention may otherwise raise significant humanitarian issues. The Department carefully and thoroughly considers both claims cognizable under the Convention and such humanitarian claims and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns.

As the official responsible for managing the Department's responsibilities in cases of international extradition, I confirm that the decision to surrender Monika Kapoor to India complies with the United States' obligations under the Convention and its implementing statute and regulations.

If you have any questions, please do not hesitate to contact my office.

Thank you,



Tom Heinemann  
Assistant Legal Adviser for  
Law Enforcement and Intelligence  
U.S. Department of State

DECLARATION OF THOMAS B. HEINEMANN

I, Thomas B. Heinemann, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I am the Assistant Legal Adviser for Law Enforcement and Intelligence (L/LEI) in the Office of the Legal Adviser of the U.S. Department of State (Department), Washington, D.C. L/LEI, which I supervise, is responsible for providing legal advice to the Department on international law enforcement matters of significance to the Department and managing the Department's responsibilities in cases of international extradition. I am a career member of the U.S. Government's Senior Executive Service and have supervised the management of the Department's international extradition responsibilities since February 2012. The following statements provide a general overview of the process of extraditing a fugitive from the United States to a foreign country. They are not intended to be an exhaustive description of all of the steps that might be undertaken in particular cases. I make these statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.
2. Extradition requests made to the United States begin when a formal extradition request is presented to the Department by a diplomatic note from the requesting State's embassy in Washington, or through a similar diplomatic communication. Upon receiving the request with properly certified supporting documents, an attorney within L/LEI reviews the materials to determine: (a) whether an extradition treaty is in effect between the requesting State and the United States; (b) whether the request appears to come within the scope of the treaty; and (c) whether, on the face of the supporting documents, there is no clearly-evident defense to extradition under the treaty (for example, that the offense is a political offense). If the attorney is satisfied that the extradition request facially satisfies these requirements, L/LEI transmits the request and documents to the Department of Justice for further review and, if appropriate, the commencement of extradition proceedings before a United States magistrate judge or a United States district judge.
3. The extradition judge conducts a hearing, pursuant to the authority delegated by 18 U.S.C. §3184, to examine whether extradition would be lawful under the terms of the relevant treaty, including determining whether there is sufficient evidence to sustain the charge(s) against the fugitive. If he or she finds that a fugitive is subject to extradition on any or all of the charges for which extradition is sought, the extradition judge certifies that finding to the Secretary of State, who is the U.S. official responsible for determining whether to surrender the fugitive to the requesting State. See 18 U.S.C. §§ 3184, 3186. In U.S. practice, the extradition judge's decision whether to certify the extradition is not dependent on consideration of any humanitarian claims, such as the age or health of the fugitive, as well as conditions a fugitive may encounter or the treatment they may receive if extradited. Under the long-established "rule of non-inquiry,"



consideration of the likely treatment of the fugitive if he or she were to be returned to the country requesting extradition should not be a part of the extradition certification decision. Instead, such issues are considered by the Secretary of State in making the decision on extradition and surrender.<sup>1</sup>

4. In determining whether a fugitive should be extradited, the Secretary of State may consider de novo any and all issues properly raised before an extradition court (or a habeas court), as well as any other considerations for or against surrender. Among these other considerations are humanitarian issues and other matters historically arising under the rule of non-inquiry, including whether the extradition request was politically motivated, whether the fugitive is likely to be persecuted or denied a fair trial or humane treatment when extradited and, specifically, when a claim cognizable under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) is made, whether it is more likely than not that the fugitive would face torture in the requesting State.

5. The United States has undertaken the obligation under Article 3 of the Torture Convention not to extradite a person to a country where "there are substantial grounds for believing that he would be in danger of being subjected to torture." A formal, written Understanding included in the United States' instrument of ratification of the treaty establishes that the United States interprets this phrase to mean "if it is more likely than not that he would be tortured." As the U.S. official with ultimate responsibility for determining whether a fugitive will be extradited, the Secretary carries out the obligation of the United States under the Torture Convention. The 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, as a decision to extradite a fugitive after determining that torture is more likely than not to occur would be a violation of the United States' obligations under the CAT.

