No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MELVIN MARTINEZ-GUARDADO,
Applicant,

v.

HIROMICHI KOBAYASHI, IN HIS OFFICIAL CAPACITY AS THE WARDEN FEDERAL DETENTION CENTER HOUSTON; THOMAS M. O'CONNOR, TRUSTEE, IN HIS OFFICIAL CAPACITY AS A UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF TEXAS; MARCO RUBIO SECRETARY, U.S. DEPARTMENT OF STATE; PAMELA BONDI, U.S. ATTORNEY GENERAL,
Respondents.

EMERGENCY APPLICATION FOR STAY OF EXTRADITION/SURRENDER PENDING THE DISPOSITION OF HIS APPEAL CURRENTLY PENDING IN THE FIFTH CIRCUIT AND THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI, AND REQUEST FOR IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

This application arises from the United States Court of Appeals for the Fifth Circuit. Applicant is Melvin Martinez-Guardado, a Legal Permanent Resident of the United States of America. Respondents are Hiromichi Kobayashi, in his official capacity as the Warden of the Federal Detention Center in Houston, Texas; Thomas M. O'Connor, Trustee, in his Official Capacity as United Stats Marshal for the Southern District of Texas; Marco Rubio, Secretary for the United States Department of State, and Pamela Bondi, United States Attorney General.

The proceedings below:

1. *Melvin Martinez-Guardado v. Hiromichi Kobayashi, et. at.,* Cause No. 4:25-CV-3305 (S.D. Tex. August 19, 2025).

2. *Melvin Martinez-Guardado v. Hiromichi Kobayashi, et. at.,* Cause No. 25-20355 (5th Cir. 2025) (unpublished order).

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to Rule 23 of the Rules of this Court and 28 U.S.C. §§ 1651, 2101(f), Applicant Melvin Martinez-Guardado respectfully applies for a stay of his extradition/surrender to Honduras, following the Fifth Circuit's August 30, 2025 unpublished order (App.1) denying his motions for a stay of his extradition/surrender during the pendency of his appeal to that court of the district court's order denying him habeas relief. Mr. Martinez-Guardado requests a stay of extradition/surrender pending (1) the disposition of his appeal currently pending in the Fifth Circuit (No. 25-20355), and (2) the filing and disposition of a subsequent petition to this Court for a writ of certiorari.

Absent a stay from this Court, there is a substantial risk that Mr. Martinez-Guardado will be surrendered to extradition and sent to Honduras, where he will likely be tortured.

INTRODUCTION

In his habeas challenge, Mr. Martinez-Guardado provided well-documented and unchallenged expert testimony—which includes reports by the Department of State (DOS) condemning the Honduran prison system as fraught with violence and corruption—in support of the conclusion that it is more likely than not that Mr. Martinez-Guardado will suffer torture if extradited to the Republic of Honduras. His case presents a circuit split concerning a district court's jurisdiction over claims for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S.

85, by persons facing their surrender, following their order of extradition. [1] It also calls for this Court's guidance as to the breadth of the "rule of non-inquiry," which currently prevents any meaningful inquiry as to the government's conclusory claim to understand its obligations to ensure extraditees are not tortured in violation of CAT. Lastly, it presents an opportunity for this Court to revisit its strongly worded concurrence in *Munaf v. Geren*, where judges of this Court opened the door to a Due Process-based challenge to prevent extradition in cases where the probability of torture is well documented, even in cases where the government fails to acknowledge it.

Mr. Martinez-Guardado requests a stay of his extradition/surrender to Honduras to allow him the opportunity to receive a decision on the merits of his appeal to the Fifth Circuit and, if necessary, to file a petition for writ of certiorari to present those questions. Without a stay, Mr. Martinez-Guardado can be extradited any day now, and consequently lose the opportunity to challenge his surrender.

OPINIONS BELOW

The Fifth Circuit's unpublished order (App.1) is reported at *Melvin Martinez-Guardado v. Hiromichi Kobayashi*, *et. al*., Cause No. 25-20355 (5th Cir. 2025). The opinion of the district court (App.2) is unreported.

JURISDICTION

Mr. Martinez-Guardado filed a notice of appeal with the Fifth Circuit on August 19, 2025. He then filed motions both for a stay of his pending surrender to Honduras and for a

[1] The same and similar issues are presented by the petition filed in *Kapoor v. Demarco*, No. 24-1288, which is currently pending before this Court.

temporary administrative stay, the latter of which was granted by the Fifth Circuit on August 26, 2025. On August 30, 2025, the Fifth Circuit issued an "Unpublished Order" denying a temporary stay pending appeal. Mr. Martinez-Guardado did not move for a rehearing *en banc.* This Court has authority to stay Mr. Martinez-Guardado's surrender to Honduras pending the Fifth Circuit's determination of the merits of the appeal, and this Court's consideration of a subsequent petition for a writ of certiorari (if necessary). 28 U.S.C. §§ 1651(a), 2101(f).

STATEMENT OF THE CASE

A. Legal Background

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

Because the certification proceedings are circumscribed, "[a] petition for habeas

corpus is the only means available to challenge an international extradition order." 15B Charles Alan Wright et al., *Federal Practice and Procedure* § 3918.3 & n.20 (2d ed. 2025 update); *see also Vitkus* v. *Blinken*, 79 F.4th 352, 362 (4th Cir. 2023) ("Because a certification order is not a final appealable order under 28 U.S.C. § 1291 an extraditee * * * can only challenge such an order in federal court by pursuing habeas corpus relief under 28 U.S.C. § 2241.").

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

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

> It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

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

Under FARRA, the State Department promulgated regulations outlining its CAT

obligations when evaluating torture/humanitarian-based habeas challenges (torture claims) of an extraditee. Among other things, those regulations require the government to consider "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition." 22 C.F.R. § 95.2(b). The regulations further provide that "appropriate policy and legal offices [shall] review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant." *Id.* § 95.3(a). But the determination resulting from that opaque process is, at least according to the regulations, a "matter[] of executive discretion not subject to judicial review." *Id.* § 95.4.

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

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

8 U.S.C. § 1252(a)(4).

B. Proceedings Below

Mr. Martinez-Guardado is a Legal Permanent Resident (LPR) of the United States,

who resides in Houston, Texas, and has been detained in connection with his extradition proceedings since September of 2024. On September 24, 2024, the government filed a complaint in the Galveston Division of the United States District Court for the Southern District of Texas requesting extradition of Mr. Martinez-Guardado under 18 U.S.C. § 3184. *See* Case No. 3:24-mj-00006, Dkt. 1. In its complaint, the government stated that Honduras sought to prosecute Mr. Martinez-Guardado for homicide. On October 17, 2024, the government filed a memorandum asking the magistrate judge to find Mr. Martinez-Guardado eligible for extradition. Case No. 3:24-mj-00006, Dkt. 18. It argued it had satisfied the five requirements for extradition under 18 U.S.C. § 3184. *See id*. Mr. Martinez-Guardado filed a response in opposition. Case No. 3:24-mj-00006, Dkt. 21. He challenged the third prong of the extradition test, arguing the extradition treaty was no longer in force because Honduras had notified the United States in August 2024 that it had terminated its obligations under the treaty *See id*. On November 1, 2024, the court held a final extradition hearing. It issued a written opinion on November 19, 2024, finding the government had satisfied all requirements for extradition. Case No. 3:24-mj-00006, Dkt. 25. It concluded the extradition treaty was still in force because Article XIV of the treaty required six months' notice for termination, making Honduras's termination of the treaty not effective until March 1, 2025. Case No. 3:24-mj-00006, Dkt. 25, Exhibit A at 5-6 [2] After the court issued its extradition decision, it sent a record of the proceedings to the Department of State ("DOS"), so the Secretary of State could make its surrender decision.

[2] The extradition treaty has been extended by agreement of the two countries and is now set to expire on February 7, 2026.

a. The First Habeas Petition.

On December 6, 2024, Mr. Martinez-Guardado filed a habeas petition under 18 U.S.C. § 2241. Case No. 4:24-cv-4862, Dkt. 1. His petition challenged any decision by the Secretary of State to surrender him to Honduras. See *id*. The petition referenced the opinion from and *curriculum vitae* for consulting expert Abram Huyser-Honig, attached as exhibits to the petition.

On April 3, 2025, the district court issued its decision on the initial habeas petition. Case No. 4:24-cv-4862, Dkt. 9. It dismissed with prejudice any challenge to the judicial extradition decision but dismissed without prejudice the habeas claims challenging the Secretary of State's extradition decision, reasoning that this issue was not yet ripe because the Secretary had not yet decided whether to surrender Mr. Martinez-Guardado. *See id*. In tandem with the habeas petition, Mr. Martinez-Guardado submitted a letter-request directly to the Department of State, asking that it forgo his surrender to Honduras because it was more likely than not that he will be tortured.

On July 14, 2025, the Secretary authorized Mr. Martinez-Guardado's surrender to Honduras. The DOS sent Mr. Martinez-Guardado a letter notifying him of the Secretary's Torture Decision. App.27. It states: "the decision to surrender Mr. Martinez-Guardado to Honduras complies with the United States' obligations under the [CAT] and its implementing statute and regulations." App.28. The letter does not provide any facts or evidence supporting the department's claim.

b. The Second Habeas Petition.

On July 17, 2025, Mr. Martinez-Guardado filed his second habeas petition under 18 U.S.C. § 2241. Case No. 4:25-cv-3305, Dkt. 1 (habeas petition), Dkt. 7 (amended habeas petition) App.29. That petition again challenged the Secretary's surrender decision. Mr. Martinez-Guardado argued the district court had jurisdiction to review the Secretary's decision under the Suspension Clause, U.S. Const. art. 1, § 9 cl. 2. He also argued his surrender to Honduras would violate the CAT, its implementing statutes and regulations, and his due process rights, because he would likely be subjected to torture in a Honduran prison if surrendered to that country. See *id*. In support of his arguments, he again submitted his expert's CV and affidavit opining that it was more likely than not Mr. Martinez-Guardado would be tortured if surrender to Honduras. App.64-87. The government filed a response in opposition. App.88. It argued the district court had no jurisdiction to evaluate the Secretary's surrender decision, including its Torture Decision, and that these considerations were exclusively within the purview of the executive branch. See *id.* On August 19, 2025, the district court dismissed Mr. Martinez-Guardado's habeas claims with prejudice. App.2. The court did not squarely decide whether it had jurisdiction to review Mr. Martinez-Guardado's CAT and due process claims. App.15-16. It held that, even if jurisdiction existed, the "rule of non-inquiry" prohibited the court from reviewing the Secretary's factual determinations as to whether Mr. Martinez-Guardado faced a risk of torture in Honduras, and Mr. Martinez-Guardado thus could not prevail on his claims. App.17-18. The court temporarily stayed Mr. Martinez-Guardado's surrender for seven days, "to allow Petitioner time to file a Notice of Appeal and any relevant motions" in the

Fifth Circuit. App.26. On August 20, 2025, Mr. Martinez-Guardado filed a timely notice of appeal. Case No. 4:25-cv-3305, Dkt. 20. In tandem, Mr. Martinez-Guardado also filed a motion for stay, and for a temporary/administrative stay of his surrender pending the appellate court's resolution. The Court granted a temporary administrative stay pending further orders. App.122. In a subsequent order denying a stay pending appeal, the Fifth Circuit decided that "[j]udicial review" of the district court's order denying habeas relief "is precluded by the 'non-inquiry rule.'" *See* "Unpublished Order," (App.1) (citing *Munaf v. Geren*, 553 U.S. 674, 700 (2008); *Escobedo v. United States*, 623 F.2d 1098, 1107 (5th Cir. 1980)). It concluded, without more, that "[t]he federal courts, including this court, are therefore barred from granting relief."

A stay of the of Mr. Martinez-Guardado's extradition/surrender to Honduras is warranted for the following reasons:

First, there is a reasonable probability that, if the Fifth Circuit affirms the district court's order, this Court would grant Mr. Martinez-Guardado's forthcoming petition for a writ of certiorari. The circuits that have considered habeas review of an extradition order are split on the statutory jurisdiction question —the Fifth Circuit's unpublished, two-sentence order is silent on the question of jurisdiction. Additionally, there is also much disagreement on the question of "non-inquiry," that is, how much of an explanation does the Department of State have to give to assuage or prevent, when possible, concerns about torture in the receiving country in extradition cases. The questions are important and recurring.

Second, there is fair prospect that this Court will reverse the Fifth Circuit if it affirms the district court's order. Mr. Martinez-Guardado has submitted well-documented

evidence, supported in part from reports prepared by the DOS that condemn the Honduran prison system, evidence that has not been, in any way, contested or rebutted by the government.

Third, a stay is necessary to prevent irreparable harm to Mr. Martinez-Guardado. Without a stay, Mr. Martinez-Guardado can now be surrendered at any time. If so, there is a substantial risk that he will be extradited to the Honduran prison system, where Mr. Martinez-Guardado is likely to be tortured, before the Fifth Circuit and this Court have had the opportunity to review the merits of his case. Finally, the balance of the equities favors a stay of the Fifth Circuit's order and mandate.

The irreversible harm that would befall Mr. Martinez-Guardado without a stay well-exceeds the "harm" to respondents, the time it would take to surrender Mr. Martinez-Guardado to Honduras. The equities favor a stay.

REASONS FOR GRANTING THE STAY

Under 28 U.S.C. § 2101(f), this Court may stay proceedings pending the filing and disposition of a petition for a writ of certiorari. To obtain such a stay, an applicant must show "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Ibid.* Mr. Martinez-Guardado satisfies those requirements.

First, there is at least a reasonable probability that, if the Fifth Circuit affirms the district court's order, this Court will grant certiorari. Given the brevity of the Fifth Circuit's unpublished order, Mr. Martinez-Guardado's forthcoming petition will present four questions: (1) whether Section 1252(a)(4) bars habeas review of CAT claims; (2) if so, whether that removal of habeas jurisdiction violates the Suspension Clause; if not, (3) whether Mr. Martinez-Guardado has a Due Process right for relief from surrender, as envisioned by this Court's powerful concurrence in *Munaf* v. *Geren*, and lastly, (4) to what extent does the rule of non-inquiry prevent a district court to require the DOS to provide evidence that it is not more likely than not that an extraditee in Mr. Martinez-Guardado's shoes will be tortured if extradited to a foreign nation. Those are important questions on which the Courts of Appeals are clearly split.

Second, if the Fifth Circuit affirms the district court's order, there is at least a fair prospect of reversal. As expressed, Mr. Martinez-Guardado has submitted expert testimony opining that it is more likely than not that he will be tortured if surrendered to the Honduran prison system. Compellingly, some of the data relied on by the expert include the Department of State's very own reports that condemn the Honduran prison system. App.71-73; 75-76. Other than a simple statement claiming to be aware of its obligations under CAT, the DOS has not responded to these allegations, much less rebutted them. This situation falls squarely into the scenario envisioned by Justice Souter in *Munaf*, who, writing for the concurring judges, assertively discussed a Due Process right to prevent extradition in cases where the probability of torture is well documented, even in cases where the government fails to acknowledge it.

Third, the balance of harms and equities weighs heavily in Mr. Martinez-Guardado's favor. Without a stay, there is a high likelihood that the government will surrender Mr. Martinez-Guardado any day now, and before he receives a decision on his appeal to the Fifth Circuit and his petition for certiorari is submitted and considered by this Court, and that if surrendered, Mr. Martinez-Guardado is likely to be tortured upon his incarceration in Honduras. The harms to the government from a stay are miniscule by comparison.

I. There Is a Reasonable Probability That, If the Fifth Circuit Affirms the District Court's Order, This Court Will Grant Certiorari

A. The Fifth Circuit's Decision Deepens an Unresolved Circuit Split

Among the reasons this Court grants writs of certiorari is that a Court of Appeals

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

There is a clear circuit split on the question whether the federal courts possess habeas jurisdiction over CAT claims asserted by extraditees. The Fifth Circuit's two-sentence unpublished order omits any mention of jurisdiction, the Suspension Clause and Mr. Martinez-Guardado's reliance on *Munaf's* concurrence for relief from torture under the Due Process Clause, instead citing only the "rule of non-disclosure" as its ground to deny relief. One could read the Fifth Circuit's order as impliedly accepting its jurisdiction to entertain torture claims like Mr. Martinez Guardado's, and that the district court properly denied relief because it could not require the DOS to provide evidence to show that is it not more likely than not that Mr. Martinez-Guardado will be tortured if surrendered to Honduras. Essentially, the Fifth Circuit's order could be read as establishing an oxymoron; a district court's jurisdiction to entertain torture claims, but an inability to ensure that the DOS complies with its duty to prevent an extraditee's torture abroad. If the Fifth Circuit affirms the district court's order on the same basis, then this Court's review would certainly

be warranted.

The Second (*Kapoor v. DeMarco*, 132 F.4th 595 (2nd Cir. 2024), Fourth (*Mironescu v Costner*, 480 F.3d 664 (4th Cir. 2007) and D.C. (*Omar v. McHugh*, 646 F.3d 13 (D.C. Cir. 2011)) Circuits have held that federal courts are prohibited from considering torture claims in extradition proceedings. The following is a summary of the holdings in each of the circuits that recognize a district court's jurisdiction to consider torture claims.

The Ninth Circuit has held that Congress has not prohibited habeas jurisdiction over CAT/FARRAR Act claims raised by extraditees, explaining that "FARRA lacks sufficient clarity to survive the 'particularly clear statement' requirement" articulated in *INS v. St. Cyr*, 533 U.S. 289 (2001), adding that Section 1252(a)(4) is thus "construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction." *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc). Accordingly, in the Ninth Circuit, an extraditee may obtain habeas review of the Secretary of State's determination that their surrender to the requesting country will not violate CAT and its implementing regulations. *Trinidad y Garcia* explains that, "[i]n addition to possessing jurisdiction under § 2241, the district court also had jurisdiction under the Constitution," elaborating that "[a]lthough the Constitution itself does not expressly grant federal habeas jurisdiction, it preserves the writ through the Suspension Clause." *Trinidad y Garcia* at 960 (citing U.S. Const. art. I, § 9, cl. 2; *Boumediene v. Bush*, 553 U.S. 723, 743-46 (2008); *Ex Parte Bollman*, 8 U.S. 75, 4 *Cranch* 75, 94-95 (1807)). "The Suspension Clause was designed to protect access to the writ of habeas corpus during those cycles of executive and legislative encroachment upon it." *Id*. (citing *Boumediene*, 553 U.S. at 745.).

The *en banc* court concluded that, "e]ven if we adopted the government's position that Congress foreclosed Trinidad y Garcia's statutory habeas remedies, his resort to federal habeas corpus relief to challenge the legality of his detention would be preserved under the Constitution." *Id*.

The Seventh Circuit in *Venckiene v. United States*, 929 F.3d 843, 865 (7th Cir. 2019) held that under certain circumstances, a district court has jurisdiction to entertain due process-based torture claims in extradition proceedings. *Venckiene* also recognized the Fourth and Fifth Circuits as possessing jurisdiction to entertain their habeas extradition challenges. As a basis for its ruling, the court in *Venckiene* relied on *In re Burt*, 737 F.2d 1477, 1487 (7th Cir. 1984), explaining:

> Generally, the Secretary of State's extradition decision is not subject to judicial review. This circuit and others, however, have recognized an exception through which courts can, at least in theory, consider claims that "the substantive conduct of the United States in undertaking its decision to extradite ... violates constitutional rights." *Burt*, 737 F.2d at 1484; *see also Martin v. Warden*, 993 F.2d 824, 829 (11th Cir. 1993) (recognizing that constitutional rights are superior to treaty obligations, but finding no violation of constitutional rights in long-delayed extradition request) *Plaster v. United States*, 720 F.2d 340, 349 (4th Cir. 1983) (recognizing constitutional claims but vacating grant of writ of habeas corpus).
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> Generally, so long as the United States has not breached a specific promise to an accused regarding his or her extradition and bases its extradition decisions on diplomatic considerations without regard to such constitutionally impermissible factors as race, color, sex, national origin, religion, or political beliefs*, and in accordance with such other exceptional constitutional limitations as may exist because of particularly atrocious procedures or punishments employed by the foreign jurisdiction, those decisions will not be disturbed.*

Venckiene at 849 (citing *Burt*, 737 F.2d at 1487) (internal citations omitted). When it

discussed blatantly impermissible characteristics sufficient to justify a district court's habeas review of the DOS's surrender decision, *Venckiene's* reference to improper race, gender or religion-based considerations were examples of an otherwise non-exhaustive set of circumstances. *Venckiene's* full quote:

> "…we are not inclined to say that a Secretary of State's extradition decision is never reviewable on due process grounds, *let alone grounds of racial or religious bias, for example*. Although the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, *we need not say here that judicial review is never available*. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in this appeal, reviewing the Secretary of State's extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

Venckiene, 929 F.3d at 861 (emphasis added).

After discussing its own circuit's precedent under *Burt*, *Venckiene* explained that "*Burt's* list of reviewable claims does not encompass Venckiene's claim that the Secretary of State's decision-making process violated her right to due process of law." *Venckiene* at 861. In this vein, the Seventh Circuit "[was] persuaded by Fourth and Fifth Circuit cases," *Peroff v. Hylton*, 563 F.2d 1099 (4th Cir. 1977), and *Escobedo v. United States*, 623 F.2d 1098 (5th Cir. 1980) as "supporting the position that a [due process] challenge like *Venckiene's* is reviewable, at least in principle." *Id*. In each case, "the Fourth and Fifth Circuits considered habeas corpus petitions raising due process challenges to the Secretary of State's extradition decisions." *Id*. "In *Peroff*, the Fourth Circuit agreed to consider the petition of an accused arguing that he was denied due process by the Secretary of State's

refusal to conduct a hearing prior to issuing his warrant of extradition. *Id*. (citing *Peroff*, 563 F.2d at 1102).” In *Escobedo*, the Fifth Circuit heard a petitioner's argument that the discretion given to the executive branch under the relevant treaty violated due process because 'no standards are provided to guide the exercise of this discretion,'" *Id*. (citing *Escobedo* at 623 F.2d at 1104-05), “ultimately reject[ing] the due process challenge on the merits.” *Id*. (citing *Escobedo* at 1106). Notably, the Seventh Circuit observed that “[t]he government ha[d] provided no case in which a court declined to hear this type of extradition due process challenge.” *Id*. *Venckiene* elaborated:

> Given this lack of contrary authority, we are not inclined to say that a Secretary of State’s extradition decision is never reviewable on due process grounds, *let alone grounds of racial or religious bias, for example*. Although the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, we need not say here that judicial review is never available. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in this appeal, reviewing the Secretary of State’s extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

Venckiene at 861 (emphasis added).

The Seventh Circuit weighed the merits of Venckiene’s claim that, if extradited to Lithuania “she would be subject to ‘atrocious procedures and punishments,’" to wit “complaints of confined spaces, improper hygiene, poor food, and substandard sanitary condition among others.” *Venckiene* at 862-863, concluding:

> In this case, we do not need to decide definitively whether *Munaf* voided the “atrocious procedures” exception in *Burt*. *Venckiene* has not provided us with the type of specific and detailed evidence that a court would need to be able

> to assess whether Lithuanian prison conditions generally constitute "atrocious punishment…Without much more specific evidence of atrocious conditions that Venckiene is likely to experience if she is extradited, we are confident that blocking this extradition on such grounds, after the executive has already approved it, would go beyond the scope of our role in the extradition process.

Venckiene, at 863. Mr. Martinez-Guardado does not complain about confined spaces, improper hygiene, poor food, and substandard sanitary conditions. Huyser-Honig has cited numerous and credible examples of the systemic barbaric treatment of prisoners in the Honduran prison system. As noted, the DOS's own annual reports have condemned the Honduran prison system as life threatening due to gross overcrowding, malnutrition lack of medical care and abuse by prison officials, adding that the government's failure to control criminal activity and pervasive gang-related violence contributed significantly to insecurity. App.40-41. [3] As acknowledged by the government, "the *Venckiene* court concluded that 'the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare . . .'" Resp. 29 (citing *Venckiene* at 861 (emphasis added). App.54. But "rare" denotes an uncommon quality, not an impossibility. The Petitioner has submitted well-documented authority in support of his arguments against his surrender to the Honduran prison system. The government has presented nothing beyond the bare claim that the DOS considers torture claims under the CAT and that it takes appropriate steps that may include obtaining information or

[3] The reports also inform that Honduran human rights organizations reported more than 100 cases of alleged torture or cruel and inhuman treatment of detainees and prisoners by security forces. They also tell of the killing of 68 inmates (61 of them gang members) by security forces during a riot.

commitments from the receiving state to address identified concerns. App.31.

In *Munaf v. Geren*, the United States Supreme Court recognized a district court's jurisdiction to consider habeas relief for two United States that were held in an Iraqi prison to answer for alleged crimes they committed while in Iraq, but that the specific facts of that case - their voluntary incursion into Iraq, their custody status under Iraqi authority and that they were alleged to have committed serious crimes in Iraq - prevented the exercise of habeas authority to provide them relief. The Court explained that "the nature of the relief sought by the habeas petitioners suggests that habeas is not appropriate in these cases," because "Habeas is at its core a remedy for unlawful executive detention," and the petitioners there were not seeking to simply be released from custody (which would inevitably result in their being rearrested by Iraqi authorities), but to be sheltered from prosecution, which did not merit Habeas relief. *Munaf*, at 693-694. In sum, the Supreme Court could not justify applying a habeas remedy where the Iraqi government, a sovereign nation, had "exclusive and absolute" authority to prosecute the petitioners for their crimes. *Munaf* at 694. Concededly, *Munaf* did not involve a habeas challenge to an extradition proceeding. The significance of *Munaf* to the Petitioner's claims lies in the message from its three-judge concurrence, authored by the late Justice David Souter. Justice Souter was clear to point out that it reserved judgment in cases where the government acknowledges that a detainee is likely to be tortured - even if the government fails to acknowledge it – adding that, despite habeas's purpose in securing release, and not protective detention (citation omitted), habeas would not be the only avenue open to an objecting prisoner because "where federally protected rights [are threatened], it has been the rule from the

beginning that court will be alert to adjust their remedies so as to grant the necessary relief." *Munaf* at 706-707 (Justice Souter, concurring) (citing *Bell v. Hood*, 327 U.S. 678 (1946)); App.59. As noted, the government did not contest the expert's opinion that Mr. Guardado is more likely to suffer mistreatment that meets the statutory definition of torture, and furthermore, fails to acknowledge that the DOS has itself published reports that supports the expert's conclusion that the Petitioner will suffer torture, or significantly inhuman treatment if surrendered to Honduras.

In *Escobedo*, cited by the Fifth Circuit in its unpublished order, the Fifth Circuit rejected the merits of Escobedo's due process challenge to his extradition on "humanitarian grounds" that he would "tortured or killed if surrendered to Mexico," determining that "the degree of risk to (Escobedo's) life from extradition is an issue that properly falls within the exclusive purview of the executive branch." *Escobedo* at 1107 (citations omitted). However, Escobedo's evidence in support of this claim was not discussed. Moreover, *Escobedo* was published 45 years ago, well before CAT and FARRAR's codification as federal law, the holdings in *Trinidad y Garcia* and *Venckiene*, and *Munaf's* powerful concurrence. *Escobedo* provides insufficiently developed precedential authority to address the full substance of Mr. Martinez-Guardado's torture claims.

Other courts have also expressed disagreement with the conclusion reached below. In *Aguasvivas* v. *Pompeo*, the First Circuit intimated that federal courts retain habeas jurisdiction over CAT claims notwithstanding the rule of non- inquiry. *See Aguasvivas* v. *Pompeo*, 984 F.3d 1047, 1052 n.6 (1st Cir. 2021) ("We have no reason to believe that any principle of non-inquiry implicates federal court jurisdiction—much less Article III

jurisdiction.").[4] And, in *Taylor v. McDermott*, a district court in the District of Massachusetts recently construed Section 1252(a)(4) to avoid conflict with the Suspension Clause, as the Ninth Circuit did in *Trinidad y Garcia*. See *Taylor v. McDermott*, 516 F. Supp. 3d 94, 109 (D. Mass. 2021) ("[T]o avoid a construction that violates the Suspension Clause, the court concludes that it has jurisdiction to hear the Taylors' claims brought under the Convention Against Torture, as implemented by the FARR Act."). Those decisions underscore the vast scope of disagreement on the questions that Mr. Martinez-Guardado will present in his certiorari petition.

Lastly, to the extent that the Fifth Circuit is relying solely on the rule of non-inquiry to reject Mr. Martinez-Guardado's request for a stay, this exposes the internal conflict between the judges who participated in the Ninth Circuit's *Trinidad y Garcia's* en banc treatment of that question. It is true that that the majority in *Trinidad y Garcia* concluded that the DOS's duty was satisfied by a bare, signed declaration from the Secretary of State that he has complied with his obligations, as sufficient to "vindicate" Trinidad y Garcia's liberty interest. *Trinidad y Garcia* at 957. Echoing Mr. Martinez-Guardado's argument (App.135-137), dissenting Justice Harry Pregerson, joined by Justice William A. Fletcher, disagreed that a bare claim of compliance with federal anti-torture laws followed by the proper signature "fully vindicated" Trinidad y Garcia's liberty interest, explaining:

> Supreme Court precedent counsels otherwise: where we have found habeas jurisdiction, our review consists of "some authority to assess the sufficiency of the Government's evidence[.]" *Boumediene* [at 786]. Because such a bare bones declaration from "the Secretary or a senior official properly designated

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

> by the Secretary," *per curiam* at 6402, does not allow us to "assess the sufficiency of the Government's evidence," (citing *Boumediene* at 786), I cannot join the majority opinion and therefore dissent.

Trinidad y Garcia, at 1002-1003 (J. Pregerson concurring in part and dissenting in part).

As noted by Justice Pregerson, "[t]he stakes in this case could not be higher:"

> [T]he right to be free from official torture is fundamental and universal, a right deserving of the highest stature under international law, a norm of jus cogens. The crack of the whip, the clamp of the thumb screw, the crush of the iron maiden, and, in these more efficient modern times, the shock of the electric cattle prod are forms of torture that the international order will not tolerate. To subject a person to such horrors is to commit one of the most egregious violations of the personal security and dignity of a human being.

