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, ROBERT CORDEIRO, CHIEF PRETRIAL SERVICES OFFICER FOR THE EASTERN DISTRICT OF NEW YORK,

Respondents.

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY OF MANDATE AND JUDGMENT PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI

Amy N. Gell
Daniel I. Phillips
GELL & GELL PLLC
299 Broadway, Suite 620
New York, NY 10007
(212) 619-2859
danieliphillipsesq@gmail.com

Daniel N. Lerman
Counsel of Record
Paul Brzyski
Zachary N. Ferguson
KRAMER LEVIN NAFTALIS & FRANKEL LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
(202) 775-4524
dlerman@kramerlevin.com

Counsel for Applicant Monika Kapoor

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INTRODUCTION

The government's response confirms the need for a stay here. The government does not deny that the decision below deepened a clear circuit split over federal courts' jurisdiction to hear Convention Against Torture (CAT) claims by extraditees. And it does not deny that Ms. Kapoor will endure irreparable harm without a stay. The government thus concedes the basic components warranting a stay. Its arguments against one are unpersuasive.

On whether this case is certworthy, the government starts by citing prior stay applications that were denied by this Court. But those applications are all readily distinguishable—none presented the issues that Ms. Kapoor will raise in her petition, and none cited or articulated the relevant circuit split on those issues. That circuit split has only deepened with the decision below. Next, after acknowledging that there is a circuit conflict as to federal court jurisdiction, the government makes the remarkable assertion that this jurisdictional conflict does not "warrant * * * review." This Court has repeatedly stressed otherwise, that jurisdictional rules demand clarity. In no context is the need for clarity more pronounced than this one, which implicates the intersection of individual liberty, the scope of the Great Writ, and foreign relations. Further, the government is patently wrong that Ms. Kapoor would lose under the Ninth Circuit's standard—so there is no vehicle issue there.

As to whether there is a "fair prospect" that this Court will reverse on the merits, the government misreads the two relevant statutes—Section 2242(d) of FARRA and 8 U.S.C. § 1252(a)(4)—as well as the history of the Great Writ. Habeas jurisdiction over CAT claims by extraditees already existed under 28 U.S.C. § 2241.

FARRA Section 2242(d) merely states a rule of construction that Section 2242 of FARRA does not affirmatively confer habeas jurisdiction. And Section 1252(a)(4) only deals with CAT claims brought to challenge *removal orders*—no matter how much the government tries to wrench that provision out of context. Last, the government cites neither Founding-era nor pre-Founding authority to support its sweeping assertion about the historical scope of habeas review for extraditees.

Last, the government does not deny that Ms. Kapoor will endure irreparable harm without a stay—complaining only that her extradition proceedings have taken too long. As the district court emphasized, the government caused the delay here, and Ms. Kapoor should not be forced to bear the cost of the government's procrastination. This is the first and only time Ms. Kapoor has had an opportunity to raise these issues to this Court. As someone who already endured torture in India and fled to escape it, who is law-abiding and non-violent, who is a mother, caregiver, and member of her local community, Ms. Kapoor—perhaps more than anyone—deserves the opportunity to at least file her petition for this Court's review.

ARGUMENT

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

A. The prior stay applications and petition cited by the government support the case for certiorari

The prior stay applications and cases cited by the government support Ms. Kapoor's case that a stay should issue to give her an opportunity to file a petition for a writ of certiorari. The government cites the denied petition for a writ of certiorari in *Trinidad y Garcia* and three denied stay applications by extraditees, arguing that

"there is no sound reason for the Court to do otherwise in this case." Opp. 13. But of course, there is.

First, Justice Kennedy *did* grant a stay of mandate in *Trinidad y Garcia*, 2012 WL 13331620 (No. 12A200) (Sept. 19, 2012), providing evidence that one of the questions that Ms. Kapoor intends to present meets the stay criteria. Indeed, the case for a stay (and for certiorari) is even stronger here than it was in *Trinidad y Garcia*. The questions presented by the petition in *Trinidad y Garcia*, according to the government, were (1) "[w]hether the Suspension Clause * * * is violated when a habeas court declines to evaluate the Secretary of State's" CAT determination; and (2) whether a fugitive had a substantive due process right to review of the Secretary's decision. See Br. in Opp. at I, No. 12-6615 (Nov. 30, 2012), (available at https://perma.cc/YHQ7-DMKB).[1] Ms. Kapoor's petition, however, would also raise the separate issue of whether Congress has barred habeas review of CAT claims—the issue on which there is a split. The petition in *Trinidad y Garcia* did not present that question, because the Ninth Circuit held that Section 1252(a)(4) does not strip courts of their habeas jurisdiction over such claims. Now, however, the Second Circuit's decision has deepened the circuit split on that question. Ms. Kapoor's petition will thus be even more certworthy than the petition in *Trinidad y Garcia*—where, as noted, the Court granted the application for a stay.