6. The Department's regulations at 22 C.F.R. Part 95, which the Department promulgated pursuant to section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105-277, outline the procedures for considering the question of torture in the context of the Secretary's determination as to whether a fugitive will be extradited. Any or all of the particular measures that the Department might undertake in response to a claim under the Torture Convention, elaborated in paragraphs 7 through 9 below, may be undertaken in response to any humanitarian concerns regarding the requesting country raised by a fugitive, even when allegations made by the fugitive do not satisfy the requirements necessary to make a claim cognizable under the Torture Convention and its implementing statute and regulations.

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<sup>1</sup> The Secretary's authority has been delegated and may be exercised by the Deputy Secretary of State and/or by the Under Secretary of State for Political Affairs. The Secretary retains the authority to act personally in any case as well. References in this declaration to the "Secretary" should be read to include the Secretary's delegates where appropriate.

7. Whenever allegations relating to torture are brought to the Department's attention by the fugitive or other interested parties, appropriate policy and legal offices within the Department with regional or substantive expertise review and analyze information relevant to the particular case in preparing a recommendation to the Secretary. The Department's Bureau of Democracy, Human Rights, and Labor, which drafts the U.S. Government's annual Human Rights Reports (discussed below in paragraph 8) is a key participant in this process. The views of the relevant regional bureau, country desk, and U.S. Embassy also play an important role in the Department's evaluation of torture claims, because our regional bureaus, country desks, and Embassies are knowledgeable about matters such as human rights, prison conditions, and prisoners' access to counsel, in general, and as they may apply to a particular case in a requesting State.

8. The Department will consider information concerning judicial and penal conditions and practices of the requesting State, including the Department's annual Human Rights Reports, and the relevance of that information to the individual whose surrender is at issue. The Department will examine materials submitted by the fugitive, persons acting on his or her behalf, or other interested parties, and will examine other relevant materials that may come to its attention. The fugitive has ample opportunity to submit any materials that he or she wishes to for the Secretary of State's consideration.

9. Based on the analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State or to deny surrender of the fugitive. Or, in some cases, the Secretary might condition the extradition on the requesting State's provision of assurances related to torture or aspects of the requesting State's criminal justice system that protect against mistreatment. In addition to assurances related to torture, such assurances may include, for example, that the fugitive will have regular access to counsel and the full protections afforded under that State's constitution or laws. Whether assurances are sought is decided on a case-by-case basis.

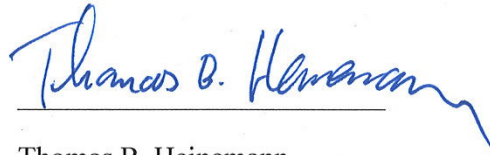
10. The Department's ability to seek and obtain assurances from a requesting State also depends in part on the Department's ability to treat dealings with the relevant foreign government with discretion. Consistent with the diplomatic sensitivities that surround the Department's communications with requesting States concerning certain humanitarian claims, including allegations relating to conditions in the country, mistreatment and torture, the Department does not make public its decisions to seek assurances in extradition cases in order to avoid the chilling effects on requesting States' willingness to make such assurances and the possible damage to our ability to conduct foreign relations with those countries. Seeking assurances may be seen as raising questions or criticism about the requesting State's institutions or commitment to the rule of law.

11. In this case, following a review of all pertinent information, including the materials submitted directly to the Department of State on Monika Kapoor's behalf, as well as all pleadings and filings, including those submitted to the U.S. District Court for the Eastern District

of New York on behalf of Ms. Kapoor, the Secretary authorized Mos. Kapoor's surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India. The materials submitted on Ms. Kapoor's behalf included a copy of her pending asylum application. Despite Ms. Kapoor's present claim that her "submission noted that [she was] requesting the State Department await [her present counsel's] supplement," nowhere in Ms. Kapoor's submissions did she mention a supplement or request that the Department delay its determination until she provided further materials. Instead, Ms. Kapoor requested that the Department "refrain from extraditing Ms. Kapoor until the Immigration Judge has rendered a decision on her pending asylum application." However, a fugitive may be extradited notwithstanding a pending asylum application; indeed, even a grant of asylum is not a legal bar to extradition. Here, neither the contents of Ms. Kapoor's asylum application nor the fact that such application is pending dissuaded the Secretary from deciding to surrender Ms. Kapoor. On September 25, 2015, we notified Ms. Kapoor of the Secretary's decision; our letter, which was transmitted via email to Ms. Kapoor's counsel, is attached.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2015.

A handwritten signature in blue ink, reading "Thomas B. Heinemann", with a stylized flourish at the end.

