

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MELVIN MARTINEZ GUARDADO,

Petitioner,

v.

KOBAYASHI et al.

Case No. 4:25-CV-3305

**GOVERNMENT'S OPPOSITION TO
PETITIONER'S SECOND AMENDED EMERGENCY MOTION
FOR A STAY OF EXTRADITION/SURRENDER
AND FOR A TEMPORARY STAY**

The United States of America, by and through United States Attorney Nicholas J. Ganjei, and John S. Ganz, Assistant United States Attorney for the Southern District of Texas, files this Opposition to Petitioner Melvin Martinez Guardado's ("Petitioner") Amended Emergency Motion for a Stay of Extradition/Surrender and for a Temporary Stay (ECF 12). The United States respectfully requests an expedited ruling on Petitioner's Motion and submits that a hearing on Petitioner's Motion is unnecessary.

I. SUMMARY

Petitioner is charged with homicide in his native country of Honduras. Pursuant to the extradition treaty between the United States and Honduras,¹ Honduras requested that the United States extradite him to face prosecution for that offense. Following an extradition hearing, a U.S. magistrate judge for the Southern District of Texas certified that Petitioner was extraditable pursuant to treaty. The United States Secretary of State's designee subsequently issued a surrender warrant authorizing Petitioner's extradition. The State Department explicitly

¹Convention 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").

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 now asks this Court to stay his extradition based on his related habeas petition, arguing that his extradition would result in his torture in Honduras in violation of the Convention. ECF 7.

Petitioner seeks to delay his extradition pending potential review of an issue—judicial reviewability of executive determinations that extradition will not violate the anti-torture provisions of the Convention—that plainly lacks merit. Under longstanding principles, the Secretary’s decision to surrender a fugitive despite claims that the fugitive will face mistreatment in the requesting state is not subject to judicial review. *See, e.g., Neely v. Henkel* (No. 1), 180 U.S. 109, 122 (1901) (United States constitutional protections do not apply in foreign prosecutions); *Munaf v. Geren*, 553 U.S. 674, 700 (2008) (“*Habeas corpus* has been held not to be a valid means of inquiry into the treatment the [fugitive] is anticipated to receive in the requesting state.”) (citation omitted). All that due process requires is confirmation that the Secretary of State complied with his obligations under the CAT. There is sufficient evidence of the Secretary’s compliance here, as demonstrated in the attached letter from the U.S. Department of State. Ex. 1. That letter definitively ends this Court’s inquiry, making a stay unwarranted. Petitioner therefore cannot and does not establish a likelihood of success on the merits of his habeas petition.

The other factors this Court considers in determining whether to issue a stay also counsel denial of Petitioner's motion. Petitioner is unable to show that he will be irreparably injured because Petitioner's inability to challenge the State Department's surrender decision cannot constitute irreparable harm when the Court lacks authority to review such a challenge in the first place. Moreover, the public interest weighs strongly against granting a stay, which would delay this extradition proceeding and jeopardize the Defendant's return to Honduras prior to the termination of the extradition treaty. The public interest is instead served by the United States swiftly fulfilling its treaty obligations, particularly with respect to the extradition of an alleged murderer. Petitioner's Motion should be denied.

The United States respectfully requests an expedited ruling on Petitioner's Motion. As the government has previously noted, this case is procedurally unique in that the Extradition Treaty between the United States and Honduras will terminate on February 7, 2026. Ex. 2, State Department Second Supplemental Declaration (noting that the treaty will be in full force and effect only until February 7, 2026 absent any future action). Petitioner thus has powerful, perverse incentives to "run out the clock" by extending this litigation at every possible turn. Not surprisingly, at the July 24, 2025 status conference Petitioner's counsel announced his intention to appeal any adverse decision to the Supreme Court. It is thus vital that this Court adjudicate the instant Motion to Stay and underlying habeas petition expeditiously to ensure that the case is decided on the legal merits, not the *fait accompli* of an expired clock.

