No. 24A1108

In the Supreme Court of the United States

MONIKA KAPOOR, APPLICANT

v.

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

RESPONSE IN OPPOSITION TO THE EMERGENCY APPLICATION FOR A STAY OF MANDATE AND JUDGMENT PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Applicant is Monika Kapoor.

Respondents are 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.

ADDITIONAL RELATED PROCEEDINGS

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

In re Extradition of Kapoor, No. 11-M-456, 2012 WL 1318925 (Apr. 17, 2012)

Kapoor v. *Dunne*, No. 12-cv-3196, 2014 WL 1803271 (May 7, 2014)

Kapoor v. *Dunne*, No. 15-cv-5793 (Oct. 14, 2015)

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

Kapoor v. *Dunne*, 606 Fed. Appx. 11 (2015)

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The Solicitor General, on behalf of respondents, respectfully files this memorandum in opposition to the application for stay of mandate and judgment pending the filing and disposition of a petition for a writ of certiorari. The Secretary of State has made repeated determinations that applicant should be extradited to India to answer to criminal charges there and that her extradition will not violate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or Convention), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, and its implementing statute and regulations. Over the last 15 years, the lower courts have denied multiple petitions for writs of habeas corpus. Applicant now seeks to delay her extradition even longer by suspending it for months, pending potential review of an issue—judicial reviewability of executive determinations that extradition will not violate the antitorture provisions of the Convention—that plainly lacks merit and that this Court has previously declined to review. The application should be denied.

STATEMENT

In 2011, the United States filed a complaint seeking applicant's extradition to India to face charges relating to forgery and fraud. In 2012, a federal magistrate judge in the Eastern District of New York certified that applicant was extraditable pursuant to treaty. *In re Extradition of Kapoor*, No. 11-M-456, 2012 WL 1318925 (Apr. 17, 2012). On habeas review, a district court determined that applicant is subject to extradition and denied relief. *Kapoor* v. *Dunne*, No. 12-cv-3196, 2014 WL 1803271, at *2-*5 (E.D.N.Y. May 7, 2014). The court of appeals affirmed. *Kapoor* v. *Dunne*, 606 Fed. Appx. 11, 12 (2d Cir. 2015).

Applicant submitted materials to the Secretary of State seeking denial of extradition on the theory that it was likely to result in her torture in India in violation of the Convention. Once the Secretary had considered and denied that request—finding that extradition would not violate the Convention—applicant filed a second habeas petition asserting a claim under the Convention. After the government agreed to consider new materials in support of applicant's claim that her extradition would contravene the Convention, she withdrew that petition "without prejudice." App. 17a. Following "a review of all pertinent information, including [applicant's] newly-provided materials," the State Department "reaffirm[ed] the prior authorization of [applicant]'s surrender," again determining that applicant's extradition would "compl[y] with the United States' obligations under the Convention and its implementing statute and regulations." *Id.* at 100a-101a.

Applicant then filed a third petition for a writ of habeas corpus. The district court denied relief. App. 40a-47a. The court of appeals affirmed. App. 3a-39a. Applicant sought a stay of the mandate from the court of appeals, which the court denied. App. 1a.

A. Legal Background

1. Under 18 U.S.C. 3184, when the government files a complaint charging a person in the United States with having committed a crime in a foreign state covered by an extradition treaty, a judge may issue an arrest warrant for the fugitive. If the judge determines that the government's "evidence of criminality" is "sufficient to sustain the charge under the provisions of the proper treaty," then the judge "shall certify * * * to the Secretary of State" that the Secretary may issue a surrender warrant. *Ibid.* A judge's certification that an extradition warrant may issue is not subject to direct appeal. *In re Metzger*, 46 U.S. (5 How.) 176, 191 (1847); see also *In re Oteiza y Cortes*, 136 U.S. 330, 333-334 (1890). But this Court has permitted habeas review of extradition certifications, limited to determining whether the judge "had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925).

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

inquiry." See, *e.g.*, *United States* v. *Kin-Hong*, 110 F.3d 103, 110 (1st Cir.), stay denied, 520 U.S. 1206 (1997).

That rule respects the unique province of the Executive Branch to evaluate claims of possible future mistreatment at the hands of a foreign state, its ability to obtain diplomatic assurances of proper treatment (if warranted), and its capacity to provide for appropriate monitoring overseas of a fugitive's treatment. If the Secretary of State finds those protections adequate, "[t]he Judiciary is not suited to second-guess such determinations." *Munaf*, 553 U.S. at 702. "It is not that questions about what awaits the [fugitive] in the requesting country are irrelevant to extradition; it is that there is another branch of government, which has both final say and greater discretion in these proceedings, to whom these questions are more properly addressed." *Kin-Hong*, 110 F.3d at 111.

2. In 1984, the United Nations General Assembly adopted the Convention Against Torture. Article 3 of the Convention provides that no state party shall "extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Art. 3, 1465 U.N.T.S. 114. That article directs the "competent authorities," in making that determination, to "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." *Ibid.*

The Senate gave its advice and consent to the Convention subject to the declaration that "Articles 1 through 16 of the Convention are not self-executing." 136 Cong. Rec. 36,198 (1990). Thus, "[t]he reference in Article 3 to 'competent authorities' appropriately refers in the United States to the competent administrative authorities who make the determination whether to extradite, expel, or return. * * * Because

the Convention is not self-executing, the determinations of these authorities will not be subject to judicial review in domestic courts." S. Exec. Rep. No. 30, 101st Cong., 2d Sess. 17-18 (1990).

