UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CRISTIAN AGUASVIVAS,	)	
	)	
v.	)	Civ. No. 19-00123-JJM-PAS
MIKE POMPEO, Secretary of State, WILLIAM BARR, Attorney General, JOHN GIBBONS, U.S. Marshal, District of Massachusetts, JAMES HAINSWORTH, U.S. Marshal, District of Rhode Island, DANIEL MARTIN, Warden, Wyatt Detention Facility	)	

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION FOUNDATION AND ACLU OF RHODE ISLAND IN SUPPORT OF PETITIONER

INTRODUCTION

Amici ACLU and ACLU of Rhode Island respectfully submit this brief to address this Court's subject matter jurisdiction over Petitioner's torture-related claims.

The federal government has already determined that Petitioner Cristian Aguasvivas is likely to be tortured if he is sent back to the Dominican Republic. Petition ¶ 28. The government is nevertheless now seeking to extradite him. As part of his habeas challenge to that extradition, he asserts several claims related to his serious risk of torture. *Id.* ¶¶ 62-85. The government does not attempt to contest the likelihood of torture, instead primarily arguing that this Court lacks jurisdiction to consider any of Petitioner's torture-related claims.

Amici write to explain why that is incorrect. This Court has subject matter jurisdiction to consider these claims. Indeed, the Suspension Clause of the Constitution guarantees this Court's habeas jurisdiction, as reflected in a long history of habeas review over similar challenges to executive detention. No statute purports to strip this court's jurisdiction over this case, and certainly does not do so with the clarity required to circumscribe habeas jurisdiction. And the rule of non-inquiry has no bearing at all on subject matter jurisdiction, and in any event does not apply where, as here, the government has *already* determined a petitioner is likely to be tortured. The Court should grant the Petition and bar Petitioner's extradition.[1]

ARGUMENT

I. THE SUSPENSION CLAUSE GUARANTEES REVIEW OF PETITIONER'S CLAIMS.

The Constitution guarantees this Court's jurisdiction. Const. art. I, § 9, cl. 2. Indeed, habeas has always been available to test the lawfulness of Executive restraints on liberty, and in the Suspension Clause the Framers of the Constitution specifically enshrined the Writ as a critical safeguard to ensure individual liberty. *See Boumediene v. Bush*, 553 U.S. 723, 743-45 (2008). As the Supreme Court has explained, the Clause "is designed to protect against" lawless detention and "maintain the 'delicate balance of governance'" by "affirming the duty and authority of the Judiciary to call the jailer to account." *Id.* at 745; *see also INS v. St. Cyr*, 533 U.S. 289, 301-02 (2001); *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1105 (9th Cir. 2019).

Three principles are particularly important in guiding the Suspension Clause analysis. First, habeas in the civil context—unlike in the criminal area—implicates the core purposes of the writ. *See St. Cyr*, 533 U.S. at 301 ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have

[1] Amici do not address the government's ripeness arguments.

been strongest."); *see also Boumediene*, 553 U.S. at 780 (observing that "the common-law habeas court's role was most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention"); *id.* at 783 ("Where a person is detained by executive order, rather than … after being tried and convicted in a court, the need for collateral review is most pressing.").

Extradition represents an instance of executive detention. *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc) (per curiam). In his torture claims, Petitioner is not seeking collateral review of any judicial judgment. *See St. Cyr*, 533 U.S. at 300-01 (cautioning against conflating criminal cases involving post-conviction relief with cases where prior judicial review is absent). Rather, he challenges the Executive's ability to detain and extradite him without court involvement. Those claims thus lie within the "historical core" of the Writ, where "its protections have been strongest." *Id*. at 301.[2] Notably, while *St. Cyr* was itself an immigration case, the Court's discussion of habeas practice in U.S. courts touched on extradition as well. *See id.,* 533 U.S. at 305-06 (citing extradition case, *In re Kaine*, 55 U.S. (14 How.) 103 (1852)).