II. PROCEDURAL BACKGROUND.

The instant action finds its procedural roots in two prior cases and unfolds against a ticking clock, insofar as the subject extradition treaty will terminate in approximately six months, in February 2026.

Petitioner's extradition was litigated in case 3:24-MJ-0006, *In re Extradition of Melvin Martinez Guardado, a/k/a "El Pelon."* 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. United States Magistrate Judge Andrew Edison rejected Petitioner's arguments and certified Petitioner's extradition following briefing and oral argument. *Id.*, ECF 25.

Petitioner did not challenge the certification. He instead filed a habeas petition in which he advanced the exact same arguments he asserts here, namely, that he will be tortured if returned to Honduras. *See* Case 4:24-CV-4862. Petitioner also submitted materials to the State Department seeking denial of extradition. 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. *Id.*, ECF 9.

The Secretary of State's 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 Convention and its implementing statute and regulations. Specifically, on July 14, 2025, 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:

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.

Id. The letter concluded: “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.* Petitioner then filed a second habeas petition in the instant action on July 17, 2025, asserting a claim under the Convention. ECF 12.

III. APPLICABLE LEGAL STANDARD.

“Injunctive relief is an extraordinary measure and drastic remedy . . . [that] should only be granted when the movant has clearly carried the burden of persuasion.” *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (internal quotations and citation omitted). “A stay may be justified to preserve meaningful review, but a stay is also an ‘intrusion into the ordinary process of administration and judicial review’ and therefore not to be granted reflexively.” *Duran-Cruz v. Holder*, 527 F. App’x 308, 310-11 (5th Cir. 2013) (citing *Nken v. Holder*, 556 U.S. 418, 427 (2009)). And although the power to stay an action is “part of [a court’s] traditional equipment for the administration of justice,” it is not a matter of right, “even if irreparable injury might otherwise result.” *Nken*, 556 U.S. at 427 (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)).

The party requesting a stay “bears the burden of showing that the circumstances justify an exercise of [the court’s] discretion.” *Id.* at 433-34. The Supreme Court has made clear that, to warrant the exercise of the Court’s discretion to grant a stay, the applicant bears the burden of showing four factors: a likelihood of success on the merits of his claim, irreparable harm absent a stay, that a stay would not substantially injure the opposing party, and that the public interest would be served by a stay. *Nken*, 556 U.S. at 425-26; *see also Duran-Cruz*, 527 F. App’x at 310. When the government is the opposing party, the last two factors merge. *Nken*, 556 U.S. at 435.

The first two factors are the most important. *Duran-Cruz*, 527 F. App’x at 311. As to the first factor, the petitioner bears the burden of demonstrating more than mere possibility of success on the merits. *Id.* And although “there is a public interest in preventing [persons] from being wrongfully [surrendered for extradition],” that is no basis to assume the “absence of harm to the public interest” if a stay is granted. *Nken*, 556 U.S. at 436. Indeed, there is “always” a public interest in prompt execution of surrender orders. *Id.* Therefore, “[a] court asked to stay [surrender] cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant’s favor.” *Id.* (internal quotation marks and citation omitted).

IV. ARGUMENT

Martinez Guardado is not entitled to a stay of extradition. All of the factors relevant to such a consideration weigh strongly against a stay. The Court should deny Petitioner’s Motion for the following reasons:

A. PETITIONER HAS NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS BECAUSE HIS CLAIMS ARE NON-JUSITCIABLE.

This Court should deny Petitioner’s stay motion for the threshold reason that he is unable to demonstrate a likelihood of success on the merits of his underlying habeas petition. The

Supreme Court in *Nken* established that the “critical” first stay factor requires the applicant to make “a strong showing” of “[m]ore than a mere ‘possibility’ of relief.” 556 U.S. at 434. “It is not enough that the chance of success on the merits be ‘better than negligible.’” *Id.* (citation omitted); *cf. Munaf*, 553 U.S. at 690 (raising “serious, substantial, difficult and doubtful” questions “says nothing about the likelihood of success on the merits” and therefore provides “no reason to grant a preliminary injunction”).