3. In implementing Article 3 of the Convention, Congress enacted Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, Subdiv. B, Tit. XXII, § 2242, 112 Stat. 2681-822 (8 U.S.C. 1231 note). Section 2242(a) declares it to be the "policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." The next subsection directs "the heads of appropriate agencies" to "prescribe regulations to implement the obligations of the United States under Article 3" of the Convention, "subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention." § 2242(b), 112 Stat. 2681-822.

FARRA bars judicial review of those regulations, and it expressly states that the statute does not create jurisdiction for judicial review of claims under the Convention, the statute, "or any other determination made with respect to the application of the policy set forth in [Section 2242(a)]," except as part of the review of a final order of removal in immigration proceedings, or if authorized by the implementing regulations promulgated pursuant to the statute. § 2242(d), 112 Stat. 2681-822. With respect to extradition, the State Department has promulgated a final rule that, among other things, notes the obligations imposed by the Convention, 22 C.F.R. 95.2(a); explains that, in implementing those obligations, the Secretary considers whether it "is more likely than not" that the fugitive will be tortured if extradited, 22 C.F.R. 95.2(b);

prescribes the procedures for the Secretary to review allegations of torture, 22 C.F.R. 95.3; and provides that the Secretary's surrender decisions "are matters of executive discretion not subject to judicial review," 22 C.F.R. 95.4.

4. Congress again addressed judicial review of claims under the Convention when it enacted 8 U.S.C. 1252(a)(4) as part of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, Tit. I, § 106(a)(1)(B), 119 Stat. 310-311. That provision states:

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

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

B. The Present Controversy

1. Applicant is a citizen of India who entered the United States in 1999 and overstayed her visa. App. 13a. In March 2010, applicant was placed in immigration removal proceedings. *Id.* at 13a-14a. She subsequently applied for asylum and withholding of removal and relief under the Convention. *Id.* at 14a.

In April 2010, an Indian court issued a warrant for applicant's arrest on five charges related to allegations that applicant and her brothers defrauded the Indian government of roughly $679,000. 2012 WL 1318925, at *1, *5-*6; see App. 14a. In particular, the Indian government alleges that applicant and her brothers used forged documents to obtain various licenses from Indian foreign trade authorities that were used to import duty-free gold. *Ibid.* Applicant was charged with (1) cheating and dishonestly inducing delivery of property, in violation of Indian Penal Code (IPC) § 420; (2) forging a valuable security, will, etc., in violation of IPC § 467; (3) forgery for the purpose of cheating, in violation of IPC § 468; (4) using a forged document as

genuine, in violation of IPC § 471; and (5) criminally conspiring to commit the aforementioned offenses, in violation of IPC § 120-B. Gov't C.A. App. 20, 30-32.[1]

2. In October 2010, the Indian government formally requested applicant's extradition pursuant to the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of India, June 25, 1997, S. Treaty Doc. No. 30, 105th Cong., 1st Sess., T.I.A.S. No. 12, 873 (1997). See Gov't C.A. App. 1-13. In May 2011, the United States filed an extradition complaint in the Eastern District of New York. *Id.* at 14-18. Applicant's immigration proceedings were held in abeyance pending resolution of the extradition proceedings. App. 15a. Applicant was later arrested pursuant to a warrant, provided an initial appearance, and released on bail pending resolution of the extradition proceedings. Gov't C.A. App. 19. In April 2012, a magistrate judge rejected applicant's challenge to her extradition and issued a certificate of extraditability. *Kapoor*, 2012 WL 1318925, at *5-*7.

In June 2012, applicant filed the first of three petitions for a writ of habeas corpus. Gov't C.A. App. 41-46. The district court denied the petition, rejecting applicant's assertions that the charges against her were not extraditable offenses and not supported by probable cause. No. 12-cv-3196, 2014 WL 1803271, at *2-*5. The court of appeals affirmed. 606 Fed. Appx. at 12.

3. In July 2015, applicant submitted materials to the Department of State and requested that it deny the Indian government's extradition request on the theory that she would be at risk of harm in India. Gov't C.A. App. 268. Following a review of those materials and related information, on September 18, 2015, the Secretary

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[1] The government of India has since dismissed two charges but continues to seek applicant's extradition on the remaining counts. Gov't C.A. App. 287-288.

granted India's request for extradition and issued a warrant authorizing applicant's surrender to India. *Id.* at 269; see 18 U.S.C. 3186.

A week later, the Assistant Legal Adviser for Law Enforcement and Intelligence at the State Department sent applicant a letter stating that, "[f]ollowing a review of all pertinent information, including the materials submitted directly to the Department of State and pleadings and filings * * * submitted * * * on behalf of [applicant], * * * Under Secretary Sherman decided to authorize [her] surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India." App. 92a. The letter further stated:

> 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.

Ibid. The letter concluded: "As the official responsible for managing the Department's responsibilities in cases of international extradition, I confirm that the decision to surrender [applicant] to India complies with the United States' obligations under the Convention and its implementing statute and regulations." *Id.* at 93a.

The Assistant Legal Adviser also provided a sworn declaration detailing the State Department's processes to ensure that an extradition complies with the United States' obligations under the Convention. App. 94a-97a. The declaration additionally reiterated that, "[i]n this case, following a review of all pertinent information, including the materials submitted directly to the Department of State on [applicant]'s behalf, as well as all pleadings and filings" and applicant's "pending asylum applica-

tion," the State Department had made the determination to authorize applicant's surrender "pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and India." App. 96a-97a.