Second, the minimum scope of judicial review protected by the Suspension Clause must include at least review of legal and constitutional challenges. *See Boumediene*, 553 U.S. at 779; *St. Cyr*, 533 U.S. at 302; *see also Saint Fort v. Ashcroft*, 329 F.3d 191, 203 (1st Cir. 2003). Petitioner's CAT claims all fall within the required scope of habeas review. *See Trinidad y Garcia*, 683 F.3d at 956 (Suspension Clause guaranteed review of legal challenge to extradition); *see also Thuraissigiam*, 917 F.3d at 1117 (scope includes mixed questions of law and fact).

[2] Habeas is also available, as the government concedes, to review Plaintiffs non-torture claims. Gov't Br. 11.

The government contends that Petitioner's claims fall outside the Clause because the Secretary of State's decision to extradite involves an exercise of discretion. Br. 33-34. But Petitioner is arguing that his extradition is legally prohibited—i.e. that the Secretary has *no* discretion to extradite him. *See Mironescu v. Costner*, 480 F.3d 664, 670 (4th Cir. 2007) (cited by government) ("although the Executive has unlimited discretion to *refuse* to extradite a fugitive, it lacks the discretion to extradite a fugitive when extradition would" be unlawful); *cf. St. Cyr*, 533 U.S. at 307-08.

Third, history figures prominently in determining the contours of the writ. *See, e.g.*, *Boumediene*, 553 U.S. at 739-52, 779-82 (analyzing the writ's history at length); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 93-94 (1807) ("for the meaning of the term *habeas corpus*, resort may unquestionably be had to the common law"); *Peyton v. Rowe*, 391 U.S. 54, 59 (1968) ("[T]o ascertain its meaning and the appropriate use of the writ in the federal courts, recourse must be had to the common law… and to the decisions of this Court interpreting and applying the common-law principles.") (internal quotation marks omitted). "[A]t the absolute minimum, the Suspension Clause protects the writ 'as it existed in 1789.'" *St. Cyr*, 533 U.S. at 301. But the Supreme Court "has been careful not to foreclose the possibility that the protections of the Suspension Clause have expanded along with post-1789 developments that define the present scope of the writ." *Boumediene*, 553 U.S. at 746.

As extensively detailed by the Supreme Court in *St. Cyr*, "[i]n England prior to 1789, in the Colonies, and in this Nation during the formative years of our Government," noncitizens as well as citizens had access to the writ to challenge a broad variety of restraints on liberty. 533 U.S. at 301 (footnote omitted). Because England was not a party to an extradition treaty before 1776, there were no common law cases specifically concerning "extradition" in the modern sense.

See Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 Colum. L. Rev. 961, 995 (1998). But the breadth of habeas jurisdiction exercised at common law provides strong support for the conclusion that habeas courts had power to inquire into the lawfulness of an individual's transfer to locations outside the kingdom. *See St. Cyr*, 533 U.S. at 302 (noting that, for example, the writ "was used to command the discharge of seamen who had a statutory exemption from impressment into the British Navy, to emancipate slaves, and to obtain the freedom of apprentices and asylum inmates") (citing cases) (footnotes omitted).

Of particular importance here, historical practice indicates common law habeas courts exercised their jurisdiction to prevent the transfer of individuals to places outside of England, including for the purpose of criminal prosecution abroad. *Murray's Case* is one such example. Robert Murray was imprisoned in 1677 on two occasions for "defamation of his majesty and his government" and "in order to his being sent into Scotland to be tried there according to law for several crimes." Paul D. Halliday, Habeas Corpus: From England to Empire 236 (Belknap Press of Harvard Univ. Press 2010) (hereinafter "Halliday"). King's Bench issued the writ to inquire into Murray's removal, and ultimately bailed him and thus prevented him from being sent outside the kingdom. *Id.*[3]

Contrary to the government's suggestion, since 1789 habeas courts in the U.S. have consistently exercised jurisdiction to review the lawfulness of extradition decisions. *See, e.g.*, *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 9 (1936) (affirming grant of habeas to U.S. citizens sought for extradition to France, on ground that U.S. citizens were not subject to

[3] The well-known *Somerset's Case*, 20 How. St. Tr. 1 (K.B. 1772), likewise provides precedent for the power of the habeas courts to inquire into an individual's transfer to a location outside the realm. In *Somerset's Case*, King's Bench issued the writ to prevent James Somerset, an individual allegedly bound to slavery, from being sent to Jamaica. *See* Halliday 174-76 (providing account of *Somerset's Case*); *see also St. Cyr*, 533 U.S. at 302 n.16 (citing *Sommersett v. Stewart*, 20 How. St. Tr. 1, 79-82 (K.B. 1772)).