Second, two of the stay applications cited by the government came from the Ninth Circuit and one came from the Fourth Circuit. Those courts had already

[1] Ms. Kapoor does not have access to the petition itself.

addressed these issues in previous cases, and were merely applying their precedents to the cases before them. The Second Circuit, by contrast, made new circuit law in Ms. Kapoor's case, and its decision *deepened*—as the court acknowledged, App. 30a—the circuit split on whether Congress has stripped federal courts of habeas jurisdiction over extraditees' CAT claims. The Second Circuit's decision here proves that the circuit split is growing, not resolving, and thus requires this Court's intervention. Thirteen years of percolation since *Trinidad y Garcia* has only entrenched the split further.

Third, none of the applications cited by the government even raised the same issues—or clearly articulated the relevant circuit split—that Ms. Kapoor's forthcoming application will raise. Again, Ms. Kapoor's petition will raise the question whether Congress has stripped federal courts of habeas jurisdiction over CAT claims by individuals facing extradition. The courts of appeals are hopelessly divided on that question: the Second and D.C. Circuits say yes, because of 8 U.S.C. § 1252(a)(4); the Fourth Circuit says yes, because of Section 2242(d) of FARRA; and the Ninth Circuit says no.

By contrast, none of the recent applications cited by the government even clearly articulated the same issue.

The Ninth Circuit's mandate in *Rana* v. *Englman* had already issued by the time the stay application was filed. See Mandate (ECF No. 50), *Rana* v. *Jenkins*, No. 23-1827 (9th Cir. Jan. 21, 2025). Moreover, the application in *Rana* v. *Englman*, No. 24A852 (Feb. 28, 2025), did not seek to resolve any clearly defined conflict among the

circuits, but instead simply challenged the correctness of the Ninth Circuit's approach to reviewing CAT determinations. See *Rana*, Application for Stay, at 1. Indeed, the *Rana* application did not even *cite* Section 1252 or Section 2242(d) of FARRA—let alone mention the jurisdictional circuit split—because the applicant had already benefited from review of his habeas claim under *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012) (per curiam). See generally Order (ECF No. 38), *Rana* v. *Jenkins*, No. 2:23-cv-04223-DSF (C.D. Cal. Feb. 19, 2025); Order (ECF No. 9.1), *Rana* v. *Engleman*, No. 25-1053 (9th Cir. Feb 21, 2025).

Much the same is true of the application in *Sridej* v. *Blinken*, 24A236 (Aug. 30, 2024). That application did not raise the jurisdictional circuit split, or the underlying Suspension Clause issue, concerning habeas jurisdiction over CAT claims by extraditees. It did not cite either the D.C. Circuit's decision in *Omar* v. *McHugh*, 646 F.3d 13 (D.C. Cir. 2011), or the Fourth Circuit decision in *Mironescu* v. *Costner*, 480 F.3d 664, 676 (4th Cir. 2007). And since *Sridej* arose in the Ninth Circuit, the applicant had already benefitted from the Ninth Circuit's approach, whereas Ms. Kapoor was denied even that.

Ms. Kapoor does not have access to the stay application in *Ye Gon* v. *Dyer*, No. 16A244 (Sept. 13, 2016). But the Fourth Circuit decision from which it arose provides no analysis of the relevant statutory or Constitutional issues that will be presented in Ms. Kapoor's petition. See *Zhenli Ye Gon* v. *Dyer*, 651 Fed. Appx. 249 (4th Cir. 2016) (per curiam). If any potentially certworthy issues were implicated by the decision, they were buried among myriad preservation and procedural issues. *Id.* at

252-253. And, like in *Rana*, the Fourth Circuit's mandate had already issued (Sept. 13, 2016) by the time this Court was considering Ye Gon's stay application.