4. In October 2015, applicant filed a second petition for a writ of habeas corpus. Gov't C.A. App. 12. After the government agreed to consider new materials in support of applicant's claim that her extradition would contravene the Convention, she withdrew her petition "without prejudice." App. 17a; see *id.* at 100a-101a.

In August 2016, the State Department informed applicant that, "[f]ollowing a review of all pertinent information, including [applicant's] newly-provided materials, Deputy Secretary Blinken decided to reaffirm the prior authorization of [applicant]'s surrender." App. 100a. The Department again determined that applicant's extradition would "compl[y] with the United States' obligations under the Convention and its implementing statute and regulations." *Id.* at 101a.

5. On October 25, 2016, applicant filed a third petition for a writ of habeas corpus, which included a request that the district court overturn the Secretary's determination that her extradition complied with the Convention. App. 48a-60a.

The district court denied the petition. App. 40a-47a. The court observed that, under the REAL ID Act, "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 [Convention]." *Id.* at 45a (quoting 8 U.S.C. 1252(a)(4)). The court invoked then-Judge Kavanaugh's decision on behalf of the D.C. Circuit in *Omar* v. *McHugh*, 646 F.3d 13 (2011), which explained that in light of the REAL ID Act, an individual facing extradition "possesses no statutory right to judicial review of conditions in the receiving country." App. 45a (quoting *Omar*, 646 F.3d at 18). And the court explained that the absence of such a right does not violate the Suspension

Clause of the Constitution, because the writ of habeas corpus was not historically available to review the anticipated treatment of an individual in a foreign country requesting extradition. *Id.* at 45a-46a.

The district court also noted the Ninth Circuit's view that there is "a 'narrow liberty interest' under which the Secretary of State 'must make a torture determination before surrendering an extraditee who makes a [Convention] claim.'" App. 47a (quoting *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952, 956-957 (9th Cir. 2012) (en banc) (per curiam) (emphasis omitted), cert. denied, 568 U.S. 1114 (2013)). And, emphasizing that applicant would not have been "afforded any broader habeas review" under the law of any federal court of appeals, the court "ensured that the [State Department] made the requisite determination" when it "twice affirmed that it considered [applicant]'s claim but decided that her extradition would not violate [the Convention]." *Ibid.*

6. The court of appeals affirmed. App. 3a-39a. It agreed with the district court that the REAL ID Act bars courts from exercising habeas jurisdiction over Convention claims raised by individuals facing extradition. App. 22a-30a. The court of appeals observed that, because the Convention "is not a self-executing treaty," applicant "must rely on the rights 'contained in the Convention's implementing statutes and regulations.'" *Id.* at 22a-23a (brackets and citation omitted). And the court recognized that 8 U.S.C. 1252(a)(4) "specifically and unambiguously precludes a court from exercising habeas jurisdiction over" an extraditee's Convention claim, App. 25a, because "[t]he statute makes clear that a petition for review of a final order of removal is the 'sole and exclusive means for judicial review' for 'any' [Convention] claim" "[n]otwithstanding . . . *section 2241 of Title 28, or any other habeas corpus provision*," *id.* at 26a (citation omitted; brackets in original).

The court of appeals also rejected applicant's claim that the Suspension Clause entitled her to habeas review of her torture claim. App. 31a-38a. The court observed that "fugitives like [applicant] facing extradition have not traditionally been able to maintain a habeas claim based on their anticipated treatment in a receiving country," because the "rule of non-inquiry" has historically "bar[red] courts from evaluating the fairness and humaneness of another country's criminal justice system, requiring deference to the Executive Branch on such matters." *Id.* at 31a. (citation omitted); see *id.* at 31a-36a (citing cases). That "historical tradition," the court explained, "means [applicant] does not present a claim implicating the type of habeas review protected by the Suspension Clause." *Id.* at 37a.

7. The court of appeals denied applicant's motion for a stay of the mandate pending a petition for a writ of certiorari. App. 1a. Following applicant's request (Appl. 28) for an administrative stay, Justice Sotomayor issued an order staying the court of appeals' mandate pending further order of this Court.

ARGUMENT

This Court should deny applicant's request for a stay pending the filing and disposition of a petition for a writ of certiorari. To obtain a stay, applicant must show (1) a "reasonable probability" that this Court would grant certiorari, (2) a "fair prospect" that the Court would reverse, (3) a "likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Applicant has not made that showing.

Applicant contends (Appl. 20-25) that, notwithstanding the review bar in 8 U.S.C. 1252(a)(4), she is entitled to judicial review of her claim that extradition would violate the Convention. That contention lacks merit. This Court has denied a petition for

certiorari raising a similar claim, *Trinidad y Garcia* v. *Thomas*, 568 U.S. 1114 (2013) (No. 12-6615), and has consistently denied stay applications like the one presented here, see *Rana* v. *Englman*, 2025 WL 725088 (Mar. 6, 2025) and 2025 WL 1020353 (Apr. 7, 2025) (No. 24A852); *Sridej* v. *Blinken*, 2024 WL 4110047 (Sept. 6, 2024) (No. 24A236); *Ye Gon* v. *Dyer*, 580 U.S. 930 (2016) (No. 16A244).

Moreover, this case would be an exceedingly poor vehicle for addressing the questions applicant intends to present because she has already received all the process that she would be afforded even under the approach of the circuit most favorable to her, and the outcome is the same: The record here includes "evidence that the Secretary has complied with" his "statutory and regulatory obligations" regarding the Convention Against Torture. *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952, 957 (9th Cir. 2012) (en banc) (per curiam), cert. denied, 568 U.S. 1114 (2013).

