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United States Department of State

Washington, D.C. 20520

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SENSITIVE BUT UNCLASSIFIED

ACTION MEMO FOR THE DEPUTY SECRETARY

FROM: L - John B. Bellinger, III

SUBJECT: Whether to Extradite Kulvir Singh Barapind to India

Recommendation

That you find, pursuant to the State Department’s regulations implementing the Convention Against Torture, 22 C.F.R. part 95, that it is not more likely than not that Kulvir Singh Barapind will be tortured if extradited to India, and you authorize the extradition of Barapind to India by signing the surrender warrant at Tab 1.

Approve __________ Disapprove __________

Background

The Government of India has requested the extradition of Indian citizen Kulvir Singh Barapind aka Kulvir Singh, a prominent Sikh separatist, to stand trial on charges pertaining to eleven violent incidents that took place in 1991 and 1992. The charges include murder, attempted murder, participation in conspiracy to murder, and robbery. The maximum penalty for these crimes is death or life imprisonment. A detailed discussion of the background facts is at Tab 2, and India’s extradition request is at Tab 3. On August 27, 2001, the U.S. District Court for the Eastern District of California certified Barapind’s extradition for charges in three of the eleven incidents, citing lack of probable cause or political offense exceptions for the remaining charges. After extensive appeals, the district court entered a new certification and order of extraditability on November 8, 2005 for the same three incidents (Tab 4). There currently is no legal bar to Barapind’s extradition to India. India considers this an important extradition.
Barapind has submitted materials to the Department opposing India’s extradition request (Tab 5). He requests that extradition be denied because, he claims, it is more likely than not that he will be tortured if surrendered to India. He also requests that extradition be denied because, he alleges, India will refuse him access to counsel, because India will violate the rule of specialty, and because India will deny him a speedy trial.

Under Article 3 of the Convention Against Torture, the United States is prohibited from extraditing a person to a country “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” For the United States, in light of the Understanding included in the U.S. instrument of ratification for the Convention and the State Department regulations implementing the Convention, this means that extradition is precluded if it is “more likely than not” that the person will be tortured. The Department, including Embassy New Delhi, has extensively reviewed and investigated the claims made in Barapind’s submission (Tabs 6-12).

As elaborated in Tab 2, we believe that it is more likely than not that Barapind will be tortured if he is extradited from the United States to India. SCA Acting A/S Camp agrees (Tab 13), and Ambassador Mulford concurs in this conclusion (Tab 10). DRL has reviewed and cleared this memo. Also as elaborated in Tab 2, we do not believe Barapind’s other claims warrant denial of surrender.
Attachments:
Tab 1 – Surrender Warrant
Tab 2 – Background on Extradition Request
Tab 3 – Extradition Request
Tab 4 – Certificate and Order of Extraditability
Tab 5 – Submission on behalf of Barapind
Tab 6 – 05 State 222735
Tab 7 – 06 State 6905
Tab 8 – 06 State 33728
Tab 9 – 05 New Delhi 9513
Tab 10 – 06 New Delhi 994
Tab 11 – 06 New Delhi 2171
Tab 12 – 06 New Delhi 2911
Tab 13 – SCA and L Statement on CAT claim
Tab 14 – 05 Country Report for Human Rights for India
Tab 15 – Department’s Letter to Immigration Judge, June 16, 1993
Tab 16 – 98 New Delhi 5439
BACKGROUND FACTS CONCERNING THE EXTRADITION OF KULBIR SINGH BARAPIND TO INDIA

India has requested the extradition of Kulvir Singh Barapind aka Kulvir Singh, a prominent Sikh separatist, to stand trial for murder, attempted murder, participation in conspiracy to murder, and robbery (Tab 3). The maximum penalty for these crimes is death or life imprisonment. The charges arise from eleven violent incidents in the District of Jalandhar, Punjab in the early 1990s. Each incident is covered by a First Information Report (FIR), a charging document, and involves multiple offenses and victims. Barapind was arrested in the United States in 1993 for immigration violations, and India requested his extradition in 1994. More than a decade of litigation followed, during which the courts found that Barapind was not extraditable for the charges arising out of eight of the eleven incidents. Barapind was found extraditable for the three remaining incidents (FIRs 34, 89 (in part), and 100), in which he is charged with a number of counts of murder and attempted murder.

Judicial Certification of Extraditability

In 1985, Barapind became a member of the All India Sikh Students Federation (SSF), a group committed to establishing the sovereign Sikh nation of Khalistan in the Punjab. Barapind subsequently moved up the group’s hierarchy, becoming the president of the Federation for the District of Jalandhar, Punjab in 1988. Despite harassment by the police (including, he alleges, torture) and the killing of fellow Federation members, Barapind continued his protest activities. He became Joint Secretary of the SSF in March 1991. The offenses with which Barapind has been charged arise from a number of violent incidents in which he allegedly participated in 1991-1992. He is alleged to have committed several murders and attempted murders. He is also accused of stealing arms and ammunition from the murdered individuals, as well as the vehicles that he used to flee the incidents. Many of Barapind’s associates were arrested, but police officials could not locate him in India. Barapind has acknowledged that the SSF was linked to the Khalistan Commando Force (KCF) and that he himself had contacts with the KCF at various times while he was involved in the SSF.