Thomas B. Heinemann  
Assistant Legal Adviser  
for Law Enforcement and Intelligence



United States Department of State

Washington, D.C. 20520

September 25, 2015

Yuanchung Lee  
Federal Defenders of New York, Inc.  
52 Duane Street, 10<sup>th</sup> Floor  
New York, New York 10007

Re: Extradition of Monika Kapoor

Dear Mr. Lee:

The Department of State is in receipt of your communication of July 24, 2015, submitting materials for the Secretary of State's consideration regarding the determination of whether to extradite Monika Kapoor. The Department is also in receipt of your email of September 21, 2015, in which you state that you had been informed of the Department's decision and requested a copy of the "denial."

Following a review of all pertinent information, including the materials submitted directly to the Department of State and pleadings and filings, including those submitted to the U.S. District Court for the Eastern District of New York on behalf of Monika Kapoor, on September 18, 2015, Under Secretary Sherman decided to authorize Monika Kapoor's surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India.

As a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention"), the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation involves consideration of "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition."

A decision by the Department to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that that fugitive is not more likely than not to be tortured if extradited or an assessment that the fugitive's claim, though invoking the Convention, does not meet the Convention's definition of torture as set forth in 22 C.F.R. 95.1(b), and does not trigger a "more likely than not" determination. Claims that do not come within the scope of the Convention may otherwise raise significant humanitarian issues. The Department carefully and thoroughly considers both claims cognizable under the Convention and such humanitarian claims and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns.



As the official responsible for managing the Department's responsibilities in cases of international extradition, I confirm that the decision to surrender Monika Kapoor to India complies with the United States' obligations under the Convention and its implementing statute and regulations.

If you have any questions, please do not hesitate to contact my office.

Thank you,



Tom Heinemann  
Assistant Legal Adviser for  
Law Enforcement and Intelligence  
U.S. Department of State



United States Department of State

Washington, D.C. 20520

[www.state.gov](http://www.state.gov)

August 4, 2016

Yuanchung Lee  
Federal Defenders of New York, Inc.  
52 Duane Street, 10<sup>th</sup> Floor  
New York, New York 10007

Amy Nussbaum Gell, Esq.  
Partner, Gell & Gell, Attorneys at Law  
299 Broadway, Suite 620  
New York, NY 10007

Re: Extradition of Monika Kapoor

Dear Mr. Lee and Ms. Gell:

On September 25, 2015, we notified Monika Kapoor of the Secretary's decision to authorize her surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India. Following that notification, Ms. Kapoor's counsel submitted further materials on her behalf to the U.S. District Court for the Eastern District of New York on October 7, 2015. The Department voluntarily agreed to review those supplemental materials, as well as further materials submitted on Ms. Kapoor's behalf directly to the Department of State on October 15, 2015.

Following a review of all pertinent information, including these newly-provided materials, Deputy Secretary Blinken decided to reaffirm the prior authorization of Ms. Kapoor's surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India.

As a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention"), the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation involves consideration of "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition."

A decision by the Department to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that that fugitive is not more likely than not to be tortured if extradited or an assessment that the fugitive's claim, though invoking the

Convention, does not meet the Convention's definition of torture as set forth in 22 C.F.R. 95.1(b), and does not trigger a "more likely than not" determination. Claims that do not come within the scope of the Convention may otherwise raise significant humanitarian issues. The Department carefully and thoroughly considers both claims cognizable under the Convention and such humanitarian claims and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns.

As the official responsible for managing the Department's responsibilities in cases of international extradition, I confirm that the decision to surrender Monika Kapoor to India complies with the United States' obligations under the Convention and its implementing statute and regulations.

If you have any questions, please do not hesitate to contact my office.

Thank you,



Tom Heinemann  
Assistant Legal Adviser for  
Law Enforcement and Intelligence  
U.S. Department of State



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MONIKA KAPOOR,

Plaintiff,

-against-

CHARLES DUNNE,

Defendant.

: 16CV5834 (FB)

: United States Courthouse  
: Brooklyn, New York

: November 18, 2021  
: 3:00 p.m.

TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT  
BEFORE THE HONORABLE FREDERIC BLOCK  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: GELL & GELL  
299 Broadway, Ste 620  
New York, NY 10007  
BY: AMY NUSSBAUM GELL, ESQ.

For the Defendant: DOJ-USA0 -Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, NY 11201  
BY: MEREDITH ASHLEY ARFA, ESQ.