The United States has a strong interest in having extradition requests resolved without undue delay, both to comply with our treaty obligations, and to further our reciprocal interest in having other Nations cooperate swiftly with our extradition requests. This case has been pending since 2011, and applicant has been afforded considerable process. She has no equitable right to cite the length and comprehensiveness of that process as a reason why she should be permitted to remain in the United States even longer. Particularly given the unlikelihood that any further proceedings would preclude her extradition to India in accordance with the nations' bilateral treaty, her request for a stay should be denied.

I. THIS COURT IS UNLIKELY TO GRANT CERTIORARI

This Court's standard for granting "extraordinary relief" entails "not only an assessment of the underlying merits but also a discretionary judgment about whether the Court should grant review." *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett,

J., concurring in the denial of application for injunctive relief), cert. denied, 142 S. Ct. 1112 (2022). An applicant seeking a stay pending appeal thus must make a "threshold" showing that "the underlying merits issue" will "warrant this Court's review when the case return[s] to the Court on the merits docket." *Labrador* v. *Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay). Absent a showing that the case satisfies the Court's traditional certiorari standards, the Court "should deny the application and leave the question of interim relief to the court of appeals." *Ibid.*

Here, applicant has not demonstrated a reasonable probability that this Court will grant certiorari on either of the questions she intends to raise. This Court has recently and repeatedly denied applications raising similar claims, and it has denied certiorari in a case that presented the same issues. See pp. 11-12, *supra*. There is no sound reason for the Court to do otherwise in this case. Applicant asserts (Appl. 12-14) that the courts of appeals disagree on the jurisdiction of habeas courts to consider a fugitive's claims under the Convention. But the asserted disagreement does not provide a sound basis for further review—let alone extraordinary relief—in this case. Each circuit to have addressed the issue has recognized that a habeas court may not review the substance of the Secretary's determination that a fugitive, if extradited, is not more likely than not to be tortured. App. 39a; *Sridej* v. *Blinken*, 108 F.4th 1088, 1093 (9th Cir. 2024), application for a stay of extradition denied, No. 24A236, 2024 WL 4110047 (Sept. 6, 2024); *Omar* v. *McHugh*, 646 F.3d 13, 19 (D.C. Cir. 2011); *Mironescu* v. *Costner*, 480 F.3d 664, 676 (4th Cir. 2007), cert. dismissed, 552 U.S. 1135 (2008). This application therefore does not present a substantive conflict for this Court to resolve, nor any other potential basis for certiorari.

Like the Second Circuit in the decision below, the D.C. and Fourth Circuits

have found no jurisdiction because (according to the D.C. Circuit) the REAL ID Act precludes judicial review of such claims, see *Omar*, 646 F.3d at 17-18, or because (according to the Fourth Circuit) FARRA precludes such review, see *Mironescu*, 480 F.3d at 673-677. Applicant notes, however, that the Ninth Circuit's decision in *Trinidad y Garcia* v. *Thomas* took the view that courts have narrow jurisdiction solely to ensure that the Secretary complied with the procedures "prescribed by the statute [implementing the Convention] and implementing regulation." 683 F.3d at 957 (citing 22 C.F.R. 95.2).

Trinidad does not create a split of authority warranting review here. The implementing regulation provides that "[t]he Secretary must consider an extraditee's torture claim and find it not 'more likely than not' that the extraditee will face torture before extradition can occur." *Trinidad*, 683 F.3d at 957 (quoting 22 C.F.R. 95.2). In *Trinidad*, the Ninth Circuit held that the Secretary of State had submitted a "generic declaration" that acknowledged the State Department's obligations under the Convention but gave "no indication that [the Department] actually complied with those obligations" in that case. *Ibid.* The Ninth Circuit concluded that the record thus included "no evidence that the Secretary has complied with the procedures in [that particular] case." *Ibid.* "In the absence of any evidence that the Secretary has complied with the regulation," the court remanded to the district court "so that the Secretary of State may augment the record by providing a declaration that she has complied with her obligations." *Ibid.* The court of appeals stated that the declaration could be signed "by the Secretary or a senior official properly designated by the Secretary." *Ibid.* "If so," the court recognized, "the court's inquiry shall have reached its

end." *Ibid.*[2]

There is no reasonable prospect that this Court would grant certiorari here to resolve any asserted conflict on the scope of judicial review over applicant's habeas claim. The narrow disagreement in the courts of appeals is not properly presented in this case because—as the district court made clear, App. 47a—applicant would not have obtained relief under the Ninth Circuit's standard. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties); see also *The Monrosa* v. *Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959). Here, unlike in *Trinidad*, the record already contains the evidence the Ninth Circuit concluded was missing but necessary: "evidence that the Secretary has complied with" his "statutory and regulatory obligations" in this particular case. *Trinidad*, 683 F.3d at 957. Specifically, the record here includes two letters and a declaration from the Assistant Legal Adviser for Law Enforcement and Intelligence, who is "the official responsible for managing the Department's responsibilities in cases of international extradition." App. 93a, 101a; see *id.* at 94a-97a. Applicant does not dispute that the Assistant Legal Adviser is a "senior official properly designated by the Secretary" to confirm that the State Department has complied with its duties. *Trinidad*, 683 F.3d at 957. And the Assistant Legal Adviser explicitly "confirm[ed] that the decision to surrender [applicant] to India complies with the United States' obligations under the Convention and its implementing statute and regulations." App. 93a, 101a; see *id.* at 95a-97a. Accordingly, applicant has received all the process

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[2] Applicant references (Appl. 14, 25) the First Circuit's decision in *Aguasvivas* v. *Pompeo*, 984 F.3d 1047 (2021), but acknowledges that "[t]he First Circuit avoided deciding th[e] issue" on which applicant seeks this Court's review. App. 14 & n.1.

that would be due under *Trinidad*, and her habeas petition would have been rejected even in the Ninth Circuit. See, *e.g.*, *Sridej*, 108 F.4th at 1090-1093.