As discussed in more detail in the government’s Response to Petitioner’s amended habeas petition (ECF 15), which is incorporated by reference herein, Petitioner seeks relief that federal courts simply cannot grant. Under the long-standing rule of judicial non-inquiry, 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, 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. The rule of non-inquiry respects the unique province of the Executive Branch to evaluate claims of possible future mistreatment at the hands of a foreign state, its ability to obtain diplomatic assurances of proper treatment (if warranted), and its capacity to provide for appropriate monitoring overseas of a fugitive’s treatment. If the Secretary of State finds those protections adequate, “[t]he Judiciary is not suited to second-guess such determinations.” *Munaf*, 553 U.S. at 702. “It is not that questions about what awaits the [fugitive] in the requesting country are irrelevant to extradition; it is that there is another branch of government, which has both final say and greater discretion in these proceedings, to whom these questions are more properly addressed.” *United States v. Kin-Hong*, 110 F.3d 103, 111 (1st Cir.), stay denied, 520 U.S. 1206 (1997). This is especially true here, where Petitioner has already

received all the process that he would be afforded even under the approach of the circuit most favorable to him: the record 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). His claim is therefore non-justiciable.

In sum, Petitioner has already litigated the legality of his extradition and, in accordance with the extradition statute, the Secretary of State’s designee made the final decision to permit Petitioner’s surrender to Honduras. As confirmed by the State Department in its letter to Petitioner, the State Department considered all of the relevant evidence, including Petitioner’s claims under the CAT. This is all the process that is required.

**B. PETITIONER HAS NOT SHOWN THAT HE WILL SUFFER
IRREPARABLE HARM ABSENT A STAY.**

Petitioner also fails to show that he will suffer irreparable harm if this Court denies his request for a stay. In his Motion, Petitioner seems to claim that he will be harmed because he will be deprived of the opportunity to challenge the Secretary’s surrender decision in court if he is extradited first. ECF 12 at 7-9. While the government does not dispute that Petitioner’s surrender would moot his second habeas petition, that fact is not sufficient to show irreparable harm. The reality that extradition will end Petitioner’s legal challenges in the United States, alone, cannot constitute irreparable harm because “[t]his is the harm facing every petitioner who lacks meritorious habeas corpus claims challenging an impending extradition.” *Venckiene v. United States*, 929 F.3d 843, 864 (7th Cir. 2019).

Moreover, Petitioner's claim of potential harm is tightly intertwined with the Court's lack of jurisdiction to grant the relief he seeks. As explained above, the Court does not have the authority to review the issues that Petitioner seeks to raise. Because his torture-related claims are non-justiciable, Petitioner cannot demonstrate that he would be irreparably harmed if he is deprived of the expansive, time-consuming opportunity he seeks to pursue them. Moreover, even if the Court found Petitioner would suffer irreparable harm in this circumstance, he is still not entitled to a stay in the absence of a sufficient likelihood of success on the merits. *See Demjanjuk v. Meese*, 784 F.2d 1114, 1118 (D.C. Cir. 1986) (finding that stay of extradition was unjustified where petitioner failed to demonstrate likelihood of success on the merits, even if extradition would constitute irreparable harm,); *Quintanilla v. U.S.*, 582 F. App'x 412, 411 (5th Cir. 2014) ("Although we assume that extradition while an appeal of the denial of habeas corpus is pending would constitute irreparable harm, a stay is not warranted because Sanchez has not demonstrated a likelihood of success on the merits of her appeal.")