Court Reporter: SOPHIE NOLAN  
225 Cadman Plaza East/Brooklyn, NY 11201  
NolanEDNY@aol.com

*Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Aided Transcription*

## Proceedings

2

1 (In open court.)

2 (The Hon. Frederic Block, presiding.)

3 THE COURTROOM DEPUY: Civil cause for oral argument  
4 *Kapoor versus Dunne*.

5 I ask the parties to state your appearances.

6 MS. GELL: Amy M. Gell, Gell & Gell, petitioner.

7 MS. ARFA: Meredith Arfa for the Government for  
8 respondent.

9 THE COURT: Let me tell you why I called you in to  
10 court today. I noticed on my calendar that this matter goes  
11 back to 2016 and so it strikes me as a rather unusual cup of  
12 tea and I think it would be a good idea to discuss what's  
13 happening here.

14 Obviously the Government does not have an appetite  
15 to move this along and to have her extradited back to India  
16 and I don't know whether the Government has a recent update as  
17 to what's going on and I think as a practical matter we should  
18 discuss what's happening here. And my initial reaction is  
19 that maybe the Government wants to check this out again and  
20 find out what exactly the preferences might be now after  
21 sitting on this thing for close to ten years so maybe you can  
22 help me in that respect.

23 Let me hear from the Government. What's going on  
24 here? What do you want to do? We can keep this in a  
25 suspended state of animation for an extended period of time

## Proceedings

3

1 but how do you think we should manage this?

2 MS. ARFA: Your Honor, the Government's position is  
3 that our requests to the Court to deny petitioner's visa  
4 petition and enable her surrender to move forward remains. We  
5 have confirmed that as recently as yesterday India's  
6 extradition warrant remains valid. India is still seeking to  
7 extradite the petitioner.

8 THE COURT: What is taking the Government so long?  
9 It's such a long period of time. I think I'm a coconspirator  
10 here by picking up the file, the Government can come in and  
11 say we want to go forward, but I got some papers today from  
12 the petitioner that we have to review and it seems to me that  
13 maybe you want to check this thing out again. You have not  
14 been so concerned over half a decade, so why now?

15 MS. ARFA: Well, I think, Your Honor, the  
16 Government -- the motion has been pending. I don't believe  
17 there's any point at which the Government has lost interest in  
18 pursuing this. With respect to evaluating where things stand,  
19 respectfully, Your Honor, I think that that's not an issue  
20 that's before this court. I think that the Court doesn't have  
21 jurisdiction --

22 THE COURT: I know the legal argument, okay. But I  
23 got some papers today from the petitioner and I feel guilty.  
24 I could have let this thing lie here for another ten years,  
25 who knows. Obviously you didn't have the appetite to contact

## Proceedings

4

1 me to say we want to get this resolved. There must be a  
2 reason you didn't do that.

3 MS. ARFA: Your Honor, I apologize. I don't have a  
4 reason to offer. What I can represent is that the Government  
5 is interested in moving forward here. We have been in contact  
6 with India, but I can also represent that with respect to next  
7 steps here, the Department of State with which we've also been  
8 in contact has represented that it will review the materials  
9 submitted by petitioner yesterday and will evaluate whether  
10 those materials warrant reconsideration of its prior surrender  
11 decision. So respectfully I think that the appropriate step  
12 here is for the Department of State to be looking at this case  
13 rather than for a habeas petition to be pending with this  
14 court.

15 THE COURT: I was thinking as a practical matter,  
16 you have these new papers. Maybe take a little time to look  
17 at it and check them all out and see what the position of the  
18 Government might be in light of the receipt of these papers  
19 that now we've got to give you some time to evaluate. There's  
20 no rush here because you're not concerned over the last five  
21 years. Take a little time to look at it and give it a good  
22 look over, so to speak, and you can hold this in abeyance and  
23 come back and let me know what your position is, I guess. I  
24 think that's a common sense thing to do.

25 MS. ARFA: Your Honor, may I speak to that?

Proceedings

5

1 THE COURT: Yes.

2 MS. ARFA: Having reviewed the filing yesterday, I  
3 don't think it changes anything. The Government's position  
4 that this court lacks jurisdiction given the particular  
5 procedural posture of this case, which is that there is a  
6 surrender warrant that has been authorized --

7 THE COURT: It goes back five years.

8 MS. ARFA: I understand, but --

9 THE COURT: What is your perspective here? I could  
10 sit on this for another five years; right?

11 MS. ARFA: The Government would respectfully request  
12 that you not do that and deny the position so --

13 THE COURT: But you would have to make an  
14 application to maintain this and see what happens in the  
15 meantime. You haven't done anything in five years.