Applicant asserts (Appl. 8-9) that the Assistant Legal Advisor's letters and declaration are "conclusory" because they do not include a "discussion" or "analysis of the evidence that [applicant] had submitted in support of her claim," such as "factual findings as to her likely torture in India." But even the Ninth Circuit does not demand that the State Department provide such specific and potentially sensitive information; it simply requires evidence that "the Secretary compl[ied] with her statutory and regulatory obligations." *Trinidad*, 683 F.3d at 957. Indeed, the Ninth Circuit has made clear that applicant's arguments—that the State Department's submissions "lack[] a case-specific explanation for the extradition decision"—would be "foreclosed by *Trinidad*" itself because "a declarant with knowledge that the Secretary or his designee has made the determination required by the [Convention] need only verify that the Secretary 'has complied with her obligations.'" *Sridej*, 108 F.4th at 1093 (quoting *Trinidad*, 683 F.3d at 957); see *Rana* v. *Engleman*, No. 25-1053, 2025 WL 719820, at *2 (9th Cir. Feb. 21, 2025) (concluding that a materially indistinguishable declaration "is sufficient to discharge the Secretary's duties" and that the court "cannot second-guess the Secretary's decision that [the extraditee] is not more likely than not to face torture if returned to India"), stay denied, No. 24A852, 2025 WL 725088 (Mar. 6, 2025) and 2025 WL 1020353 (Apr. 7, 2025).

Applicant further errs in asserting (Appl. 14-16) that this Court's review is required on the theory that the Suspension Clause of the Constitution requires substantive review of the Secretary's determination concerning applicant's likely treatment after extradition. Applicant concedes (Appl. 15) that no court of appeals has adopted her novel view of the Suspension Clause and that no "inter-circuit split" ex-

ists. Applicant asserts (Appl. 15-16) the existence of "intra-circuit divisions," but she does not identify any division of authority or inconsistency within any circuit. She points instead to the separate writings of panel members whose views did not muster a majority. App. 15-16 (citing *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment); *Trinidad*, 683 F.3d at 959 (Thomas, J., concurring); *id.* at 972 (Tallman, J., dissenting)). And even if applicant had properly identified any intracircuit division, that still would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

In addition, a certiorari petition in this case would not present any new ground for this Court's intervention that the Court has not considered and rejected before. This Court denied certiorari in *Trinidad* itself. 568 U.S. at 1114. It is true that, in *Trinidad*, the Ninth Circuit erred, and the fugitive received more favorable treatment than he may have received in other circuits. But even that review was highly limited. The only inquiry permitted under the Ninth Circuit's rubric is to ensure that the State Department has confirmed that it complied with its statutory and regulatory obligations. See *Trinidad*, 683 F.3d at 957. This Court nonetheless declined in that case to address the same claim that applicant presses here: namely, an entitlement to judicial review of the substance of a claim that extradition would violate the Convention. It has also denied stays of extradition asserting similar claims—including earlier this Term. See *Sridej*, 2024 WL 4110047, at *1; see also *Rana*, 2025 WL 725088, at *1; *Rana*, 2025 WL 1020353, at *1. There is no sound reason why it would—or should—reach out to grant certiorari here.

II. APPLICANT IS UNLIKELY TO SUCCEED ON THE MERITS

In addition to failing to show a likelihood of certiorari, applicant also has failed

to show a fair prospect that, if the Court did grant certiorari, it would reverse the judgment below. The courts below correctly concluded that applicant's habeas claim is foreclosed in this context.

A. Article 3 of the Convention Against Torture provides that no party to the Convention shall "extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." 1465 U.N.T.S. 114. Under Article I of the Convention, "torture" has a specific and narrow definition, referring to the likelihood of deliberate infliction of significant suffering at the instigation of government officials in the receiving country. 1465 U.N.T.S. 113-114. The Senate gave its advice and consent to the Convention in 1990, 136 Cong. Rec. 36,198, noting that "[b]ecause the Convention is not self-executing," determinations made under the Convention "will not be subject to judicial review in domestic courts." S. Exec. Rep. No. 30, 101st Cong., 2d Sess. 18 (1990). Congress implemented Article 3 of the Convention in Section 2242 of FARRA, which provides that it is "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." § 2242(a), 112 Stat. 2681-822 (8 U.S.C. 1231 note).

Section 2242(d) of FARRA, in turn, makes clear that Congress did not grant federal courts jurisdiction to review claims under the Convention outside of the context of a final order of removal entered in an immigration case. Specifically, it instructs that "[n]otwithstanding any other provision of law," and except as provided by certain regulations, "nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention" Against Torture, "*except as part of the review of a final order of removal*" pursuant to 8 U.S.C.

1252. 8 U.S.C. 1231 note (emphasis added). In doing so, it "provides for judicial review of [Convention] claims 'as part of the review of a final order of removal,'" *Nasrallah* v. *Barr*, 590 U.S. 573, 580 (2020) (citation omitted), but not otherwise, unless granted by regulation. It thereby forecloses the form of review that applicant seeks: habeas corpus review of a Convention determination committed by regulation to the Secretary.