Trinidad y Garcia at 1003 (J. Pregerson concurring and dissenting) (citing *Hilao v. Estate of Marcos*, 25 F.3d 1467, 1475 (9th Cir. 1994) (quoting *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992)). Mr. Martinez-Guardado submits that the majority's efforts in seeking a balance between a district court's habeas obligations and the executive's discretion in managing its foreign policy objectives under the rule of non-inquiry, though well-intentioned, deprives a district court of its ability to meaningfully determine the merits of a habeas action, "render[ing] Martinez Guardado's habeas process an empty and meaningless exercise," (App.57) and consequently converting the district court's function into a proverbial rubber stamp. We are not herding cattle. Yet, the government asks this court to allow the government to lead the Applicant, a United States Legal Permanent Resident, to the slaughterhouse that is the Honduran prison system, without any meaningful guarantees for his safety. *See Trinidad y Garcia*, at 1005 (J. Pregerson, concurring and dissenting) ("But such a superficial inquiry in the context of a habeas corpus petition abdicates the critical constitutional "duty and authority" of the

judiciary to protect the liberty rights of the detained by "call[ing] the jailer to account." (citing *Boumediene*, 553 U.S. at 745.) The rule of non-inquiry should not be interpreted to prohibit proper fact finding by a district court when resolving a torture-based habeas claim.). In this case, the Court should make inquiries as to what, if anything the DOS has coordinated with Honduras to ensure the Petitioner's safe custody during his trial process, and evidence of the existence of a safe venue, along with proof that the Honduran government has complied with requirements that uphold CAT and FARRAR Act guarantees. Additionally, and unique to our case, it is understood that the United States and Honduras were only able to muster a one-year extension of their extradition treaty—after the Honduran President abruptly cancelled it in 2024, following an American diplomate's unflattering comments about the President's involvement with drug trafficking—to February 7, 2026. What assurances can the DOS give that the treaty will not expire again before the Petitioner's trial process is completed? Would a treaty expiration release the Honduran government of any guarantees to protect the Petitioner from torture? We don't know, and the government does not feel compelled to answer. Common sense dictates the need for proper answers to these pressing questions from the Court.

The circuit split and overall confusion about the state of the law on the issues presented will likely persist without this Court's review.

B. This Case Raises Substantial and Unresolved Questions Concerning the Scope of the Suspension Clause, a Due Process Right to Present Torture Claims under *Munaf's* Concurrence, and the Breadth of the Rule of Non-Inquiry.

The Fifth Circuit's order did not disavow a district court's jurisdiction to entertain Mr. Martinez-Guardado's torture claims, which is consistent with *Venckiene's* own

interpretation of *Escobedo's* holding on the question of jurisdiction. Without an affirmative statement that jurisdiction exists, however, this is a mere supposition. The Court also failed to discuss the role of the Suspension Clause as a protector of habeas torture claims. The order states that the rule of non-inquiry prevented the district court from granting habeas relief, but it fails to identify this reasoning as the sole authority for this ruling. In fact, the order fails to discuss any of the grounds for relief raised by Mr. Martinez Guardado in his habeas petition and key to a resolution of the rule of non-inquiry question, the disagreement by the judges in *Trinidad y Garcia* regarding how much evidence the DOS is required to provide the habeas court to satisfy concerns about torture. As noted, the Seventh, Ninth and Fifth—as understood by the 7th Cir. in *Venckiene*, and as implied from a cursory reading of the Fifth Circuit's brief order—Circuits all recognize a district court's jurisdiction to entertain a habeas torture challenge. Additionally, *Munaf's* concurrence, which suggests a Due Process right to habeas relief, is also absent from the order.

C. The Questions Presented Are Important and Recurring

The basis for certiorari is strengthened where the conflict involves an important and recurring question of law. *Supreme Court Practice* §§ 4.4(A)-(C). Mr. Martinez-Guardado's case presents such a case. For someone in Mr. Martinez-Guardado's predicament, habeas relief is the only vehicle to avoid torture in a foreign country. *See* 15B Charles Alan Wright et al., *Federal Practice and Procedure* § 3918.3 & n.20 (2d ed. 2025 update) ("A petition for habeas corpus is the only means available to challenge an international extradition order."). The viability of the habeas remedy is caught in a tug of war between the executive's inherent power to manage its foreign relations, and a district

court's constitutional, habeas duty to ensure that extraditees are not tortured when surrendered to a foreign nation. Without a review of these important questions and rules, extraditees will continue to seek judicial recourse without a clear legal roadmap, and the courts will continue to issue rulings that are based on unsettled law.

II. There is a Fair Prospect that the Court Will Reverse

The Court does not need to find that the Fifth Circuit actually erred in order to grant Mr. Martinez-Guardado's requested stay, but "a fair prospect" of reversal by a majority of this Court. *Maryland v. King*, 567 U.S. 1301, 1302 (Roberts, C.J., in chambers) (citation omitted).

The evidence in support of Huyser Honig's opinion that it is more likely than not that Mr. Martinez-Guardado will suffer torture if surrendered to the Honduran prison system is compelling, and undenied and unrebutted by the government. Huyser-Honig's opinion is based not on mere research, but on years of boots on the ground experience in Honduras. Moreover, and as previously noted, Huyser-Honig's findings and opinion are supported by the DOS's own reports condemning the Honduran prison system and cruel and corrupt. The boilerplate response by the DOS in its torture determination response does not constitute an assurance that it is not more likely that not that Mr. Martinez Guardado will be tortured. The government should not be permitted to condemn the Honduran prison system on the one hand, and on the other claim that CAT concerns, without more, have been attended to, without a factually supported response. Ultimately, a district court's jurisdiction to entertain a habeas torture claim is really meaningless if the DOS remains immune to any reasonable inquiry about its efforts at ensuring an extraditee's safety under

the CAT.

III. Mr. Martinez-Guardado Will Suffer Irreparable Harm Absent a Stay of His Extradition/Surrender to Honduras.

The equities overwhelmingly favor a stay of the DOS's decision to surrender Mr. Martinez-Guardado to Honduras. Without a stay, there is a substantial risk that the government will surrender Mr. Martinez-Guardado at any before his appeal to the Fifth Circuit is decided, and his petition for certiorari is even filed. That alone constitutes irreparable harm. See *Manrique* v. *Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023) ("Irreparable injury is obvious: Once extradited, Toledo's appeal will be moot."); *Vitkus v. Blinken*, 79 F.4th 352, 367 (4th Cir. 2023) (finding that a petitioner's "extradition during ongoing litigation" would constitute irreparable harm); *Demjanjuk v. Meese*, 784 F.2d 1114, 1118 (D.C. Cir. 1986) (noting that "the imminent extradition of petitioner to Israel may qualify as a threat of irreparable harm"); *Quintanilla* v. *United States*, 582 Fed. Appx. 412, 414 (5th Cir. 2014) (per curiam) (assuming that "extradition while an appeal of the denial of habeas corpus is pending would constitute irreparable harm"). What is more, Mr. Martinez-Guardado has credibly claimed that he will face torture if extradited to Honduras. App.83-84. That too is irreparable harm. See *Antonio* v. *Garland*, 38 F.4th 524, 526 (6th Cir. 2022) (stating that the prospect that petitioner "will likely be tortured if he is removed" was "a remarkably strong satisfaction of the irreparable-harm factor"); *Huisha-Huisha* v. *Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) (affirming finding that plaintiffs asserting CAT claims "will suffer irreparable harm if they are expelled to places where they will be persecuted or tortured"); *Leiva- Perez* v. *Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (per

curiam) ("extortion and beatings" that petitioner feared if deported "would certainly constitute irreparable harm"). The harms on the other side of the scale pale in comparison. While the harm to Mr. Martinez-Guardado is his extradition to Honduras and likely torture, the harm to the government is a short delay in carrying out his extradition.

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

The Court should grant an administrative stay to enable full consideration of the merits of this stay application. Mr. Martinez-Guardado filed this application just 6 days after the Fifth Circuit's unpublished order. Given that timing, and the irreparable harm that Mr. Martinez-Guardado would suffer if extradited, the Court should grant a brief administrative stay of the extradition/surrender, while it considers this application.

CONCLUSION

The Court should grant the motion and stay Mr. Martinez-Guardado's extradition to Honduras, to prevent his surrender pending the Fifth Circuit's disposition of his appeal of the district court's order denying habeas relief and, if the Fifth Circuit affirms that order, pending the Supreme Court's disposition of his forthcoming petition for a writ of certiorari. Mr. Martinez-Guardado also respectfully asks the Court to administratively stay his extradition/surrender pending disposition of this Application.

Respectfully submitted,

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September 5, 2025

United States Court of Appeals for the Fifth Circuit

No. 25-20355

MELVIN MARTINEZ-GUARDADO,

Petitioner—Appellant,

versus

HIROMICHI KOBAYASHI, *In his Official Capacity as the Warden Federal Detention Center Houston*; THOMAS M. O'CONNOR, *Trustee*, *In his Official Capacity as a United States Marshal for Southern District of Texas*; MARCO RUBIO, *Secretary, U.S. Department of State*; PAMELA BONDI, *U.S. Attorney General*,

Respondents—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:25-CV-3305

UNPUBLISHED ORDER

Before SMITH, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that appellant's opposed motion for stay pending appeal is DENIED. Judicial review of the challenged determinations is precluded by the "non-inquiry rule." *Munaf v. Geren*, 553 U.S. 674, 700 (2008). *See Escobedo v. United States*, 623 F.2d 1098, 1107 (5th Cir. 1980). The federal courts, including this court, are therefore barred from granting relief.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MELVIN MARTINEZ-GUARDADO,	§	
	§	
Petitioner,	§	
	§	
VS.	§	CIVIL ACTION NO. H-25-03305
	§	
HIROMICHI KOBAYASHI, TRUSTEE	§	
THOMAS M. O'CONNOR, ANTONY	§	
BLINKEN, MERRICK GARLAND,	§	
MARCO RUBIO, and PAM BONDI,[1]	§	
	§	
Respondents.	§	

MEMORANDUM AND ORDER OF DISMISSAL

Petitioner Melvin Martinez Guardado ("Martinez Guardado"), represented by counsel, filed this Amended Petition for a writ of habeas corpus to challenge his extradition, alleging that he will likely be subjected to torture or inhumane conditions in a Honduran prison if returned to that country. Doc. No. 7. Martinez Guardado has also filed a Second Amended Motion for a Stay of Extradition

[1] Although the petitioner names several individuals as respondents, as the Warden of the Federal Detention Center in Houston, Texas, where Petitioner is detained, Hiromichi Kobayashi is the proper respondent because he is the petitioner's immediate custodian. *See* Rumsfeld v. Padilla, 124 S. Ct. 2711, 2720 (2004); *see also* 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained.").

and for a Temporary Stay. Doc. No. 12.[2] The Court has carefully considered the petition, motion, responses, replies, record, and applicable law and concludes as follows.

I. Background and Procedural History

The background facts and procedural history of this case were set forth in detail in the Court's Memorandum and Order in Petitioner Melvin Martinez Guardado's previous petition. *See* Martinez Guardado v. Kobayashi, *et al.*, Civ. A. No. H-24-4862 (S.D. Tex. Apr. 3, 2025), at Doc. No. 9 (hereinafter "Martinez Guardado I"). As stated in Martinez Guardado I, Martinez Guardado is a lawful permanent resident of the United States currently detained at the Federal Detention Center in Houston, Texas. He is accused in Honduras of homicide. Pursuant to the extradition treaty between the United States and Honduras, the Government of Honduras submitted a formal request for Martinez Guardado's extradition. *See* In re the Extradition of Melvin Martinez Guardado, a/k/a/ "El Pelón", Case No. 3:24-mj-00006-1, at Doc. No. 1 (under seal) (S.D. Tex. Sept. 24, 2024); *see also* The Convention Between the United States of America and the Republic of Honduras for the Extradition

[2] The Second Amended Motion for a Stay (Doc. No. 12) supersedes the other motions for a stay; accordingly, the other motions for a stay (Doc. Nos. 3, 10) are **DENIED as MOOT**.

of Fugitives from Justice, U.S. — Honduras, Jan. 15, 1909, 37 Stat. 1616, as amended by the Supplementary Extradition Convention between the United States of America and the Republic of Honduras, Feb. 21, 1927, 45 Stat. 2489 (together, "the Treaty").

In November 2024, a magistrate judge conducted an extradition hearing for Martinez Guardado, determined that the requirements for certification[3] were met, certified his extradition, and committed him to the custody of the United States Marshal pending a decision on extradition by the Secretary of State pursuant to 18 U.S.C. § 3186. *See* In re Guardado, Case No. 3:24-mj-00006-1, at Doc. No. 25, at 3 (S.D. Tex. Nov. 19, 2024) (noting that the court's role in the extradition process is limited because "[t]he ultimate decision to extradite is a matter within the exclusive prerogative of the Executive in the exercise of its powers to conduct foreign affairs") (citing Escobedo v. United States, 623 F.2d 1098, 1105 (5th Cir. 1980)). Guardado's sole ground for

[3] "A district court must issue a certificate of extradition if the following five requirements are met: (1) the judicial officer has jurisdiction to conduct the extradition proceeding; (2) the court has jurisdiction over the fugitive named in the extradition request; (3) the applicable extradition treaty is in full force and effect; (4) the extradition treaty covers the offense for which extradition is requested; and (5) there is sufficient evidence to support a finding of probably cause as to the offense for which extradition is sought." In re Extradition of Guardado, Case No. 3:24-mj-00006-1, Doc. No. 25 at 3 (S.D. Tex. Nov. 19, 2024) (citing 18 U.S.C. § 3184; In re Extradition of Garcia, 825 F. Supp. 2d 810, 826-27 (S.D. Tex. 2011)).

challenging extradition in his certification proceeding was that "the United States failed to establish that the extradition treaty was still in effect between the United States and Honduras." Id.

By letter dated November 20, 2024, the Department of Justice ("DOJ") notified counsel for Martinez Guardado of his options in light of the certification of his extradition. *See* Martinez Guardado I at Doc. No. 7-1 at 2. On December 6, 2024, Martinez Guardado filed Martinez Guardado I. On April 3, 2025, this Court dismissed that petition with prejudice as to any challenge to the Magistrate Judge's certification of his extradition to Honduras; without prejudice to his CAT and FARR Act claim regarding whether extradition to Honduras would subject him to torture because "[t]he rule of non-inquiry restrains the Court from adjudicating the torture issue"; and without prejudice as to the claim that the Secretary of State is violating his due process rights by not complying with his statutory and regulatory obligations to decide the torture claim because the claim was not ripe. Id. at Doc. No. 9 at 8-10.

On July 14, 2025, the Secretary of State sent a letter to Martinez Guardado advising him of the decision to extradite him to Honduras and stating:

> Following a review of all pertinent information, including the materials and filings submitted to the

> Secretary and the United States District Court for the Southern District of Texas on behalf of Mr. Martinez Guardado, on July 7, 2025, the Deputy Secretary of State decided to authorize Petitioner's surrender to Honduras, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and Honduras.

Doc. No. 15 at 6 (citing Gov't Ex. 1). The letter further confirmed that "the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations." Id. On July 17, 2025, Martinez Guardado filed the instant petition to challenge his extradition, together with a motion to stay and exhibits. Doc. Nos. 1-3. Martinez Guardado subsequently amended his pleadings (Doc. No. 7) and submitted two amended motions for a stay (Doc. Nos. 10, 12).

Martinez Guardado argues that Honduran prisons are dangerous and inhumane. As he did in his previous habeas proceeding, Martinez Guardado alleges:

> Because his extradition violates the United Nations Convention Against Torture ("CAT"), the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRAct") (which implements observance of the CAT under federal law), the State Department's regulations implementing the CAT and the FARR Act, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Suspension Clause in art. I, § 9, cl. 2 of the United States Constitution, Mr. Martinez Guardado requests that this Court stay his extradition, grant him a meaningful opportunity to be heard on his claim that he would be tortured if extradited, conclude that Petitioner's

> extradition is barred by federal law, and order Respondents to cancel the Petitioner's extradition, and release him from custody.

Doc. No. 7 at 2.

The Government filed a response in opposition, arguing that (1) the court's review of the extradition certification order is limited; (2) the Executive Branch has the primary authority over extraditions, and the Judicial Branch's role is highly limited; (3) the "rule of non-inquiry" precludes the Court from evaluating foreign justice systems in extradition matters; (4) neither the CAT nor the FARR Act provides for judicial review of CAT claims in extradition cases; (5) the Suspension Clause does not require the court to review a CAT claim in extradition cases; (6) Petitioner's out-of-circuit cases and the non-binding concurrence in Munaf v. Geren, 128 S. Ct. 2207, 2228 (2008), do not support his claim. Doc. No. 15. The Government seeks an expedited decision based on the "fast-approaching termination of the Extradition Treaty." Id. at 30.

In his reply regarding the merits of his petition, Martinez Guardado contends that the Court has jurisdiction to consider his claims under the CAT and FARR Act. Doc. No. 17. He points to a "circuit split" regarding whether federal courts are prohibited from considering torture/humanitarian-based challenges in

extradition proceedings (in addition to the review that the Secretary of State conducts) and contends that the Government's interpretation of the rule of non-inquiry is "overly restrictive." Id. at 1-8. He contends that the Government's documentation from the Secretary of State is insufficient to satisfy due process and show that the Secretary complied with his obligations. Id. at 9-13.

Regarding the motion for a stay, Martinez Guardado contends that (1) the Government's characterization of Honduras as his "Native Country" is improper because he is a legal permanent resident who works and resides in the United States; (2) the Government's request for an expedited timeline is based not on conduct of the petitioner but on the actions of the Executives in the respective countries; (3) he presents meritorious grounds for seeking meaningful review based on his expert's report and testimony about "the systemically corrupt and brutal Honduran prison system"; (4) in the alternative, he seeks at least a temporary stay to allow him to seek an appeal with the Fifth Circuit. Doc. No. 16 at 6.

II. Legal Standards

A. 28 U.S.C. § 2241

Section 2241(c)(1) of Title 28 of the United States Code "applies to persons held 'in custody under or by color of the authority of the United States.'" Munaf, 128 S. Ct. at 2217 (citing § 2241(c)(1)). "An individual is held 'in custody' by the United States when the United States official charged with his detention has 'the power to produce' him. Id. (quoting Wales v. Whitney, 5 S. Ct. 1050, 1054 (1885); *see also* 28 U.S.C. § 2243 ("The writ ... shall be directed to the person having custody of the person detained")).

The extradition to Honduras of a person found in the United States is governed by the provisions of the federal extradition statutes, 18 U.S.C. § 3181 *et seq.*, and the Treaty between the United States of America and the Republic of Honduras for extradition of fugitives. A court certifying extradition considers whether it has jurisdiction to certify the extradition and jurisdiction over the individual against whom extradition is sought; whether there is a valid extradition treaty in effect; whether probable cause supports the charge; and whether the charge is covered by the treaty. In re Extradition of Garcia, 825 F. Supp. 2d 810, 826-27 (S.D. Tex. 2011). Upon finding sufficient

evidence to support extraditing the fugitive, the court then certifies him as extraditable to the Secretary of State, who ultimately decides whether to surrender him to the requesting country. 18 U.S.C. §§ 3184, 3186, 3196.

There is no direct appeal from a decision granting a certificate of extradition; the proper method of seeking review of a certification decision is through a petition for habeas corpus under 28 U.S.C. § 2241. *See* Balzan v. United States, 702 F.3d 220, 223 n.3 (5th Cir. 2012); *see also* Quintanilla v. United States, 582 F. App'x 412, 413-14 n.1 (5th Cir. 2014). The review of the certification determination is "quite narrow" and is limited "to determining 'whether the magistrate has 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.'" Escobedo, 623 F.2d at 1101 (citing Fernandez v. Phillips, 45 S. Ct. 541 (1925)).

Article III of the Convention Against Torture ("CAT") 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). "The Convention is a non-self-executing treaty--by its own force,

it confers no rights that are enforceable in U.S. courts." Kapoor v. DeMarco, 132 F.4th 595, 602 (2d Cir. 2025) (citing Pierre v. Gonzales, 502 F.3d 109, 114 (2d Cir. 2007); 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.")); *see also* Medellin v. Texas, 128 S. Ct. 1346, 1356 n.2 (2008) (explaining that "[w]hether such a treaty has domestic effect depends upon implementing legislation passed by Congress").

To implement the CAT, Congress enacted the FARR Act, which articulated the following policy of the United States:

> It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231) ("FARRA" or "FARR Act"). Congress clarified FARRA in 2005 in the REAL ID Act, Pub. L. No. 109-13, § 106(a)(1)(B), 119 Stat. 231, 310 (2005) (codified at 8 U.S.C. § 1252(a)(4)), which amended FARRA § 2242(d) as follows:

> 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 United Nations Convention Against Torture and Other Forms of Cruel, Inhumane, or Degrading Treatment or Punishment, except as provided in subsection (e).

8 U.S.C. § 1252(a)(4)).[4] In the FARR Act, "Congress directed the heads of the appropriate agencies to 'prescribe regulations to implement the obligations of the United States under Article 3.'" Kapoor, 132 F.4th at 602 (citing FARR Act § 2242(b)).

Pursuant to the FARR Act, the State Department promulgated the following regulations regarding claims under CAT in the extradition context. Chapter 22 of the Code of Federal Regulations, Section 95.2 provides:

> (a) Article 3 of the Convention imposes on the parties certain obligations with respect to extradition. That Article provides as follows:
>
> (1) No 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.
>
> (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the

[4] Subsection (e) provides limited judicial review of orders under section 1225(b)(1), a situation not relevant here. *See* 8 U.S.C. §§ 1252(e), 1225(e).

> State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.
>
> (b) Pursuant to sections 3184 and 3186 of Title 18 of the United States Criminal Code, the Secretary is the U.S. official responsible for determining whether to surrender a fugitive to a foreign country by means of extradition. In order 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.

22 C.F.R. § 95.2. Section 95.1(d) defines "Secretary" to mean "Secretary of State and includes, for purposes of this rule, the Deputy Secretary of State, by delegation." 22 C.F.R. § 95.1.

B. Motion to Stay Legal Standard

A litigant seeking a stay bears the burden to show: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken v. Holder, 129 S. Ct. 1749, 1761 (2009). The party seeking a stay "must satisfy all of the requirements for a stay, including a

showing of a significant possibility of success on the merits." Hill v. McDonough, 126 S. Ct. 2096, 2104 (2006).

III. Discussion

In Martinez Guardado's first habeas petition, the Court dismissed any claims regarding the magistrate judge's certification decision with prejudice. *See* Martinez Guardado I. In addition, the Court held that the rule of non-inquiry constrains it from examining the substance of the torture issue on the merits because the determination as to whether "it is more likely than not" that the petitioner would be subjected to torture is under the exclusive purview of the Executive branch in the context of extradition. *See* id. at Doc. No. 9 at 8-10. The Court further noted that Martinez Guardado's claim regarding whether the Secretary of State complied with his statutory obligations when deciding the torture issue was not ripe because the Secretary had not made any decision regarding whether to extradite Martinez Guardado. The Court also reserved judgment on whether there was a limited due process right to review the Secretary's procedures if and when he decided that extradition was appropriate.

Martinez Guardado seeks to revisit the Court's previous determination that the rule of non-inquiry bars this Court from reviewing the factual basis of his torture claim, relying

principally on a concurring opinion in Trinidad y Garcia v. Thomas, 683 F.3d 952 (9th Cir. 2012), the Seventh Circuit's opinions in Venckiene v. United States, 929 F.3d 843 (7th Cir. 2019), and In re Burt, 737 F.2d 1477 (7th Cir. 1984), and dictum in Justice Souter's separate concurrence in Munaf, 128 S. Ct. at 2228. He also contends that the Government's submission of a letter certifying that the Secretary complied with his statutory obligations does not satisfy due process in reviewing the decision to surrender him for extradition. The Court addresses each claim in turn.

A. The Court's role in determining whether it is "more likely that not" that the petitioner will be tortured if extradited to Honduras.

Martinez Guardado contends that this Court has jurisdiction to decide whether it is "more likely than not" that he will be subjected to torture by examining the factual basis for his CAT claims under the FARR Act. The Government argues that the FARR Act, by its express terms, deprives this Court of jurisdiction to consider the merits of his torture claims, and that the "rule of non-inquiry" otherwise bars the Court from considering torture claims as a violation of due process.

Regarding his claims under the FARR Act, Martinez Guardado concedes that several circuits have held that the REAL ID Act

amended the FARR Act to deprive this Court of jurisdiction over any CAT/FARR Act claim. *See* Kapoor v. DeMarco, 132 F.4th 595, 608 (2d Cir. 2025) (holding that "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"); Mironescu v. Costner, 480 F.3d 664 (4th Cir. 2007) (holding that the district court lacked jurisdiction over the extraditee's habeas petition under § 2242(d) of the FARR Act because the statutory language "plainly conveys that although courts may consider or review CAT or FARR Act claims as part of their review of a final removal order, they are otherwise precluded from considering or reviewing such claims"); and Omar v. McHugh, 646 F.3d 13, 19 (D.C. Cir. 2011) (explaining that "the FARR Act, as supplemented by the REAL ID Act of 2005," does not grant the "right to judicial review of conditions in the receiving country") (citing Kiyemba v. Obama ("Kiyemba II"), 561 F.3d 509, 514-15 (D.C. Cir. 2009)).

On the other hand, Martinez Guardado points out that the Ninth Circuit in Trinidad y Garcia held that "[n]either the REAL ID Act (8 U.S.C. § 1252(a)(4)) nor the FARRA (8 U.S.C. § 1231 note) repeals all habeas jurisdiction over Trinidad y Garcia's claims." 683 F.3d at 956. The Ninth Circuit recognized that "CAT and its implementing regulations are binding domestic law" with which the

Secretary must comply and make the torture determination. Id. It further concluded that an extraditee has a "narrow liberty interest: that the Secretary comply with [his] statutory and regulatory obligations." Id.

Even if the FARR Act does not expressly limit this Court's jurisdiction over torture claims, the rule of non-inquiry constrains this Court from second-guessing decisions that are within the Executive Branch's exclusive purview. Although not labeling it as "the rule of non-inquiry" per se, the Supreme Court has "recognized that 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." Munaf v. Geren, 128 S. Ct. 2207, 2225 (2008). It has recognized that allegations of torture "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." Id. It further noted:

> 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." See The Federalist No. 42, p. 279 (J. Cooke ed. 1961) (J. Madison) ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations."). 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. As Judge Brown

> noted, "we need not assume the political branches are oblivious to these concerns. Indeed, the other branches possess significant diplomatic tools and leverage the judiciary lacks."

Id. at 2226.

Likewise, the Fifth Circuit in Escobedo wrote that "[a]ssuming that the magistrate's decision is in favor of extradition, the Executive's discretionary determination to extradite the fugitive -- even one who is a United States national -- is not generally subject to judicial review." 623 F.2d at 1105. The Fifth Circuit added: "The ultimate decision to extradite is a matter within the exclusive prerogative of the Executive in the exercise of its powers to conduct foreign affairs." Id. (citing and discussing Peroff v. Hylton, 563 F.2d 1099, 1102-03 (4th Cir. 1977), and other cases). The Fifth Circuit rejected Escobedo's argument that he would likely be tortured or killed if he were extradited, holding that "'the degree of risk to (Escobedo's) life from extradition is an issue that properly falls within the exclusive purview of the executive branch." Id. at 1107 (quoting Sindona v. Grant, 619 F.2d 167, 174 (2d Cir. 1980)).

Similarly, in the context of habeas proceedings challenging extradition based on conditions in the receiving country, several other circuit courts have held that the decision to extradite such a fugitive is within the exclusive purview of the Executive Branch.

See, e.g., Kapoor, 132 F.4th at 610-13 (2d Cir. 2025) (noting that under the rule of non-inquiry, "fugitives . . . facing extradition have not traditionally been able to maintain a habeas claim on their anticipated treatment in a receiving country" and holding that the "historical tradition of refusing to consider petitioners 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") (citing cases historically and traditionally applying the rule of non-inquiry); Noeller v. Wojdylo, 922 F.3d 797, 808 (7th Cir. 2019) ("Under the settled rule of non-inquiry, the executive branch has sole authority to consider such humanitarian considerations in deciding on extradition requests.")(citing Hoxha v. Levi, 465 F.3d 554, 563 (3d Cir. 2006)); 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."); Trinidad y Garcia v. Thomas, 683 F.3d 952, 957 (9th Cir. 2012) (explaining that the rule of non-inquiry affects the *scope* of the inquiry but not the court's *jurisdiction* and that the "doctrine of separation of powers and the rule of non-inquiry block any inquiry into the substance of the Secretary's declaration"); Omar, 646 F.3d at 19 (D.C. Cir.

2011) ("[A]pplying 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."); United States v. Kin-Hong, 110 F.3d 103, 110 (1st Cir. 1997) (explaining that "[m]ore than just a principle of treaty construction, the rule of non-inquiry tightly limits the appropriate scope of judicial analysis in an extradition proceeding" and that "courts refrain from 'investigating the fairness of a requesting nation's justice system,' [] and from inquiring 'into the procedures or treatment which await a surrendered fugitive in the requesting country'" (citations omitted)); Ahmad v. Wigen, 910 F.2d 1063, 1067 (2d Cir. 1990) ("It is the function of the Secretary of State to determine whether extradition should be denied on humanitarian grounds.").

In a similar vein, Justice Kavanaugh, while a judge on the D.C. Circuit, explained in a concurrence that "both Munaf and the deeply rooted 'rule of non-inquiry' in extradition cases require that we defer to the Executive's considered judgment that transfer is unlikely to result in torture" and that, "with respect to international transfers of individuals in U.S. custody, Munaf and the extradition cases have already struck the due process balance between the competing interests of the individual and the

Government." Kiyemba v. Obama, 561 F.3d 509, 517 (D.C. Cir. 2009) (Kavanaugh, J., concurring).

The jurisprudence set forth above demonstrates that historically and traditionally, the Executive Branch, through the Secretary of State, and not the courts, makes the factual determination regarding the torture issue, and such a determination is not subject to judicial review on the merits. *See* Escobedo, 623 F.2d at 1107. The rule of non-inquiry bars the Court from adjudicating Martinez Guardado's torture claim.