16 You're in a tough spot here.

17 MS. GELL: Yeah. My position is that first and  
18 foremost, once the State Department's recommendation to  
19 extradite in lieu -- disregarding the torture convention was  
20 not legal. My belief is that their recommendation in 2016 is  
21 certainly reviewable by this court.

22 THE COURT: Well, no, we have a very limited scope.

23 MS. GELL: I think actually the scope of review with  
24 respect to torture convention is a substantive scope. I think  
25 it's not only procedural, but substantive and that's what I

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1 was trying to put in with some of the new case law, which is  
2 it's really suggesting that the habeas court has tremendous  
3 power in terms of deciding on the torture convention.

4 THE COURT: You think I have the power to order a  
5 hearing?

6 MS. GELL: I do. And I think that there are no  
7 limiting issues with respect to this. I think that the State  
8 Department's decision was arbitrary and capricious. I think  
9 that the habeas review is necessary here to guarantee due  
10 process in this whole matter and I think that with respect to  
11 CAT and FARA and that its implementing regulations when it  
12 comes to deportation and exclusion for years, the immigration  
13 courts all look to this issue and they protect people against  
14 violations of CAT but the law of extradition has really lagged  
15 behind.

16 I think that this is exactly a case of what happens  
17 in extradition cases when it comes to especially the torture  
18 convention claim that there's a shuffling effect.

19 For example, Monica Kapoor was picked up eleven  
20 years ago and applied for asylum, CAT, and withholding of  
21 removal eleven years ago and then she was put -- and it was  
22 held in abeyance.

23 THE COURT: The question is whether I have the  
24 authority to really order a hearing and listen to the issues  
25 on torture which is the only reason why presumably extradition



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1 should not be ordered. Otherwise the Secretary of State has  
2 total discretion in this matter.

3 Is there a narrow window here for me to really  
4 reflect upon whether or not there is a basis for a torture  
5 dynamic here?

6 MS. ARFA: Is there --

7 THE COURT: Is there a narrow window of jurisdiction  
8 here to deal with the torture allegation and deal with a  
9 hearing to resolve whether or not there is a legitimate  
10 torture claim here?

11 MS. ARFA: The Government's position, Your Honor, is  
12 that this court does not have that authority. The substance  
13 of the Secretary's surrender decision is not judicially  
14 reviewable even with respect to the CAT claim and --

15 THE COURT: Has the Secretary made a torture  
16 analysis and decision in this case?

17 MS. ARFA: Your Honor, yes. The secretary has  
18 issued two notice letters, both of which made clear that those  
19 decisions were made in compliance with CAT and with the  
20 implementing regulations.

21 THE COURT: Well, where is a file or any record of  
22 the determination that the Secretary of State made that there  
23 was no viable torture claim?

24 MS. ARFA: The representation in the letter, I don't  
25 have to read to Your Honor the language, is that that was

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1 considered and taken into account which is what the Secretary  
2 is required to do.

3 MS. GELL: Your Honor --

4 MS. ARFA: May I just --

5 THE COURT: Don't interrupt.

6 You can say whatever you want, but the question is  
7 it's almost like an immigration proceeding where a claim of  
8 torture is adjudicated by an immigration judge and there's a  
9 review by the Circuit Court of Appeals. And doesn't the same  
10 type of thing apply in this type of situation?

11 MS. ARFA: It doesn't. The statutes at issue are  
12 different. At every stage of the relevant Congressional  
13 action including, approval of the CAT, the enactment of FARA  
14 and REAL ID Act, Congress has reinforced that the parties  
15 subject to extradition may not --

16 THE COURT: You are just reading the statute.

17 MS. ARFA: I am not. Bear with me for a moment.

18 THE COURT: You are reading something?

19 MS. ARFA: So, I was saying Congress with all three  
20 of those statutes has reinforced that there is no habeas  
21 review available with respect to the Secretary's decision as  
22 to whether there's underlying compliance with the CAT.

23 THE COURT: But the Secretary of State has to make a  
24 torture determination from my understanding of the law.

25 MS. ARFA: Correct. And those --

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1 THE COURT: Where is that determination here?

2 MS. ARFA: It's in the notice letters.

3 THE COURT: It's in what?

4 MS. ARFA: In the notice letters providing that  
5 the -- I'm happy to read to you the language if you will bear  
6 with me.