C. STAYING PETITIONER'S SURRENDER WOULD INJURE THE UNITED STATES AND RUN CONTRARY TO THE PUBLIC INTEREST.

Staying Petitioner's surrender would also injure the United States and harm the public's interest because "the public interest will be served by the United States complying with a valid extradition application from [Honduras] under the treaty. Such proper compliance promotes good relations between the two countries, and enhances efforts to establish an international rule of law and order." *Artukovic v. Rison*, 784 F.2d, 1354, 1356 (9th Cir. 1986). Or, as Justice Stone put it in 1933, "[t]he surrender of a fugitive, duly charged in the country from which he has fled with a nonpolitical offense and one generally recognized as criminal at the place of asylum, involves no impairment of any legitimate public or private interest." *Factor v. Laubenheimer*, 290 U.S. 276,

298 (1933). So “in the interest of justice and friendly international relationships,” courts—including this one—should not forestall promptly and “liberally” enforcing extradition treaties. *Id.*; see also *Venckiene v. United States*, 929 F.3d 843, 865 (7th Cir. 2019) (“For extradition treaties to operate successfully, each party must comply with their terms and be able to trust that the other party will do the same. Failure to comply with foreign nations’ proper extradition requests erodes the effective force of these treaties. If other countries lose confidence that the United States will abide by its treaties, the United States risks losing its ability to obtain the extraditions of people who commit crimes here and flee to other countries. It is . . . [in] the public interest for this country to be able to try those who commit crimes here within our justice system.”); *United States v. Leitner*, 784 F.2d 159, 160-61 (2d Cir. 1986) (the government has an overriding foreign relations interest in complying with treaty obligations and producing extradited persons).

The United States has a strong interest in having extradition requests submitted by its treaty partners, such as Honduras, resolved without undue delay, both to comply with the United States’ treaty obligations and to further the United States’ reciprocal interest in ensuring that other nations cooperate swiftly with U.S. extradition requests. It is important that the United States be regarded in the international community as a country that honors its agreements to be able to demand that other nations meet their reciprocal obligations to the United States. A stay that causes unwarranted delay in the United States’ fulfillment of its obligations to Honduras—particularly if one is entered when Petitioner is unlikely to succeed on the merits of his claim and when he could avoid facing justice if the Extradition Treaty terminates—could damage the United States’ relationship with Honduras, harm the United States’ credibility in the international arena, and impair its ability to obtain the cooperation of foreign nations in extraditing fugitives

from the United States to justice. A stay here would therefore harm the public interest.

Significantly, the government is, as the Supreme Court recognized in *Munaf*, not “oblivious” to concerns about possible torture. 553 U.S. at 702 (citation omitted). Indeed, the State Department has concluded after careful review that Petitioner’s extradition would comply with the United States’s obligations under the Convention and implementing statutes and regulations. Judicial review of the treatment that a fugitive is likely to receive in a foreign state after the Secretary of State has determined that torture is not more likely than not to occur would disrupt the proper balance between the branches by requiring the Judiciary to pronounce foreign-policy judgments that are the province of the political branches, thereby preventing the Nation from speaking with one voice on sensitive matters of foreign policy. *See Munaf*, 553 U.S. at 702.

The fact that the extradition treaty between Honduras and the United States will terminate on February 7, 2026 weighs even further in favor of denying Petitioner’s stay motion. Indeed, counsel for Petitioner, at the July 24, 2025 status conference announced his intention to appeal this case to the Supreme Court. The delay inherent in such extended litigation will, as a practical matter, undermine Honduras’s legitimate interest in obtaining justice for Petitioner’s alleged victim. This factor clearly favors denial of the instant Motion.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Petitioner’s motion for a stay of extradition and issue a decision on the stay motion on an expedited basis.

Respectfully submitted,

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ORDER DENYING PETITIONER'S MOTION TO STAY

This matter is before the Court on Petitioner's Motion to Stay (ECF 12). Having considered the Motion and the Government's Opposition thereto, the Court DENIES the Motion.

SO ORDERED this ____ day of July, 2025 at Houston, Texas.

Honorable Ewing Werlein Jr.
Senior United States District Judge

CERTIFICATE OF SERVICE

I certify that I filed the foregoing Response with the CM/ECF system on July 28, 2025 which will automatically serve a copy on counsel for Petitioner.

x John S. Ganz
Assistant United States Attorney