Martinez Guardado nonetheless relies on the concurrence in Munaf to assert a that a narrow exception to the rule of non-inquiry applies in this case. Justice Souter, joined by two other Justices, wrote in his concurrence:

> Nothing in today's opinion should be read as foreclosing relief for a citizen of the United States who resists transfer, say, from the American military to a foreign government for prosecution in a case of that sort, and I would extend the caveat to a case in which the probability of torture is well documented, even if the Executive fails to acknowledge it. Although the Court rightly points out that any likelihood of extreme mistreatment at the receiving government's hands is a proper matter for the political branches to consider, see ante at 2225-2226, if the political branches did favor transfer it would be in order to ask whether substantive due process bars the Government from consigning its own people to torture.

Munaf, 128 S. Ct. at 2228 (Souter, J., concurring). The Munaf concurrence added, "where federally protected rights [are threatened], it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Id. (citing Bell v Hood, 66 S. Ct. 773 (1946)).

While the concurrence in Munaf counsels caution in applying the majority's holding in an "extreme case in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway," id., there is no indication here that the Secretary determined that Martinez Guardado is likely to be tortured and decided to transfer him anyway. To the contrary, the Government's submissions reflect that the Secretary understands that "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,'" 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.'" Doc. No. 15-1 at 1. The documentation from the Secretary further confirms that the Secretary "complie[d] with its obligations under the Convention and its implementing statute and regulations." Id. at 2. The Munaf concurrence does not suggest specifics regarding the degree of threat, what relief could be fashioned, or under what authority

and circumstances a court would contravene a decision that the Court in Munaf, in its opinion authored by Chief Justice John Roberts, unequivocally stated is within the purview of the political branches. This Court is bound by the holding in Munaf and the Fifth Circuit's opinion in Escobedo and finds that numerous sister circuit opinions following the rule of non-inquiry are also persuasive precedent.[5] Therefore, this Court may not revisit the factual basis of the Secretary's decision regarding his torture claim.

B. Whether the letter submitted by the Government suffices to show that the petitioner received due process in connection with the decision to surrender him for extradition.

As explained above, the separation of powers and the rule of non-inquiry bar judicial review of the factual basis and substance of the Secretary's decision regarding Martinez Guardado's torture claim. To the extent that Martinez Guardado may have a "narrow liberty interest" in whether the Secretary of State complied with his statutory and regulatory obligations, the Government has submitted a letter from Attorney Advisor Noah L. Browne, Office of the Legal Advisor for Law Enforcement and Intelligence at the

[5] Conversely, the Court is not persuaded by the non-binding authority Martinez Guardado cites in the concurrence in Trinidad y Garcia, or the Seventh Circuit's dicta in Venckiene and In re Burt, 737 F.2d 1477 (7th Cir. 1984).

United States Department of State, confirming that the Secretary did comply with his obligations. *See* Doc. No. 15-1.

In Sridej v. Blinken, 108 F.4th 1088, 1090 (9th Cir. 2024), the Ninth Circuit explained that it recognized in Trinidad y Garcia that "the 'CAT and its implementing regulations are binding domestic law' and that an extraditee 'possesses a narrow liberty interest' under the Due Process Clause in the Secretary of State complying with those regulations." Id. at 1091. Sridej further noted that the Ninth Circuit in Trinidad y Garcia "expressly held that '[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. (quoting Trinidad y Garcia, 683 F.3d at 957). Both Trinidad y Garcia and Sridej held that documentation from the Secretary of State that he complied with his statutory and regulatory obligations would be sufficient to end the inquiry and vindicate the extraditee's due process rights. *See* Trinidad y Garcia, 683 F.3d at 957; Sridej, 108 F.4th at 1093; *see also* Rana v. Engleman, No. 25-1053, 2025 WL 719820, at *2 (9th Cir. Feb. 21, 2025) (same).

Here, as in Sridej and Rana,[6] the Secretary of State has submitted documentation representing that he reviewed "all

[6] In Trinidad y Garcia, the Government also submitted a short declaration from the Secretary of State on remand. *See* Trinidad y Garcia v. Benov,

pertinent information, including [the Petitioner's] materials and filings submitted to the Secretary and the United States District Court for the Southern District of Texas" before deciding "to authorize [Petitioner's] surrender to Honduras, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty." Doc. No. 15-1 at 1. The Secretary recognized his "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. The State Department letter confirmed that the Secretary did comply with his statutory and regulatory obligations. This ends the inquiry regarding Martinez Guardado's due process challenge to his extradition. Therefore, the petition for habeas corpus must be denied.

Concomitantly, because Martinez Guardado has not shown a substantial likelihood of success on the merits, his motion for a stay in large part will be denied; however, the Court grants a temporary STAY of surrender to extradition for seven (7) days from the date the Final Judgment is entered to allow the petitioner time to file a Notice of Appeal and any relevant motions in the United States Court of Appeals for the Fifth Circuit.

Civ. No. 2:08-cv-07719-MMM-CW, at Doc. No. 124 at 7-8 (C.D. Cal. Apr. 4, 2013). However, the district court later dismissed the case as moot when the receiving country dismissed the charges against Trinidad y Garcia. *See* id. at Doc. Nos. 137 (Notice of Dismissal of Charges); Doc. No. 151 (Dismissal Order Dated Oct. 2, 2013).

IV. ORDER

Based on the foregoing, it is hereby

ORDERED that Petitioner's Second Amended Motion for a Stay of Extradition/Surrender (Doc. No. 12) is **DENIED** and the habeas petition filed by Melvin Martinez Guardado is **DISMISSED** with prejudice; it is further

ORDERED that the Petitioner's Motion for a Temporary Stay (Doc. No. 12) is **GRANTED** in part, insofar as Petitioner's surrender to extradition is **STAYED** for seven (7) days from the date the Final Judgment is entered to allow Petitioner time to file a Notice of Appeal and any relevant motions in the United States Court of Appeals for the Fifth Circuit; and it is

ORDERED that all other pending motions, if any, are **DENIED as MOOT**.

The Clerk will enter this Order and provide a true copy to all parties of record.

SIGNED at Houston, Texas, on this 19th day of August, 2025.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

United States Department of State

Washington, D.C. 20520

July 14, 2025

Mr. Jorge Aristotelidis
Assistant Federal Public Defender
Southern District of Texas No. 1443
440 Louisiana, Suite 1350
Houston, Texas 77002
(713)-718-4600
By email: Jorge_Aristotelidis@fd.org

Re: Extradition of Melvin Martinez Guardado to Honduras

Dear Mr. Aristotelidis:

I am writing in relation to the Secretary of State's determination of whether to extradite Melvin Martinez Guardado to Honduras. Following a review of all pertinent information, including the materials and filings submitted to the Secretary and the United States District Court for the Southern District of Texas on behalf of Mr. Martinez Guardado, on July 7, 2025, the Deputy Secretary of State decided to authorize Mr. Martinez Guardado's surrender to Honduras, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and Honduras.

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 to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that the claimed "torture" does not meet the definition set forth in 22 C.F.R. § 95.1(b) or a determination that the fugitive is not "more likely than not" to be tortured if extradited. Claims that do not come within the scope of the Convention also may 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 this case, I confirm that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations.

Thank you,

Noah L. Browne
Attorney Adviser
Office of the Legal Adviser
for Law Enforcement and Intelligence
U.S. Department of State

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MELVIN MARTINEZ GUARDADO, Petitioner, v. HRIOMICHI KOBAYASHI, Warden of Federal Detention Center in Houston, Texas; THOMAS M. O'CONNOR, United States Marshal for the Southern District of Texas; MARCO RUBIO, Secretary of State for the United States; PAM BONDI, Attorney General of the United States. Respondents.	§ § § § § § § § § § § § § § §	Civil Action No.H-25-cv-03305

AMENDED PETITION FOR WRIT OF HABEAS CORPUS [1]

INTRODUCTION AND PROCEDURAL HISTORY

Petitioner Mr. Melvin Martinez Guardado's (Mr. Martinez Guardado) extradition is prohibited under the Convention Against Torture's (CAT) international ban against torture. Based upon the significant evidence of official torture and brutality associated with the Republic of Honduras's prison system, there are substantial grounds to believe that Mr. Martinez Guardado will be subjected to torture, or worse, if extradited to Honduras. Accordingly, the Secretary of State should be precluded from returning Mr. Martinez Guardado to Honduras where he faces the real prospect of torture. Mr. Martinez Guardado remains in the custody of Respondent Kobayashi, the Warden of the

[1] This amended petition substitutes the names of Respondents Marco Rubio and Pam Bondi, and contains other minor corrections of form and style, but otherwise retains the substance of the arguments in the original petition. It is submitted in tandem with the motion for a stay and for temporary stay that was previously filed with the original petition and is currently pending a determination by this Court.

Federal Detention Center in Houston, Texas (FDC Houston), under orders of Respondents, United States Marshal O'Connor, Secretary Marco Rubio and Attorney General Pam Bondi.

Because his extradition violates the United Nations Convention Against Torture ("CAT"), the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRAct") (which implements observance of the CAT under federal law), the State Department's regulations implementing the CAT and the FARR Act, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Suspension Clause in art. I, § 9, cl. 2 of the United States Constitution, Mr. Martinez Guardado requests that this Court stay his extradition, grant him a meaningful opportunity to be heard on his claim that he would be tortured if extradited, conclude that Petitioner's extradition is barred by federal law, and order Respondents to cancel the Petitioner's extradition and surrender, and release him from custody.

On December 6, 2024, Petitioner filed a writ of habeas corpus seeking the relief requested in the present application. This petition was denied, but without prejudice, because the district court found the petition to have been filed prematurely, and thus not ripe for adjudication. This is because at the time the Department of State had not ruled on the Petitioner's request to deny the Petitioner's surrender to Honduras. *See* Memorandum and Order (Case 4:24-cv-04862, Doc 9, filed 04/03/25).

On June 12, 2025, the undersigned received an email message from Mr. John Ganz, Assistant United States Attorney representing the DOS in this matter, advising that the government would not surrender Mr. Martinez-Guardado for a period of 72-hours,

from the time the DOS sends the undersigned a letter notification communicating the DOS's surrender warrant determination in order to allow Mr. Martinez Guardado sufficient time to refile his habeas petition with this Court, and a corresponding motion to stay. The DOS specified that surrender may proceed unless Mr. Martinez Guardado has sought and obtained a court-ordered stay.

On Monday, July 14, 2025, the undersigned received and emailed letter advising of the DOS's decision to surrender Mr. Martinez Guardado. In the letter, the DOS represents as follows:

> A decision to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that the claimed "torture" does not meet the definition set forth in 22 C.F.R. § 95 .1 (b) or a determination that the fugitive is not "more likely than not" to be tortured if extradited. Claims that do not come within the scope of the Convention also may 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.

The DOS "confirm[ed] that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations."

JURISDICTION AND STANDARD OF REVIEW

The district court has jurisdiction over a petition for writ of habeas corpus when a person is in custody in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241. This Court also has jurisdiction under art. I , § 9, cl. 2 of the United States Constitution ("Suspension Clause") and 28 U.S.C. § 1331, as Petitioner is

presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

The proper venue for a habeas petition under § 2241 is the petitioner's district of confinement. Venue in this case lies in the Southern District of Texas because Mr. Martinez Guardado is detained at FDC Houston in Houston, Texas.

PARTIES

Petitioner Melvin Martinez Guardado is a lawful permanent resident of the United States. He is currently detained at FDC Houston. Upon information and belief, Mr. Martinez Guardado is accused in Honduras of having killed a person, and his extradition has been certified by Magistrate Judge Andrew M. Edison. *See* Opinion and Order (ECF Dkt. 25). Petitioner Martinez Guardado contends that his extradition violates federal law and makes the non-frivolous argument that federal courts have the power and jurisdiction to grant him a meaningful opportunity to be heard on whether he can legally be extradited to Honduras, because he will, more likely than not, be tortured.

Respondent Hriomichi Kobayashi is the warden of FDC Houston. He is an employee of the Bureau of Prisons, which operates the Federal Detention Center in Houston, Texas (FDC Houston). As the warden of the facility, Respondent Kobayashi is the immediate physical custodian of Mr. Martinez Guardado. He is sued in his official capacity.

Respondent Thomas M. O'Connor is the United States Marshal for the Southern District of Texas. As such, he is responsible for, among other things, the custody of

federal prisoners pending federal criminal charges or extradition. Respondent O'Connor has legal custody of Mr. Martinez Guardado and is authorized to release him. He is sued in his official capacity.

Respondent Marco Rubio is the Secretary of State for the United States. He is the President's chief foreign affairs adviser and carries out the President's foreign policies through the State Department. As a result, in his official capacity, Secretary Rubio reviews all foreign extradition demands and makes the determinations whether a treaty is in force, whether the crimes are extraditable offenses, whether the extradition documents are properly certified as required by federal law and is responsible for making the final determination whether to surrender Mr. Martinez Guardado to Honduras. He is empowered to grant withholding of removal or other relief to Mr. Martinez Guardado consistent with the CAT and FARR ACT and is Mr. Martinez Guardado's legal custodian. He is sued in his official capacity.

Respondent Pam Bondi is the Attorney General of the United States. The Attorney General has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is responsible for surrendering Mr. Martinez Guardado to Honduras pursuant to Respondent Bondi's determination that Mr. Martinez Guardado should be extradited. The Attorney General is empowered to grant withholding of removal or other relief to Mr. Martinez Guardado, and she is Mr. Martinez Guardado's legal custodian. She is sued in her official capacity.

STATEMENT OF FACTS

Expert Witness Declaration: Prison Conditions in Honduras

Basis of Opinion and Expert's Qualifications

A. Education and Experience

Mr. Mr. Huyser-Honig possesses a master's degree in public policy from Michigan State University, and a bachelor's degree in English and Spanish from Calvin University in Grand Rapids, Michigan. He has submitted a declaration that is based on his professional expertise and direct experience; review of reports and publications produced by other researchers and organizations; dialogue with other experts on violence, governance, and human rights in Honduras; and interviews with Hondurans affected by violence, corruption, and other human rights violations. *See* Sworn Declaration (Decl.) by Abram Huyser-Honig, and CV, attached as **Exhibits A and B.** Decl. ¶¶ 2-3.

For over 19 years, Mr. Mr. Huyser-Honig has been involved with the Association for a More Just Society (Asociación para una Sociedad más Justa, or "ASJ"), a nongovernmental organization that advocates for reforms in Honduras to enhance justice and human rights. ASJ is the chapter in Honduras of Transparency International (TI), a global coalition of civil society, anti-corruption organizations. ASJ has received millions of dollars in funding from the U.S. State Department and continues to receive funding also from many other individuals, foundations, nonprofit organizations, and governmental agencies. It has been featured in reporting by the New York Times and other highly respected news media. ¶ 4.

Over the last ten years, Mr. Mr. Huyser-Honig has served as an expert in approximately 130 asylum cases on behalf of Honduran men and women before federal immigration courts in Detroit, Michigan; Chicago, Illinois; Hartford, Connecticut; Arlington, Virginia; New Orleans, Louisiana; Seattle, Washington; Houston, Texas; New York City; and other jurisdictions. To his knowledge, his designation as an expert has never been contested. He adds that Mr. Martinez Guardado's is the first case in which he has rendered services for a Federal Public Defender office. ¶ 5-6.

B. Experience Related to Honduran Prisons

As an undergraduate student studying in Honduras, Mr. Mr. Huyser-Honig visited the Granja Penal de Comayagua (Comayagua Penal Farm) and the Centro Penitenciario de La Paz (La Paz Penitentiary). As part of his work for ASJ, he visited the Renaciendo (Rebirth) youth penitentiary, and in the course of his life and work in Honduras he visited several police stations and witnessed conditions in holding cells at these stations. During the time he worked for ASJ, colleagues of Mr. Mr. Huyser-Honig provided investigative and legal support to several individuals who had been tortured while incarcerated at the Renaciendo youth penitentiary. He reviewed case files and interviewed lawyers, investigators, and the victims involved in that case. 3. ¶ 7-8.

As editor of Revistazo.com, Mr. Mr. Huyser-Honig oversaw the process of reporting and publishing a series of articles about conditions in Honduran prisons. ¶ 9.

C. Additional Experience Related to Honduran Law-Enforcement Agencies and Practices

During the decade that he lived in Honduras, Mr. Mr. Huyser-Honig interacted with dozens of Honduran law enforcement agents. One of ASJ's programs provides investigative and legal aid to crime victims; many of the private detectives hired by ASJ for this project were former Honduran National Police detectives. The private lawyers and detectives working for ASJ coordinated actions with active-duty police detectives, and he met and conversed with a number of these detectives. 4 ¶ 10.

In addition, after one of his colleagues was assassinated in 2006, the Inter-American Human Rights Commission ordered the Government of Honduras to provide police protection for ASJ. As a result, for the majority of the time he lived and worked in Honduras, Mr. Mr. Huyser-Honig interacted on a daily basis with Honduran police officers assigned to provide protection to the staff of ASJ. Six officers were assigned at a time, and due to rotations, he met and got to know twenty or more police officers in this capacity. 4 ¶ 9.

Through his work with ASJ, Mr. Huyser-Honig met and spoke with prosecutors and judges on dozens of occasions, observed several criminal trials, and read through hundreds of pages of police reports, formal charge filings, and court transcripts. 4 ¶ 12.

Mr. Huyser-Honig was also assigned by ASJ to act as a consultant to special commissions tasked by the Honduran Government with cleaning up corruption in the public prosecuting agency and collaborated directly with government prosecutors investigating alleged instances of corruption and violent crime. In July and August of

2016, Mr. Huyser-Honig acted as a consultant to a civil society Commission appointed by the Government of Honduras that was tasked with purging Honduras's national police force of agents suspected of corruption. ¶ 13.

As he did on the topic of Honduran prisons, under Mr. Huyser-Honig's leadership, Revistazo.com also frequently published articles related to corruption and mismanagement within the Honduran police force. ¶ 14.

D. Experience Related to Gangs and Organized Crime

Between October 2004 and August 2014, Mr. Huyser-Honig lived in Honduras. Throughout this time, he lived in economically depressed neighborhoods that were affected significantly by violence and criminality (from 2004 – 2008 in Nueva Suyapa and from 2008 – 2014 in Carrizal, both in Tegucigalpa). ¶ 15.

Throughout the time he lived in Honduras, he worked in many capacities for ASJ. As an advocacy and public relations official, he shadowed and wrote about colleagues who provided investigative, legal, and counseling services to survivors of domestic abuse, sexual and gender-based violence, extortion, and other violent crimes, and he got to know many of these survivors. He relates:

> Later, during the two years I served as Coordinator of Research and Investigations, I contributed to and supervised scores of research projects, interviewing public officials and other local experts, designing and carrying out surveys and focus groups, reviewing laws and legal precedents, obtaining and reviewing government documents, and creating databases in order to analyze information obtained from the government.

¶ 17. In 2013 – 2014, Huyser Honing contributed as a researcher to the report "Honduras Elites and Organized Crime", published by Washington, D.C.-based think-tank InSight

Crime; this report examines the relationships of Honduran political and business elites with drug traffickers. In 2015, he contributed supervisory and editorial services to the production of a report ASJ produced in cooperation with InSight Crime on gangs in Honduras. In the fall of 2016, he helped to plan the most comprehensive effort to date to calculate impunity rates and track the progress of homicide cases throughout the country. In 2017, Revistazo journalists under his supervision contributed reporting to an InSight Crime report on arms trafficking in Honduras. In 2018 he directed a journalistic investigation covering the election of the Honduras' Attorney General. ¶ 18.

Under Mr. Huyser-Honig's direction, ASJ's online investigative journal, Revistazo.com, has published extensive coverage of cases and issues related to gang violence. ¶ 19.

E. Ongoing experience

Mr. Huyser-Honig continues to interact regularly with reporters and civil society actors in Honduras. Examples of recent work include the following:

a) In the spring of 2024, he edited three in-depth journalistic investigations about drug trafficking and land-rights conflicts written by a journalist contracted by ASJ.13

b) In July 2023 he served as a translator for Gabriela Castellanos, the director of Honduras's National Anti-Corruption Commission (CNA), during a presentation she gave in Michigan.

c) In late 2021 and early 2022, he was contracted as a consultant by a program funded by the National Democratic Institute (NDI) to provide supervision and editorial services for a group of Honduran journalists working on an investigation related to corruption in the Honduran public health system's response to the Covid-19 pandemic.

¶ 6-7. He explains that because Honduras is a small country with a unitary system of government, his observations regarding the operations of government agencies and structures are generally applicable to the context throughout the country. ¶ 7.

Prison Conditions in Honduras

Overview of Honduran Law Enforcement and Prisons

A. Law Enforcement Agencies

Mr. Huyser-Honig explains that, in contrast to the United States, where law-enforcement and incarceration are managed by a mosaic of municipal, county, state, and federal agencies, in Honduras these functions are almost entirely carried out by national-government agencies. Most law-enforcement activity in Honduras is carried out by the Honduran National Police, a unified police force that is part of the executive branch of the national government and is responsible for law enforcement throughout the country. The Honduran National Police are organized into several major subdivisions, including Preventive Police (uniformed beat cops), Traffic Police, and Investigative Police. After the Honduran National Police, the Honduran Armed Forces is the most important institution engaged in law-enforcement. Of particular note is the Public Order Military Police (PMOP), a branch of the military that is tasked with protecting civilian security through efforts such as anti-gang patrols and arrest operations. However, other military units also engage in activities such as patrolling high-crime areas and crowd control during public protests. ¶¶ 22-24.

B. Prisons and Prison Administration:

The Honduran Government runs 25 prisons, with a total population of around 19,500 prisoners. By the government's own account, that is about 6,500 more than the prisons were built to hold. Nearly half of the Honduran prison population is awaiting trial. ¶ 25.

Responsibility for Honduras's 25 prisons has ricocheted between the National Police, the Armed Forces, and the National Penitentiary Institute (INP). For example, in the spring of 2023, President Xiomara Castro was unhappy with the ways prisons were being administered by the INP, so in April 2023 she appointed a special commission affiliated with the National Police to take over leadership of the prison system. However, two months later, she decided the special commission was not doing a good job either, and put the military in charge. ¶ 26.

C. Honduran Prisons are Dangerous and Inhumane

According to the United States Department of State's most recent report on human rights conditions in Honduras, published in the spring of 2024:

> **Prison conditions were harsh and at times life threatening due to gross overcrowding, malnutrition and lack of medical care, and abuse by prison officials. The government's failure to control criminal activity and pervasive gang-related violence contributed significantly to insecurity.**

8 ¶ 27 (citing "2023 Country Reports on Human Rights Practices: Honduras." Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State. April 22, 2024. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/

(emphasis added)

The State Department's report also notes that "prisons were severely overcrowded"; that prisoners "suffered from malnutrition, lack of adequate sanitation and medical care, and, in some prisons, lack of adequate ventilation and lighting"; and that Honduran human rights agencies "reported more than 100 cases of alleged torture or cruel and inhuman treatment of detainees and prisoners by security forces." at 9 ¶ 28 (citing "2023 Country Reports on Human Rights Practices: Honduras") (emphasis added)

In July 2023, a spokesperson for the United Nations High Commissioner for Human Rights stated that the agency was concerned by recent developments in the Honduran prison system since control of Honduran prisons was returned to the military under the state of emergency, including reports that correctional officers were beating inmates and depriving them of adequate food, water, and sleep. 9 ¶ 29.

The UN continued to highlight concerns about conditions in Honduran prisons in 2024; in April, the leader of a delegation from the UN Subcommittee on the Prevention of Torture stated that "we observe, with concern, that conditions in a significant number of places of deprivation of liberty amount to cruel, inhuman, and degrading treatment." ¶ 30.

In February 2023, Honduras' National Human Rights Commission reported that in the previous four years 70 inmates were killed inside Honduran prisons. ¶ 31.

D. Prison Massacres and Fires

Mr. Huyser-Honig adds that, over the past two decades, over 550 inmates in Honduran prisons lost their lives in five mass-death events:

> **a) In 2003, 68 people—61 of them gang members—were slaughtered in a prison in northern Honduras; most were shot to death by prison guards and by non-gang-affiliated prisoners working in tandem with the guards.** [2]
>
> b) In 2004, a fire in a prison in San Pedro Sula killed 107 inmates.
>
> c) In March 2012, 13 prisoners died in a riot and fire in the same San Pedro Sula prison.
>
> d) The month before, in February 2012, a fire in a prison in central Honduras killed 326 people, most of them inmates.
>
> e) On June 20, 2023, female Barrio 18 members murdered 46 fellow inmates by shooting them, hacking them to death with machetes, and setting fires in their cells.

¶ 32. (emphasis added)

E. Honduran prisoners face a significant risk of being harmed by law enforcement personnel

Honduran Police engage in violent, organized crime. Members of the Honduran National Police force from the very highest levels on down have been implicated in the gamut of criminal behavior. Honduran law enforcement agents frequently collaborate with—and even count themselves as members of—MS-13, Barrio 18, and other gangs. Gang leaders pay off law-enforcement agents to willfully ignore industrial-level extortion of the public transportation sector, to permit free movement of money and goods in and out of prison, and more. Networks of Honduran National Police officers frequently provide gang members with weapons and police uniforms. ¶ 33

[2] "U.S. Department of State, Country Reports on Human Rights Practices for 2003: Honduras." https://www.state.gov/j/drl/rls/hrrpt/2003/27903.htm

The Honduran Police are also key players in the trafficking of illegal drugs, especially cocaine, across Honduran territory as it moves from producers in South America to consumers located primarily in the United States. Honduran police officers have also engaged in murder for hire and operated kidnapping rings. ¶ 34.

Mr. Huyser-Honig opines on the implications that the current state of law enforcement in Honduras has on an imprisoned extraditee like Mr. Martinez Guardado. He explains that given Honduran law-enforcement agents' propensity for criminal involvement, there is a significant risk to prisoners of being harmed by law-enforcement officers who take sides in conflicts between different inmate groups. For example, in the 2003 El Porvenir prison massacre, penitentiary police teamed up with non-gang-affiliated inmates to massacre gang members. A recent report published by the Organization of American States that many police and prison guards are affiliated with the MS-13 gang. ¶ 35.

E. Honduran Police Engage in Brutality and Violate Due Process

The Honduran police have a long history of disregarding due process and physically abusing and even killing civilians. **Again, citing from a 2023 report prepared by the State Department:**

> **"significant human rights issues included credible reports of: arbitrary or unlawful killings; torture or cruel, inhuman, or degrading treatment or punishment by government agents; harsh and life-threatening prison conditions; arbitrary arrest or detention;".**

¶ 36. Observers have criticized the Honduran police for their frequent use of arbitrary detention. **The State Department notes in its 2019 report on Human Rights practices**

in Honduras that Honduras' National Human Rights Commission reported 80 cases of arbitrary detention by security forces in that year. [3] The true number is likely to be higher, since many individuals do not have easy access to the offices of the Human Rights Commissioner and may be afraid to report police misconduct in any case. ¶ 37.

C. Torture of Arrestees

The Honduran police frequently beat, abuse, and torture individuals they arrest. A nongovernmental organization that advocates against abusive practices by Honduran law-enforcement authorities estimated that among individuals arrested by police, as many as seven in ten were beaten, abused, and/or tortured in some way. ¶ 38.

In April of 2020, journalists reported multiple instances of Honduran individuals being tortured by police after being detained for allegedly failing to heed the country's COVID-19 related lockdown; these individuals reported having their faces rubbed with towels soaked in pepper spray, having their heads forced into buckets of water, and being beaten while handcuffed. Between 2017 and 2020 journalists and human rights defenders also reported instances of police officers punishing individuals imprisoned for protesting a mining project by allowing them to wear only underwear inside the prison and of police officers throwing pepper spray inside of a van where protesters had sought refuge during clashes between police and protesters at the national university. As of 2019, at least 39 police officers were under investigation for alleged participation in torture, but none had been convicted. Between 2017 and 2018, a Honduran nongovernmental organization

[3] "2019 Country Reports on Human Rights Practices: Honduras". U.S. State Department (2020) https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras/

dedicated to supporting victims of torture said it received 95 reports from individuals who said they were tortured by law-enforcement agents. ¶ 39.

In 2010, police officers in the city of Siguatepeque responded to a call from a hotel requesting assistance with a patron at the hotel bar who was getting rowdy. The man was arrested, and eight police officers beat him in their vehicle and then in a cell at the police station until he had a seizure and died. ¶ 40.

In 2007, police officers arrested a homeless man who was addicted to inhaling paint thinner vapors. One of the officers took away the man's container of paint thinner, threw the contents on the man, and then lit him on fire. ¶ 41.

Around 2005 to 2007, colleagues of Mr. Huyser-Honig's at ASJ worked collaborated with victims and public prosecutors to investigate and prosecute police and other personnel at a juvenile detention center near Tegucigalpa; these individuals had tortured inmates by forcing them to eat feces, breaking their bones, and locking them in closet-sized spaces for over 24 hours. In the mid-2000s, when the organization he worked with, ASJ, began offering investigative and legal aid to victims of gang violence, it also found it necessary to adopt a human rights policy to make sure that police officers it collaborated with did not beat, abuse, or falsely incriminate suspects. ¶ 42.

E. Extrajudicial Killings and Death Squads Committed by Police Officers

Mr. Huyser-Honig cites numerous examples. He concludes these examples with a personal interview he conducted in 2004, while a freelance journalist writing about Honduran news and issues for several English-language publications. The woman he interviewed said her son had been murdered by men wearing police uniforms who had

arrived at a soccer field where the woman's son was playing soccer and summarily executed him and others who were on the field. ¶¶ 43-48.

Based on these accounts and given Honduran law-enforcement agents' propensity for engaging in violence against individuals they deem to have broken the law, or simply to have crossed them in some way, Huyser-Honing opines that inmates in Honduran prisons face a significant risk of being attacked and/or killed by these agents. ¶ 49.

F. Honduran prisoners face a significant risk of being harmed by fellow inmates

The Vice-Minister of Security, Julissa Villanueva, recently told Organization of American States (OAS) representatives that while the problem of Honduran prisons being governed by prisoners was decades old, it has gotten worse in the past 10 or 15 years. Villanueva also noted that this problem was most severe in the country's maximum-security prisons—which, ironically, were intended to be model institutions where the authorities exercised greater control over life on the inside. ¶ 50.

Honduras's largest prisons have separate wings dedicated exclusively to Barrio 18 and MS-13, respectively. These gangs rule over their sections of the prisons as quasi-autonomous fiefdoms, usually overseen by older, heavily tattooed gang members serving multi-decade sentences. ¶ 51.