7 THE COURT: I am curious where we have a torture  
8 adjudication or resolution by the Secretary of State.

9 MS. ARFA: In the letters dated September 25, 2015  
10 and August 4, 2016, they say that as the official responsible  
11 for managing the Department's responsibilities in cases of  
12 international extradition, I confirm that the decision to  
13 surrender Monika Kapoor to India complies with the United  
14 States' obligations under the convention and its implementing  
15 statute and regulations."

16 THE COURT: That is just a conclusion.

17 MS. ARFA: That's the State Department representing  
18 that it has reached that conclusion.

19 THE COURT: I do not know. Isn't there something  
20 there that actually will inform me that they actually did make  
21 a torture determination instead of just mouthing that law?

22 MS. ARFA: That's what the letter provides. What I  
23 would also say is that in addition to the CAT statute and the  
24 FAR Act, which permits review of CAT claims in immigration  
25 proceedings only, it's the Government's position that FAR,

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1 which is the implementing legislation here, permits review of  
2 CAT claims in immigration proceedings but not in extradition  
3 proceedings and the REAL ID Act is explicit in saying that  
4 certain immigration proceedings are the sole and exclusive  
5 means for judicial review under the CAT. So Your Honor's  
6 point --

7 THE COURT: The regulations that we speak about here  
8 creates a narrow, limiting interest under which the Secretary  
9 of State, and I'm quoting from the Ninth Circuit decision back  
10 in 2012, must make a torture determination before surrendering  
11 an extraditee who makes a CAT claim. I am just looking for a  
12 torture determination. All you are doing is reading that he  
13 complied with the law.

14 MS. ARFA: Your Honor --

15 THE COURT: I am not so sure that satisfies me that  
16 there's a torture determination and if there was a torture  
17 determination, would I not have the obligation or the  
18 petitioner wouldn't have the opportunity to question that in a  
19 court of law?

20 MS. ARFA: Your Honor, I believe that you're  
21 referring to the *Trinidad* decision; is that right?

22 THE COURT: Yeah.

23 MS. ARFA: So in *Trinidad* what the Court held was  
24 that where the Secretary of State had submitted a general  
25 declaration that acknowledged the Department's obligations but

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1 gave no indication that the department had actually complied  
2 with those obligations in the particular case, that was not  
3 sufficient. And the Court in that case remanded so that the  
4 secretary could augment the record by providing a declaration  
5 that she had actually complied with her obligations. Here,  
6 that's already been done. It's been done twice on two  
7 separate occasions --

8 THE COURT: Six years ago.

9 MS. ARFA: Right, Your Honor. First of all, it's  
10 the Government's position that that's sufficient, but the  
11 Department of State has represented that --

12 THE COURT: Well, why hasn't the Department of State  
13 done anything in the last six years? It troubles me. Is this  
14 a waiver that we're talking with?

15 MS. ARFA: Your Honor, I can't speak to the  
16 Department of State, but I believe that the Government's  
17 position is that there's nothing that could happen while this  
18 habeas position --

19 THE COURT: I understand, but Judge Block picked up  
20 this file five year later because it's pending on his calendar  
21 and five years later you say, we made a decision, but it  
22 hasn't done anything to implement it.

23 MS. ARFA: Again, Your Honor, the decision has been  
24 pending, but the Government -- I don't --

25 THE COURT: Maybe with the passage of five years

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1 maybe there's a waiver of the Government's right to enforce an  
2 extradition order. That has not happened here.

3 MS. ARFA: Your Honor, I don't believe there's been  
4 any waiver here.

5 THE COURT: I am not saying there is but maybe with  
6 the passage of a half a decade it might constitute a waiver if  
7 the Government fails to act.

8 MS. ARFA: I don't believe there's a waiver here,  
9 but I would emphasize that this relates to our relationship  
10 with India and this relates to a treaty and India has  
11 confirmed as recently as yesterday that they are still seeking  
12 to extradite --

13 THE COURT: I know you say that, but it sounds to me  
14 like the type of thing I should know about and make a  
15 determination somehow. I will at least because of the five  
16 years' time that has passed without the Government or India or  
17 anybody doing anything about this -- and my sense is I can  
18 leave it another five years because if I didn't pick up this  
19 file another five years would pass. It sounds like there's a  
20 waiver of what arguably would have been the rights half a  
21 decade ago.