FARRA also requires the "heads of the appropriate agencies" to prescribe regulations implementing Article 3 of the Convention. § 2242(b), 112 Stat. 2681-822 (8 U.S.C. 1231 note). Under that statutory authority, the State Department has promulgated regulations that provide that, when appropriate, "the Department considers the question of whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition." 22 C.F.R. 95.2(b); see 22 C.F.R. 95.1(b) (defining torture). The regulations also state that the Secretary's surrender decisions are "matters of executive discretion not subject to judicial review." 22 C.F.R. 95.4. And the regulations themselves are shielded from judicial review by Section 2242(d)'s preclusion of review of claims under the Convention, the statute, "or any other determination made with respect to the application of the policy [on torture] set forth in subsection (a)." FARRA § 2242(d), 112 Stat. 2681-822 (8 U.S.C. 1231 note).

Under those provisions, parties subject to extradition—which is not a final order of removal in an immigration case—may not obtain review via habeas corpus of the State Department's decision to extradite or the substance of its determination under the Convention. It is "of course a matter of serious concern" whether a person will be tortured if he is transferred to another country for prosecution. *Munaf* v. *Geren*, 553 U.S. 674, 700 (2008). But as this Court has recognized, "[e]ven with re-

spect to claims that detainees would be denied constitutional rights if transferred, * * * it is for the political branches, not the Judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Id.* at 700-701.[3]

If any doubt remained about whether Congress has precluded the sort of review that applicant seeks, the REAL ID Act of 2005 eliminated it. In amending 8 U.S.C. 1252, Congress provided that, "[n]otwithstanding any other provision of law * * * *including section 2241 of title 28*,"—which provides for petitions for writs of habeas corpus—"*or any other habeas corpus provision*," a petition for review of a final order of removal "shall be the sole and exclusive means for judicial review of *any* cause or claim under the United Nations Convention Against Torture." 8 U.S.C. 1252(a)(4) (emphases added); see 28 U.S.C. 2241. As this Court has repeatedly explained, the "word 'any' has an expansive meaning." *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (citation omitted). Thus, "[e]ven if [FARRA] had extended a judicial review right to extradition or military transferees * * * , a subsequent statute—the REAL ID Act of 2005—made clear that those kinds of transferees have no such right." *Omar*, 646 F.3d at 18.

B. Invoking the Ninth Circuit's decision in *Trinidad*, applicant asserts that Section 2242(d) of FARRA "'lacks sufficient clarity'" to limit habeas jurisdiction and that the REAL ID Act "'can be construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction.'" Appl. 20-22 (citation omitted). That contention is unsound.

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[3] In *Munaf*, the Court "express[ed] no opinion" on whether FARRA permits judicial review of claims under the Convention. See 553 U.S. at 703 n.6. But the Court noted that a court addressing that question would need to decide, among other things, whether review under FARRA is "limited to certain immigration proceedings." *Ibid.* (citing FARRA § 2242(d), 112 Stat. 2681-822).

The REAL ID Act's text is unqualified, making it plain that a petition for review of a removal order is the "sole and exclusive means" for judicial review of claims under the Convention. 8 U.S.C. 1252(a)(4). And as the decision below correctly recognized, App. 27a-28a, applicant's interpretation "runs afoul of the 'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute,'" *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014) (citation omitted). Section 1252(a)(4) would be redundant if its limitation on judicial review only applied in the context of removal proceedings. The very next paragraph of the statute, 8 U.S.C. 1252(a)(5), already bars habeas claims in the context of removal proceedings by providing that "[n]otwithstanding any other provision of law * * * , including section 2241 of title 28"—the habeas statute—"a petition for review * * * in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." If, as applicant insists, subsection (a)(4)'s limitation on habeas review of claims under the Convention applies only to claims raised in the context of removal proceedings, then subsection (a)(4) would be entirely subsumed by subsection (a)(5)'s broader limitation on *all* habeas review of removal orders.

In any event, even under applicant's preferred rubric, her claim would be subject to narrowly circumscribed review solely to ensure that the State Department has confirmed that it complied with statutory and regulatory obligations under the Convention. See *Sridej*, 108 F.4th at 1090-1093; *Trinidad*, 683 F.3d at 957. And as discussed above, even if such review were permitted, the judgment below still would be affirmed because the Assistant Legal Adviser's letters and declaration provide the confirmation that the Ninth Circuit requires. See *ibid.*

C. Applicant also errs in asserting (Appl. 22-25) that the Suspension Clause requires substantive review of the Secretary of State's determination concern-

ing applicant's likely treatment after extradition. That claim rests on a fundamentally incorrect understanding of the role of habeas corpus in the extradition context. As a matter of history and practice, the role of a habeas court does not extend to issues concerning the treatment a fugitive will receive in a foreign state. See *DHS* v. *Thuraissigiam*, 591 U.S. 103, 119 (2020) (rejecting a Suspension Clause claim where "the relief requested falls outside the scope of the writ as it was understood when the Constitution was adopted"). At most, a habeas court's role in that context—based on a *statutory* conferral of habeas rights, not the Constitution, see *id.* at 128-130—has been the far more limited one of reviewing the complaint to determine whether the request falls within the scope of the treaty and is supported by probable cause. See *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925); p. 3-4, 19-20, *supra*. Applicant had access to the jurisdiction of the habeas court to contest those issues and fully litigated them. See 606 Fed. Appx. 11. The Constitution requires no more.