extradition under the treaty, emphasizing that "[t]here is no executive discretion to surrender [an individual] to a foreign government, unless that discretion is granted by law."); *Kaine*, 55 U.S. 103 . And habeas jurisdiction in the extradition context has not been limited to claims based on compliance with the extradition treaty or statute. Rather, habeas courts have routinely reviewed independent statutory and constitutional claims. For example, in *Rice v. Ames*, 180 U.S. 371 (1901), the Supreme Court reviewed a state statutory claim that the habeas petitioners' extradition was unlawful because the government had obtained a continuance of the proceedings in excess of the amount of time permitted for continuances under Illinois law, *id.* at 376. In addition to the statutory claim, *Rice* also reviewed a constitutional challenge to the statute concerning procedures and appointment of extradition commissioners. *Id.* at 378.

The courts of appeals have likewise entertained claims based on legal mandates arising from sources other than the extradition treaty or statute.[4] A number of such cases have entertained on the merits claims—similar to those Petitioner advances here—that extradition was

[4] *See, e.g.*, *Vo v. Benov*, 447 F.3d 1235, 1245-48 (9th Cir. 2006) (reviewing and rejecting habeas petitioner's due process challenges to extradition); *Lo Duca v. United States*, 93 F.3d 1100, 1104, 1108-11 (2d Cir. 1996) ("assess[ing] on their merits" habeas petitioner's claims that extradition statute violates separation of powers, Appointments Clause, and Federal Magistrates Act, 28 U.S.C. § 646(b)); *Demjanjuk v. Petrovsky*, 10 F.3d 338, 352-56 (6th Cir. 1993) (reviewing whether prosecutors had committed fraud on the court by failing to disclose exculpatory evidence in extradition proceedings, and vacating district court's denial of habeas); *Martin v. Warden*, 993 F.2d 824, 827-29 (11th Cir. 1993) (reviewing claim that 17-year delay in pursuing extradition violated due process, and emphasizing that "[t]he United States' actions in reviewing a request for extradition are, of course, subject to the constraints of the Constitution"); *Oen Yin-Choy v. Robinson*, 858 F.2d 1400, 1408 (9th Cir. 1988) (reviewing and rejecting claim that judge presiding over extradition hearing was required to recuse himself from habeas proceeding); *Romeo v. Roache*, 820 F.2d 540, 543-44 (1st Cir. 1987) (reviewing and rejecting habeas petitioner's claim that his Sixth Amendment right to counsel and due process require competency hearing in extradition proceedings); *Kamrin v. United States*, 725 F.2d 1225, 1228 (9th Cir. 1984) (reviewing and rejecting habeas petitioner's claim that due process required the application of U.S. limitations statute to prevent his extradition); *David v. Attorney General*, 699 F.2d 411, 416 (7th Cir. 1983) (reviewing claim that the judge who presided at the extradition hearing was required to recuse himself from the habeas proceeding);.

impermissible because it was inconsistent with the federal government's prior position or representation. In *Plaster v. United States*, 720 F.2d 340 (4th Cir. 1983), for example, the Fourth Circuit specifically rejected the government's argument that the habeas court had no jurisdiction to consider a constitutional claim that the petitioner's extradition would violate his agreement with the U.S. granting him immunity from any prosecution, *id.* at 347-49, 351-55; *see also, e.g.*, *Valenzuela v. United States*, 286 F.3d 1223, 1229-30 (11th Cir. 2002) (granting habeas petition where petitioner asserted due process claim based on prosecutor's breach of immunity agreement, and emphasizing that "[d]espite our limited role in extradition proceedings, the judiciary must ensure that the constitutional rights of individuals subject to extradition are observed"); *Geisser v. United States*, 627 F.2d 745, 749-50 (5th Cir. 1980) (reviewing claim that habeas petitioner's extradition would violate plea agreement with the United States, and determining whether State Department's communications with Swiss government were sufficient to fulfill plea agreement). *Plaster* expressly recognized that review of the habeas petitioner's legal claim was required by the Suspension Clause: "[B]ecause a claim of unconstitutional governmental conduct is within the scope of habeas corpus review *mandated by both the Constitution itself, U.S. Const. art. I, sec. 9, cl.2,* and the applicable federal statute, 28 U.S.C. § 2241 …, we conclude that the district court was correct in entertaining Plaster's claim." 720 F.2d at 348 (emphasis added); *see also In re Burt*, 737 F.2d 1477, 1484 (7th Cir. 1984) ("federal courts undertaking habeas corpus review of extraditions have the authority to consider . . . the substantive conduct of the United States in undertaking its decision to extradite if such conduct violates constitutional rights").