22 I'm troubled by the passage of time here. What I  
23 think I should do, so I can take a careful look at this  
24 oddball situation and maybe I will let you folks brief the  
25 issue of waiver and what review powers I do have and we should

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1 take a careful look at that and it sounds like the sensible  
2 thing to do.

3 Maybe it will be that I agree with you, but it's  
4 such an odd cup of tea here because of the passage of time.

5 MS. ARFA: I agree it's odd with the passage of  
6 time, but again respectfully it's the Government's position  
7 that the Court does not have jurisdiction to do anything here.

8 THE COURT: Well, I do have jurisdiction. Obviously  
9 I have jurisdiction here to pass upon whether or not the  
10 Secretary of State has the power to, you know, almost  
11 unilaterally make these decisions. I have the jurisdiction to  
12 consider this case, don't I?

13 MS. ARFA: I think at this point post-surrender this  
14 court lacks jurisdiction because --

15 THE COURT: I lack jurisdiction that I should do  
16 nothing and I should let the file sit on my desk forever?

17 MS. ARFA: No, Your Honor. The Government --

18 THE COURT: I can do that. If I have no  
19 jurisdiction, I will dismiss the case for lack of jurisdiction  
20 and you can do what you want.

21 MS. ARFA: That's not how I would phrase it, but the  
22 Government's position is that this habeas petition should be  
23 dismissed.

24 THE COURT: What if I dismiss it; what would happen  
25 then?

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1 MS. ARFA: Then the Department of State, given the  
2 passage of time and the filing as of yesterday, will look at  
3 that. We'll review and make a determination.

4 THE COURT: Why didn't they do that within the past  
5 half a decade?

6 MS. ARFA: I can't speak on behalf of the Secretary  
7 of State.

8 THE COURT: I'm a little concerned about that. Why  
9 don't you brief the issue.

10 Do you want to say anything here?

11 MS. GELL: I have several points. I think, first,  
12 that the Government misapprehends the limiting provision of  
13 22-04-D in FARA and the statement in the REAL ID Act. I think  
14 that certainly in REAL ID Act it says that -- it appears to  
15 limit the right of habeas, but it only limits the right of  
16 habeas review when there is actually a filed order of removal  
17 and it was just a consolidating measure.

18 If CAT is denied, absolutely there is a right of the  
19 Court to examine that denial and the -- at the federal -- at  
20 the --

21 THE COURT: It was denied by the Secretary of State;  
22 correct?

23 MS. GELL: Yes. I think --

24 THE COURT: We're not dealing with an immigration  
25 proceeding.

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1 MS. GELL: But also FARA deals with -- absolutely  
2 it's the implementing regulation for extradition and FARA does  
3 not in 22.04-D limit the review of the habeas court. It is  
4 merely because it wasn't as explicitly set out by Congress --

5 THE COURT: What powers do I have in this habeas  
6 application?

7 MS. GELL: You have the powers to substantively  
8 review whether or not there's a torture convention.

9 THE COURT: To have a hearing to determine what the  
10 merits are of this application?

11 MS. GELL: This is what I believe.

12 THE COURT: I am not so sure. Do you have any case  
13 authority that supports that?

14 MS. GELL: I do. This new case in *Morella versus*  
15 *USA* that I put in, in *Aquavista* in the Second Circuit.

16 THE COURT: It says that a habeas court can order a  
17 hearing to determine the merits of this case?

18 MS. GELL: They don't specifically say that you can  
19 order a hearing but they say that you have power to  
20 substantively review the denial by the Department of State and  
21 to review the extradition by the Department of State.

22 THE COURT: Do you agree that I have the power to  
23 review the determination?

24 MS. ARFA: I don't and I would like to make two  
25 points.

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1 THE COURT: The case she cites is not correct,  
2 right?

3 MS. ARFA: Your Honor, one of the cases that she,  
4 *Aquavista* she cites the District Court decision that in  
5 relevant part was reversed by the first circuit.

6 THE COURT: She said no.

7 MS. GELL: It was not reversed by the first circuit.  
8 In fact, the reason that that case was actually dropped was  
9 because the Government of, what was it, Romania.

10 MS. ARFA: You're speaking to Morella. I'm speaking  
11 to *Aquavista*.

12 THE COURT: You can't talk to each other.

13 MS. GELL: In *Aquavista* what happened is that --  
14 see, in this case the immigration case has been held in  
15 abeyance. This family was put in a position where their case  
16 couldn't go forward.