B. The acknowledged circuit split warrants this Court's review

In its opposition to Ms. Kapoor's motion for a stay in the court of appeals, the government argued that "there is no circuit split" on the question presented. Gov't C.A. Br. 7 (ECF 116) (May 5, 2025). In its response to Ms. Kapoor's stay application to this Court, the government now acknowledges that there is very much a circuit conflict. See Opp. 15 (discussing the "narrow disagreement in the courts of appeals"); *id.* at 17 (stating that in *Trinidad y Garcia* "the Ninth Circuit erred"). It just protests that the circuit split over federal court habeas jurisdiction is not one "warranting review." Opp. 14. But that assertion flies in the face of everything this Court has said previously.

Indeed, this Court has stressed that "jurisdictional rules should be clear." *Lapides* v. *Board of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002); *Direct Mktg. Ass'n* v. *Brohl*, 575 U.S. 1, 11 (2015) (rejecting an interpretation of a statute that was inconsistent with this Court's "rule favoring clear boundaries in the interpretation of jurisdictional statutes"). This Court therefore often grants certiorari petitions to resolve "divergent" jurisdictional rulings by the courts of appeals, *Hertz Corp.* v. *Friend*, 559 U.S. 77, 92 (2010), striving to provide the lower courts with "straightforward rules under which they can readily assure themselves of their power to hear a case," *id.* at 94. Such clarity is urgently needed here.

After *Trinidad y Garcia*, one set of commentators described the confused legal landscape of habeas review of CAT claims by extraditees as "less certain than a Star

Trek venture." 2 Bryan Neihart & Anjali Nanda, *Litigation of International Disputes in U.S. Courts* § 10:25 (2d ed. 2024). That is an intolerable state of affairs in this context, where the need for jurisdictional clarity is at its zenith and the judicial role necessarily lies at the intersection of individual rights, the scope of the Great Writ, and foreign relations.

The government next argues that Ms. Kapoor should not receive a stay because she would not ultimately succeed under the Ninth Circuit's rule in *Trinidad y Garcia*. See Opp. 15-16. That is not true—and beside the point in any event.

First, the State Department's cut-and-paste letters here would not, as the government suggests, satisfy the scope of review afforded under *Trinidad y Garcia*. There, the State Department had "submitted a generic declaration outlining the basics of how extradition operates at the Department and acknowledging the Department's obligations under the aforementioned treaty, statute and regulations, but the Department g[ave] no indication that it actually complied with those obligations in [the] case." *Id.* at 957. That was deemed inadequate by the Ninth Circuit. *Ibid.* But that is just what Ms. Kapoor received—generic letters and generic declarations outlining the basics of how extradition operates and acknowledging the Department's obligation to asses her transfer under CAT, with no indicia that it actually did so. App. 92a-101a.

Remarkably, the Heinemann Declaration provided in this case by the State Department *never says that Ms. Kapoor's extradition would comply with CAT*, but only purports to describe "a general overview of the process of extraditing a fugitive

from the United States." See App. 94a. Thus, the only possible statement that references the Secretary's compliance with its obligations is the entirely unsupported line in the State Department letters stating that the Secretary "confirm[s]" that the surrender decision complies with CAT. See *id.* at 93a, 99a, 101a. But those conclusory sentences are unsupported by either the declarations themselves or the supporting facts, and are thus inadequate under *Trinidad y Garcia*.

Moreover, Ms. Kapoor very much disputes the view that federal court habeas jurisdiction over CAT claims necessarily excludes all substantive review of the merits of the claim. That view appears to derive, as the government argues, from the so-called rule of non-inquiry—the idea that any inquiry into any of the conditions that the extraditee would face in the receiving country is prohibited. That position is wrong. As described below, see pp. 12-15, *infra*, the rule of non-inquiry arose at the turn of the 20th Century and does not cohere to the writ's historical scope at the Founding; indeed, the government's brief cites no Founding-era or pre-Founding legal authority to support its position. The historical writ inherited from England "exist[ed] to empower the justices to examine detention in *all forms*." Paul D. Halliday, *Habeas Corpus: From England to Empire* 176 (2010) (emphasis added). And habeas corpus has a long and venerable history as the vehicle for extraditees to challenge the lawfulness of their extraditions. See Stay Application 22-25.