II. NO STATUTE PURPORTS TO DIVEST THIS COURT OF JURISDICTION, AND THE RULE OF NON-INQUIRY IS IRRELEVANT.

In the face of the Suspension Clause's guarantees, the government offers two arguments that this Court lacks jurisdiction: First, that federal statutes strip jurisdiction, and second, that the rule of non-inquiry bars this case. Both lack merit.

1. This court has statutory jurisdiction "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.'" *Trinidad y Garcia*, 683 F.3d at 956. The government contends, however, that the CAT and federal statutes strip this Court's jurisdiction. Br. 30-32. That argument lacks merit.

As the Ninth Circuit has explained, a "statute must contain 'a particularly clear statement' before it can be construed as intending to repeal habeas jurisdiction." *Trinidad y Garcia*, 683 F.3d at 956 (quoting *Demore v. Kim,* 538 U.S. 510, 517 (2003)). "Even if a sufficiently clear statement exists, courts must determine whether 'an alternative interpretation of the statute is fairly possible' before concluding that the law actually repealed habeas relief." *Id.* (quoting *St. Cyr,* 533 U.S. at 299-300). That is so because, in a case like this one, a statute stripping habeas jurisdiction would—to say the least—"raise serious constitutional problems" under the Suspension Clause. *St. Cyr*, 533 U.S. at 300; *see supra* Part I.A.

The government invokes the CAT itself as stripping jurisdiction over this case. Br. 30. That is foreclosed, as the First Circuit has held that FARRA, 8 U.S.C. § 1231 note, "gives the CAT domestic effect," and "FARRA and the regulations are now the positive law of the United States, and, as such, are cognizable under habeas." *See Saint Fort*, 329 F.3d at 202. Moreover, the government points to nothing in the text of the convention to support the argument that it strips jurisdiction. Instead, it points only to a reference in the Senate report about the convention not

being self-executing. That plainly cannot amount to a particularly clear statement *in* the convention. *See Trinidad y Garcia*, 683 F.3d at 956 (holding district court had jurisdiction).

The government's reliance on FARRA is likewise foreclosed by circuit precedent. The First Circuit has held that FARRA must be read "in terms of its language and no more broadly," and that because it "does not expressly refer to 28 U.S.C. § 2241 or to habeas review," it refused to "imply an intent to repeal habeas jurisdiction from silence." *Saint Fort*, 329 F.3d at 201.[5] The government emphasizes that FARRA says "nothing in this section shall be construed" to provide jurisdiction "except as part of the review of *a final order of removal*." Br. 31 (quoting 8 U.S.C. § 1231 note) (emphasis in original). But the First Circuit explained that there "are a number of problems" with relying on that language to strip habeas jurisdiction, including that "the clause says it 'does not provide' jurisdiction, not that it repeals jurisdiction." *Saint Fort*, 329 F.3d at 201.[6]

[5] Numerous courts of appeals have agreed. *See Trinidad y Garcia*, 683 F.3d at 956; *Cadet v. Bulger*, 377 F.3d 1173, 1182 (11th Cir. 2004); *Wang v. Ashcroft*, 320 F.3d 130, 141 (2d Cir. 2003); *Ogbudimkpa v. Ashcroft*, 342 F.3d 207, 221 (3d Cir. 2003). Notably, in *Mironescu* the Fourth Circuit—in concluding otherwise—expressly declined to consider the Suspension Clause issue, and the Court therefore failed to interpret FARRA § 2242(d) in light of constitutional concerns. 480 F.3d at 677 n.15 ("We [] note that Mironescu does not argue that denying him the opportunity to present his CAT and FARR Act claims on habeas review violates the Suspension Clause. We therefore do not address that issue."). And *Omar v. McHugh*, 646 F.3d 13 (D.C. Cir. 2011), a challenge to the transfer of an individual detained in Iraq, not the extradition of a person within the United States, in fact concluded that the court *did* "have jurisdiction to consider his habeas petition," *id*. at 14.