17 THE COURT: We have a recent paper by. I was  
18 troubled by the apparent issue of waiver here if there's such  
19 a thing and I'm troubled by what powers I have, given the  
20 latest spate of papers and the long period of time that this  
21 has been inert and the underlying question of what powers at  
22 all do I have in the face of just a general conclusion five  
23 years ago by the Secretary of State that we comply with the  
24 law so I'm troubled by that. I think it's important for us to  
25 have some briefing here and I know it's been pending a long

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1 time and, you know, we're going to take a look at it now  
2 because I'm interested in this unusual cup of tea here. Does  
3 that make sense?

4 MS. GELL: That would be great. Can I also ask you  
5 a question, Your Honor, and I thank you for that opportunity.  
6 In this case, if -- I know that there was an extradition --  
7 there was a determination that this was an extraditable  
8 offense many years ago. But since then there has been  
9 progress in India, for example, the case has been resolved  
10 with respect to the two -- to her two brothers --

11 THE COURT: I get that.

12 MS. GELL: I'm wondering if that, since there was  
13 only a minimal fine and there was no one-year incarceration --

14 THE COURT: You're arguing that the extradition  
15 order in India is no longer viable. It may or may not be, but  
16 I'm hearing from your adversary that it is viable and I want  
17 to see what it says. All right? I know that you're telling  
18 me that, but I want to actually see the actual extradition  
19 order from India today because things could have changed over  
20 the last five years, obviously, right? There have been a lot  
21 of changes in our government. We had a wonderful new  
22 president we had until last year, so things do change.

23 Our country today is not the same as it was five  
24 years ago so how do I know if India today is the same as it  
25 was five years ago.

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1 MS. ARFA: Well --

2 THE COURT: I need to really get a feel for that.

3 MS. ARFA: We're happy to do whatever Your Honor  
4 would like, but we do have the representation from the India  
5 government that they are still actively pursuing this and with  
6 respect to the question of whether the extraditable offenses  
7 have been dismissed that actually doesn't speak to the  
8 question here and I am happy to speak to that.

9 THE COURT: I will look at the papers you will  
10 submit. You are telling me a lot of things and because I  
11 activated a dormant file, suddenly all sorts of things are  
12 happening and I have to get on top of what's happening here.  
13 I'm interested in the issue of waiver. I want to find out  
14 under the most recent declaration from India I would like to  
15 see what it is. Whether, there is really still a viable  
16 extradition order out there and you're not going back half a  
17 decade to say, you know, we don't have to do anything more.  
18 I'm concerned about that.

19 MS. ARFA: Your Honor, we're happen me to submit  
20 additional briefing but that is the Government's position that  
21 that is beyond the scope of your jurisdiction.

22 THE COURT: So make your submission, but my guess is  
23 and I may be wrong, if I didn't pick up this file it would be  
24 dormant for another X amount of years and maybe forever and I  
25 say that because nothing has happened over the past five years



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1 so why would anything happen over the next five years?

2 MS. ARFA: Your Honor, what I can say to that to the  
3 extent that it's helpful, I only appeared in the case about  
4 two months ago and I would have reached out to the Court.

5 THE COURT: I am not blaming you. I'm talking about  
6 a system.

7 MS. ARFA: I understand, but I still say I do think  
8 we would have moved forward.

9 THE COURT: Brief it all for me. How much time do  
10 you need? Do you want to exchange briefs at the same time or  
11 do you want to have a sort of briefing schedule? What's your  
12 preference?

13 MS. ARFA: I think if the petitioner is going to  
14 submit additional briefing then --

15 THE COURT: Why don't you do this; why don't you  
16 speak to each other and work out amongst yourselves a briefing  
17 schedule so I don't have to play kindergarten teacher and  
18 micromanage it. I'm sure you can work it out amongst  
19 yourselves and when you do that, just let me know, send me a  
20 little ECF letter and make a report of what you agreed to in  
21 terms of your briefing schedule and when you get all of your  
22 papers together send them out to me and we'll take a look at  
23 it. Does that sound okay?

24 MS. GELL: Yes.

25 THE COURT: Work it out amongst yourselves. I don't

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1 see any urgency here obviously. And we'll take a hard look at  
2 it. You understand why I'm concerned.

3 MS. ARFA: I understand Your Honor's position, yes.

4 THE COURT: Okay. Good talking to you.

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6 (Matter adjourned.)

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