A report commissioned by the Honduran Government found that the directors of the country's prisons lacked adequate training, and that corruption and smuggling of drugs into prisons is widespread. Gang members and others with money to pay off guards have free access to cell phones they can use to communicate with the outside world, and

illicit cash flows in and out of Honduras's prisons are estimated to be in the millions of dollars. ¶ 52.

In response to growing public frustration with Honduran prisons serving simply as headquarters for gangs, the Honduran Government inaugurated a maximum-security prison based on U.S. models, known as "El Pozo" (The Pit), in 2016 A year later, a second maximum-security prison, "La Tolva" (The Hopper), was opened. But prison officials at El Pozo have colluded with inmates to help them run extortion rings that operate outside prison walls and allowed inmates to have access to knives and guns which they have used to commit murders inside prison. In practice, Honduras's new "maximum security" facilities are plagued by the same porousness endemic to the rest of its prisons, allowing information, plans, weapons, and violence to pass freely between prisoners and the outside world. Barrio 18 and MS-13 also control their own wings of these maximum-security prisons. In May 2021, a Honduran army colonel in charge of one "El Pozo" told a journalist that "inside those doors, the gangs have their own organization, their own rules, and their own means of punishment. We don't go there." ¶ 53.

Huyser-Honing opines that, given the extent to which criminal organizations control life on the inside of Honduran prisons, inmates in these facilities run a serious risk of being attacked, tortured, and/or murdered by members of criminal organizations. Between 2001 and 2008, for example, some 438 prisoners in Honduran penitentiaries were murdered by fellow inmates. In 2017, government agents found two human skulls

and other bones buried under the floor of a section of a prison that had been occupied by the Barrio 18 gang. ¶ 54.

G. The Honduran Government has not improved prison conditions despite decades of calls to do so

The Honduran Government is well aware of the problems in its prison system. Institutions like the U.S State Department, the Organization of American States, and Honduran and international human rights groups have been calling attention to the dire conditions in Honduran for years. ¶ 55.

Huyser-Honing narrates examples cited by Inter-American Court of Human Rights (IACHR), which determined that Honduran prisons violate the Inter-American Convention on Human rights:

> a) In the case López Álvarez vs. Honduras, decided in 2005, the IACHR noted that Honduran prison conditions were crowded and unhealthy, and ordered the Government of Honduras to ensure that every prisoner in the country had adequate food, medical care, and physical conditions.
>
> b) In the case Pacheco Teruel and others vs. Honduras, decided in 2012, the IACHR found the Honduran Government responsible for the deaths of the 107 inmates who died in the 2004 San Pedro Sula prison fire, and ordered the Government of Honduras to make "substantial improvements" to nine of the country's most overcrowded and run-down prisons.

¶ 56.

Despite these clear signals that major improvements should be made, Honduras's prisons remain crowded, inhumane, and dangerous. In its 2024 report on human rights in Honduras, the OAS noted that there had been little progress in addressing issues with the prison system that it had highlighted five years earlier. In July 2024, a coalition of Honduran human rights organizations reported that over the previous year they had

received 432 reports of cruel and inhuman treatment of inmates in Honduran prisons. ¶ 57.

H. Conclusion

Based on the evidence he has presented, it is Huyser-Honing's opinion that anyone incarcerated in Honduras is almost certain to endure inhumane conditions such as lack of food, water, and sanitation; faces a significant risk of being attacked, tortured, and/or killed by members of Honduran security forces; and faces a significant risk of being attacked, tortured, and/or killed by fellow inmates. ¶ 58. Additionally, Huyser-Honig opines as follows:

a) An individual incarcerated in Honduras is almost certain to endure inhumane conditions such as lack of food, water, and sanitation;

b) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise physically and/or mentally harmed by Honduran security forces in ways that may be qualified as "torture" under 22 CFR § 95.1;

c) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise physically and/or mentally harmed by fellow inmates, acting with the tacit permission of Honduran security forces, in ways that may be qualified as "torture" under 22 CFR § 95.1;

d) Individuals incarcerated in Honduras face a significant risk of being murdered by fellow inmates, being murdered by security personnel, or dying in prison fires or similar

catastrophic incidents. Based on available statistics, inmates in Honduran prisons appear to face a risk about 20 times higher than that of inmates in U.S. jails and prisons of dying in these ways. ¶ 59 (a-d).

GROUNDS FOR RELIEF

FIRST GROUND FOR RELIEF: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

The foregoing allegations are repeated and re-alleged as though fully set forth herein.

The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property without due process of law."

As a lawful permanent resident of the United States, Mr. Martinez Guardado is entitled to the Due Process Clause protections against deprivations of liberty.

Respondents Blinken and Garland are constitutionally obligated not to extradite a person protected by the Due Process Clause if he is likely to be tortured or killed once surrendered to another country.

Mr. Martinez Guardado has demonstrated that if extradited, he is likely to be tortured or killed in Honduras.

SECOND GROUND FOR RELIEF: DENIAL OF A FORUM TO CHALLENGE EXTRADITION IS A VIOLATION OF THE SUSPENSION CLAUSE

The foregoing allegations are repeated and re-alleged as though fully set forth herein.

Notwithstanding any act of Congress, all persons, including Petitioner, enjoy the constitutional privilege of habeas corpus as protected by the Suspension Clause, Art. I, § 9, cl.2. Such privilege includes a meaningful opportunity to demonstrate the illegality of the Executive Branch's actions with respect to the detention of a person.

Respondents Blinken and Garland's determination to deny Petitioner a forum to challenge his detention and extradition would violate Mr. Martinez Guardado's right to habeas corpus under the Suspension Clause.

THIRD GROUND FOR RELIEF:
VIOLATION OF THE CONVENTION AGAINST TORTURE

The foregoing allegations are repeated and re-alleged as though fully set forth herein.

The CAT obligates signatories to the treaty to refrain from expelling, returning or extraditing a person to another state where there are substantial ground for believing that the person will be tortured.

As a signatory to the CAT, the United States is obligated to comply with the CAT and thus, Respondents Blinken and Garland cannot extradite Mr. Martinez Guardado if he is likely to be tortured or killed in Honduras if extradited.

Respondent Blinken's determination to surrender Mr. Martinez Guardado to Honduras would violate the CAT.

FOURTH GROUND FOR RELIEF:
VIOLATION OF THE FARRAct

The foregoing allegations are repeated and re-alleged as though fully set forth herein.

The FARRAct implements the United States' obligations under the CAT.

Pursuant to the FARRAct, Respondents Rubio and Bondi cannot extradite Mr. Martinez Guardado if he is likely to be tortured or killed in Honduras once extradited.

Respondent Rubio's determination to surrender Mr. Martinez Guardado to Honduras would violate the CAT.

FOURTH GROUND FOR RELIEF:
VIOLATION OF THE FARRAct REGULATIONS

The foregoing allegations are repeated and re-alleged as though fully set forth herein.

The FARRAct regulations, 22 C.F.R. § 95.1 through 95.4, implements the United States' obligations under the CAT and FARRAct.

Pursuant to the FARRAct regulations, Respondents Rubio and Bondi cannot extradite Mr. Martinez Guardado if he is likely to be tortured or killed in Honduras once extradited.

LEGAL ARGUMENTS WITH AUTHORITY

CAT & FARRAct

In *Trinidad Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012), an *en banc* court considered Trinidad y Garcia's challenge to his extradition to the Philippines, arguing that it would violate his rights under the Convention Against Torture (CAT) and the Fifth Amendment's Due Process Clause. *Trinidad Garcia v. Thomas*, 683 F.3d 952, 955 (9th Cir. 2012) (en banc). The court took up the question of jurisdiction.

It ruled that "[t]the district court had jurisdiction over the action pursuant to 28 U.S.C. § 2241, which makes the writ of habeas corpus available to all persons 'in custody in violation of the Constitution or laws or treaties of the United States,' and under the Constitution." *Trinidad Garcia v. Thomas*, 683 F.3d at 955 (citing 28 U.S.C. § 2241(c)(3); *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). It added that "[t]he writ of habeas corpus historically provides a remedy to noncitizens challenging executive detention." *Id.* (citing *INS v. St. Cyr*, 533 U.S. 289, 301-03 (2001)).

The Court observed that "[t]he CAT and its implementing regulations are binding domestic law, which means that the Secretary of State must make a torture determination before surrendering an extraditee who makes a CAT claim." *Id.* FARRA and its regulations generate interests cognizable as liberty interests under the Due Process Clause, which guarantees that a person will not be 'deprived of life, liberty, or property, without due process of law.'" *Id.* at 956-957 (citing U.S. Const. amend. V; *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Goldberg v. Kelly*, 397 U.S. 254 (1970)). In light of this authority, "[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." *Id.* at 957 (citing 22 C.F.R. § 95.2.). "An extraditee thus possesses a narrow liberty interest: that the Secretary comply with her statutory and regulatory obligations."

More recently, in *Venckiene v. United States*, (7th Cir. 2019), the Seventh Circuit also recognized a district court's jurisdiction to consider a 2241 challenge to the Secretary of State's decision to surrender an extraditee, explaining:

> ...we are not inclined to say that a Secretary of State's extradition decision is never reviewable on due process grounds, let alone grounds of racial or religious bias, for example. Although the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, we need not say here that judicial review is never available. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in this appeal, reviewing the Secretary of State's extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

Venckiene v. United States 929 F.3d 843, 861 (7th Cir. 2019). In reaching its decision, the Seventh Circuit cited *Peroff v. Hylton*, 563 F.2d 1099 (4th Cir. 1977), and a Fifth Circuit opinion, *Escobedo v. United States*, 623 F.2d 1098 (5th Cir. 1980), as decisions that recognized a district court's jurisdiction to consider whether a Secretary of State's surrender order meets due process standards. *Venckiene*, 929 F.2d at 861.

Honduran incarceration system expert Abram Huyser-Honig has reviewed the definition of "torture" in 22 CFR § 95.1 and opines that it is more likely than not that Mr. Martinez Guardado will experience treatment that meets that definition if he is incarcerated in Honduras, following his surrender to Honduras. *Supra* at 21 (citing ¶ 58). Specifically, he opines the following to be true:

a) An individual incarcerated in Honduras is almost certain to endure inhumane conditions such as lack of food, water, and sanitation;

b) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise

physically and/or mentally harmed by Honduran security forces in ways that may be qualified as "torture" under 22 CFR § 95.1;

c) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise physically and/or mentally harmed by fellow inmates, acting with the tacit permission of Honduran security forces, in ways that may be qualified as "torture" under 22 CFR § 95.1;

d) Individuals incarcerated in Honduras face a significant risk of being murdered by fellow inmates, being murdered by security personnel, or dying in prison fires or similar catastrophic incidents. Based on available statistics,77 inmates in Honduran prisons appear to face a risk about 20 times higher than that of inmates in U.S. jails and prisons of dying in these ways. *Supra* at 21-22 (citing ¶ 59 (a-d)).

Of particular significance to his well-supported opinion that Mr. Martinez Guardado is likely to be tortured if surrendered to Honduras is that ironically, Huyser-Honig's opinions are based in part on reports prepared by *the DOS* that flatly condemn the Honduran government's prison system as one rife with violence, torture, and death. On the one hand, DOS reports cited by Huyser-Honig consistently condemn the Honduran prison system, while on the other, DOS attempts to assure Mr. Martinez Guardado, in patently lightweight fashion, that there is a less than probable chance that he will be tortured or subject to significantly inhumane treatment because, well, the DOS says so, and the we should just go with that. Mr. Martinez Guardado, a legal permanent resident of this country, is guaranteed a meaningful habeas review of an extradition

process that, absent proven and reliable extraordinary measures by the Republic of Honduras to protect him during his incarceration in Honduras, is likely to result in serious harm or even death to his person.

Huyser Honig also opines that even if Martinez Guardado is not subject to torture, as defined in 22 C.F.R. § 95.1, that he would be subject to, as described by the DOS's response letter, mistreatment that raises significant humanitarian concerns. Nothing in the DOS's surrender letter properly addresses, much less ensures, that it is not more likely than not that Mr. Martinez Guardado will be mistreated in a significantly inhumane manner, if extradited to Honduras.

The DOS's words ring hollow. It represents that it takes appropriate steps, which may include obtaining information or commitments from Honduras, to address Mr. Martinez Guardado's concerns. Yet, it fails to explain what, if any appropriate steps were taken, or what information and/or commitments may have been agreed to by Honduras to protect Mr. Martinez Guardado. As the factfinder tasked with determining the merits of Mr. Martinez Guardado's request for relief, this Court is left to speculate whether the DOS has taken appropriate action to ensure that he is protected, simply on the weight of a conclusory and factually unsupported claim.

Second, without any factual support, the DOS simply "confirms" that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations. Again, this is a conclusory claim, devoid of any factual support for this Court to determine if Mr. Martinez Guardado is protected after he is surrendered to Honduras. This should not be

sufficient to assuage a *bona fide* preoccupation about torture and other significant humanitarian concerns. To accept the DOS's claims in their current form would effectively render Martinez Guardado's habeas process an empty and meaningless exercise.

Lastly, much has changed since Mr. Martinez Guardado filed his original (and premature) habeas claim in December 2024. The Trump administration has taken an overly aggressive and often legally questionable - if not outrightly lawless - approach to representing facts in our federal district courts. This is now recurrent and a matter of public record. *See* The Editorial Board. "'Egregious' 'Brazen.' 'Lawless." How 48 Judges Describe Trump's Actions, in Their Own Words." New York Times, July 12, 2025. **Exhibit C.** It behooves this Court to be significantly cautious when weighing the fact-less and conclusory claims by the DOS in its letter response, in addressing Martinez Guardado's concerns about torture and other significantly inhumane treatment if surrendered to Honduras. This unfortunate reality underscores the need for much more than what the DOS presents in its response. Respectfully, the manner in which the administration's agencies and their representatives now routinely address an opponent's legal claims compel the Court to require well-documented and candid factual bases to support their claims that Mr. Martinez Guardado stands a less than probable chance of suffering torture or other significantly inhumane treatment when he is surrendered to Honduras.

DUE PROCESS

The habeas statute provides that a federal district court may entertain a habeas application by a person held "in custody under or by color of the authority of the United States," or "in custody in violation of the Constitution or laws or treaties of the United States." *See Munaf v. Geren*, 553 U.S. 674, 685 (U.S. 2008) (citing 28 U.S.C. §§ 2241(c)(1), (3)). In *Munaf*, the Supreme Court determined that a United States District Court did not have habeas jurisdiction to release from custody two United States Citizen detainees (Munaf and Omar) who voluntarily traveled to and were charged by Iraq with having committed crimes under Iraqi law. Unlike our situation, the "[p]etitioners [t]here allege[d] only *the possibility* of mistreatment in a prison facility…[and] not a more extreme case in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway." *Id*. at 702 (emphasis added). Specifically, the Court noted that though the "[p]etitioners briefly argue[d] that their claims of potential torture *may not be readily dismissed* on the basis of these principles because the FARR Act prohibits transfer *when torture may result*…[n]either petitioner asserted a FARR Act claim in his petition for habeas, and the Act was not raised in any of the certiorari filings before this Court," adding that "[e]ven in their merits brief…the habeas petitioners hardly discuss[ed] the issue." *Id.* at 703 (emphasis added). "Under such circumstances," the Court "[would] not consider the question [of torture]." *Id*.

Moreover, "[the] United States [there] explain[ed] that, although it remain[ed] concerned about torture among some sectors of the Iraqi Government, the State Department ha[d] determined that the Justice Ministry—the department that would have

authority over Munaf and Omar—as well as its prison and detention facilities ha[d] 'generally met internationally accepted standards for basic prisoner needs.'" *Id*. No such vote of confidence has even remotely ever been proclaimed by the government about state prisons in Honduras. In fact, an opposite conclusion is reached by Honduran prison expert Huyser-Honig, and the DOS's own reports about a failed Honduran prison system.

Mr. Martinez Guardado has presented compelling evidence that he is likely to be tortured upon his surrender to Honduras. Expressing a more expansive application of the Due Process Clause to extradition cases, in a concurrence, Justice Souter, joined by Justices Ginsburg and Breyer, joined the majority opinion in denying relief, but only after considering the particular "circumstances essential to the Court's holding," which included the government's assurance that "the department that would have authority over Munaf and Omar . . . as well as its prison and detention facilities…generally met internationally accepted standards for basic prisoner needs." *Id*. at 706. Justice Souter wrote:

> The Court accordingly reserves judgment on an "extreme case in which the Executive has determined that a detainee [in United States custody] is likely to be tortured but decides to transfer him anyway." (citation omitted) I would add that nothing in today's opinion should be read as foreclosing relief for a citizen of the United States who resists transfer, say, from the American military to a foreign government for prosecution in a case of that sort, **and I would extend the caveat to a case in which the probability of torture is well documented, even if the Executive fails to acknowledge it.** Although the Court rightly points out that any likelihood of extreme mistreatment at the receiving government's hands is a proper matter for the political branches to consider (citation omitted), **if the political branches did favor transfer it would be in order to ask whether substantive due process bars the Government from consigning its own people to torture.** And although the Court points out that habeas is aimed at securing release, not protective detention (citation omitted), habeas would not be the

> only avenue open to an objecting prisoner; "where federally protected rights [are threatened], it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief," *Bell* v. *Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 90 L. Ed. 939 (1946).

Id. at 706-707. (emphasis added)

The facts envisioned by the concurring justices in *Munaf* are clearly present in our case. Mr. Martinez-Guardado's case *is* the extreme case in which the Executive (in part by way of its own DOS reports) has determined that a detainee is likely to be tortured but decides to transfer him anyway. *Munaf's* concurrence would extend the caveat to a case in which the probability of torture is well documented, even if the Executive - here the DOS - fails to acknowledge it. In *Munaf*, *any likelihood* of extreme mistreatment at the receiving government's hands is a proper matter for the political branches to consider, so that if the DOS favors transfer, it would be in order for this Cout to ask whether substantive due process bars the Government from consigning Mr. Martinez Guardado to torture. Mr. Martinez Guardado seeks release from the extradition process, so that his claim falls squarely within what the habeas model was designed to remedy. Yet, the Supreme Court was so concerned about events such as Mr. Martinez Guardado's, that it was compelled to clarify that habeas would not be the only avenue open to an objecting prisoner, because where federally protected rights are threatened, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.

Mr. Martinez Guardado's presents the perfect facts under *Munaf* to justify the exercise of this Court's habeas jurisdiction, to prohibit his extradition and surrender that that all but guarantees his torture, or even death.

PRAYER FOR RELIEF

WHEREFORE, Mr. Martinez Guardado respectfully requests that the Court:

1. Assume jurisdiction over this matter;

2. Issue an order staying Martinez Guardado's surrender to Honduras pending the determination of his habeas petition on its merits;

3. Issue an order directing Respondents to show cause why the writ should not be granted;

4. Provide the Petitioner with a hearing and be allowed a meaningful opportunity to demonstrate the illegality of the DOS's actions with respect to Mr. Martinez Guardado's extradition and order of surrender;

5. Order the necessary discovery that is in the possession of the federal government's agencies, and that all such documentation be turned over for inspection by Counsel for Mr. Martinez Guardado, or alternatively, that it be turned over to the Court for its own inspection, and that it be made part of the record for appeal, if an appeal becomes necessary;

6. Order Respondents to cancel Petitioner's extradition;

7. Deny the Petitioner's surrender to Honduras;

8. Order the release of Petitioner;

9. Grant reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and,

10. Grant such and further relief as the Court deems just and proper.

11. In the event that this Court denies Mr. Martinez Guardado's petition, he requests that this Court stay his surrender to Honduras for 7 days, to allow the filing of a notice of appeal with the Fifth Circuit Court of Appeals, and a corresponding motion for stay with that Court. [4]

PHILIP G. GALLAHER
Federal Public Defender
Southern District of Texas No. 566458
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COUNSEL FOR PETITIONER
MELVIN MARTINEZ GUARDADO

[4] Mr. Martinez Guardado's motion to stay his surrender has been filed in a separate pleading contemporaneously with this petition.

CERTIFICATE OF SERVICE

I certify that on July 22, 2025, a copy of the foregoing was served by Notification of Electronic Filing and was delivered by email to the office of Assistant United States Attorney John Ganz.

By /s/ George W. Aristotelidis
GEORGE W. "JORGE" ARISTOTELIDIS

Expert Witness Declaration: Prison Conditions in Honduras

Expert: Abram Huyser-Honig

In the case of: Melvin Martinez Guardado

Exhibit A

Date: July 16, 2025

Contents

Part 1: Basis of Opinion and Expert's Qualifications

1.1. Introduction

I, Abram J. Huyser-Honig, upon my personal knowledge and in accordance with 28 U.S.C. § 1746, declare as follows:

1. I have prepared this declaration at the request of the Office of the Federal Public Defender, Southern District of Texas, in relation to their representation of Melvin Martinez Guardado, whom the Government of Honduras has requested in extradition.

1.2. Expert's education and experience

2. I possess a master's degree in Public Policy from Michigan State University, and a bachelor's degree in English and Spanish from Calvin University in Grand Rapids, Michigan.

3. I have been researching the historical, political, and economic factors at play in Honduras for over 19 years. This declaration is based on my professional expertise, including direct experience; review of reports and publications produced by other researchers and organizations; dialogue with other experts on violence, governance, and human rights in Honduras; and interviews with Hondurans affected by violence, corruption, and other human rights violations.

4. For over 19 years[1] I have been involved with the Association for a More Just Society (Asociación para una Sociedad más Justa, or "ASJ"),[2] a nongovernmental organization that advocates for reforms in Honduras to enhance justice and human rights. ASJ is the chapter in Honduras of Transparency International (TI), a global coalition of civil society, anti-corruption organizations.[3] ASJ has received millions of dollars in funding from the U.S. State Department.[4] ASJ continues to receive funding from many other individuals, foundations, nonprofit organizations, and

[1] I began working for ASJ in January 2005. From August 2014 through December 2023, my contract was technically structured as a consultancy; however, this was primarily to simplify some of the complexities of working for a Honduran organization while based in the U.S. I continued to use an ASJ email address for my work with the organization, supervised individuals who were direct employees of ASJ, and was considered a member of the organization's permanent personnel. As of January 2023, I stepped away from my official role with ASJ; however, I continue to volunteer for the organization occasionally and stay in regular contact with ASJ staff.
[2] See www.asjhonduras.com and https://www.asj-us.org/
[3] See www.transparency.org and https://www.transparency.org/country/HND#chapterInfo
[4] https://www.asj-us.org/stories/special-updates/support-asj

governmental agencies. It has been featured in reporting by the New York Times and other highly respected news media.[5]

5. Over the last ten years I have served as an expert in approximately 130 asylum cases on behalf of Honduran men and women before federal immigration courts in Detroit, Michigan; Chicago, Illinois; Hartford, Connecticut; Arlington, Virginia; New Orleans, Louisiana; Seattle, Washington; Houston, Texas; New York City; and other jurisdictions. To my knowledge, no ruling has ever been made in any of the cases I have participated in finding that I am not an expert on relevant country conditions.

6. This is the first case in which I have rendered services on behalf of the Office of the Federal Public Defender.

Experience related to Honduran prisons

7. As an undergraduate student studying in Honduras, I visited the Granja Penal de Comayagua (Comayagua Penal Farm) and the Centro Penitenciario de La Paz (La Paz Penitentiary). As part of my work for ASJ, I visited the Renaciendo (Rebirth) youth penitentiary, and in the course of my life and work in Honduras I visited several police stations and witnessed conditions in holding cells at these stations.

8. During the time I worked for ASJ, colleagues of mine provided investigative and legal support to several individuals who had been tortured while incarcerated at the Renaciendo youth penitentiary. I reviewed case files and interviewed lawyers, investigators, and the victims involved in this case.

9. As editor of Revistazo.com, I oversaw the process of reporting and publishing a series of articles about conditions in Honduran prisons.[6]

[5] See for example: Nazario, Sonia. "How the Most Dangerous Place on Earth Got Safer." New York Times, August 11, 2016. https://www.nytimes.com/2016/08/14/opinion/sunday/how-the-most-dangerous-place-on-earth-got-a-little-bit-safer.html?_r=0 ; Phillips, Nicholas. "In Honduras, Going From Door to Door to Prosecutors." New York Times, March 24, 2014. https://www.nytimes.com/2014/03/04/world/americas/in-honduras-going-from-door-to-door-to-prosecutors.html?mcubz=2&_r=0 ; Taub, Amanda. "In Honduran cities, 99 percent of murders go unpunished." Vox.com, Dec. 22, 2014. https://www.vox.com/2014/12/22/7433349/honduras-murder-impunity ; Vanta, Maria. "Amid Rampant Violence in Honduras, Evangelicals Have Become Crime-Fighters." Vice News, June 16, 2015. https://news.vice.com/article/amid-rampant-crime-in-honduras-evangelicals-have-become-crime-fighters

[6] "Prisons in Honduras". Revistazo.com. 2014 – 2016. https://revistazo.com/carceles-en-honduras/

Additional experience related to Honduran law-enforcement agencies and practices

10. During the decade I lived in Honduras, I interacted with dozens of Honduran law enforcement agents. One of ASJ's programs provides investigative and legal aid to crime victims; many of the private detectives hired by ASJ for this project were former Honduran National Police detectives. The private lawyers and detectives working for ASJ coordinated actions with active-duty police detectives, and I met and conversed with a number of these detectives.

11. In addition, after one of my colleagues was assassinated in 2006, the Inter-American Human Rights Commission ordered the Government of Honduras to provide police protection for ASJ. As a result, for the majority of the time I lived and worked in Honduras, I interacted on a daily basis with Honduran police officers assigned to provide protection to the staff of ASJ. Six officers were assigned at a time, and due to rotations, I met and got to know twenty or more police officers in this capacity.

12. Through my work with ASJ, I met and spoke with prosecutors and judges on dozens of occasions, observed several criminal trials, and read through hundreds of pages of police reports, formal charge filings, and court transcripts.

13. I was also assigned by ASJ to act as a consultant to special commissions tasked by the Honduran Government with cleaning up corruption in the public prosecuting agency, and collaborated directly with government prosecutors investigating alleged instances of corruption and violent crime. In July and August of 2016, I acted as a consultant to a civil society Commission appointed by the Government of Honduras that was tasked with purging Honduras's national police force of agents suspected of corruption.

14. Under my leadership, Revistazo.com also frequently published articles related to corruption and mismanagement within the Honduran police force.[7]

[7] "Papel de Comisión Depuradora es Despedir Policías Malos—y lo Están Haciendo a Todo Dar [*Purge Commission's Job is to Fire Bad Cops—and They're Doing it at Full Speed*]." Revistazo. June 10, 2016. https://revistazo.com/papel-de-comision-depuradora-es-despedir-policias-malos-y-lo-estan-haciendo-a-todo-dar/ ; Reyes, German H. ""En cuatro semanas de trabajo hemos hecho más que nunca en materia de depuración policial": Omar Rivera ['*In four weeks we've done more than ever in terms of cleaning up the police': Omar Rivera*]." Revistazo. May 21, 2016. https://revistazo.com/en-cuatro-semanas-de-trabajo-hemos-hecho-mas-que-nunca-en-materia-de-depuracion-policial-omar-rivera/ ; "La Depuracion Policial en Cifras [*The Police Purge in Numbers*]." Revistazo. 2016. http://www.revistazo.com/depuracion_charts/ ; "Estadísticas develan que la depuración policial sigue siendo un fracaso [*Statistics show pólice cleanup continues to be a failure*]." Revistazo. Oct 16, 2015.

Experience related to gangs and organized crime

15. Between October 2004 and August 2014, I lived in Honduras. Throughout this time, I lived in economically depressed neighborhoods that were affected significantly by violence and criminality (from 2004 – 2008 in Nueva Suyapa and from 2008 – 2014 in Carrizal, both in Tegucigalpa).

16. Throughout the time I lived in Honduras, I worked in many capacities for ASJ. As an advocacy and public relations official, I shadowed and wrote about colleagues who provided investigative, legal, and counseling services to survivors of domestic abuse, sexual and gender-based violence, extortion, and other violent crimes, and I got to know many of these survivors.

17. Later, during the two years I served as Coordinator of Research and Investigations, I contributed to and supervised scores of research projects, interviewing public officials and other local experts, designing and carrying out surveys and focus groups, reviewing laws and legal precedents, obtaining and reviewing government documents, and creating databases in order to analyze information obtained from the government.

18. In 2013 – 2014, I contributed as a researcher to the report "Honduras Elites and Organized Crime", published by Washington, D.C.-based think-tank InSight Crime;[8] this report examines the relationships of Honduran political and business elites with drug traffickers. In 2015, I contributed supervisory and editorial services to the production of a report ASJ produced in cooperation with InSight Crime on gangs in Honduras.[9] In the fall of 2016, I helped to plan the most comprehensive effort to date to calculate impunity rates and track the progress of homicide cases throughout the country. In 2017, Revistazo journalists under my supervision contributed reporting to an InSight

https://revistazo.com/estadisticas-develan-que-la-depuracion-policial-sigue-siendo-un-fracaso/ ; "Depuración de la Policía: dos años sin verdaderos resultados [*Police clean-up: two years without real results*]." Revistazo. March 26, 2014. https://revistazo.com/depuracion-de-la-policia-dos-anos-sin-verdaderos-resultados/ ; Reyes, German H. "Si la DIECP hiciera su trabajo los policías vinculados al crimen estarían presos [*If the DIECP was doing its job, pólice officers linked to crime would be in jail*]." Revistazo. March 26, 2014. https://revistazo.com/content/si-la-diecp-hiciera-su-trabajo-los-policias-vinculados-al-crimen-estarian-presos/ ; Reyes, German H. "Oficiales de policía aseguran que las autoridades quieren desaparecer la DNIC [*Investigative pólice officers say authorities want to dissolve their agency*]." Revistazo. March 26, 2014. https://revistazo.com/oficiales-de-policia-aseguran-que-las-autoridades-quieren-desaparecer-la-dnic/ ; Pampliega, Antonio. "Trabas a la investigación criminal con fines electoralistas [*Criminal investigations blocked for political reasons*]." Revistazo. July 24, 2013. https://revistazo.com/trabas-a-la-investigacion-criminal-con-fines-electoralistas/ ; "Suspenden labores de la DNIC sin notificación oficial [*Work of Investigative Police suspended without official notification*]." June 5, 2013. https://revistazo.com/content/suspenden-labores-de-la-dnic-sin-notificacion-oficial/

[8] "Honduras Elites and Organized Crime," InSightCrime, 2016 http://www.insightcrime.org/images/PDFs/2016/Honduras_Elites_Organized_Crime

[9] "Gangs in Honduras," InSight Crime, 2015 http://www.insightcrime.org/images/PDFs/2015/HondurasGangs, hereafter referred to as "Insight Crime gangs report"

Crime report on arms trafficking in Honduras.[10] In 2018 I directed a journalistic investigation covering the election of the Honduras' Attorney General.[11]

19. Under my direction, ASJ's online investigative journal, Revistazo.com, has published extensive coverage of cases and issues related to gang violence.[12]

Ongoing experience

20. I continue to interact regularly with reporters and civil society actors in Honduras. Examples of recent work include the following:

a) In the spring of 2024, I edited three in-depth journalistic investigations about drug trafficking and land-rights conflicts written by a journalist contracted by ASJ.[13]

b) In July 2023 I served as a translator for Gabriela Castellanos, the director of Honduras's National Anti-Corruption Commission (CNA), during a presentation she gave in Michigan.

c) In late 2021 and early 2022, I was contracted as a consultant by a program funded by the National Democratic Institute (NDI) to provide supervision and editorial services for a group of Honduran journalists working on an investigation related to corruption in the Honduran public health system's response to the Covid-19 pandemic.