[6] To the extent the government suggests the regulations implementing FARRA strip this Court of habeas jurisdiction, it is wrong. As explained above, if access to habeas is to be curtailed, it must be done by *Congress* and with the utmost clarity. The Executive cannot itself control when habeas will be available. *See Boumediene*, 553 U.S. at 765-66 (constitutional availability of habeas "must not be subject to manipulation by those whose power it is designed to restrain."). Moreover, even on their own terms the regulations are not sufficiently clear to eliminate habeas jurisdictions. *Compare* Gov't Br. 32 ("The regulations state that the Secretary's surrender decisions are 'matters of executive discretion not subject to judicial review.'") (quoting 22 C.F.R. § 95.4), *with St. Cyr*, 533 U.S. at 311-13 (holding that, because "'judicial review' and 'habeas corpus' have historically distinct meanings," statutes barring judicial review did not "speak[] with sufficient clarity to bar jurisdiction pursuant to the general habeas statute").

The government's reliance on the REAL ID Act, 8 U.S.C. § 1252(a)(4), is likewise unavailing. As the Ninth Circuit explained, "[t]he REAL ID Act can be construed as being confined to addressing final orders of removal, without affecting federal habeas jurisdiction." *Trinidad y Garcia*, 683 F.3d at 956. "The purpose of the REAL–ID Act's jurisdiction-stripping provisions was to 'consolidate judicial review of immigration proceedings into one action in the court of appeals.'" *Id*. at 958 (Thomas, J., concurring) (quoting *St. Cyr*, 533 U.S. at 313). "Uncodified sections of the REAL ID Act state that the legislation was intended to apply only to 'final administrative order[s] of removal, deportation, or exclusion.'" *Id.* (quoting 119 Stat. 231, 311.[7] "Given a plausible alternative statutory construction," this Court thus "cannot conclude that the REAL ID Act actually repealed the remedy of habeas corpus." *Id.* at 956 (majority) (citing *St. Cyr*, 533 U.S. at 299-300). Indeed, in light of the extremely serious Suspension Clause questions that would be raised by construing any of the provisions on which the government relies to divest this Court of habeas jurisdiction, the Court is "obligated to construe the statute to avoid such problems." *St. Cyr*, 533 U.S. at 300.

2. The "rule of non-inquiry," on which the government relies, has no bearing on this Court's subject matter jurisdiction, and in any event does not apply.

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[7] The legislative history bears out the same point. *See* H.R. Conf. Rep. No. 109-72, at 175 ("the bill would eliminate habeas review *only* over challenges to removal orders") (emphasis added); *id.* at 176 (same). Thus, Congress recognized that "section 106" (referring to the section of the REAL ID Act containing relevant amendments to § 1252) "would not preclude habeas review over challenges to detention that are *independent* of challenges to removal orders." *Id.* at 175 (emphasis added); *see also id.* at 176 (same). The First Circuit has reached the same conclusion in a detention challenge, *Hernandez v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005) (citing legislative history), as have numerous other courts of appeals, *see, e.g.*, *Ochieng v. Mukasey*, 520 F.3d 1110, 1115 (10th Cir. 2008); *Nnadika v. Att'y Gen.*, 484 F.3d 626, 632 (3d Cir. 2007); *Kellici v. Gonzales*, 472 F.3d 416, 419 (6th Cir. 2006); *Madu v. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006). And, with regard to the particular provision the government invokes—8 U.S.C. § 1252(a)(4))—the history confirms that Congress addressed only "aliens in section 240 removal proceedings," without mention of any intention to strip habeas review outside the removal context. H.R. Conf. Rep. No. 109-72, at 176.

The rule of non-inquiry is "a doctrine which forbids judicial authorities from investigating the fairness of a requesting nation's justice system when considering whether to permit extradition to that nation." *In re Extradition of Howard*, 996 F.2d 1320, 1329 (1st Cir. 1993). The First Circuit has stated that the rule is not constitutional, but rather a judge-made doctrine reflecting "that, absent a contrary indication in a specific instance, the ratification of an extradition treaty mandated noninquiry as a matter of international comity." *Id.* at 1330 n.6.