Moreover, the writ of habeas corpus cannot be deemed "suspended" unless a claimant can show that she would have enjoyed a greater degree of review at some earlier time. For example, in *Munaf*, the habeas petitioners contended that a federal court should enjoin their transfer to Iraqi authorities to face trial in Iraqi courts "because their transfer to Iraqi custody is likely to result in torture." 553 U.S. at 700. Relying on principles announced in extradition cases, this Court recognized that "[s]uch allegations are of course a matter of serious concern, but in the present context that concern is to be addressed by the political branches, not the Judiciary." *Ibid.* And the court quoted a treatise's observation that "[h]abeas corpus has been held not to be a valid means of inquiry into the treatment the relator is anticipated to receive in the requesting state." *Ibid.* (citation omitted). Rather, even where important rights are concerned, "it is for the political branches, not the Judiciary, to assess prac-

tices in foreign countries and to determine national policy in light of those assessments." *Id.* at 700-701.

Munaf noted that the Solicitor General had represented that "it is the policy of the United States *not* to transfer an individual in circumstances where torture is likely to result," 553 U.S. 702, and that such determinations rely on "the Executive's assessment of the foreign country's legal system and . . . the Executive['s] . . . ability to obtain foreign assurances it considers reliable." *ibid.* (quoting Gov't Br. at 47, *Munaf*, No. 06-1666 (Jan. 22, 2008)) (brackets in original). The Court emphasized that "[t]he 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." *Ibid.* "In contrast," the Court explained, "the political branches are well situated to consider sensitive foreign policy issues, such as whether there is a serious prospect of torture at the hands of an ally, and what to do about it if there is." *Ibid.* The Court rejected the view that the government would be indifferent to that prospect, observing that "the other branches possess significant diplomatic tools and leverage the judiciary lacks." *Id.* at 702-703 (citation omitted).

This Court's decision in *Munaf* reinforced the longstanding tradition of judicial reluctance to inquire into the treatment a fugitive would face in a foreign legal system if extradited. See, *e.g.*, *Neely* v. *Henkel (No. 1)*, 180 U.S. 109, 122 (1901). Applying equitable doctrines that "may 'require a federal court to forgo the exercise of its habeas corpus power,'" *Munaf*, 553 U.S. at 693 (citation omitted), this Court concluded that, even in the face of allegations of potential mistreatment by a foreign state, "[d]iplomacy," not judicial review, "was the means of addressing the petitioner's concerns," *id.* at 701. Thus, as a matter of historical practice that was reaffirmed in

Munaf, no valid claim exists that a habeas court's refusal to second-guess the Secretary of State's Convention determination violates the Suspension Clause.[4]

Congress did not alter that historic rule by enacting FARRA. Rather, it reinforced it. As explained above (pp. 4-6), Congress enacted Section 2242 of FARRA to implement the United States' obligations in Article 3 of the Convention, which are not self-executing and do not themselves provide a basis for judicial review. Section 2242(a) makes clear that it is the "policy of the United States" not to extradite a person where there are substantial grounds for believing the person would be tortured. But that statement creates no judicially enforceable right. See *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 288 (2002) (statutes that "speak only in terms of institutional policy and practice * * * cannot 'give rise to individual rights'") (citations omitted).

Applicant's reliance (Appl. 24) on *Trump* v. *J.G.G.*, 145 S. Ct. 1003 (2025) (per curiam), is misplaced. In *J.G.G.*, this Court explained that certain detainees' "[c]hallenges to removal" under the Alien Enemies Act (AEA), Ch. 324, 60 Stat. 237, 50 U.S.C. 21, "must be brought in habeas," not under the Administrative Procedure Act, because their "claims for relief necessarily imply the invalidity of their confinement and removal under" the AEA. *J.G.G.*, 145 S. Ct. at 1005 (citation omitted). In a concurring opinion, Justice Kavanaugh observed that habeas corpus was "the appropriate vehicle" for the detainees' AEA-related claims "given the history and precedent of using habeas corpus to review transfer claims." *Id.* at 1007. But the Court did not

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[4] *Munaf* noted that it did not have before it "a more extreme case in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway." 553 U.S. at 702. Nor is that "extreme case" presented here. The United States recognizes its obligation under the Convention not to surrender a fugitive who is more likely than not to be tortured in the receiving state. And the State Department declaration in this case expressly represented that "[t]he Secretary will not approve an extradition whenever the Secretary determines that it is more likely than not that the particular fugitive will be tortured in the country requesting extradition." App. 95a.

hold that an alien facing extradition is entitled to judicial review of every determination made by the Executive Branch—including determinations as to which judicial review is statutorily barred and would be historically anomalous.

To the contrary, *J.G.G.* underscores that the Court seeks guidance from history in considering the scope of habeas corpus. See 145 S. Ct. at 1005; *id.* at 1007 (Kavanaugh, J., concurring); see also, *e.g.*, *Thuraissigiam*, 591 U.S. at 107 (holding that a "Suspension Clause argument fails because it would extend the writ of habeas corpus far beyond its scope 'when the Constitution was drafted and ratified'") (citation omitted); *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."). Applicant's ability to challenge her extradition by seeking a writ of habeas corpus was not disputed; she sought such a writ, and her claims were adjudicated and denied. 606 Fed. Appx. 11; No. 12-CV-3196, 2014 WL 1803271. But under the historical rule of non-inquiry, "[t]hose facing extradition traditionally have not been able to maintain habeas claims to block transfer based on conditions in the receiving country." *Omar*, 646 F.3d at 19; see, *e.g.*, *United States* v. *Kin-Hong*, 110 F.3d 103, 110 (1st Cir.), stay denied, 520 U.S. 1206 (1997); pp 3-4, 19-20, *supra*.[5]