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[10] "Firearms Trafficking in Honduras." InSight Crime and Asociacion para una Sociedad mas Justa. 2017. https://insightcrime.org/wp-content/uploads/2023/08/Firearms-Trafficking-Honduras.pdf

[11] See http://fiscaleaks.com/

[12] See for example: Reyes, German. "Entre el crimen y la zozobra seis bandas criminales controlan un sector de San Pedro Sula [Between crime and fear, six criminal bands control a sector of San Pedro Sula]", Revistazo, May 8, 2014. https://www.revistazo.biz/web2/index.php/nacional/item/867-entre-el-crimen-y-la-zozobra-seis-bandas-criminales-controlan-un-sector-de-san-pedro-sula ; "Dos entierros y una exhumación: la caída de una banda en la Rivera Hernández [Two burials and an exhumation: the fall of a band in Rivera Hernandez]", Revistazo, Sept 08, 2016. http://www.revistazo.biz/web2/index.php/nacional/item/1146-dos-entierros-y-una-exhumaci%C3%B3n-la-ca%C3%ADda-de-una-banda-en-la-rivera-hern%C3%A1ndez ; "Desolación y abandono reflejan comunidades de San pedro Sula abatidas por la criminalidad [Desolation and abandonment in San Pedro Sula communities plagued by crime]", Revistazo, November 10, 2014. https://www.revistazo.biz/web2/index.php/nacional/item/988-desolaci%C3%B3n-y-abandono-reflejan-comunidades-de-san-pedro-sula-abatidas-por-la-criminalidad ; "Fronteras invisibles y letales: la vida diaria de los niños en la Rivera Hernández [Invisible and deadly borders: the daily life of children in Rivera Hernandez", Revistazo, July 20, 2017. https://www.revistazo.biz/web2/index.php/nacional/item/1194-fronteras-invisibles-y-letales-la-vida-diaria-de-los-ni%C3%B1os-en-la-rivera-hern%C3%A1ndez ; "Barrio Pobre, Barrio Bravo: La historia violenta de la Rivera Hernández, Honduras [Poor neighborhood, rough neighborhood: the violent history of Rivera Hernandez, Honduras]", Revistazo, Dec 9, 2015. https://www.revistazo.biz/web2/index.php/nacional/item/1091-%E2%80%9Cbarrio-pobre-barrio-bravo-la-historia-violenta-de-la-rivera-hern%C3%A1ndez-honduras%E2%80%9D

[13] The first has been published here: https://revistazo.com/vacas-de-cocaina-las-narco-fincas-que-destruyen-la-biosfera-del-rio-platano/ ; the other two are pending publication.

d) From February through November 2021, I worked as a lead researcher in a project funded by USAID examining relationships between violence and irregular immigration among youths in Honduras.

21. Because Honduras is a small country with a unitary system of government, my observations regarding the operations of government agencies and structures are generally applicable to the context throughout the country.

Part 2: Prison Conditions in Honduras

2.1. Overview of Honduran law-enforcement and prisons

Law-enforcement agencies

22. In contrast to the United States, where law-enforcement and incarceration are managed by a mosaic of municipal, county, state, and federal agencies, in Honduras these functions are almost entirely carried out by national-government agencies.

23. Most law-enforcement activity in Honduras is carried out by the Honduran National Police, a unified police force that is part of the executive branch of the national government and is responsible for law enforcement throughout the country. The Honduran National Police are organized into several major subdivisions, including Preventive Police (uniformed beat cops), Traffic Police, and Investigative Police.

24. After the Honduran National Police, the Honduran Armed Forces is the most important institution engaged in law-enforcement. Of particular note is the Public Order Military Police (PMOP), a branch of the military that is tasked with protecting civilian security through efforts such as anti-gang patrols and arrest operations.[14] However, other military units also engage in activities such as patrolling high-crime areas and crowd control during public protests.

[14] "Nota de Felicitacion [Congratulatory Note]", Armed Forces of Honduras, August 24, 2019. http://www.ffaa.mil.hn/?p=6807 ; Law of the PMOP (Decreto No. 168-2013), https://www.acnur.org/fileadmin/Documentos/BDL/2016/10608.pdf

Prisons and prison administration

25. The Honduran Government runs 25 prisons, with a total population of around 19,500 prisoners.[15] By the government's own account, that is about 6,500 more than the prisons were built to hold.[16] Nearly half of the Honduran prison population is awaiting trial.[17]

26. Responsibility for Honduras's 25 prisons has ricocheted between the National Police, the Armed Forces, and the National Penitentiary Institute (INP).[18] For example, in the spring of 2023, president Xiomara Castro was unhappy with the ways prisons were being administered by the INP, so in April 2023 she appointed a special commission affiliated with the National Police to take over leadership of the prison system.[19] However, two months later, she decided the special commission was not doing a good job either, and put the military in charge.[20]

2.2. Honduran prisons are dangerous and inhumane

27. According to the U.S. State Department's most recent report on human rights conditions in Honduras, published in the spring of 2024,

> Prison conditions were harsh and at times life threatening due to gross overcrowding, malnutrition and lack of medical care, and abuse by prison officials. The government's failure to control criminal activity and pervasive gang-related violence contributed significantly to insecurity.[21]

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[15] "Situación de la Población Penitenciaria: Honduras, 2022 [*Situation of the Penitentiary Population: Honduras, 2022*]". Ministry of Security of Honduras, with support from USAID and UNDP. July, 2023. https://www.undp.org/sites/g/files/zskgke326/files/2023-07/PNUD-HN-INFOSEGURA-ANALISIS-POBLACION-PENITENCIARIA-2023.pdf

[16] Ibid

[17] Ibid

[18] Zelaya, Jose Francisco. "Génesis del Sistema Penitenciario Nacional [*Origins of the National Penitentiary System*]." National Penitentiary Institute (Honduras). https://portalunico.iaip.gob.hn/ver_archivo/MTk1MjI5

[19] "Suspenden a Julissa Villanueva de la comision interventora de centros penales tras matanza en PNFAS [*Julissa Villanueva suspended from special commission on prisons after killings in women's prison*]." El Heraldo. June 21, 2023. https://www.elheraldo.hn/sucesos/suspenden-julissa-villanueva-comision-interventora-centros-penales-matanza-pnfas-cefas-honduras-carcel-mujeres-HA14051868

[20] Cruz, Julio. "Xiomara Castro, de criticar a la PMOP a delegarle direccion de las carceles [*Xiomara Castro, from criticizing the PMOP to delegating authority over prisons to them*]". El Heraldo. June 21, 2023. https://www.elheraldo.hn/honduras/presidenta-xiomara-castro-de-criticar-pmop-delegarle-direccion-carceles-honduras-HA14055389

[21] "2023 Country Reports on Human Rights Practices: Honduras." Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State. April 22, 2024. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/

28. The State Department's report also notes that "prisons were severely overcrowded"; that prisoners "suffered from malnutrition, lack of adequate sanitation and medical care, and, in some prisons, lack of adequate ventilation and lighting"; and that Honduran human rights agencies "reported more than 100 cases of alleged torture or cruel and inhuman treatment of detainees and prisoners by security forces."[22]

29. In July 2023, a spokesperson for the United Nations High Commissioner for Human Rights stated that the agency was concerned by recent developments in the Honduran prison system since control of Honduran prisons was returned to the military under the state of emergency, including reports that correctional officers were beating inmates and depriving them of adequate food, water, and sleep.[23]

30. The UN continued to highlight concerns about conditions in Honduran prisons in 2024; in April, the leader of a delegation from the UN Subcommittee on the Prevention of Torture stated that "we observe, with concern, that conditions in a significant number of places of deprivation of liberty amount to cruel, inhuman, and degrading treatment."[24]

31. In February 2023, Honduras' National Human Rights Commission reported that in the previous four years 70 inmates were killed inside Honduran prisons.[25]

2.2. 550 Honduran prisoners have died in massacres and prison fires

32. Over the past two decades, over 550 inmates in Honduran prisons lost their lives in five mass-death events:

[22] "2023 Country Reports on Human Rights Practices: Honduras." Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State. April 22, 2024. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/

[23] Hurtado, Marta. "Honduras: Militarization of public security." UN High Commissioner for Human Rights. July 7, 2023. https://www.ohchr.org/en/press-briefing-notes/2023/07/honduras-militarization-public-security

[24] "Honduras: Militarisation of prisons and detention conditions raise concerns, UN torture prevention body says." United Nations, Office of the High Commissioner for Human Rights. Apr 25, 2024. https://www.ohchr.org/en/press-releases/2024/04/honduras-militarisation-prisons-and-detention-conditions-raise-concerns-un

[25] "Desde el año 2019: unas 70 personas privadas de libertad perdieron la vida violentamente en las cárceles [*Since 2019: about 70 incarcerated persons lost their lives violently inside prisons*]." National Human Rights Commission of Honduras (CONADEH). Feb 6, 2023. https://www.conadeh.hn/desde-el-ano-2019-unas-70-personas-privadas-de-libertad-perdieron-la-vida-violentamente-en-las-carceles/

a) In 2003, 68 people—61 of them gang members—were slaughtered in a prison in northern Honduras; most were shot to death by prison guards and by non-gang-affiliated prisoners working in tandem with the guards.[26]

b) In 2004, a fire in a prison in San Pedro Sula killed 107 inmates.[27]

c) In March 2012, 13 prisoners died in a riot and fire in the same San Pedro Sula prison.[28]

d) The month before, in February 2012, a fire in a prison in central Honduras killed 326 people, most of them inmates.[29]

e) On June 20, 2023, female Barrio 18 members murdered 46 fellow inmates by shooting them, hacking them to death with machetes, and setting fires in their cells.[30]

2.3. Honduran prisoners face a significant risk of being harmed by law enforcement personnel

Honduran Police officers engage in violent, organized crime

33. Members of the Honduran National Police force from the very highest levels on down have been implicated in the gamut of criminal behavior. Honduran law enforcement agents frequently collaborate with—and even count themselves as members of—MS-13, Barrio 18, and other

[26] U.S. Department of State, Country Reports on Human Rights Practices for 2003: Honduras. https://www.state.gov/j/drl/rls/hrrpt/2003/27903.htm

[27] "El horror marca la historia del Centro Penal Sampedrano [*Horror marks the history of the San Pedro Prison*]." La Prensa. March 17, 2017. https://www.laprensa.hn/honduras/el-horror-marca-la-historia-del-centro-penal-sampedrano-LALP1053787

[28] "13 muertos en un motín en la cárcel de San Pedro Sula en Honduras [*13 dead in prison riot in San Pedro Sula, Honduras*]." CNN en Español. March 29, 2012. https://cnnespanol.cnn.com/2012/03/29/incendio-en-la-carcel-principal-de-san-pedro-sula-en-honduras

[29] Zabludovsky, Karla. "Report Paints Dire Picture in Honduran Prison Fire." New York Times. August 2, 2013. https://www.nytimes.com/2013/08/03/world/americas/deadly-fire-at-honduran-prison-was-accident-report-says.html

[30] Gonzalez, Marlon. "Gang slaughtered 46 women at Honduran prison with machetes, guns and flammable liquied, official says." Associated Press (AP). June 21, 2023. https://apnews.com/article/honduras-women-prison-riot-3df51756c946b759e2b813fa18fee7ae

gangs.[31] Gang leaders pay off law-enforcement agents to willfully ignore industrial-level extortion of the public transportation sector, to permit free movement of money and goods in and out of prison, and more.[32] Networks of Honduran National Police officers frequently provide gang members with weapons and police uniforms.[33]

34. The Honduran Police are also key players in the trafficking of illegal drugs, especially cocaine, across Honduran territory as it moves from producers in South America to consumers located

[31] "Honduras: 81 oficiales y policías vinculados a la Mara Salvatrucha." ["Honduras: 81 police officials and agents linked to the Mara Salvatrucha."] El Heraldo, September 26, 2016. http://www.elheraldo.hn/pais/1003154-466/honduras-81-oficiales-y-polic%C3%ADas-vinculados-a-la-mara-salvatrucha ; "Honduras: capturan a policia, supuesto cabecilla de la pandilla 18 en San Lorenzo, Valle [Honduras: pólice officer who allegedly was 18 gang leader arrested in San Lorenzo, Valle]". El Heraldo. June 16, 2019. https://www.elheraldo.hn/sucesos/1293690-466/honduras-capturan-a-polic%C3%ADa-supuesto-cabecilla-de-la-pandilla-18-en-san ; "Desmantelan red de asesinos integrado por pandilleros de la 18 [Network of Barrio 18 assassins broken up]". El Heraldo. June 24, 2015. https://www.elheraldo.hn/sucesos/852680-219/desmantelan-red-de-asesinos-integrada-por-pandilleros-de-la-18

[32] "Gangs in Honduras". InSight Crime and Asociacion para una Sociedad mas Justa/produced for review by United States Agency for International Development (USAID). 2015. https://www.insightcrime.org/images/PDFs/2015/HondurasGangs.pdf

[33] "Policias proveian armas a las pandillas MS y la 18 [Polices provided arms to MS and 18 gangs]" La Prensa, Jan 9, 2017. http://www.laprensa.hn/honduras/1033413-410/polic%C3%ADas-prove%C3%ADan-armas-a-las-pandillas-ms-y-la-18 ; [33] "Con chalecos policiales capturan a 6 presuntos pandilleros en la capital [Six presumed gang members arrested in the Capital with police-issue bulletproof vests]", Radio America, October 12, 2018. http://www.radioamerica.hn/chalecos-policiales-capturan/ ; "Cae militar que facilitaba uniformes a la pandilla 18 [Soldier who provided uniforms to the Pandilla 18 is arrested]", HCH, September 28, 2018. https://www.hch.tv/2018/09/28/cae-militar-que-facilitaba-uniformes-a-la-pandilla-18-y-otros-sucesos-en-tgu/ ; "Sujetos vestidos de policias asesinaron a las cuatro personas en la Smith [Individuals dressed as Police Officers killed four people in the Smith neighborhood]", Tiempo Digital, September 9, 2018. https://tiempo.hn/sujetos-vestidos-de-policias-asesinaron-a-las-cuatro-personas-en-la-smith/ ; "Hombres vestidos de policias mataron a parejas en la colonia Nueva Suyapa [Men dressed as police officers killed couple in the Nueva Suyapa neighborhood]". El Heraldo. July 26, 2018 https://www.elheraldo.hn/sucesos/1201542-466/hombres-vestidos-de-polic%C3%ADas-mataron-a-pareja-en-la-colonia-nueva-suyapa ; "Honduras: hombres vestidos de policia asesinan a cuatro personas [Men dressed as police officers murder four people]" EFE, February 17, 2018. https://www.tn8.tv/america-latina/444002-honduras-hombres-vestidos-policia-asesinan-cuatro-personas/ ; Sicarios vestidos de policia secuestran jovenes para asesinarlos [Hitmen dressed as police officers kidnap two young people in order to murder them]" El Heraldo. July 3, 2017. https://www.elheraldo.hn/pais/976305-466/sicarios-vestidos-de-polic%C3%ADa-secuestran-a-dos-j%C3%B3venes-para-asesinarlos ; Amador, Iris. "La Operación Avalancha azota a la MS-13 en Honduras [Operation Avalanch hits MS-13 in Honduras]". Dialogo Digital Military Magazine. March 15, 2016. https://dialogo-americas.com/en/articles/operation-avalanche-hits-ms-13-honduras ; "Recuperarán uniformes en manos de pandilleros [Uniforms in hands to gang members to be recovered]", La Tribuna, August 11, 2014. http://www.latribuna.hn/2014/08/11/recuperaran-uniformes-en-manos-de-pandilleros/

primarily in the United States.[34] Honduran police officers have also engaged in murder for hire[35] and operated kidnapping rings.[36]

Implications for prisoners in Honduras

35. Given Honduran law-enforcement agents' propensity for criminal involvement, there is a significant risk to prisoners of being harmed by law-enforcement officers who take sides in conflicts between different inmate groups. For example, in the 2003 El Porvenir prison massacre, penitentiary police teamed up with non-gang-affiliated inmates to massacre gang members. A recent report publish by the Organization of American States that many police and prison guards are affiliated with the MS-13 gang.[37]

Honduran Police engage in brutality and violate due process

36. The Honduran police have a long history of disregarding due process and physically abusing and even killing civilians. According to the U.S. State Department's 2023 Report on Human Rights

[34] Malkin, Elizabeth and Alberto Arce. "Files Suggest Honduran Police Leaders Ordered Killing of Antidrug Officials." New York Times, April 15, 2016. http://www.nytimes.com/2016/04/16/world/americas/files-suggest-honduras-police-leaders-ordered-killing-of-antidrug-officials.html?_r=0 ; "Policias extraditados crearon red de lavado." ["Extradited pólice built money-laundering network."] La Tribuna, July 18, 2016. http://www.latribuna.hn/2016/07/18/policias-extraditados-crearon-red-lavado/ ; Transcript: U.S. District Court for the Southern District of New York, United States of America v. Fabio Porfirio Lobo, March 6, 2017. As accessed at http://cdn.latribuna.hn/wp-content/uploads/2017/03/Testimonio-Devis-Rivera-espanol.1.pdf ; Silva Avalos, Hector, and Asmann, Parker. "4 Takeaways from the US Trial against the Honduras President's Brother". Oct 24, 2019. InSight Crime. https://www.insightcrime.org/news/analysis/takeaways-us-trial-honduras-president-brother/ ; "Former Chief Of Honduran National Police Charged With Drug Trafficking And Weapons Offenses", U.S. Attorney's Office, Southern District of New York. April 30, 2020. https://www.justice.gov/usao-sdny/pr/former-chief-honduran-national-police-charged-drug-trafficking-and-weapons-offenses

[35] "Gran cantidad de sicarios en Honduras provienen de la Policía, según ex ministro de Defensa [Many hit-men in Honduras come from the Police, according to former Defense Minister]". Proceso Digital. Nov 23, 2019. https://www.proceso.hn/actualidad/7-actualidad/gran-cantidad-de-sicarios-en-honduras-provienen-de-la-policia-segun-ex-ministro-de-defensa.html ; Clavel, Tristan. "Honduras Top Cop Killed for Cachiros: US Prosecutor". InSight Crime. Sept 12, 2018. https://www.insightcrime.org/news/analysis/honduras-top-cop-killed-for-cachiros/ ; "Tribunal declara culpables a asesinos de abogado Dionisio Díaz García [Court declares guilty verdict for killers of lawyer Dionisio Diaz Garcia]". Proceso Digital. Feb 28, 2009. https://www.proceso.hn/metropoli/13-metropoli/Tribunal-declara-culpables-a-asesinos-de-abogado-Dionisio-D%C3%ADaz-Garc%C3%ADa.html

[36] "Con armas y vehiculos de los Cobras, banda de policías salio a secuestrar [Band of pólice undertook kidnapping with guns and weapons belonging to COBRA pólice unit]" La Prensa, June 15, 2018. https://www.laprensa.hn/sucesos/1188200-410/armas-vehiculos-cobras-banda-policias-secuestro ; Valencia Caravantes, Daniel. "Así es la policía del país más violento del mundo [This is what the most violent pólice force in the world is like]". El Faro, March 19, 2012. http://www.salanegra.elfaro.net/es/201203/cronicas/7982/ ; "Capturan a un policía que secuestró a un estudiante en Honduras [Police officer who kidnapped student is arrested in Honduras]". ACAN-EFE, July 26, 2007. http://www.radiolaprimerisima.com/noticias/resumen/17399/capturan-a-un-policia-que-secuestro-a-un-estudiante-en-honduras/

[37] Inter-American Commission on Human Rights. "Honduras: Situación de Derechos Humanos: aprobada por la Comisión Interamericana de Derechos Humanos el 24 de marzo de 2024." (OAS. Documentos oficiales; OEA). https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf

Practices in Honduras, "significant human rights issues included credible reports of: arbitrary or unlawful killings; torture or cruel, inhuman, or degrading treatment or punishment by government agents; harsh and life-threatening prison conditions; arbitrary arrest or detention;" among others.[38]

Arbitrary detention

37. Observers have criticized the Honduran police for their frequent use of arbitrary detention. The U.S. State Department notes in its 2019 report on Human Rights practices in Honduras that Honduras' National Human Rights Commission reported 80 cases of arbitrary detention by security forces in that year.[39] The true number is likely to be higher, since many individuals do not have easy access to offices of the Human Rights Commissioner, and may be afraid to report police misconduct in any case.

Torture

38. The Honduran police frequently beat, abuse, and torture individuals they arrest. A nongovernmental organization that advocates against abusive practices by Honduran law-enforcement authorities estimated that among individuals arrested by police, as many as seven in ten were beaten, abused, and/or tortured in some way.[40]

39. In April of 2020, journalists reported multiple instances of Honduran individuals being tortured by police after being detained for allegedly failing to heed the country's COVID-19 related lockdown; these individuals reported having their faces rubbed with towels soaked in pepper spray, having their heads forced into buckets of water, and being beaten while handcuffed.[41] Between 2017 and 2020 journalists and human rights defenders also reported instances of police officers punishing individuals imprisoned for protesting a mining project by allowing them to wear only underwear

[38] "2023 Country Reports on Human Rights Practices: Honduras". U.S. State Department. April 22, 2024. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/honduras/

[39] "2019 Country Reports on Human Rights Practices: Honduras". U.S. State Department. 2020. https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras/

[40] "Torture: A persistent practice in Honduras." Center for Prevention, Treatment, and Rehabilitation of Victims of Torture and their Families (CPTRT). April, 2009. https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/HND/INT_CAT_NGO_HND_42_8985_E.pdf

[41] Davila, Heidy. "Están a sus anchas y sin control: Policías aplican terribles torturas a detenidos en el toque de queda en departamento de El Paraíso [Out of control and doing whatever they want: Police apply terrible torture methods to arrested individuals during the lockdown in the department of El Paraiso]". Pasos de Animal Grande. April 29, 2020. http://www.pasosdeanimalgrande.com/index.php/es/denuncias/item/2813-estan-a-sus-anchas-y-sin-control-policias-aplican-terribles-torturas-a-detenidos-en-el-toque-de-queda-en-departamento-de-el-paraiso/2813-estan-a-sus-anchas-y-sin-control-policias-aplican-terribles-torturas-a-detenidos-en-el-toque-de-queda-en-departamento-de-el-paraiso

inside the prison[42] and of police officers throwing pepper spray inside of a van where protesters had sought refuge during clashes between police and protesters at the national university.[43] As of 2019, at least 39 police officers were under investigation for alleged participation in torture, but none had been convicted.[44] Between 2017 and 2018, a Honduran nongovernmental organization dedicated to supporting victims of torture said it received 95 reports from individuals who said they were tortured by law-enforcement agents.[45]

40. In 2010, police officers in the city of Siguatepeque responded to a call from a hotel requesting assistance with a patron at the hotel bar who was getting rowdy. The man was arrested, and eight police officers beat him in their vehicle and then in a cell at the police station until he had a seizure and died.[46]

41. In 2007, police officers arrested a homeless man who was addicted to inhaling paint thinner vapors. One of the officers took away the man's container of paint thinner, threw the contents on the man, and then lit him on fire.[47]

42. Around 2005 to 2007, colleagues of mine at ASJ worked collaborated with victims and public prosecutors to investigate and prosecute police and other personnel at a juvenile detention center near Tegucigalpa; these individuals had tortured inmates by forcing them to eat feces, breaking their bones, and locking them in closet-sized spaces for over 24 hours. In the mid-2000s, when the

[42] Meza, Dina. "Un coronel lo ordenó: Defensores de Guapinol están en ropa interior en La Tolva [A coronel ordered it: Defenders of Guapinol are in their underwear in La Tolva]". Pasos de Anmial Grande. Sept 8, 2019. https://www.pasosdeanimalgrande.com/index.php/es/denuncias/item/2561-un-coronel-lo-ordeno-defensores-de-guapinol-estan-en-rpoa-intima-en-la-tolva

[43] Meza, Dina. "Videos ratifican las torturas que altos oficiales de policía aplicaron a defensores de DDHN y estudiantes [Videos confirm tortures that high-ranking police officials applied to human rights defenders and students]". Pasos de Animal Grande. Apr 20, 2018. http://www.pasosdeanimalgrande.com/index.php/de/contexto/item/2104-videos-ratifican-las-torturas-que-altos-oficiales-de-policia-aplicaron-a-defensores-de-ddhn-y-estudiantes

[44] "2019 Honduras Follow-up Mission Report". Basque Program for Temporary Protection of Human Rights Defenders. Feb 2019. https://www.euskadi.eus/contenidos/informacion/defensores_derechos_humanos/es_def/adjuntos/Informe%20Misi%C3%B3n%20Honduras%202019.pdf

[45] "Honduras: CPTRT ha recibido 95 denuncias de torturas contra privados de libertad [Honduras: CPTRT has received 95 reports of torture against incarcerated individuals]". Criterio. June 26, 2018. https://criterio.hn/honduras-cptrt-ha-recibido-95-denuncias-de-torturas-contra-privados-de-libertad/

[46] "Familiares esperan que la justicia castigue a policías que torturaron hasta dar muerte a su pariente [Family members hope justice system will punish police who tortured and killed their relative]". Defensores en Linea. Sept 9, 2016. https://defensoresenlinea.com/familiares-esperan-que-la-justicia-castigue-a-policias-que-torturaron-hasta-dar-muerte-a-su-pariente/

[47] Ibid

organization I work with, ASJ, began offering investigative and legal aid to victims of gang violence, it also found it necessary to adopt a human rights policy to make sure that police officers it collaborated with did not beat, abuse, or falsely incriminate suspects.

Extrajudicial killings and death squads

43. According to the U.S. State Department's 2019 Human Rights Report for Honduras, there were "307 arbitrary or unlawful killings by security forces during the year."[48]

44. In 2018, police officers in San Pedro Sula shot a young man to death for failing to stop his vehicle at a police checkpoint.[49]

45. In April of 2014, two individuals on a motorcycle shot a police officer in the head, resulting in his death. Soon after police detained two suspects, and beat one of them to death.[50]

46. In 2012, Honduras' National Violence Observatory found that police had killed at least 149 Hondurans over the previous two years.[51]

47. A recent Director of the National Police, Juan Carlos "El Tigre" Bonilla, was accused by the police's internal affairs unit of being involved with a death squad known as "Los Magnificos",[52] participating directly in three extrajudicial murders and having some involvement in 11 others[53]; later he tacitly admitted to a Salvadoran journalist that he may have participated in extrajudicial killings,[54] and the journalist claims that Bonilla's reputation for participating in extrajudicial

[48] "2019 Country Reports on Human Rights Practices: Honduras". U.S. State Department. 2020. https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras/

[49] "Policias matan a conductor que no obedeció señal de detenerse [Police kill driver who didn't obey stop signal]". La Prensa. Jan 30, 2018. https://www.laprensa.hn/sucesos/1147652-410/polic%C3%ADas-matan-conductor-asesinado-honduras

[50] "Muere uno de los sospechosos del crimen de policia de transito [*One of the suspects in crime against transit police officer has died].*" El Heraldo. April 7, 2014. https://www.elheraldo.hn/sucesos/623071-219/muere-uno-de-los-sospechosos-del-crimen-de-policia-de-transito

[51] "Policias de Honduras, responsable de 148 muertes violentas [Honduran pólice responsable for 149 violent deaths]". La Prensa. Dec 03, 2012. https://www.laprensa.hn/honduras/tegucigalpa/330802-98/polic%C3%ADas-de-honduras-responsables-de-149-muertes-violentas

[52] Martinez, Oscar. "The Macho Cops of Honduras." New York Times, March 7, 2014. https://www.nytimes.com/2014/03/08/opinion/hondurass-macho-cops.html?mcubz=0

[53] Arce, Alberto. "Honduras police accused of death squad killings." Associated Press / San Diego Union Tribune. March 16, 2013. http://www.sandiegouniontribune.com/sdut-honduras-police-accused-of-death-squad-killings-2013mar16-story.html

[54] Martinez, Oscar. "The Macho Cops of Honduras." New York Times, March 7, 2014. https://www.nytimes.com/2014/03/08/opinion/hondurass-macho-cops.html?mcubz=0

killings actually served as a point in his favor among sympathetic Honduran politicians[55] who appointed him to the highest position in the National Police in 2012.[56] In February 2013, the teenage son of a former director of the National Police, Ricardo Ramirez del Cid, was ambushed by ten gunmen in a restaurant and shot to death; del Cid accused his colleague, "El Tigre" Bonilla, of orchestrating and hiring out the hit.[57]

48. In the fall of 2004, I worked as a freelance journalist writing about Honduran news and issues for several English-language publications. As part of on reporting project, I interviewed a woman who said her son had been murdered by men wearing police uniforms who had arrived at a soccer field where the woman's son was playing soccer, and summarily executed him and others who were on the field.

Implications for prisoners in Honduras

49. Given Honduran law-enforcement agents' propensity for engaging in violence against individuals they deem to have broken the law—or simply to have crossed them in some way—inmates in Honduran prisons face a significant risk of being attacked and/or killed by these agents.