CAT and FARRA are duly enacted prohibitions on the extradition of a person to a country where they are more likely than not to endure torture—they are positive law that is reviewable through habeas, both historically and under 28 U.S.C. § 2241,

which expressly covers detention in violation of the "laws or treaties of the United States." "The language of Article 3 [of CAT] is mandatory," and FARRA states an unqualified policy of the United States not to extradite persons where there are "substantial grounds for believing" torture would occur (*i.e.*, the torture doesn't have to be certain). *Trinidad y Garcia*, 683 F.3d at 985-986 (Berzon, J., concurring in part). FARRA then directs the agencies to prescribe regulations implementing the "obligations of the United States." *Id.* at 986. Thus, as Judge Berzon recognized, the courts have the "obligation * * * to review the Secretary of State's determination and to decide * * * whether it is more likely than not that [the extraditee] will be tortured if extradited." *Ibid.*

* * *

Ms. Kapoor's forthcoming petition will cleanly and clearly present the jurisdictional circuit conflict for this Court's review, as well as the underlying Suspension Clause issue. The decision below, though wrong, is commendably clear on what it holds, and where it fits amongst the other circuits—there is no ambiguity as to what the Second Circuit held or that there is a split of authority. Ms. Kapoor did not receive *any* review of her CAT claim (nor will anyone else in the Second Circuit)—not even the review offered in the Ninth Circuit. This case is thus an exceptional vehicle for the Court to review these issues.

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

There is also a "fair prospect" that, if the Court grants certiorari, it would reverse the judgment below. The government's arguments to the contrary lack merit.

1. First, as the Ninth Circuit held in *Trinidad y Garcia*, neither Section 2242(d) of FARRA nor 8 U.S.C. § 1252(a)(4) strips federal courts of habeas jurisdiction over CAT claims by persons facing extradition.

Start with FARRA. The government argues that "Section 2242(d) of FARRA * * * 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" and refers to "Section 2242(d)'s preclusion of review of claims under the Convention." Opp. 18-19. The text says nothing of the sort.

Section 2242(d) of FARRA states only that "nothing in this section [*i.e.*, section 2242 of FARRA] 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. § 1231 note. By its plain terms, nothing in that paragraph purports to *rem*ove any jurisdiction from any court. Rather, Section 2242(d) provides a rule of construction that section 2242 should not be construed as an *affirmative grant* of habeas jurisdiction over claims brought under CAT or FARRA. But of course, habeas jurisdiction *already existed* over those claims under the general federal habeas statute, 28 U.S.C. § 2241.

Turn next to Section 1252(a)(4), and the government's insistence—following the D.C. and Second Circuits—to wrench that provision out of context. Ms. Kapoor addressed the broader statutory context of Section 1252(a)(4) in her application (at

20-22). But to elaborate even further, the statutory text shows that the entire section is aimed squarely at addressing the scope and reviewability of judicial orders of removal. Paragraph (a)(1), addressing "general orders of removal," says that "[j]udicial review of a *final order of removal* * * * is governed only by chapter 158 of Title 28." 8 U.S.C. § 1252(a)(1) (emphasis added). Paragraph (a)(2) deals with "matters not subject to judicial review," and has multiple provisions that remove habeas corpus proceedings as a means for review of "removal" orders. See *id.* § 1252(a)(2)(A)-(D). Paragraph (a)(3) prohibits appeals of decisions of removal of an alien based on an adverse medical certification. And paragraph (a)(5) is a catchall, reaffirming that "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 an *order of removal*." See *id.* § 1252(a)(5) (emphasis added).

The government's statutory argument thus hangs entirely on the word "any," as used in Paragraph (a)(4), which states that a petition for review "in accordance with this section" shall be the exclusive means for judicial review of "any cause or claim under [CAT]." Does that phrase refer to "any cause or claim" under CAT asserted by anyone, anywhere, at any time? Or, does it refer to "any cause or claim under CAT" asserted by an alien in the context of immigration proceedings? Ms. Kapoor submits that it's the latter, given that the words "cause" and "claim" are used repeatedly throughout section 1252 and, in each instance, they clearly refer to causes or claims asserted by aliens in immigration proceedings facing orders of removal. See, *e.g.*, 8 U.S.C. § 1252(a)(2)(A)(i) ("cause or claim arising from or relating to the

implementation or operation of an order of removal"); *id.* § 1252(b)(5)(A) ("[i]f the petitioner claims to be a national of the United States"); *id.* § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.").

Layer on the jurisdiction-preserving directive of *INS* v. *St. Cyr*, 533 U.S. 289 (2001)—which the Ninth Circuit relied on in *Trinidad y Garcia*, but which the government fails to even cite in its response—and Ms. Kapoor's interpretation of section 1252(a)(4) is all the more correct. See Application 21-22.

