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.

PHILIP G. GALLAHER
Interim Federal Public Defender
Southern District of Texas No. 566458
New Jersey State Bar No. 2320341

/s/ Jorge G. Aristotelidis
GEORGE W. "JORGE" ARISTOTELIDIS
Southern District of Texas No. 18443
Texas Bar No. 00783557
Lyric Tower
440 Louisiana St.
Suite 1350
San Antonio, Texas 77002
(713) 718-4600
jorge_aristotelidis@fd.org

COUNSEL FOR PETITIONER
MELVIN MARTINEZ GUARDADO

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