2.4. Honduran prisoners face a significant risk of being harmed by fellow inmates

50. The Vice-Minister of Security, Julissa Villanueva, recently told OAS representatives that while the problem of Honduran prisons being governed by prisoners was decades old, it has gotten worse in the past 10 or 15 years.[58] Villanueva also noted that this problem was most severe in the country's maximum security prisons[59]—which, ironically, were intended to be model institutions where the authorities exercised greater control over life on the inside.

51. Honduras's largest prisons have separate wings dedicated exclusively to Barrio 18 and MS-13,

[55] Martinez, Oscar. "The Macho Cops of Honduras." New York Times, March 7, 2014. https://www.nytimes.com/2014/03/08/opinion/hondurass-macho-cops.html?mcubz=0
[56] "Tres claves para el 'Tigre' Bonilla frente de la policía [Three key issues for "the Tiger" Bonilla at the helm of the pólice]" La Prensa, August 15, 2013. http://www.laprensa.hn/honduras/apertura/329406-98/tres-claves-para-el-tigre-bonilla-al-frente-de-la-polic%C3%ADa
[57] Arce, "Honduras police accused of death squad killings."
[58] Inter-American Commission on Human Rights. "Honduras: Situación de Derechos Humanos: aprobada por la Comisión Interamericana de Derechos Humanos el 24 de marzo de 2024." (OAS. Documentos oficiales; OEA). https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf
[59] Ibid

respectively. These gangs rule over their sections of the prisons as quasi-autonomous fiefdoms,[60] usually overseen by older, heavily tattooed gang members serving multi-decade sentences.[61]

52. A report commissioned by the Honduran Government found that the directors of the country's prisons lacked adequate training, and that corruption and smuggling of drugs into prisons is widespread.[62] Gang members and others with money to pay off guards have free access to cell phones they can use to communicate with the outside world,[63] and illicit cash flows in and out of Honduras's prisons are estimated to be in the millions of dollars.[64]

53. In response to growing public frustration with Honduran prisons serving simply as headquarters for gangs, the Honduran Government inaugurated a maximum-security prison based on U.S. models, known as "El Pozo" (The Pit), in 2016[65] A year later, a second maximum-security prison, "La Tolva" (The Hopper), was opened.[66] But prison officials at El Pozo have colluded with inmates

[60] "Así viven los mareros en la cárcel de Tamara, Honduras [This is how gang members live in prison in Tamara, Honduras]". La Prensa. March 03, 2017. https://www.laprensa.hn/honduras/1049693-410/as%C3%AD-viven-los-mareros-en-la-c%C3%A1rcel-de-t%C3%A1mara-honduras ; "Conozca la vida de lujo que tenían en una cárcel de Honduras los pandilleros de ms 13 y m 18 [See the life of luxury that Honduran gang members from ms 13 and m 18 had]". Orbita TV. May 19, 2017. https://www.youtube.com/watch?v=VDHmKgnqDHE ; Reyes, German H. "Las mafias gobiernan en los centro penales hondureños [Gangs rule inside Honduran prisons]". Revistazo. Sept 16, 2014. http://www.revistazo.biz/web2/index.php/nacional/item/915-las-mafias-gobiernan-en-los-centros-penales-hondure%C3%B1os ; "Cortinas y no barrotes tienen pandilleros en puertas de sus celdas [Gang members have curtains, not bars, on their cell doors]". La Prensa. March 2, 2017. https://www.laprensa.hn/honduras/1049383-410/cortinas-y-no-barrotes-tienen-pandilleros-en-puertas-de-sus-celdas ; "No oír, no ver, no hablar: la ley de la mara en los carcels de Honduras [Don't hear, don't see, don't speak: the law of the gangs in Honduras' prisons]". La Prensa. March 15, 2017. https://www.laprensa.hn/fotogalerias/honduras/1048970-411/no-o%C3%ADr-no-ver-no-hablar-la-ley-de-la-mara-en?i=8

[61] See for example "Con 773 pandilleros de Tamara fue habilitada La Tolva [La Tolva prison begins service with 773 gang members transferred from Tamara]." La Prensa. May 16, 2017. https://www.laprensa.hn/honduras/1071775-410/pandilleros-tamara-tolva-pozo-reos-honduras

[62] Pavon, Lucy Albertina; Vasquez, Rodil; and Peña, Gustavo. "Diagnostico del sistema penitenciario en Honduras [Diagnostic of the penitentiary system in Honduras]". CONAPREV. November 15, 2011. http://relapt.usta.edu.co/images/CONAPREV-Diagnostico-del-Sistema-Penitenciario-2011.pdf

[63] "Asi viven los mareros en la cárcel de Tamara, Honduras [This is how gang members live in prison in Tamara, Honduras]". La Prensa, March 15, 2017. http://www.laprensa.hn/honduras/1049693-410/as%C3%AD-viven-los-mareros-en-la-c%C3%A1rcel-de-t%C3%A1mara-honduras

[64] "Payments of 10 to 15 million Lempiras were made to get 18th-street gang members out of prison", La Prensa

[65] "El Pozo, la cárcel hondureña de máxima seguridad blindada para cabecillas de pandillas [The Pit, the Honduran máximum security prison for gang leaders]", El Heraldo, Sept 20, 2016. https://www.elheraldo.hn/pais/1001315-466/el-pozo-la-c%C3%A1rcel-hondure%C3%B1a-de-m%C3%A1xima-seguridad-blindada-para-cabecillas-de

[66] "Aproximadamente 650 pandilleros inauguraron la cárcel de máxima seguridad "La Tolva" [Approximately 650 gang members inaugurated the máximum security prison 'The Hopper']", Libertad Digital, May 16, 2017. https://libertaddigital.news/honduras/los-650-pandilleros-inauguraron-la-carcel-de-maxima-seguridad-la-tolva/

to help them run extortion rings that operate outside prison walls[67] and allowed inmates to have access to knives and guns which they have used to commit murders inside prison.[68] In practice, Honduras's new "maximum security" facilities are plagued by the same porousness endemic to the rest of its prisons, allowing information, plans, weapons, and violence to pass freely between prisoners and the outside world. Barrio 18 and MS-13 also control their own wings of these maximum security prisons. In May 2021, a Honduran army colonel in charge of one "El Pozo" told a journalist that "inside those doors, the gangs have their own organization, their own rules, and their own means of punishment. We don't go there."[69]

Implications for prisoners in Honduras

54. Given the extent to which criminal organizations control life on the inside of Honduran prisons, inmates in these facilities run a serious risk of being attacked, tortured, and/or murdered by members of criminal organizations. Between 2001 and 2008, for example, some 438 prisoners in Honduran penitentiaries were murdered by fellow inmates.[70] In 2017, government agents found two human skulls and other bones buried under the floor of a section of a prison that had been occupied by the Barrio 18 gang.[71]

2.5. The Honduran Government has not improved prison conditions despite decades of calls to do so

55. The Honduran Government is well aware of the problems in its prison system. Institutions like the U.S State Department, the Organization of American States, and Honduran and international human rights groups have been calling attention to the dire conditions in Honduran for years.

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[67] "Capturan a agente penitenciario asociado con reos de "El Pozo" para extorsionar [Prison guard who partnered with "El Pozo" inmates to carry out extortion is arrested]". El Heraldo, May 7, 2017. http://www.elheraldo.hn/sucesos/1086627-466/capturan-a-agente-penitenciario-asociado-con-reos-de-el-pozo-para-extorsionar

[68] "VIDEO: Asi mataron dentro de 'El Pozo I' a Magdaleno Meza, narco vinculado con Tony Hernandez [VIDEO: This is how they killed Magdaleno Meza, narco linked with Tony Hernandez, inside 'El Pozo I']". El Heraldo. Oct 26, 2019. https://www.elheraldo.hn/sucesos/1329819-466/video-as%C3%AD-mataron-dentro-de-el-pozo-i-a-magdaleno-meza-narco

[69] Martinez D'Aubuisson, Juan Jose. "The Inescapable Prison of Barrio 18 in Honduras." InSight Crime. Jan 17, 2023. https://insightcrime.org/investigations/inescapable-prison-barrio-18-honduras/

[70] "Hallan restos oseos en prision en Honduras [*Bones found in Honduran prison*]." La Prensa. Jan 11, 2008. https://www.laprensa.hn/sucesos/hallan-restos-oseos-en-prision-en-honduras-LSLP687682

[71] "Hallan osamentas en modulo Escorpion de la carcel de Tamara [*Skeletons found in Scorpion module of Tamara prison*]." El Heraldo. Aug 5, 2017. https://www.elheraldo.hn/sucesos/hallan-osamentas-en-modulo-escorpion-de-la-carcel-de-tamara-BMeh1096061

56. Moreover, the Inter-American Court of Human Rights (IACHR) has determined that Honduran prisons violate the Inter-American Convention on Human rights.

    a) In the case López Álvarez vs. Honduras, decided in 2005, the IACHR noted that Honduran prison conditions were crowded and unhealthy, and ordered the Government of Honduras to ensure that every prisoner in the country had adequate food, medical care, and physical conditions.[72]

    b) In the case Pacheco Teruel and others vs. Honduras, decided in 2012, the IACHR found the Honduran Government responsible for the deaths of the 107 inmates who died in the 2004 San Pedro Sula prison fire, and ordered the Government of Honduras to make "substantial improvements" to nine of the country's most overcrowded and run-down prisons.[73]

57. Despite these clear signals that major improvements should be made, Honduras's prisons remain crowded, inhumane, and dangerous. In its 2024 report on human rights in Honduras, the OAS noted that there had been little progress in addressing issues with the prison system that it had highlighted five years earlier.[74] In July 2024, a coalition of Honduran human rights organizations reported that over the previous year they had received 432 reports of cruel and inhuman treatment of inmates in Honduran prisons.[75]

[72] "Technical Data: López Álvarez Vs. Honduras." Inter-American Human Rights Court. 2005. https://www.corteidh.or.cr/ver_ficha_tecnica.cfm?nId_Ficha=322&lang=en

[73] "Caso Pacheco Teruel y Otros vs. Honduras: Sentencia de 27 de abril de 2012 [*Case of Pacheco Teruel and Others vs Honduras: Sentence of April 27, 2012*]" Inter-American Human Rights Court. 2012. https://corteidh.or.cr/docs/casos/articulos/seriec_241_esp.pdf

[74] Inter-American Commission on Human Rights. "Honduras: Situación de Derechos Humanos: aprobada por la Comisión Interamericana de Derechos Humanos el 24 de marzo de 2024." (OAS. Documentos oficiales; OEA). https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf

[75] "Honduras: Incumplimiento de sentencias de la Corte IDH perpetúa crisis y riesgo de las personas privadas de libertad [*Honduras: failure to comply with IACHR sentences perpetuates criss and risks to persons deprived of liberty*]." Center for Justice and International Law (CEJIL). July 12, 2024. https://cejil.org/comunicado-de-prensa/honduras-incumplimiento-de-sentencias-de-la-corte-idh-perpetua-crisis-y-riesgo-de-las-personas-privadas-de-libertad/

Part 3: Conclusion

58. I have reviewed the definition of "torture" in 22 CFR § 95.1.[76] Based on the evidence presented above, I believe that it is more likely than not that an individual incarcerated in Honduras will experience treatment that meets this definition of torture.

59. Specifically, I believe the following to be true:

a) An individual incarcerated in Honduras is almost certain to endure inhumane conditions such as lack of food, water, and sanitation

b) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise physically and/or mentally harmed by Honduran security forces in ways that may be qualified as "torture" under 22 CFR § 95.1.

c) It is more likely than not that an individual incarcerated in Honduras will, at some point during their incarceration, be beaten, physically attacked, and/or otherwise physically and/or mentally harmed by fellow inmates, acting with the tacit permission of Honduran security forces, in ways that may be qualified as "torture" under 22 CFR § 95.1.

d) Individuals incarcerated in Honduras face a significant risk of being murdered by fellow inmates, being murdered by security personnel, or dying in prison fires or similar catastrophic incidents. Based on available statistics,[77] inmates in Honduran prisons appear to face a risk about 20 times higher than that of inmates in U.S. jails and prisons of dying in these ways.

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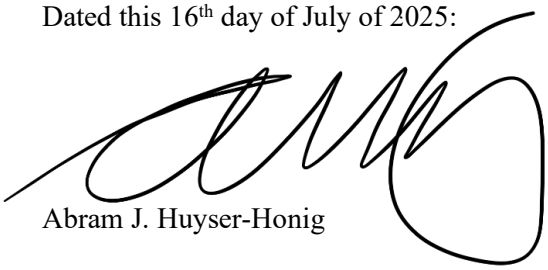
[76] *Electronic Code of Federal Regulations (e-CFR) Title 22—Foreign Relations CHAPTER I—DEPARTMENT OF STATE SUBCHAPTER J—LEGAL AND RELATED SERVICES PART 95—IMPLEMENTATION OF TORTURE CONVENTION IN EXTRADITION CASES.* Cornell Law School, Legal Information Institute. https://www.law.cornell.edu/cfr/text/22/95.1

[77] I calculated approximate rates of death by murder or accident per 100,000 prisoners for U.S. and Honduran prisoners. For Honduran prisoner deaths, I used the figure of 550 deaths in mass events cited in paragraph 32 of this report. For U.S. prisoner deaths, I referred to the following report: Carson, E. Ann. *Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables*. U.S. Department of Justice, Bureau of Justice Statistics. Dec 2021. https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf . For both U.S. and Honduran total prison populations, I referred to "Highest to Lowest - Prison Population Total". World Prison Brief. Birkbeck University of London. Accessed 07/16/2025.
https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All

Part 4: Declaration and Signature

I declare under penalty of perjury that the foregoing is true and correct to best of my knowledge.

Dated this 16th day of July of 2025:



Abram J. Huyser-Honig

Exhibit B

ABRAM J. **HUYSER-HONIG**

Grand Rapids, MI | abramhuyserhonig@gmail.com | +1 (616) 589-7025 Last Update: 07/012024

SUMMARY

Expert witness and policy analyst with 19+ years of experience researching violence and corruption in Honduras.

PROFESSIONAL EXPERIENCE

05/2014 to Present **Expert Witness**
Served as an expert witness on violence in Honduras in approximately 100 asylum and withholding cases to date before federal immigration courts in Chicago, Detroit, Virginia, New York, Seattle, Houston, and others. Collaborated with clinics at Yale Law School, Georgetown Law, Pace, and Michigan State University College of Law, as well as nonprofit organizations, pro-bono teams, and private attorneys.

07/2016 to Present **Consultant**

03/2024 to 06/2024 **Editor, Reports on Environmental Issues, Crime, and Corruption**
Asociación para una Sociedad más Justa (ASJ), Tegucigalpa, Honduras

12/2021 to 02/2022 **Editor, Journalists Learning Cycle (CAP) on Democracy, Disinformation and Freedom of Expression**
Led group of 6 Honduran journalists carrying out investigation of public health sector corruption. Project funded by USAID.

01/2021 to 10/2021 **Researcher, Study on Violence and Immigration in Honduras**
Asociación para una Sociedad más Justa (ASJ), Tegucigalpa, Honduras
ASJ (Association for a More Just Society) is a legal aid and advocacy organization; it is the representative in Honduras of Transparency International.

Project funded by USAID.

07/2016 – 9/2016 **Editor, 6-month report on activities of the Honduran Police Purge Commission**
Asociación para una Sociedad más Justa (ASJ), Tegucigalpa, Honduras

09/2013 to 12/2022 **Editor, Revistazo.com**
Asociación para una Sociedad más Justa (ASJ), Tegucigalpa, Honduras

Summary: Editorial decision-making for investigative news website.

Responsibilities:
- Assigning, reviewing and editing all content (text, photos, video, infographics).
- Supervising 3 full-time staff members and various consultants.

Accomplishments:
- Collaborated with InSight Crime in joint investigations regarding gangs and arms trafficking.
- Produced true-crime mini-documentary viewed over 1 million times online.

06/2016 to Present **Data Analyst, Institutional Research**
Michigan State University, East Lansing, Michigan

Summary: Assessing student success, research productivity, and other university metrics.

09/2012 to 08/2014 **Coordinator of Research and Investigations**
Asociación para una Sociedad más Justa (ASJ), Tegucigalpa, Honduras

Summary: Directing all major research projects for ASJ.
Reporting to Executive Director.

Responsibilities:
- Lead researcher for reports on medicine quality in public health system, connections between elites and organized crime, and impunity rates for homicides in Honduras.
- Hired 40 consultants and supervised 77 research projects during my tenure.
- Prepared presentations, press releases, and talking points to communicate key findings.
- Met with members of the Honduran Government, diplomatic corps, and international bodies.

Accomplishments:
- Impunity rate project findings—only 4% of murders result in conviction —helped fuel police reform movement.
- Acted as consultant to Honduran government officials: Office of the Prosecutor Intervention Commission, Minister of Health, Social Security Institute Intervention Commission.
- Health sector research contributed to indictment of seven health administration officials on corruption charges and major reforms to medicine storage and distribution practices.

Research topics included corruption and governance issues in the public security, health, education, and land management sectors—as well as internal program evaluations.

Project funders included U.S. State Department, Bureau of Conflict and Stabilization Operations (CSO); InSight Crime; Transparency International; Open Society Foundations (OSF); Swiss Agency for Development and Cooperation (SDC); Inter-American Development Bank (IDB); the World Bank; Dan Church Aid (DCA); and the National Endowment for Democracy (NED).

06/2009 to 08/2012 **Director of Operations**
Association for a More Just Society-U.S. (AJS-US), Tegucigalpa, Honduras

11/2005 to 05/2009 **Communications Coordinator**
Association for a More Just Society-U.S. (AJS-US), Tegucigalpa, Honduras

2005 – 2012 Worked from Tegucigalpa, Honduras office for AJS-US, a U.S. 501(c)(3) charity based in Grand Rapids, Mich., that provides grants and other aid to ASJ-Honduras.
Reporting to Board of Directors

Responsibilities (combined 2005 – 2012)**:**
- Advocacy campaigns: strategizing, organizing campaigns, lobbying officials.
- Communications: writing newsletters, producing photos and video, maintaining website.
- Fundraising: writing letters, giving presentations, personal donor meetings, event planning.
- Financial and administrative tasks: analyzing financial trends, reviewing accounting records.
- Aid to board of directors: liaison between organizations in U.S., Canada, and Honduras.

Accomplishments (combined 2005 – 2012)**:**
- Organized advocacy campaign contributing to conviction of hit-men who killed human rights lawyer Dionisio Díaz.
- Annual revenue increased by 125%, from $200,000 in 2006 to $450,000 in 2012.
- Donor base increased by 156%, from 270 donors in 2006 to 690 in 2012.

EDUCATION

05/2016 **Master of Public Policy, Michigan State University** (East Lansing, Michigan)

- Coursework focusing on econometric analysis and program evaluation.
- Independent study spring 2016 on detecting corruption and collusion in public procurement

05/2004 **B.A. in English and Spanish, Calvin University** (Grand Rapids, Michigan)

- Research Assistant: long-term effects of short-term mission trips, spring 2004
- Third World Development Studies semester in Honduras, spring 2003

LANGUAGES

Fluent in Spanish. Familiar with Latin American cultural references and regional linguistic variations.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MELVIN MARTINEZ GUARDADO,	§	
Petitioner,	§	
	§	
v.	§	
	§	**Civil Action No. 4:25-CV-3305**
HRIOMICHI KOBAYASHI et al,	§	
	§	
Respondents.	§	

GOVERNMENT'S RESPONSE IN OPPOSITION TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR EXPEDITED DECISION

The United States of America, by and through Nicholas J. Ganjei, United States Attorney for the Southern District of Texas, and Assistant United States Attorney John Ganz, submits this response in opposition to Petitioner Melvin Martinez Guardado's Amended Petition for Writ of Habeas Corpus (ECF 7). The United States further moves for an expedited decision for the reasons explained below.

I. INTRODUCTION.

The Republic of Honduras ("Honduras") seeks to prosecute Petitioner Melvin Martinez Guardado ("Martinez Guardado" or "Petitioner") for homicide in violation of Article 192 of the Honduran Criminal Code. On November 19, 2024, pursuant to 18 U.S.C. § 3184 and the extradition treaty between the United States and Honduras[1], United States Magistrate Judge Andrew Edison of the Southern District of Texas, after an extradition hearing, certified to the U.S. Secretary of State (the "Secretary") that Martinez Guardado may be extradited to Honduras for this offense. (Case No. 3:24-MJ-0006, ECF 25 (the "Certification").)

[1]Convention Between the United States and Honduras for the Extradition of Fugitives from Justice, U.S.-Hond., Jan. 15, 1909, 37 Stat. 1616, *as amended by* the Supplementary Extradition Convention Between the United States of America and the Republic of Honduras, Feb. 21, 1927, 45 Stat. 2489 (together, the "Extradition Treaty").

Martinez Guardado challenged the Certification by petitioning for a writ of habeas corpus and simultaneously challenged his extradition by making a submission to the Secretary of State. (*See* Case No. 4:24-CV-4862.) The gravamen of Petitioner's claim in his first habeas petition was that he will be tortured if extradited to Honduras. (*Id.* ECF 1, 7.) Because the Secretary had not yet made a surrender decision, the Court on April 3, 2025 dismissed Petitioner's torture-related claims as unripe. (*Id.*, ECF 9.)

Subsequently, the Secretary of State (through his designee) determined that Petitioner should be extradited to Honduras to answer to criminal charges there and that his extradition will not violate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Feb. 4, 1985, S. Treaty Doc. No. 10-20, 1465 U.N.T.S. 85 (Convention or the "CAT"), and its implementing statute and regulations. The Department of State sent Petitioner a letter affirming "that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations." Ex. 1, State Department Letter.

Petitioner filed the instant action on July 17, 2025, filing both a Petition for Writ of Habeas Corpus and a Motion to Stay. (ECF 1, 3.) Petitioner subsequently amended those filings. (ECF 7, 10, 12.) The Government has filed a Response opposing the operative Motion to Stay in which it incorporates the arguments it propounds here. (ECF 14.) This Response addresses the operative Petition for Writ of Habeas Corpus (ECF 7).

Petitioner here repeats the same arguments he made in his earlier Petition. He primarily argues that various humanitarian concerns, including alleged conditions in Honduran prisons, warrant an unprecedented exception to the long-established rule of judicial non-inquiry. In doing so, he relies on the "CAT" and related federal law.

None of Petitioner's claims warrant relief. Under the long-standing rule of judicial non-inquiry—something conspicuously absent from the Petition—Petitioner's claims about the alleged conditions he will face in Honduras if extradited are not judicially-reviewable and instead fall solely within the authority of the Secretary of State to decide. Indeed, as a matter of history and practice, habeas courts in extradition cases have never been authorized to adjudicate humanitarian or CAT claims. The scant authority Petitioner cites to support his position come from out-of-circuit decisions (*Trinidad Garcia* and *Venckiene*) that provided narrow rulings in factually-distinct scenarios that do not change the analysis here or, if anything, support the Government's position. Critically, Petitioner has already received all the process that he would be afforded even under the approach of the circuit most favorable to him: even under *Trinidad*, all that due process requires is confirmation that the Secretary of State (or his designee) complied with his obligations under the CAT, and there is such evidence in this case, as demonstrated by the letter the Department of State sent to Petitioner. Ex. 1. The record thus includes "evidence that the Secretary has complied with" his "statutory and regulatory obligations" regarding the CAT. *Trinidad y Garcia* v. *Thomas*, 683 F.3d 952, 957 (9th Cir. 2012) (en banc) (per curiam), cert. denied, 568 U.S. 1114 (2013). That letter definitively ends this Court's inquiry. *Id.* The Fifth Circuit's *Escobedo* decision binds this Court and directs it to deny the Petition. The Court should rule accordingly and do so expeditiously given the fast-approaching termination of the Extradition Treaty.

II. FACTUAL AND PROCEDURAL HISTORY.

A judge in Honduras issued an arrest warrant for Petitioner on March 23, 2022, after multiple eyewitnesses saw Petitioner shoot and kill a man in a liquor store on December 19, 2020. (*See* 3:24-MJ-006, ECF 1 at 2-3, 106-111.). Honduras thereafter requested Petitioner's extradition from the United States pursuant to the Extradition Treaty, and the Government filed its Complaint

in support of extradition on September 24, 2024. (*See* Case No. 3:24-MJ-006, ECF 1.). The Government submitted with the Complaint a declaration from the U.S. Department of State stating, *inter alia*, that "on August 28, 2024, the Republic of Honduras provided notice to the United States of America through diplomatic note of its decision to terminate the Extradition Treaty"; that "absent a further notice by the Republic of Honduras that withdraws or materially modifies its notice to terminate the Extradition Treaty, the Extradition Treaty . . . will terminate on March 1, 2025"; and that "the Extradition Treaty remains in full force and effect between the United States and Honduras, and Melvin Martinez Guardado may be extradited pursuant to the Extradition Treaty during such time that the Extradition Treaty remains in full force and effect." (*See* 3:24-MJ-006, ECF 1 at 20-21.)[2] The Treaty's termination date was subsequently extended to February 7, 2026. (*See* Case No. 4:24-CV-4862, ECF 7.)

Petitioner was arrested on Honduras's extradition request on September 27, 2024 in the Southern District of Texas. During the extradition proceedings, Petitioner's only challenge to the Government's request for certification was his contention that the Extradition Treaty was no longer in effect. (*See* 3:24-MJ-006, ECF 21.)

On November 1, 2024, Judge Edison held an extradition hearing pursuant to 18 U.S.C. § 3184. (*Id*., ECF 22.) The sole issue before the Court was whether the Extradition Treaty was currently in full force and effect between Honduras and the United States. The Government submitted supplemental briefing on November 15, 2024. (*Id*., ECF 24.) On November 19, 2024, Judge Edison rejected Petitioner's argument and issued the Certification. (*Id.*, ECF 25) ("The

[2]The declaration also noted that "[t]he Republic of Honduras may at any time prior to March 1, 2025, withdraw its notice of termination, in which case the Extradition Treaty will not terminate and will remain in full force and effect between the United States of America and the Republic of Honduras"; and that, "[i]f the Extradition Treaty terminates prior to the United States surrendering Melvin Martinez Guardado to the Republic of Honduras, the United States will not extradite Melvin Martinez Guardado to Honduras [because t]he United States generally cannot extradite in the absence of a treaty."

United States has easily satisfied its burden to demonstrate that the Extradition Treaty is presently in full force and effect."). Judge Edison found that Honduras's extradition request satisfied the requirements of the Extradition Treaty; that Martinez Guardado's conduct fell within the scope of the Extradition Treaty; and that probable cause existed to believe Martinez Guardado committed the Honduran offense of homicide.

Martinez Guardado filed his first habeas petition challenging the Certification on December 6, 2024. (Case No. 4:24-CV-4862, ECF 1). He did not challenge the Certification Order. The gravamen of his argument was instead that he would be tortured while in custody if extradited to Honduras. Petitioner also simultaneously submitted materials to the Secretary of State seeking denial of extradition.

The State Department at that time had not issued a surrender decision. On April 3, 2025, Senior United States District Judge Ewing Werlein, Jr. dismissed with prejudice Petitioner's claims, if any, regarding the certification of his extradition. Judge Werlein dismissed Petitioner's torture-related claims without prejudice as "not ripe for adjudication" because at that time, the Secretary of State had not yet decided whether to issue a surrender warrant. (Case 4:24-CV-4862, ECF 9.)

The Secretary of State (through his designee) considered and denied Petitioner's request, determining that Petitioner should be extradited to Honduras to answer to criminal charges there and that his extradition will not violate the CAT and its implementing statute and regulations. On July 14, 2025, Noah Browne, an Attorney Adviser in the Office of the Legal Adviser for Law Enforcement and Intelligence at the Department of State, sent Petitioner a letter stating that, "[f]ollowing a review of all pertinent information, including the materials and filings submitted to the Secretary and the United States District Court for the Southern District of Texas on behalf of

Mr. Martinez Guardado, on July 7, 2025, the Deputy Secretary of State decided to authorize Petitioner's surrender to Honduras, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and Honduras." Ex. 1.

The letter further stated:

> 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 to surrender a fugitive who has made a claim of torture invoking the Convention reflects either a determination that the claimed "torture" does not meet the definition set forth in 22 C.F.R. § 95.1(b) or a determination that the fugitive is not "more likely than not" to be tortured if extradited. Claims that do not come within the scope of the Convention also may 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 this case, I confirm that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations.

Id.

In response, Petitioner filed the instant action on July 17, 2025 by filing a Petition for Writ of Habeas Corpus and an accompanying Motion to Stay. (ECF 1, 3.) Petitioner subsequently amended his filings. (ECF 7, 10, 11, 12.) He repeats (with slight modification) his previous arguments. For the reasons explained below, the Court should dismiss the Petition (ECF 7).

III. APPLICABLE LEGAL STANDARD.

A. A DISTRICT COURT'S HABEAS REVIEW OF A CERTIFICATION ORDER IS HIGHLY LIMITED.

Extradition is primarily an executive function with a carefully-limited role for a judicial officer who is statutorily-authorized to determine whether to certify to the Secretary of State that the alleged fugitive is extraditable. 18 U.S.C. §§ 3184, 3186; *Lo Duca v. United States*, 93 F.3d 1100, 1104 (2d Cir. 1996).