2. The government's Suspension Clause argument likewise fails, for several reasons.

The government's first Suspension Clause argument parrots the Second Circuit as to the so-called "rule of non-inquiry"—arguing that the federal courts lack habeas jurisdiction over CAT claims because, in the government's telling, the "role of a habeas court does not extend to issues concerning the treatment a fugitive will receive in a foreign state." Opp. 22; see *ibid.* (cross-referencing arguments on the so-called rule of non-inquiry on Opp. 3-4, 19-20). That is an unsupported, and incorrect, understanding of the historical scope of the writ. The government's brief cites neither pre-Founding nor Founding-era cases—none—for its core assertion that the historical writ precluded review of conditions faced in the foreign state. For good reason: the government's argument is wrong. There are multiple instances of courts issuing writs to prevent removal from England of individuals allegedly bound to slavery, including,

most famously, *Somerset's Case*, where Lord Mansfield issued the writ on the ground that slavery was unknown to English common law. *Somerset* v. *Stewart* (1772) 98 Eng. Rep. 499, 510; Lofft. 1, 19.

The government's framing of the scope of the habeas privilege at the Founding implies that the privilege covered only a patchwork of legal claims. Opp. 22. But that's wrong. The justices of the King's Bench exercised habeas jurisdiction expansively to cover all forms of detention and involuntary transfer. "Although habeas corpus was a common law writ, subjects' pleas to use it were often based less on common law norms than on appeals to what we might call the equity of the writ." Paul D. Halliday & G. Edward White, *The Suspension Clause: English Text, Imperial Contexts, and American Implications*, 94 Va. L. Rev. 575, 608 (2008). Over different phases of English history—particularly the English Civil War, the Interregnum, and the Restoration—the use of the writ adapted to address new types of governmental officers and imprisoned individuals. Indeed, the "King's Bench issued the writ by reasoning not from precedents, but from the writ's central premise: that it exists to empower the justices to examine detention in all forms." Halliday, *Habeas Corpus*, at 176. "This history was known to the Framers." *Boumediene* v. *Bush*, 553 U.S. 723, 742 (2008).

The so-called rule of non-inquiry originated "by implication" from the fact that, in a few cases near the turn of the twentieth century, "the [legal] procedures which will occur in the demanding country subsequent to extradition were not listed by the Supreme Court as a matter of a federal court's consideration." Jacques Semmelman,

Federal Courts, the Constitution, and the Rule of Non-Inquiry in International Extradition Proceedings, 76 Cornell L. Rev. 1198, 1211-1213 (1991) (alteration adopted and citation omitted) (reviewing *Benson* v. *McMahon*, 127 U.S. 457 (1888); *Neely* v. *Henkel*, 180 U.S. 109 (1901); and *Glucksman* v. *Henkel*, 221 U.S. 508 (1911)). Inquiring into whether an extraditee would endure torture in the requesting country is a far cry from inquiring into the legal "procedures" that they would face abroad.

To the extent that the rule of non-inquiry has any vitality at all, it's at most a prudential rule for decision-making. It has nothing to do with federal court *jurisdiction*, as the Second Circuit mistakenly held below. But the rule doesn't have any purchase in any event, whether at the jurisdictional stage or the merits, in the face of CAT. Any so-called "rule of non-inquiry" has its origins in federal common law jurisprudence. See, *Mironescu*, 480 F.3d at 669. Thus, it must give way in the face of contrary, duly enacted positive law. Stephen E. Sachs, *Pennoyer Was Right*, 95 Tex. L. Rev. 1249, 1285 (2017) (explaining that enacted statutes override general law principles). CAT and FARRA are just that. And habeas corpus is the vehicle to challenge detention in violation of "the law of the land," including treaties and statutes. *Omar*, 646 F.3d at 27 (Griffith, J., concurring in the judgment) (citing historical sources).

III. Ms. Kapoor Will Suffer Irreparable Harm Absent A Stay Of The Mandate

Ms. Kapoor will suffer irreparable harm without a stay—extradition and likely torture—and the balance of the equities tilts strongly in her favor. The government's arguments to the contrary are unpersuasive.

To begin with, the government seems to concede irreparable harm. It states that "Applicant is correct" that, absent a stay, Ms. Kapoor may be extradited "and her case would almost certainly be mooted." Opp. 28. Harm does not get more irreparable than that. See, *e.g.*, *Vitkus* v. *Blinken*, 79 F.4th 352, 367 (4th Cir. 2023) (finding that a petitioner's "extradition during ongoing litigation" would constitute irreparable harm); Application 26 (collecting cases). So, instead of denying that extradition to India constitutes irreparable harm, the government's first argument attacks a strawman. It argues that this Court shouldn't grant a stay "if this Court is likely to leave the extradition decision undisturbed." Opp. 26. That is a non-sequitur. Ms. Kapoor is not asking for this Court itself to examine the merits of her CAT claim, but to resolve the prevailing circuit split and hold that the lower courts have *jurisdiction* to adjudicate it in the first instance.