Thus, the Rule has no bearing on this Court's subject matter jurisdiction. The question whether a habeas court has power to hear a case is separate from the question whether it is appropriate for the court to grant relief. In *Munaf v. Geren*, on which the government heavily relies, for example, the Court first held the district courts *had* subject matter jurisdiction before ultimately concluding that it was not appropriate for the them to grant relief on the merits. 553 U.S. 674, 685-88, 691-92 (2008). *Trinidad y Garcia* also rejected the argument that rule of non-inquiry stripped habeas jurisdictions. 683 F.3d at 956.

Moreover, the rule has no application to a case like this one. *Munaf* itself recognized that the applicability of the rule of non-inquiry would need to be reexamined in "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.[8] The First Circuit has similarly taken care to note, in a case on which the government also heavily relies, that it could "imagine situations where the relator, upon extradition, would be subject to procedures or punishment so antipathetic to a federal court's sense of decency as to require reexamination of the" rule of non-inquiry. *United States v. Kin-Hong*, 110 F.3d 103, 112 (1st Cir. 1997) (internal quotation marks omitted). This is just such a case: The

[8] *Munaf*'s context, moreover, could not be more different. That case involved a challenge to the transfer of individuals held overseas in a theater of war. 553 U.S. at 679-80, 689.

Executive Branch has *already* determined that Petitioner is likely to be tortured if sent back to his home country, yet is seeking to extradite him anyway.

More generally, as the Fourth Circuit noted in another case on which the government relies, the rule does not bar review where a petitioner claims that his extradition "would violate a federal statute" or the Constitution. *Mironescu*, 480 F.3d at 671-73 (rejecting government's argument that the court could not review petitioner's claim that he would be tortured if extradited). As a common-law doctrine "born by implication" from nineteenth century extradition cases, *id*. at 669 (internal quotation marks omitted), the rule of non-inquiry is displaced where Congress acts to impose mandatory obligations on the government:

> [P]rior to the CAT and the FARR Act, the conclusion . . . that individuals being extradited are not constitutionally entitled to any particular treatment abroad rendered evidence of the treatment they were likely to receive irrelevant in the context of a claim on habeas that their detention contravened federal law. . . . However, the FARR Act now has given petitioners the foothold that was lacking . . . . [I]n light of the Secretary's conceded obligation under the FARR Act not to extradite Mironescu if he is likely to face torture, the rule of non-inquiry does not bar habeas review of the Secretary's extradition decision.

Id. at 671, 673.[9]

Trinidad y Garcia does not warrant concluding that Petitioner's torture claims are not justiciable. As noted above, in that case the Ninth Circuit held that the rule of non-inquiry had no bearing on the district court's subject matter jurisdiction. 683 F.3d at 956. To the extent the court held that the rule of non-inquiry significantly narrowed the liberty interests the Petitioner could assert on the merits, it was wrongly decided. *See id*. at 956-57; *see also id*. at 1002-09 (Pregerson,

[9] *Mironescu* explained that the existence of a right enforceable in habeas set that case (and this one) apart from *Neely v. Henkel*, 180 U.S. 109 (1901). *See Mironescu*, 480 F.3d at 671 (*Neely* meant only that "absent any federal right to particular treatment in the requesting country, any refusal of extradition based on the treatment a fugitive was likely to receive would have to be made by the Executive"). *Terlinden v. Ames*, 184 U.S. 270, 288 (1902), addressed a uniquely "political" question—whether a successor state could invoke a treaty signed by its predecessor state.

J., dissenting in part). But in any event, unlike *Trinidad y Garcia*, here the government already determined that Petitioner more likely than not will be tortured if he is sent back to the Dominican Republic.[10]

CONCLUSION

The Court should grant the Petition and bar Petitioner's extradition.

[10] While the Ninth Circuit noted that the petitioner in that case raised a claim under the CAT, it only addressed the merits of his due process claims. *See* 683 F.3d at 955-57.

Dated: May 20, 2019

Respectfully submitted,

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