Specifically, the extradition court's inquiry is limited to five factors: (1) whether the judicial officer is authorized to conduct the extradition proceeding; (2) whether the court has jurisdiction over the fugitive; (3) whether the applicable extradition treaty is in full force and effect; (4) whether the treaty covers the offense for which extradition is requested; and (5) whether there is sufficient evidence to support a finding of probable cause as to the offense for which extradition is sought. *See* 18 U.S.C. § 3184; *see also Skaftouros v. United States*, 667 F.3d 144, 154-55 (2d Cir. 2011). Because of the narrow scope of extradition proceedings, Martinez Guardado's rights at the extradition hearing were strictly circumscribed, thereby limiting Magistrate Judge Edison's task.[3]

This Court's task in reviewing the Certification is even *more* limited. Extradition certifications are not directly appealable. "Rather, if review is to be had at all it must be pursued by a writ of habeas corpus." *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir. 1976) ("*Jhirad II*") (citing *Shapiro*, 478 F.2d 894). "The scope of habeas corpus review of a magistrate's extradition

[3]"[F]ugitives do not benefit from many of the protections that are traditionally accorded to defendants in the criminal context." *Skaftouros*, 667 F.3d at 155 n.16 (2d Cir. 2011). Neither the Federal Rules of Criminal Procedure nor the Federal Rules of Evidence apply. Hearsay is admissible, unsworn statements of absent witnesses can be considered, and there is no right to confrontation or cross-examination. *Id.* (collecting cases). The fugitive has no right at an extradition hearing to "introduce evidence to rebut that of the prosecutor," and while the extradition court has discretion to permit "explanatory testimony," the accused "may not offer proof which contradicts that of the demanding country." *Messina v. United States*, 728 F.2d 77, 80 (2d Cir. 1984).

order is quite narrow." *Escobedo v. United States*, 623 F.2d 1098, 1101 (5th Cir. 1980); *see also Bingham v. Bradley*, 241 U.S. 511, 517 (1916). Indeed, the Supreme Court has repeatedly held that habeas review of extradition decisions is more limited than review on appeal. *See, e.g.*, *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925) (habeas corpus "cannot take the place of a writ of error. It is not a means for rehearing what the magistrate has decided"); *Collins v. Miller (Collins I)*, 252 U.S. 364, 369 (1920) ("[I]t is ordinarily beyond the scope of the review afforded by a writ of habeas corpus to correct error in the proceedings."). This is a "procedural idiosyncrasy" that has "important substantive consequences," *Jhirad*, 536 F.2d at 482. A habeas court 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*, 268 U.S. at 312 (emphasis added); *see also, e.g.*, *Jimenez v. Aristeguieta*, 311 F.2d 547, 555 (5th Cir. 1962); *Skaftouros*, 667 F.3d at 157. Within that narrow scope of review, "[p]urely legal questions are reviewed de novo by the habeas court, while purely factual questions are reviewed under the clearly erroneous standard." *Sandhu v. Bransom*, 932 F. Supp. 822, 825 (N.D. Tex. 1996) (citing *Quinn v. Robinson*, 783 F.2d 776, 790-91 (9th Cir. 1986)). Martinez Guardado raises none of these issues here.

Habeas challenges in the extradition context are asymmetrical proceedings "in which a prisoner seeks to overturn a presumptively valid judgment. . . ." *Skaftouros*, 667 F.3d at 158 (quoting *Pinkney v. Keane*, 920 F.2d 1090, 1094 (2d Cir. 1990)). Given that the Certification is presumptively lawful, Petitioner bears the burden of proving by a preponderance of the evidence that he is unlawfully in custody. *Id.* The instant habeas proceedings are "not a means for rehearing

what the magistrate already has decided. The alleged fugitive from justice has had his hearing." *Skaftouros*, 667 F.3d at 158 (quoting *Fernandez*, 268 U.S. at 312).

B. APPLICABLE LAW VESTS THE EXECUTIVE BRANCH WITH PRIMARY AUTHORITY OVER EXTRADITIONS. THE JUDICIARY'S ROLE IS HIGHLY LIMITED.

Extradition proceedings are governed by both 18 U.S.C. § 3184 *et. seq.* and the extradition treaty between the country requesting extradition and the country in which the fugitive is found. *Allen v. Schultz*, 713 F.2d 105, 108 (5th Cir. 1983); *In re Lahoria*, 932 F. Supp. 802, 805 (N.D. Tex. 1996).

Section 3184 establishes procedures for extradition and allocates responsibilities between extradition judges and the Secretary of State. The Executive Branch in the form of the Secretary of State remains primarily responsible for extradition, while the extradition judge is assigned the limited duty of determining the sufficiency of the extradition request under the applicable treaty provisions. 18 U.S.C. § 1384; *Martin v. Warden, Atlanta Penitentiary*, 993 F.2d 824, 828-829 (11th Cir. 1993); *see also Ordinola v. Hackman*, 478 F.3d 588, 608 (4th Cir. 2007) (Traxler, J., concurring) ("[T]he judiciary plays a limited role in the overall extradition process, as prescribed by Congress in the Extradition Act."). The judicial function is carried out by conducting the hearing called for by 18 U.S.C. § 3184.

Once the extradition judge has certified the case, as here, the matter shifts to the Secretary of State to make the final decision whether to surrender the fugitive. 18 U.S.C. § 3186; *Allen*, 713 F.2d at 108. It is well-settled that the "ultimate decision to extradite is a matter within the exclusive prerogative of the Executive [Branch] in the exercise of its powers to conduct foreign affairs." *Escobedo*, 623 F.2d. at 1105; *see also, e.g., United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir.

1997) (following judicial certification, the "larger assessment of extradition and its consequences is committed to the Secretary of State"); *Shapiro v. Sec'y of State*, 499 F.2d 527, 531 (D.C. Cir. 1974) ("Subject to judicial determination of the applicability of the existing treaty obligation of the United States to the facts of a given case, extradition is ordinarily a matter within the exclusive purview of the Executive."). Because extradition is ultimately a question of foreign policy, the surrender decision is entirely discretionary—the Secretary is not required to surrender a fugitive who has been certified as eligible for extradition. 18 U.S.C. § 3186 (Secretary "may" order the fugitive to be delivered to the requesting country); *Escobedo*, 623 F.2d at 1105, n.20.

This "bifurcated procedure reflects the fact that extradition proceedings contain legal issues peculiarly suited for judicial resolution, such as questions of the standard of proof, competence of evidence, and treaty construction, yet simultaneously implicate questions of foreign policy, which are better answered by the executive branch." *Kin-Hong*, 110 F.3d at 110. "The Secretary exercises broad discretion and may properly consider myriad factors affecting both the individual defendant as well as foreign relations, which an extradition magistrate may not." *Martin*, 993 F.2d at 829. The surrender of a fugitive to a foreign government is thus "purely a national act . . . performed through the Secretary of State" within the Executive's "power to conduct foreign affairs." *In re Kaine*, 55 U.S. (14 How.) 103, 110 (1852); *Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1207 (9th Cir. 2003) ("[E]xtradition is a diplomatic process carried out through the powers of the executive, not the judicial, branch.").

C. THE RULE OF NON-INQUIRY PRECLUDES COURTS FROM EVALUATING FOREIGN JUSTICE SYSTEMS IN EXTRADITION MATTERS.

The well-established rule of non-inquiry precludes courts from adjudicating issues of foreign law and "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) (citation and quotation marks omitted); ; *see also Gomez v. United States*, 140 F.4th 49, 59 (2d Cir. 2025) (fugitive's argument that the magistrate judge and district court erred by failing to consider that he was likely to be tortured or killed in the event he was extradited was "a nonstarter" because "the degree of risk to [the fugitive's] life from extradition is an issue that properly falls within the exclusive purview of the executive branch" and "[i]t is the function of the Secretary of State – not the courts – to determine whether extradition should be denied on humanitarian grounds") (internal quotation marks and citations omitted). The Rule is "shaped by concerns about institutional competence and by notions of separation of powers." *Kin-Hong*, 110 F.3d at 110. As the Supreme Court has held, federal courts are ill-suited to "pass judgment on foreign justice systems," which carry sensitive foreign policy implications that must be addressed by the Executive Branch. *Munaf v. Geren*, 553 U.S. 674, 702 (2008). Further, the Executive Branch "possess[es] significant diplomatic tools and leverage the judiciary lacks" to ensure a fugitive is treated humanely upon being returned if the extradition request is granted. *Id.* at 703; *see also, e.g., Kin-Hong*, 110 F.3d at 110 ("The State Department alone, and not the judiciary, has the power to attach conditions to an order of extradition."). The rule of non-inquiry thus respects the unique province of the Executive Branch to ensure that the United States upholds its obligations under its extradition treaties and to evaluate claims of possible mistreatment at the hands of a foreign state, as well as to obtain assurances of proper treatment (if warranted), to provide for appropriate monitoring overseas of a fugitive's treatment, and to exercise its exclusive responsibility for conducting foreign relations.

Critically, the rule of non-inquiry does not prevent fugitives from having their torture or other treatment claims carefully considered. To the contrary, its role is to protect the ability for such claims to be considered by the branch of government most capable of assessing and addressing likely conditions fugitives will face if extradited.

The Petition is thunderously silent as to this fundamental standard.

IV. ARGUMENT.

This Court's habeas decision of April 3, 2025 dismissed with prejudice Petitioner's claims, if any, regarding the certification of his extradition, and Martinez Guardado does not, in the instant Petition raise any claims challenging any of the five certification factors. As in his first petition, he argues only that his habeas petition should be granted because of various humanitarian concerns, including alleged conditions in Honduran prisons. Petitioner cannot meet his burden because the Supreme Court, the Fifth Circuit and myriad other courts have uniformly and repeatedly held that such humanitarian claims are reserved exclusively for the Secretary of State's consideration and are not judicially-reviewable in extradition proceedings or in habeas challenges to extradition.

Petitioner argues that his extradition violates the CAT, the Foreign Affairs Reform and Restructuring Act of 1998 (the "FARR Act"), the State Department's regulations implementing the CAT and the FARR Act, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the Suspension Clause of the U.S. Constitution. He is wrong, and his arguments are precluded by binding precedent. As shown *infra*, "the degree of risk to [a fugitive's] life is an issue that falls within the exclusive purview of the executive branch." *Escobedo*, 623 F.2d at 1107 (internal quotation marks and citation omitted); *see also, e.g.*, *Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006); *In re Extradition of Mujagic*, 990 F. Supp. 2d 207, 227-228 (N.D.N.Y. 2013); *Gill v. Imundi*,

747 F. Supp. 1028, 1049-50 (S.D.N.Y. 1990). "Review by habeas corpus . . . tests only the legality of the extradition proceedings; the question of the wisdom of extradition remains for the executive branch to decide." *Wacker v. Bisson*, 348 F.2d 602, 606 (5th Cir. 1965).

A. THE RULE OF NON-INQUIRY BARS THE COURT FROM REVIEWING PETITIONER'S CAT CLAIM.

Petitioner claims that this Court has authority to stop his extradition because he will be tortured and otherwise subjected to inhumane prison conditions if extradited to Honduras. Courts, however, have long recognized that it is the responsibility of the Secretary of State to evaluate claims regarding the treatment a fugitive may face in a requesting country. Under the rule of non-inquiry, review of a fugitive's claim that he will be mistreated if extradited falls outside the narrow scope of the extradition magistrate's authority to certify an extradition, beyond the concomitantly narrow scope of any review of that certification in habeas proceedings by a District Court, and beyond the court's authority in any subsequent appeal of a denial of habeas. Thus, "federal courts have [traditionally] refused to consider questions relating to the . . . treatment that might await an individual on extradition." *In re Manzi*, 888 F.2d 204, 206 (1st Cir. 1989). Courts, including the Fifth Circuit, have instead "chosen to defer these questions to the executive branch because of its exclusive power to conduct foreign affairs." *Id.* at 206; *see also, e.g., Escobedo*, 623 F.2d at 1107; *Sindona v. Grant*, 619 F.2d 167, 174-75 (2d Cir. 1980) ("[T]he degree of risk to Sindona's life from extradition is an issue that properly falls within the exclusive purview of the executive branch."); *Hoxha*, 465 F.3d at 563-64 (noting that the rule of non-inquiry precludes judicial review of the Secretary of State's extradition decision); *accord Peroff v. Hylton*, 563 F.2d 1099, 1102 (4th Cir. 1977) (per curiam); *Quinn*, 783 F.2d at 789-90.

Indeed, 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. *Gomez*, 140 F.4th at 59, application for a stay of extradition denied, No. 24A1218, 2025 WL 1942064 (July 15, 2025); *Kapoor v. DeMarco*, 132 F.4th 595, 612-13 (2d Cir. 2025); *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).[4]

"The rule of [judicial] non-inquiry, like extradition procedures generally, is shaped by concerns about institutional competence and by notions of separation of powers." *Kin-Hong*, 110 F.3d at 110. "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." *Id*. at 111.

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. As the State Department noted in its July 14 letter,

[4] In *Gallina v. Fraser*, 278 F.2d 77, 79 (2d Cir. 1960), the Second Circuit speculated that, hypothetically, there could be an extreme case warranting an exception to the rule of non-inquiry. But the Second Circuit's subsequent decision in *Ahmad v. Wigen*, 910 F.2d 1063 (2d Cir. 1990), "definitively foreclosed such review by a habeas corpus judge[.]" *In re Extradition of Cheung*, 968 F. Supp. 791, 799 (D. Conn. 1997) (citing *Ahmad*, 910 F.2d at 1066); *Gill*, 747 F. Supp. at 1049 ("the promise of *Gallina*'s dictum [has] . . . been excised" by *Ahmad*); *see also, e.g.*, *Hoxha*, 465 F.3d at 564 n.14 ("no federal court has applied [*Gallina*] to grant habeas relief in an extradition case."); *Hilton*, 754 F.3d at 87 ("[n]o court has yet applied such a theoretical Gallina exception" and "we decline to apply such an exception"); *Gomez v. United States*, 140 F.4th 49, 59 (2d Cir. 2025) ("[W]hile Lalama Gomez hangs onto our dicta in *Gallina v. Fraser* . . . no court has ever found such an exception to the rule of non-inquiry . . . . Accordingly, we conclude that the district court did not err in declining to consider potential humanitarian concerns in Ecuador in reviewing Lalama Gomez's habeas petition."); *Kapoor*, 132 F.4th at 612 n.18 ("courts have noted the hypothetical 'exception' we mentioned in *Gallina*, but none has applied it").

"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." Ex. 1. The Department of State thus reviewed Petitioner's torture claim 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.

Decisions from the Fifth Circuit and this Court enshrine the rule of judicial non-inquiry. *See, e.g.*, *Escobedo*, 623 F.2d at 1107 ("[T]he degree of risk to [the fugitive's] life from extradition is an issue that properly falls within the exclusive purview of the executive branch.") (internal quotation marks and citation omitted) (approving refusal to entertain U.S. citizen's allegation that he may be tortured or killed if surrendered to Mexico); *accord Ntakirutimana v. Reno*, 184 F.3d 419, 430 (5th Cir. 1999) ("Due to the limited scope of habeas review, we will not inquire into the procedures that await [the fugitive]"); *In re Extradition of Garcia*, 825 F. Supp. 2d 810, 839 (S.D. Tex. 2011) ("[T]he Fifth Circuit has expressly held that "'the degree of risk to [an extraditee's] life from extradition is an issue that properly falls within the exclusive purview of the executive branch.'") (citing *Escobedo*, 623 F.2d at 1107); *In re Nava Gonzalez*, 305 F. Supp. 2d 682, 693 n.26 (S.D. Tex. 2004) ("the potentially life-threatening risks which Respondent may face as an ex-policeman in Mexico are properly addressed to the executive branch"). In short, "[a]ssuming that the [extradition] magistrate's decision is in favor of extradition, the Executive's discretionary determination to extradite the fugitive – even one who is a United States national – is not generally subject to judicial review." *Escobedo*, 623 F.2d at 1105.

No court has created a humanitarian exception to the rule of non-inquiry, and this case warrants no exception. Petitioner can, and already has, raised his torture concerns with the Secretary of State. The Secretary of State's designee, who is in the best position to determine whether Petitioner's extradition is appropriate in light of his claims, denied Petitioner's request and confirmed that in doing so the State Department complied with its obligations under the CAT and governing law. Thus, this Court should neither inquire into, nor rule on, the state of Honduras's justice system or the treatment that Petitioner will receive and should not second-guess the careful consideration of, or the substance of the final decision of, the Secretary of State or his designee. *See Escobedo*, 623 F.2d at 1107; *Kin-Hong*, 110 F.3d at 111 (1st Cir. 1997); *Koskotas v. Roche*, 931 F.2d 169, 174 (1st Cir. 1991) ("principles of international comity . . . would be ill-served by requiring foreign governments to submit their purposes and procedures to the scrutiny of United States courts"); *In re Assarsson*, 635 F.2d 1237, 1244 (7th Cir. 1980). Petitioner's failure to directly address the rule of non-inquiry's impact on his claims implicitly acknowledges its fatal impact on his arguments.

B. PETITIONER'S DUE PROCESS CLAIM FAILS BECAUSE THE RULE OF NON-INQUIRY PRECLUDES THIS COURT FROM INQUIRING INTO HIS HUMANITARIAN CLAIMS.

For the same reasons, Petitioner's claim that his extradition to Honduras would violate the Due Process Clause because he is likely to be tortured or killed once surrendered to Honduras is not a matter properly before the Court. As explained above, the rule of non-inquiry prohibits District Courts from granting habeas relief on this basis because applicable law charges the Secretary of State with assessing a requesting country's conditions of confinement. *See, e.g.*, *Kin-Hong*, 110 F.3d at 111; *In re Assarsson*, 635 F.2d at 1244 ("While our courts should guarantee that

all persons on our soil receive due process under our laws, that power does not extend to overseeing the criminal justice system of other countries."). The right to due process is not infringed when "[f]undamental principles in our American democracy limit the role of courts in certain matters, out of deference to the powers allocated by the Constitution to the President and to the Senate, particularly in the conduct of foreign relations." *Kin-Hong*, 110 F.3d at 106; *see also Martin*, 993 F.2d at 830 n.10 (noting the viability of the rule of non-inquiry despite potential due process challenges); *Sandhu v. Burke*, No. 97 CIV. 4608 (JGK), 2000 WL 191707, at *11-12 (S.D.N.Y. Feb. 10, 2000) (finding that extradition magistrate's refusal to consider evidence of corruption in India that had allegedly resulted in the charging of individuals with crimes they had not committed did not violate due process).

C. NEITHER THE CAT NOR THE FARR ACT PROVIDES FOR JUDICIAL REVIEW OF CAT CLAIMS IN EXTRADITION CASES.

Petitioner additionally cites the CAT, the FARR Act, and the FARR Act's implementing regulations in support of his requested relief. (ECF 7 at 23-24.) None of these, however, give this Court authority to do what Petitioner asks, nor do any of them alter the unavailability of judicial review of a decision that is within the exclusive purview of the Secretary of State. As discussed *infra*, the CAT is not self-executing, the FARR Act does not create jurisdiction for judicial review of claims under the CAT except in certain immigration proceedings, and the REAL ID Act makes doubly clear that specified immigration proceedings "shall be the sole and exclusive means for judicial review of any cause or claim under the [CAT]." Thus, the CAT did not alter the longstanding rule of non-inquiry; if anything, its implementing legislation cemented the fact that federal courts may not consider CAT claims in extradition cases.

As an initial matter, the CAT is not self-executing. As a party to the CAT, the United States is prohibited under Article 3 of the CAT from extraditing a person to a country where substantial grounds exist to believe the person would be in danger of being tortured. CAT, Art. 3. That article directs the "competent authorities" responsible for evaluating torture claims 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." *Id.* Under the implementing regulations found at 22 C.F.R. § 95, this obligation involves the Department of State's consideration of whether the fugitive is more likely than not to be tortured in the country requesting extradition. Articles 1 through 16 of the CAT are not, however, self-executing, as Congress specified when it ratified the CAT. 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. 101-30, at 17-18 (1990). As a non-self-executing treaty, the CAT does not confer judicially-enforceable rights upon a private party such as Petitioner. *See Medellin v. Texas*, 552 U.S. 491, 505 n.2 (2008) ("[A] non-self-executing' treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress."); *see also id.* at 522 n.2, n.12 (citing with approval circuit court decisions that have found the CAT not to be self-executing). Petitioner therefore cannot seek relief based on the CAT, and the CAT is enforceable in federal court only to the extent provided for by Congress in implementing legislation. Congress has provided no such authority.

The implementing legislation for the CAT—the FARR Act—does not provide for judicial review of CAT claims in extradition cases. Congress implemented Article 3 of the CAT by enacting Section 2242 of the FARR Act, Pub. L. No. 105–277, § 2242, 112 Stat. 2681-822 (1998) (codified at 8 U.S.C. § 1231 note) (the "FARR Act"). Section 2242(a) of that Act states that 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." *Id.* § 2242(a). This statutory statement of U.S. policy, however, remains "just that—[a statement] of policy." *Comcast Corp. v. FCC*, 600 F.3d 642, 654 (D.C. Cir. 2010). Such policy statements do not create judicially-enforceable rights. *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") (citation omitted).

The text of the FARR Act, moreover, underscores the fact that Congress did not intend to make claims under the CAT justiciable in extradition proceedings. In the subsection immediately following the statement of policy, Congress directed "the heads of the appropriate agencies" to "prescribe regulations to implement the obligations of the United States under Article 3" of the CAT. FARR Act § 2242(b). A neighboring subsection captioned "Review and Construction" shields those regulations from judicial review. *Id*. § 2242(d). It then expressly states that, with the exception of certain *immigration* proceedings, the statute does not provide for judicial review of any determination made with respect to the policy set forth in the FARR Act. *Id.*; s*ee also Munaf*, 553 U.S. at 703 n.6 ("claims under the FARR Act may be limited to certain immigration proceedings").

Specifically, Section 2242(d) of the FARR Act confirms that the statute does not confer courts with jurisdiction to review claims under the CAT outside the context of a final order of removal entered in an immigration case. It states:

> Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and *nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the [CAT] 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).

FARR Act § 2242(d) (emphasis added).

Courts have held that this text makes plain Congress's expectation that courts in extradition cases would be "precluded from considering or reviewing [CAT or FARR Act] claims." *Mironescu,* 480 F.3d at 674; H.R. Conf. Rep. 105-432, at 150, 105th Cong., 2d. Sess. (1998) ("The provision agreed to by the conferees does not permit for judicial review of the regulations or of most claims under the Convention."); *see also Omar*, 646 F.3d at 24 (finding no right to review of surrender decision under FARR Act, habeas corpus, or due process; regardless of the particular source of law invoked by the petitioner, the rule of non-inquiry bars habeas relief where judicial review would require a court to second-guess the Secretary's assessment); *Juarez-Saldana v. United States*, 700 F. Supp. 2d 953, 958-61 (W.D. Tenn. 2010) (reviewing FARR Act and implementing regulations and holding that "Congress did not intend to make the Secretary of State's extradition decisions involving CAT claims subject to judicial review, and to the contrary, expressly prohibited such review"); *Yacaman Meza v. McGrew*, U.S. District Court for the Southern District of Florida Case No. 11-cv-60955, Order Adopting Report and Recommendation of Magistrate Judge and Dismissing Case, Jan. 6, 2014, Dkt. 50, at 8 (dismissing habeas petition challenging Secretary of State's surrender decision; citing rule of non-inquiry, *Munaf*, and FARR Act, district court adopts

magistrate's conclusion that "the Secretary of State's determination that Petitioner should be extradited is not subject to judicial review"). The U.S. District Court for the Eastern District of Texas has likewise adopted this approach. *See De La Rosa Pena v. Daniels*, Civil Action No. 1:13cv708, 2015 WL13730955 at *2-3 (E.D. Tex Dec. 11, 2015), *R&R adopted*, 2016 WL 463251 (E.D. Tex. Feb. 8, 2016).

Further, the State Department regulations prescribed pursuant to Section 2242(b) of the FARR Act make clear that CAT claims are not judicially-reviewable in the extradition context. The regulations establish internal procedures for addressing claims under the CAT, define the term "torture," designate the Secretary of State (or Deputy Secretary) as the U.S. official responsible for making a torture determination, require "appropriate policy and legal offices" to make a recommendation to the Secretary in every "case where allegations relating to torture are made or the issue is otherwise brought to the Department's attention," and set forth the Secretary's options upon review of that recommendation. *See* 22 C.F.R. §§ 95.1-95.4. The regulations expressly state 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. The regulations also make clear that the provisions in the FARR Act providing for judicial review in the context of immigration removal proceedings are "not applicable to extradition proceedings." *Id.* The regulations thus explicitly reject the notion that the CAT, the FARR Act or the regulations themselves confer judicially enforceable rights in extradition proceedings or otherwise subject the Secretary of State's extradition decisions to judicial scrutiny.

The REAL ID Act of 2005 eliminates any doubt that Congress intended to exclude all claims raised under the CAT from habeas review. *See Omar*, 646 F.3d at 18 ("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."). Congress addressed judicial review of claims under the CAT when it enacted 8 U.S.C. § 1252(a)(4) as part of the REAL ID Act of 2005, Pub. L. No. 109-13, § 106(a)(1)(B), 119 Stat. 231, 310 (the "REAL ID Act"), providing:

> 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) [dealing with expedited removal].

8 U.S.C. § 1252(a)(4) (emphasis added). This provision thus constitutes "a clear statement of congressional intent to bar all habeas jurisdiction over CAT claims, with narrowly delineated exceptions not relevant here."[5] *Kapoor*, 132 F.4th at 608.

The REAL ID Act underscored what the FARR Act already established: judicial review of a claim under the CAT is limited to regional courts of appeals' review of final orders of removal in immigration cases. 8 U.S.C. § 1252(a)(4); *see also Kapoor*, 132 F.4th at 608 ("The [REAL ID Act] 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. . . . This broad language encompasses CAT claims like Kapoor's made in the extradition context and therefore bars habeas review of those claims."); *Kiyemba v. Obama*, 561 F.3d 509, 514-15 (D.C. Cir 2009) (under REAL ID Act, "Congress limited judicial review under the [CAT] to claims raised in a challenge to a final order of removal."). Thus, the REAL ID Act also plainly bars habeas review of the torture claim Petitioner raises here.

[5]A "final order of removal" is a final order concluding that an alien is removable or that orders removal from the United States. *Nasrallah v. Barr*, 590 U.S. 573, 579 (2020) (citing 8 U.S.C. § 1101(a)(47)(A)). This case is an extradition proceeding, not an immigration removal proceeding.

D. THE SUSPENSION CLAUSE DOES NOT REQUIRE THE COURT TO REVIEW A CAT CLAIM IN EXTRADITION CASES.

Petitioner's argument pertaining to the Suspension Clause (ECF 7 at 22-23) is similarly misplaced. 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 a minimum, the Clause "protects the writ as it existed when the Constitution was drafted and ratified." *Boumediene v. Bush*, 553 U.S. 723, 746 (2008). The Supreme Court has not yet decided whether the Suspension Clause protects only the right of habeas corpus as it existed in 1789, or whether its protections have grown with the expansion of the writ. *Id.* (Petitioner cites no supporting authority in this regard.) Under either view, the Clause does not require review of Petitioner's CAT claim. The habeas corpus right that existed in 1789 cannot plausibly be extended to the Secretary's surrender decision in present-day extradition proceedings.

"At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention . . . ." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). The historical writ covered "detentions based on errors of law, including the erroneous application or interpretation of statutes." *Id.* at 302. But courts have traditionally "recognized a distinction between eligibility for discretionary relief, on the one hand, and the favorable exercise of discretion, on the other hand." *Id.* at 307. The Secretary's surrender decision has historically fallen into the latter category, which is "not a matter of right" that can be judicially-enforced through habeas. *Id.* at 308 (quoting *Jay v. Boyd*, 351 U.S. 345, 353-354 (1956)). The Secretary's decision is thus not subject to habeas review under the writ as it existed when the Constitution was ratified. Nor has the Supreme Court expanded habeas review of extradition decisions in the years since. Rather, as discussed, the

Supreme Court has consistently held that the treatment a fugitive might receive in the requesting country is not a proper basis for habeas relief to prevent extradition. *See, e.g.*, *Omar*, 646 F.3d at 23 n.10 (*citing Munaf*, 553 U.S. at 700-03) (noting that the Supreme Court "examined the relevant history and held that . . . a right to judicial review of conditions in the receiving country before [the petitioner] is transferred[ ]is not encompassed by the Constitution's guarantee of habeas corpus"); *Munaf*, 553 U.S. at 700 ("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.") (internal quotations and citation omitted)[6]; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), 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); *Neely v. Henkel*, 180 U.S. 109, 123 (1901).

Because Petitioner had a full and fair opportunity to litigate the issues that fall within the limited role of the habeas court—*i.e.*, whether the magistrate 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*, 268 U.S. at 312—the writ was not suspended. *Cf. Ye Gon v. Dyer*, 651 F. App'x 249, 252 (4th Cir. 2016) (per curiam) (unpublished) (rejecting extradition petitioner's Suspension Clause argument and noting that he "has clearly had the full benefit of habeas review of the extradition request under [the *Fernandez*] standard.") (internal quotation marks omitted).

[6] *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 letter in this case expressly represented that "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,'" 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.'" Ex. 1. Petitioner's citation (ECF 7 at 31-32) to Justice Souter's concurrence in *Munaf* does not change the analysis.

The Second Circuit's *Kapoor* decision addresses a situation factually-similar to the one at hand. Kapoor was certified to be extradited to India on criminal charges. *Kapoor,* 132 F. 4th at 603. She submitted multiple rounds of documents to the State Department to support her claim that she would face torture in the Indian justice system. *Id.* at 603-04. The State Department subsequently issued a letter explicitly noting its review of the material and finding, as here, that extradition would not violate applicable, torture-related federal law. *Id.* at 604-05. Kapoor then filed a habeas petition claiming that extradition would violate the Suspension Clause, based in part on her claim that the State Department had failed to meaningfully consider her torture claim. *Id.* at 610.

The Second Circuit affirmed the district court's denial of Kapoor's petition. In doing so, it relied on the rule of non-inquiry and the Supreme Court's *Munaf* decision. *Id.* at 610-13. The Second Circuit noted that Kapoor's claim that the State Department's failed to adequately consider her torture claim "would require our court to review the evidence available to the Department when it made its extradition determination." *Id.* at 613. Such review would "effectively ask . . . [the] Court to review the conditions of the country requesting her extradition and determine how she is likely to be treated if returned—the precise type of question barred by the rule of non-inquiry . . ." *Id.*

E. THE OUT-OF-CIRCUIT CASES PETITIONER CITES DO NOT SUPPORT HIS CLAIM.

1. *TRINIDAD* IS FACTUALLY-DISTINCT BECAUSE THE STATE DEPARTMENT HAS CONFIRMED ITS COMPLIANCE WITH THE CAT. *TRINIDAD*, MOREOVER, REAFFIRMED THE RULE OF NON-INQUIRY.

Petitioner cites the Ninth Circuit's decision in *Trinidad y Garcia v. Thomas,* 683 F.3d 952 (9th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 845 (2013), for the proposition that the District

Court has jurisdiction to entertain a torture claim in an extradition case. (ECF 7 at 24-25.) Not so. *Trinidad*, in fact, held that courts may *not* second-guess the Secretary of State's substantive decision to surrender a fugitive, even when a torture claim is made. *Trinidad*, 683 F.3d at 957 (relying on the rule of non-inquiry and the Supreme Court's decision in *Munaf* in concluding that the substance of the Secretary's final extradition decision is not reviewable).