Next, the government plays the victim, claiming that the protracted extradition proceedings have prejudiced the government and "impose[] serious costs on the sound operation of the extradition system." Opp. 27. But the government itself, not Ms. Kapoor, is responsible for the delays here. Ms. Kapoor filed her habeas petition in 2016, and the government waited until 2021 to do anything about it. App. 103a, 112a. The government's slow-walking was not lost on the district court, which observed that it was "obvious[]" the government did "not have an appetite to move this along" and hadn't "done anything to implement" its extradition decision. *Ibid.* Indeed, the court questioned whether the government had altogether waived its ability to enforce Ms. Kapoor's extradition given the "half a decade" of delay. *Id.* at

113a. It is the definition of chutzpah for the government—the *same* government that sat on its hands for nearly *five years* while this case languished in the district court—to now claim that giving Ms. Kapoor a few months to file her petition for a writ of certiorari could somehow "impair [the] foreign relations" of the United States. Opp. 27.

The government nowhere denies that Ms. Kapoor will likely face torture if extradited to India. The prospect of such torture constitutes an additional irreparable harm separate from the irreparable harm of mootness to her case. Instead, the government says that it is "not 'oblivious' to concerns about possible torture," Opp. 28 (quoting *Munaf* v. *Green*, 553 U.S. 674, 702 (2008)), and notes that the Secretary of State approved Ms. Kapoor's extradition, *ibid.* That is non-responsive: the government does not even attempt to rebut Ms. Kapoor's credible torture allegations. But, more to the point, the government has no idea whether Ms. Kapoor will ultimately be tortured if returned to India. The State Department's conclusory *ipse dixit* that Ms. Kapoor is not "more likely than not" to face torture if extradited to India flies in the face of its own publications.[2] It also flies in the face of *her own experience* in India, as described in detail in her habeas petition and supporting evidence filed in the district court (and which the government also does not dispute). App. 65a-67a; 90a-91a. That Ms. Kapoor will likely again experience torture if

[2] See, *e.g.*, U.S. Dep't of State, 2023 Country Reports on Human Rights Practices: India (2023), https://perma.cc/GSB6-AK4A (noting reports that "authorities used torture to coerce confessions" and "also used torture to extort money or as summary punishment," and that "police used torture, other mistreatment, and arbitrary detentions to obtain forced or false confessions"); day, https://perma.cc/H6KQ-UH4X (noting "credible reports of * * * torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials" and "unlawful and arbitrary killings, including extrajudicial killings by the government or its agents").

extradited to India is "a remarkably strong satisfaction of the irreparable-harm factor." *Antonio* v. *Garland*, 38 F.4th 524, 526 (6th Cir. 2022); see *Huisha-Huisha* v. *Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) (affirming finding that plaintiffs asserting CAT claims "will suffer irreparable harm if they are expelled to places where they will be persecuted or tortured"); *Leiva-Perez* v. *Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (per curiam) ("extortion and beatings" that petitioner feared if deported "would certainly constitute irreparable harm").

The equities here greatly favor giving Ms. Kapoor a chance to file her petition for a writ of certiorari—before she is irrevocably extradited. Unlike others facing extradition, Ms. Kapoor is not violent, not a danger to others, and not a flight risk. She has shown up to every court proceeding, abided by every movement restriction, and broken no laws. She is a 53-year-old housewife who is the primary caregiver for her ailing husband. She is the mother of two children and a cherished member of her local community, where she has put down roots. If any case is worthy of a stay, and this Court's consideration of these issues, it is Ms. Kapoor's case.

CONCLUSION

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

May 29, 2025

Respectfully submitted,

Amy N. Gell
Daniel I. Phillips
GELL & GELL PLLC
299 Broadway, Suite 620
New York, NY 10007
(212) 619-2859
danieliphillipsesq@gmail.com

/s/ Daniel N. Lerman
Daniel N. Lerman
Counsel of Record
Paul Brzyski
Zachary N. Ferguson
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
(202) 775-4524
dlerman@kramerlevin.com