There is good reason for this long history of the rule of non-inquiry in the extradition context. The rule of non-inquiry does not prevent fugitives from having their torture or other treatment claims carefully considered; on the contrary, its role is to protect the ability for such claims to be considered by the branch of government

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[5] Applicant asserts (Appl. 18) that this Court's decision in *Nasrallah*, 590 U.S. 573, is "adjacent to" the questions raised in the application. But *Nasrallah* concerned statutorily authorized "judicial review of final orders of removal and [Convention] orders," 590 U.S. at 579, *not* the availability of habeas relief to challenge an extradition based on the conditions in the receiving state.

most capable of assessing and addressing likely conditions fugitives will face if extradited. See pp. 3-4, *supra*. And just as courts have an established practice of non-inquiry, the Executive Branch has well-established procedures for diligently considering and addressing claims regarding treatment in extradition cases, as this case demonstrates. The Department of State has reviewed applicant's torture claim in this case more than once, based on a careful and longstanding approach consistent with the United States' treaty obligations, FARRA and 18 U.S.C. 3186, and the State Department's regulations at 22 C.F.R. Part 95.

III. THE EQUITIES DO NOT SUPPORT A STAY

The unlikelihood that this Court would grant a writ of certiorari and reverse means that a stay is unwarranted irrespective of applicant's arguments (Appl. 25-28) that she will be irreparably harmed in the absence of a stay or that the equities favor interim relief. See Stephen M. Shapiro et al., *Supreme Court Practice* § 17.13(b), at 903-904 (10th ed. 2013). No sound reason exists to stay applicant's extradition if this Court is likely to leave the extradition decision undisturbed. *Ibid.*; see, *e.g.*, *Indiana State Police Pension Trust* v. *Chrysler LLC*, 556 U.S. 960, 961 (2009) (per curiam) ("A stay is not a matter of right, even if irreparable injury might otherwise result.") (quoting *Nken* v. *Holder*, 556 U.S. 418, 433 (2009)).

In any event, applicant errs in suggesting that the equities favor relief. "The surrender of a fugitive, duly charged in the country from which he has fled with a non-political offense and one generally recognized as criminal at the place of asylum, involves no impairment of any legitimate public or private interest." *Factor* v. *Laubenheimer*, 290 U.S. 276, 298 (1933). Rather, "the public interest will be served by the United States complying with a valid extradition application * * * under the treaty," because "compliance promotes relations between the two countries, and en-

hances efforts to establish an international rule of law and order." *Artukovic* v. *Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986).

Judicial review of the treatment that a fugitive is likely to receive in a foreign state—after the Secretary of State has determined that torture is not more likely than not to occur—would threaten to disrupt the proper balance between the branches by requiring the Judiciary to pronounce foreign-policy judgments that are the province of the political branches, possibly preventing the Nation from speaking with one voice on sensitive matters of foreign policy. See *Munaf*, 553 U.S. at 702. And delaying extradition to entertain a claim that United States courts should begin to engage in that sort of intrusive inquiry could in itself impair foreign relations.

Delay imposes serious costs on the sound operation of the extradition system. The litigation of applicant's extradition, for example, has lasted almost 15 years. Such protracted delays in extradition can produce international tensions that may undermine the United States' own interests in securing the prompt return of fugitives under extradition treaties. Applicant suggests (Appl. 27) that the length of the proceedings thus far would render further delay relatively inconsequential. But that suggestion would have the perverse effect of prolonging the proceedings most in need of conclusion.

In some cases, extended delays can undermine a foreign government's ability to prosecute a fugitive. For example, in *Cornejo Barreto* v. *Siefert*, 389 F.3d 1307 (2004), the Ninth Circuit dismissed as moot an appeal from the denial of habeas corpus in an extradition case, where the foreign government withdrew its extradition request because the statute of limitations had run while the extradition proceedings were pending. *Id.* at 1307. The United States thus has a significant interest in achieving timely compliance with extradition requests from its treaty partners, in-

cluding India.

Applicant is correct (Appl. 25) that absent a stay, she may be extradited and her case would almost certainly be mooted. See, *e.g.*, *Lindstrom* v. *Graber*, 203 F.3d 470, 474 (7th Cir. 2000) (appeal from denial of habeas writ moot where fugitive is returned to foreign state). But significantly, the government is, as this Court recognized in *Munaf*, not "oblivious" to concerns about possible torture. 553 U.S. at 702 (citation omitted). On multiple occasions within the last 15 years, the State Department has concluded that applicant's extradition would comply with the United States' obligations under the Convention and implementing statute and regulations.

The State Department's declaration in this case unequivocally represented that "[t]he Secretary will not approve an extradition whenever the Secretary determines that it is more likely than not that the particular fugitive will be tortured in the country requesting extradition." App. 95a. Rather, "[i]n each case where allegations relating to torture are made," the "appropriate policy and legal offices" in the Department "analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant." 22 C.F.R. 95.3(a).

Applicant pursued those procedures in this case and her claims have been extensively reviewed and litigated. See pp. 6-9, 15-17, *supra*. The court of appeals rejected her habeas claims, 606 Fed. Appx. at 12; the State Department twice considered her Convention claim, App. 92a-97a, 98a-101a; and she has received all the process due even under the circuit precedent that is most favorable to her, *Sridej*, 108 F.4th at 1090-1093. A stay here thus "could only delay but not prevent extradition." *Jimenez* v. *United States Dist. Ct.*, 84 S. Ct. 14, 19 (1963) (Goldberg, J., in chambers). "At some point all litigation must end." *Ibid.* That time should come now.

CONCLUSION

The application should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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