Although the Ninth Circuit in *Trinidad* identified a "narrow liberty interest" under the Due Process Clause that could support a district court's habeas inquiry into whether the Secretary had complied with its regulations implementing the FARR Act, the Ninth Circuit made clear that such an interest was "fully vindicated" by the Secretary's filing of a declaration confirming that its decision complied with Article 3 of the CAT. *Id.* (noting that, if the State Department provides such confirmation, "the court's inquiry shall . . . end"); *see also Sridej*, 108 F.4th at 1093 (discussing *Trinidad* and holding that "a declarant with knowledge that the Secretary or his designee has made the determination required by the CAT need only verify that the Secretary 'has complied with her obligations'"). The opinion thus "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 that it was not 'more likely than not' that the extradite will face torture if executed." *Kapoor*, 132 F. 4th at 610.

Trinidad's narrow holding thus focused almost exclusively on whether a record existed to show that the State Department complied with applicable extradition procedures, something *not* at issue here because the State Department has, in fact, provided such a record. The State Department's July 14, 2025 letter explicitly confirmed "that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations." Ex. 1. Aware that the State Department's letter definitively

resolves this issue—thereby eliminating any persuasive force *Trinidad* could offer—Petitioner attempts to "move the goalposts" by arguing that the letter provides too little information, thereby elevating the Government's burden. ECF 7 at 28-29. But that is not what *Trinidad* requires. *Trinidad*, 683 F.3d at 957 (if the State Department provides confirmation that its decision complied with the CAT, "the court's inquiry shall . . . end"); *Sridej*, 108 F.4th at 1093 (under *Trinidad*, "a declarant with knowledge that the Secretary or his designee has made the determination required by the CAT need only verify that the Secretary 'has complied with her obligations'").

Petitioner, moreover, fails to provide binding authority under which the Court could find the letter insufficient, nor does he fill that void by articulating any specific standard defining what level of detail would sufficient. The Court is thus left to wonder how much detail would be enough to satisfy Petitioner in this regard. Given the looming February 7, 2026 termination of the Extradition Treaty, Petitioner would likely have the Court order the State Department to provide the most expansive possible rationale of his surrender decision and request serial revisions, using that process to extend this litigation past the Treaty's termination.

Trinidad represents the outermost bounds to which a circuit court has ever exercised jurisdiction in the extradition habeas context to address a fugitive's CAT claim. Even so, the court reaffirmed the rule of non-inquiry, holding that "[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 (citations omitted). Not surprisingly, the Petition fails to reference this holding.

2. *VENCKIENE* REAFFIRMED THAT A FUGITIVE'S HUMANITARIAN CLAIMS SHOULD BE ADDRESSED BY THE SECRETARY OF STATE, NOT THE COURT.

Petitioner mistakenly cites the Seventh Circuit's decision in *Venckiene v. United States*, 929 F.3d 843 (7th Cir. 2019), for the proposition that the District Court has jurisdiction to consider a habeas challenge to the Secretary's decision to extradite a fugitive. ECF 7 at 25-26. In *Venckiene*, the fugitive, like Petitioner, sought habeas relief and a stay of extradition based in part on allegedly poor conditions in Lithuania's prisons. *Venckiene*, 929 F.3d at 862. The Seventh Circuit found that there was no irreparable harm warranting a stay, despite the fugitive's claims that her physical safety would be threatened if extradited, because "these important humanitarian considerations are left to the executive branch." *Id.* at 864-65. The court reasoned that "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 860 (quoting *Munaf*, 553 U.S. at 700-01) (internal quotation marks omitted)); *see also id.* at 849 ("The executive branch has sole authority to consider issues like the political motivations of a requesting country and whether humanitarian concerns justify denying a request.") (citing *Noeller v. Wojdylo*, 922 F.3d 797, 808 (7th Cir. 2019)). The Seventh Circuit further discussed the Supreme Court's decision in *Munaf*, noting that, "[a]lthough *Munaf* did not deal with extradition directly, it certainly offers guidance to courts in carrying out their limited role in the extradition context, teaching that the judiciary should refrain from encroaching upon the executive's political and humanitarian decisions regarding foreign justice systems." *Id.* at 861; *see also Munaf*, 553 U.S. at 700 ("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.") (internal quotations and citation omitted).

As Petitioner acknowledges, the *Venckiene* court concluded that "the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State *should be rare* . . ." *Id.* at 861 (emphasis added); ECF 7 at 26. The only examples of such circumstances the Seventh Circuit identified were cases in which the Secretary based extradition decisions on "blatantly . . . impermissible characteristics like race, gender, or religion." *Id.* Petitioner raises no such claims here, and no court has ever overturned the Secretary's discretionary decision to order extradition on these grounds. Petitioner's reliance on *Venckiene* fails.

F. THE NON-BINDING *MUNAF* CONCURRENCE ACKNOWLEDGES THAT THE LIKELIHOOD THAT A FUGIVITVE WILL BE TORTURED IS A MATTER FOR THE EXECUTIVE BRANCH.

Petitioner cites the non-binding concurrence in *Munaf* in support of his Due Process claim. (ECF 7 at 330-33.) This case is, moreover, factually-distinct from the circumstance the concurrence says would suffice to allow district courts to grant habeas relief to fugitives who claim a risk of torture.

In *Munaf*, Justice Souter focused on the hypothetical "extreme case" in which the Executive extradited a fugitive despite finding that the fugitive is likely to be tortured. *Munaf*, 553 U.S. at 706-707. Here, the State Department has made the exact *opposite* finding—and did so after evaluating the materials Petitioner submitted in this regard in light of applicable law. This finding is entitled to deference because, as Souter wrote, "any likelihood of extreme mistreatment at the receiving government's hands is a proper matter for the political branches to consider . . ." *Id*. at 706. Similarly, the majority opinion properly stated 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

foreign policy. *Id.* at 702. To the extent Justice Souter would extend such relief to cases in which the possibility of torture is "well-documented"—a term open to expansive, time-consuming interpretation—that approach would upend the rule of non-inquiry and give federal courts an inappropriately-intrusive role in matters of foreign policy. *Kapoor*, 132 F. 4th at 613 ("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—the precise type of question barred by the rule of non-inquiry"). This Court should definitively decline Petitioner's invitation to create such elastic and otherwise expansive new law.

V. MOTION FOR EXPEDITED DECISION.

The fast-approaching termination of the Extradition Treaty on February 7, 2026 means that time is of the essence, especially because Petitioner's counsel at the July 24, 2025 status conference stated his intention to appeal any adverse decision all the way to the Supreme Court. The looming termination date creates perverse incentives for Petitioner to extend this litigation in every way possible so that he can win his freedom by "running out the clock," rather than through legally-meritorious means.[7] The Government thus moves for an expedited decision, and submits that oral argument is unnecessary for the Court to render judgment.

VI. CONCLUSION.

For the foregoing reasons, the Court should deny Martinez Guardado's Petition for a writ of habeas corpus on an expedited basis.

[7]Petitioner's expansive request that the Court "[o]rder the necessary discovery that is in the possession of the federal government's *agencies*, and that *all* such documentation be turned over for inspection by Counsel for Mr. Martinez" (emphasis added) appears designed for this exact purpose. (ECF 7 at 33.)

Respectfully Submitted,

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Southern District of Texas

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MELVIN MARTINEZ GUARDADO,	§	
	§	
Petitioner,	§	
	§	
v.	§	**Civil Action No. 4:25-CV-3305**
	§	
HRIOMICHI KOBAYASHI et al,	§	
	§	
Respondents.	§	

ORDER ON GOVERNMENT'S MOTION FOR EXPEDITED DECISION

This matter having come before the Court, the Court ORDERS as follows:

1. The Court GRANTS the Government's motion for expedited decision. This matter shall be adjudicated on an expedited basis.
2. The Court shall rule on this matter without oral argument.
3. The Court shall rule on the pending habeas petition (ECF 7) no later than _____.

So ordered this ____ day of _____, 2025.

_____
Honorable Ewing Werlein, Jr.
Senior United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MELVIN MARTINEZ GUARDADO,	§	
	§	
Petitioner,	§	
	§	
v.	§	**Civil Action No. 4:25-CV-3305**
	§	
HRIOMICHI KOBAYASHI et al,	§	
	§	
Respondents.	§	
	§	

ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

This matter having come before the Court, the Court hereby DISMISSES the pending Petition for Writ of Habeas Corpus (ECF 7).

So ordered this ____ day of _____, 2025.

_____
Honorable Ewing Werlein, Jr.
Senior United States District Judge

CERTIFICATE OF SERVICE

I certify that the attached Response and Motion was filed with the CM/ECF system on July 29, 2025, which will forward a copy to counsel for Petitioner Melvin Martinez Guardado.

s/ *John S. Ganz*
Assistant United States Attorney
Southern District of Texas

United States Court of Appeals for the Fifth Circuit

No. 25-20355

MELVIN MARTINEZ-GUARDADO,

Petitioner—Appellant,

versus

HIROMICHI KOBAYASHI, *In his Official Capacity as the Warden Federal Detention Center Houston*; THOMAS M. O'CONNOR, *Trustee, In his Official Capacity as a United States Marshal for Southern District of Texas*; MARCO RUBIO, *Secretary, U.S. Department of State*; PAMELA BONDI, *U.S. Attorney General*,

Respondents—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:25-CV-3305

UNPUBLISHED ORDER

Before SMITH, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that petitioner's opposed motion to stay the district court's August 19, 2025, order, treated as a motion for a temporary administrative stay, is GRANTED pending further order. Petitioner's motion for a stay pending appeal remains pending.

The respondents are directed to respond to the motion for stay pending appeal by 4:00pm Thursday August 28.

This order is not to be construed as a comment on the ultimate merits of any issue.

ANDREW S. OLDHAM, *Circuit Judge*, dissenting:

I would decline to issue an administrative stay because Petitioner has not made out a prima facie case for relief. He argues that the district court erred in not reviewing his claim that he will face torture in Honduras in violation of the Convention Against Torture ("CAT"). Mot. at 9. But the CAT is not self-executing. 136 Cong. Rec. S17486-01; *see also Mironescu v. Costner*, 480 F.3d 664, 677 n.15 (4th Cir. 2007). Thus, it does not confer judicially enforceable rights without implementing legislation. *Medellin v. Texas*, 552 U.S. 491, 505 n.2 (2008). And CAT's implementing legislation, the FARR Act, does not provide for judicial review of CAT claims in extradition cases: "[N]othing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention . . . except as part of the review of a final order of removal." Pub. L. No. 105-277, § 2242(d), 112 Stat. 2681-822 (1998); *see also Munaf v. Geren*, 553 U.S. 674, 703 n.6 (2008). But this is an extradition case, not a final order of removal. Thus, the court is "precluded from considering or reviewing" Petitioner's claim. *Mironescu*, 480 F.3d at 674.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 26, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-20355 Martinez-Guardado v. Kobayashi
USDC No. 4:25-CV-3305

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Mr. George William Aristotelidis
Mr. John Sergei Ganz
Ms. Rosa Victoria Garcia-Cross
Mr. Nathan Ochsner

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

MELVIN MARTINEZ GUARDADO,	§	
	§	
Petitioner,	§	
	§	
v.	§	**Civil Action No. H-25-cv-3305**
	§	
HRIOMICHI KOBAYASHI, Warden of Federal Detention Center in Houston, Texas; THOMAS M. O'CONNOR, United States Marshal for the Southern District of Texas; MARCO RUBIO, Secretary of State for the United States; PAM BONDI, Attorney General of the United States.	§	
	§	
Respondents.	§	

PETITIONER'S REPLY TO GOVERNMENT'S RESPONSE TO PETITIONER'S AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

REPLY ISSUES

Reply Issue 1 The Government's Allegations That This Court Has Jurisdiction To Consider The Petitioner's Habeas Claims

In its response, the government makes scattershot allegations that this Court does not possess jurisdiction to hear the Petitioner's habeas claims. Government's Response (Doc. 15) (Resp.) ps. 17, 20, 22, 24, 26-28. The government is wrong. The Court has jurisdiction to consider the merits of the Petitioner's claims on both statutory and constitutional grounds.

There is a split between the circuits. The Petitioner concedes that the Second (*Kapoor v. DeMarco*, 132 F.4th 595 (2nd Cir. 2024), Fourth (*Mironescu v. Costner*, 480 F.3d 664 (4th Cir. 2007) and D.C. (*Omar v. McHugh*, 646 F.3d 13 (D.C. Cir. 2011)) Circuits

have held that federal courts are prohibited from considering torture/humanitarian-based challenges (torture claims) in extradition proceedings. The following is a summary of the holdings in each of the circuits that recognize this Court's jurisdiction. The Petitioner will then explain the importance of the Supreme Court's decision in *Munaf v. Geren*, 553 U.S. 674 (2008) to the Petitioner's claims.

The Ninth Circuit:

The government first alleges that the Ninth Circuit's decision in *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012) (en banc), does not recognize a district court's jurisdiction to consider a torture claim in an extradition case, but then concedes that the court recognized a "'narrow liberty interest" under the Due Process Clause that could support a district court's habeas inquiry into whether the Secretary had complied with its regulations implementing the FARR Act.'" Resp. 25-26 The government confuses jurisdiction with the scope of a district court's review of the DOS's decision to surrender an extraditee.

The Ninth Circuit has held that Congress has not prohibited habeas jurisdiction over CAT /FARRAR Act claims raised by extraditees. Amended 2241 Petition, Doc. 7 p. 24-25 (Pet. 24-25). *Trinidad y Garcia* explains that, "[i]n addition to possessing jurisdiction under § 2241, the district court also had jurisdiction under the Constitution," elaborating that "[a]lthough the Constitution itself does not expressly grant federal habeas jurisdiction, it preserves the writ through the Suspension Clause." *Trinidad y Garcia* at 960 (citing U.S. Const. art. I, § 9, cl. 2; *Boumediene v. Bush*, 553 U.S. 723, 743-46 (2008); *Ex Parte Bollman*, 8 U.S. 75, 4 Cranch 75, 94-95 (1807)). "The Suspension Clause was designed to

protect access to the writ of habeas corpus during those cycles of executive and legislative encroachment upon it." *Id*. (citing *Boumediene*, 553 U.S. at 745.). The *en banc* court concluded that, "e]ven if we adopted the government's position that Congress foreclosed Trinidad y Garcia's statutory habeas remedies, his resort to federal habeas corpus relief to challenge the legality of his detention would be preserved under the Constitution." *Id.*

The Seventh Circuit:

The Seventh Circuit in *Venckiene v. United States*, 929 F.3d 843, 865 (7th Cir. 2019) held that under certain circumstances, a district court has jurisdiction to entertain due-process-based torture claims in extradition proceedings. Pet. 25-26. *Venckiene* also recognized the Fourth and Fifth Circuits as possessing jurisdiction to entertain their habeas extradition challenges. Pet. 25-26.

As a basis for its ruling, the court in *Venckiene* relied on *In re Burt*, 737 F.2d 1477, 1487 (7th Cir. 1984), explaining:

> Generally, the Secretary of State's extradition decision is not subject to judicial review. This circuit and others, however, have recognized an exception through which courts can, at least in theory, consider claims that "the substantive conduct of the United States in undertaking its decision to extradite ... violates constitutional rights." *Burt*, 737 F.2d at 1484; *see also Martin v. Warden*, 993 F.2d 824, 829 (11th Cir. 1993) (recognizing that constitutional rights are superior to treaty obligations, but finding no violation of constitutional rights in long-delayed extradition request); *Plaster v. United States*, 720 F.2d 340, 349 (4th Cir. 1983) (recognizing constitutional claims but vacating grant of writ of habeas corpus). We said in *Burt*:
>
> Generally, so long as the United States has not breached a specific promise to an accused regarding his or her extradition and bases its extradition decisions on diplomatic considerations without regard to such constitutionally impermissible factors as race, color, sex, national origin, religion, or political beliefs*, and in accordance with such other exceptional*

> *constitutional limitations as may exist because of particularly atrocious procedures or punishments employed by the foreign jurisdiction, those decisions will not be disturbed.*

Venckiene at 849 (citing *Burt*, 737 F.2d at 1487) (internal citations omitted). The government unfairly encapsulates *Venckiene's* holding as limiting those rare circumstances to race, gender, or religion, adding that "Petitioner raises no such claims here." Resp. 29. But this is an incomplete reading of *Venckiene's* holding. When it discussed blatantly impermissible characteristics sufficient to justify a district court's habeas review of the DOS's surrender decision, *Venckiene's* reference to improper race, gender or religion-based considerations were examples of an otherwise non-exhaustive set of circumstances. *Venckiene's* full quote:

> "…we are not inclined to say that a Secretary of State's extradition decision is never reviewable on due process grounds, *let alone grounds of racial or religious bias, for example*. Although the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, *we need not say here that judicial review is never available*. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in this appeal, reviewing the Secretary of State's extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

Venckiene, 929 F.3d at 861 (emphasis added).

After discussing its own circuit's precedent under *Burt*, *Venckiene* explained that "*Burt's* list of reviewable claims does not encompass Venckiene's claim that the Secretary of State's decision-making process violated her right to due process of law." *Venckiene* at 861. In this vein, the Seventh Circuit "[was] persuaded by Fourth and Fifth Circuit cases,"

Peroff v. Hylton, 563 F.2d 1099 (4th Cir. 1977), and *Escobedo v. United States*, 623 F.2d 1098 (5th Cir. 1980) as "supporting the position that a [due process] challenge like *Venckiene's* is reviewable, at least in principle." *Id*. In each case, "the Fourth and Fifth Circuits considered habeas corpus petitions raising due process challenges to the Secretary of State's extradition decisions." *Id*. "In *Peroff*, the Fourth Circuit agreed to consider the petition of an accused arguing that he was denied due process by the Secretary of State's refusal to conduct a hearing prior to issuing his warrant of extradition. *Id*. (citing *Peroff*, 563 F.2d at 1102). "In *Escobedo*, the Fifth Circuit heard a petitioner's argument that the discretion given to the executive branch under the relevant treaty violated due process because 'no standards are provided to guide the exercise of this discretion,'" *Id*. (citing *Escobedo* at 623 F.2d at 1104-05), "ultimately reject[ing] the due process challenge on the merits." *Id*. (citing *Escobedo* at 1106). Notably, the Seventh Circuit observed that "[t]he government ha[d] provided no case in which a court declined to hear this type of extradition due process challenge." *Id*. *Venckiene* elaborated:

> Given this lack of contrary authority, we are not inclined to say that a Secretary of State's extradition decision is never reviewable on due process grounds, *let alone grounds of racial or religious bias, for example*. Although the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, we need not say here that judicial review is never available. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in this appeal, reviewing the Secretary of State's extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

Venckiene at 861 (emphasis added).

The Seventh Circuit weighed the merits of Venckiene's claim that, if extradited to Lithuania "she would be subject to 'atrocious procedures and punishments,'" to wit "complaints of confined spaces, improper hygiene, poor food, and substandard sanitary condition among others." *Venckiene v. United States*, 929 F.3d at 862-863, concluding:

> In this case, we do not need to decide definitively whether *Munaf* voided the "atrocious procedures" exception in *Burt*. *Venckiene* has not provided us with the type of specific and detailed evidence that a court would need to be able to assess whether Lithuanian prison conditions generally constitute "atrocious punishment…Without much more specific evidence of atrocious conditions that Venckiene is likely to experience if she is extradited, we are confident that blocking this extradition on such grounds, after the executive has already approved it, would go beyond the scope of our role in the extradition process.

Venckiene, at 863. Petitioner does not complain about confined spaces, improper hygiene, poor food, and substandard sanitary conditions. His expert has cited numerous and credible examples of the systemic barbaric treatment of prisoners in the Honduran prison system. As noted, the DOS's own annual reports have condemned the Honduran prison system as life threatening due to gross overcrowding, malnutrition lack of medical care and abuse by prison officials, adding that the government's failure to control criminal activity and pervasive gang-related violence contributed significantly to insecurity. Pet. 12-16. [1]

As acknowledged by the government, "the *Venckiene* court concluded that 'the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare . . .'" Resp. 29 (citing *Venckiene* at 861 (emphasis added); (2241 Petition at 26). But "rare" denotes an uncommon quality, not an

[1] The reports also inform that Honduran human rights organizations reported more than 100 cases of alleged torture or cruel and inhuman treatment of detainees and prisoners by security forces. They also tell of the killing of 68 inmates (61 of them gang members) by security forces during a riot.

impossibility. The Petitioner has submitted well-documented authority in support of his arguments against his surrender to the Honduran prison system. The government has presented nothing beyond the bare claim that the DOS considers torture claims under the CAT and that it takes appropriate steps that may include obtaining information or commitments from the receiving state to address identified concerns. Pet. 3.

The Supreme Court: Munaf v. Geren

In *Munaf v. Geren*, the United States Supreme Court recognized a district court's jurisdiction to consider habeas relief for two United States that were held in an Iraqi prison to answer for alleged crimes they committed while in Iraq, but that the specific facts of that case - their voluntary incursion into Iraq, their custody status under Iraqi authority and that they were alleged to have committed serious crimes in Iraq - prevented the exercise of habeas authority to provide them relief. The Court explained that "the nature of the relief sought by the habeas petitioners suggests that habeas is not appropriate in these cases," because "Habeas is at its core a remedy for unlawful executive detention," and the petitioners there were not seeking to simply be released from custody (which would inevitably result in their being rearrested by Iraqi authorities), but to be sheltered from prosecution, which did not merit Habeas relief. *Munaf*, at 693-694. In sum, the Supreme Court could not justify applying a habeas remedy where the Iraqi government, a sovereign nation, had "exclusive and absolute" authority to prosecute the petitioners for their crimes. *Munaf* at 694. Concededly, *Munaf* did not involve a habeas challenge to an extradition proceeding.

The significance of *Munaf* to the Petitioner's claims lies in the message from its three-judge concurrence, authored by the late Justice David Souter. Justice Souter was clear to point out that it reserved judgment in cases where the government acknowledges that a detainee is likely to be tortured - even if the government fails to acknowledge it - adding that, despite habeas's purpose in securing release, and not protective detention (citation omitted), habeas would not be the only avenue open to an objecting prisoner because "where federally protected rights [are threatened], it has been the rule from the beginning that court will be alert to adjust their remedies so as to grant the necessary relief." Pet. 31-32 (citing *Bell v. Hood*, 327 U.S. 678 (1946)). As noted, the government does not contest the expert's opinion that the Petitioner is more likely to suffer mistreatment that meets the statutory definition of torture, and furthermore, fails to acknowledge that the DOS has itself published reports that supports the expert's conclusion that the Petitioner will suffer torture, or significantly inhuman treatment if surrendered to Honduras.

This Court has proper jurisdiction to consider the Petitioner's habeas claims, and this authority permits the Court to grant habeas relief, specifically, release from government custody, unless the government can prove, through a proper showing supported by proper evidence, that it is not more likely than not that the Petitioner will be tortured if surrendered to the Honduran prison system. The only thing standing in the way of this Court's fact-finding process is the government's claim to be free from any such accountability, under an overly restrictive interpretation of the rule of non-inquiry.

Escobedo

The Fifth Circuit rejected the merits of Escobedo's due process challenge to his extradition on "humanitarian grounds" that he would "tortured or killed if surrendered to Mexico," determining that "the degree of risk to (Escobedo's) life from extradition is an issue that properly falls within the exclusive purview of the executive branch." *Escobedo* at 1107 (citations omitted). However, Escobedo's evidence in support of this claim was not discussed. Having recognized its jurisdiction to consider Escobedo's due process claim, and without any discussion of what evidence Escobedo provided in support of his humanitarian claim, it is possible that the Court was unimpressed by the evidence, and opted to reject the arguments by relying on the general rule that defers torture determinations to the DOS. Moreover, *Escobedo* was published 45 years ago, well before CAT and FARRAR's codification as federal law, the holdings in *Trinidad y Garcia* and *Venckiene*, and *Munaf's* powerful concurrence. *Escobedo* simply does not provide sufficient precedential authority to assist this Court in determining the merits of the Petitioner's habeas claims.

Reply Issue 2 The Government's Argument That The Secretary Of State's Letter Response Satisfies *Trinidad y Garcia's* Mandate

The government submits that, consistent with *Trinidad y Garcia's* holding "the Ninth Circuit made clear that such an interest was “fully vindicated” by the Secretary’s filing of a declaration confirming that its decision complied with Article 3 of the CAT." Resp. 26. That is, it would be sufficient thus for the Secretary of State in its response letter to represent that it takes appropriate steps, which may include obtaining information or

commitments from Honduras, to address the Petitioner's concerns, without actually explaining what, if any steps were taken or what information and/or commitments may have been agreed to by Honduras to protect Mr. Martinez Guardado from torture. Or, that stating it "confirms" that the decision to surrender Mr. Martinez Guardado to Honduras complies with the United States' obligations under the Convention and its implementing statute and regulations, without even a smidge of proof, should satisfy the district court's habeas inquiry. Pet. 28.29. The government further complains that the "Petitioner fails to articulate any specific standard defining what level of detail would be sufficient," so that "[t]he Court is thus left to wonder how much detail would be enough to satisfy Petitioner in this regard." Resp.27. It is this Court, and not the Petitioner, who is tasked with determining whether the government complies with its obligations to ensure that the Petitioner is not tortured. The "level of detail" would be what this Court determines to be sufficient, after reviewing actual evidence provided by the government, not empty claims and suppositions. The government then attempts to distract from the serious business before the Court by making the unwarranted accusation that the Petitioner would likely seek "the most expansive possible rationale of his surrender decision and request serial revisions to extend the litigation past the looming February 7, 2026 termination of the Extradition Treaty." Resp. 27. It further accuses the Petitioner of attempting to "move the goalposts" by arguing that the DOS's surrender letter provides "too little information, thereby elevating the Government's burden." The Petitioner's claims are not frivolous. He has submitted a solid and well-documented expert opinion, which includes DOS findings, which exposes the Honduran prison system as corrupt and deadly, easily satisfying the

definition of torture in 22 CFR § 95.1 (Pet. 26-27). The government has not challenged these findings. It is only right, and in keeping with the fact-finding tradition of the Court in a habeas proceeding to expect a showing of proper evidence to support the bare representations in the DOS's surrender letter. It's not that the Petitioner attempts to move the goalposts. The government has taken the position that it doesn't have to make a field goal, that the Court should take the government at its word that it has scored one, and neither the Court or the Petitioner have a right to inquire of the existence of factual evidence that is relied upon by the government to support its representations.

It is true that that the majority in *Trinidad y Garcia* did conclude that the DOS's duty was satisfied by a bare, signed declaration from the Secretary of State that he has complied with his obligations, as sufficient to "vindicate" Trinidad y Garcia's liberty interest. *Trinidad y Garcia* at 957. Rather, Petitioner urges the scope of review argued for by Justice Harry Pregerson who, joined by Justice William A. Fletcher, disagreed that a bare claim of compliance with federal anti-torture laws followed by the proper signature "fully vindicated" Trinidad y Garcia's liberty interest, explaining:

> Supreme Court precedent counsels otherwise: where we have found habeas jurisdiction, our review consists of "some authority to assess the sufficiency of the Government's evidence[.]" *Boumediene* [at 786]. Because such a bare bones declaration from "the Secretary or a senior official properly designated by the Secretary," *per curiam* at 6402, does not allow us to "assess the sufficiency of the Government's evidence," (citing *Boumediene* at 786), I cannot join the majority opinion and therefore dissent.

Trinidad y Garcia, at 1002-1003 (J. Pregerson concurring in part and dissenting in part). As noted by Justice Pregerson, "[t]he stakes in this case could not be higher:"

> [T]he right to be free from official torture is fundamental and universal, a right deserving of the highest stature under international law, a norm of jus cogens. The crack of the whip, the clamp of the thumb screw, the crush of the iron maiden, and, in these more efficient modern times, the shock of the electric cattle prod are forms of torture that the international order will not tolerate. To subject a person to such horrors is to commit one of the most egregious violations of the personal security and dignity of a human being.

Trinidad y Garcia at 1003 (J. Pregerson concurring and dissenting) (citing *Hilao v. Estate of Marcos*, 25 F.3d 1467, 1475 (9th Cir. 1994) (quoting *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992)). Petitioner submits that the majority's efforts in seeking a balance between a district court's habeas obligations and the executive's discretion in managing its foreign policy objectives under the rule of non-inquiry, though well-intentioned, deprives a district court of its ability to meaningfully determine the merits of a habeas action, "render[ing] Martinez Guardado's habeas process an empty and meaningless exercise," (Pet. 29) and converting the district court's function into a proverbial rubber stamp. We are not herding cattle. Yet, the government asks this court to allow the government to lead the Petitioner, a United States Legal Permanent Resident, to the slaughterhouse that is the Honduran prison system, without any meaningful guarantees for his safety. *See Trinidad y Garcia*, at 1005 (J. Pregerson, concurring and dissenting) ("But such a superficial inquiry in the context of a habeas corpus petition abdicates the critical constitutional "duty and authority" of the judiciary to protect the liberty rights of the detained by "call[ing] the jailer to account." (citing *Boumediene*, 553 U.S. at 745.) The rule of non-inquiry should not be interpreted to prohibit proper fact finding by a district court when resolving a torture-based habeas claim.). In this case, the Court should make inquiries as to what, if anything the DOS has coordinated with Honduras to ensure the

Petitioner's safe custody during his trial process, and evidence of the existence of a safe venue, along with proof that the Honduran government has complied with requirements that uphold CAT and FARRAR Act guarantees. Additionally, and unique to our case, it is understood that the United States and Honduras were only able to muster a one-year extension of their extradition treaty - which the Honduran President abruptly cancelled in 2024 following an American diplomate's unflattering comments about the President's involvement with drug trafficking - to February 7, 2026. What assurances can the DOS give that the treaty will not expire again before the Petitioner's trial process is completed? Would a treaty expiration release the Honduran government of any guarantees to protect the Petitioner from torture? We don't know, and the government does not feel compelled to answer. Common sense alone dictates the need for proper answers to these pressing questions. This Court's habeas authority empowers it to seek a proper answer, under pain of the Petitioner's release from extradition to Honduras.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of August 2025, a copy of the foregoing "Reply to Response to Amended Petition for a Writ of Habeas Corpus," has been delivered to Mr. John Ganz, AUSA in charge of this case, *via* the ECF electronic filing system and regular email.

/s/ JORGE G. ARISTOTELIDIS