On April 25, 1993, Barapind was arrested at the Los Angeles International Airport for attempting to enter the United States with a false passport. He was arrested...
immediately detained and was placed into the custody of the Immigration and Naturalization Service (INS). On June 7, 1993, Barapind applied for asylum and withholding of deportation on the basis that, if returned to India, he would be persecuted because of his Sikh political separatist activities. On November 29, 1994, India submitted an extradition request for Barapind for the offenses enumerated above, but, because of Barapind’s pending asylum and exclusion proceedings, the extradition request was not filed with the court until September 18, 1997. On October 30, 1997, the Board of Immigration Appeals (BIA) granted an INS motion to hold in abeyance the asylum and exclusion proceedings, pending the outcome of the extradition proceedings. Barapind challenged the order, but on June 4, 1999, the district court dismissed his petition and on August 28, 2000, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) affirmed. The immigration proceedings have been on hold since.

On August 27, 2001, an extradition order was issued in the U.S. District Court for the Eastern District of California, finding Barapind extraditable for charges in three of the eleven incidents for which India requested his extradition. Specifically, the court concluded that Barapind was extraditable for the murder of Kulwant Kaur, as charged in FIR 89; the murders of Kulwant Singh, Aman Nath Kanigo, Soda Ram, and Jasbir Ram, as charged in FIR 34; and the murder of Sahib Singh (aka Sahbi) and the attempted murder of Makhan Ram, as charged in FIR 100. Of the eight remaining incidents, extradition was denied for the charges in FIRs 23, 94, 113, 114, and 193 because the district court concluded that, although probable cause to extradite existed, extradition was barred because the charges fell within the political offense exception of the extradition treaty.1 (Extradition for some of the charges in FIR 99 was also denied on political offense grounds.) Extradition for the charges in the remaining three incidents (FIR 52, 87, and 220) was denied because probable cause was not established.

Following the certification of extraditability, Barapind filed a petition for a writ of habeas corpus, challenging the court’s order on the basis that he should not be extradited for the offenses in FIRs 34, 89, and 100 because the evidence submitted in support of those charges was insufficient to prove probable cause and because the offenses fell under the political offense exception. Following the denial of his habeas petition on September 18, 2002, Barapind filed an appeal with the Ninth Circuit. On March 10, 2004, a panel of the Ninth Circuit affirmed the

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1 Article 6 of the applicable extradition treaty bars extradition for offenses “of a political character.”
denial of the petition, but that decision was withdrawn by the full court. On March 9, 2005, an en banc panel of the Ninth Circuit affirmed the certification of extraditability for FIRs 89 and 100 but remanded the case to the district court for a reevaluation of the charges in FIR 34. On October 24, 2005, the district court confirmed its earlier certification of extraditability for the charges in FIR 34 (Tab 4). No appeal has been taken from that decision, and consequently, there currently is no legal bar to Barapind’s extradition to India.

Request that Extradition Be Denied on Humanitarian Grounds

Now that the courts have reviewed India’s request, it is for the Department to decide whether Barapind should, in fact, be surrendered. In so doing, the Department considers humanitarian claims made by or on behalf of the fugitive.

Barapind’s Submission

On November 28, 2005, the Department received a submission from Barapind’s lawyers, as well as a letter and documents in support of the submission from the Center for Human Rights & Global Justice at New York University School of Law, requesting that the Secretary not sign a warrant for Barapind’s surrender to the Indian authorities (Tab 5). The claims made in Barapind’s submission regarding torture fall into two categories:

Likelihood of Torture. Barapind’s submission claims it is more likely than not that he will be tortured if surrendered to India. (a) This claim is based in part on specific allegations of past torture. Thus, the submission alleges that Barapind was detained and tortured by Indian officials in June 1988 and July 1989. In particular, it claims that he was tortured in 1988, first by the Nadokar police and then by the Goraya police, and in 1989 at a Central Reserve Police Force Camp in Phagwara and again after being transferred to the custody of the Criminal Investigation Agency in Kapurthala. Barapind’s submission also claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment. These claims are supported by affidavits from Barapind, his brother, and others. They are also recounted in excerpts from the 1993 exclusion proceedings before the immigration judge. (b) The claim that Barapind will likely be tortured is also based upon the Department’s annual human rights reports, the reports of human rights groups, and affidavits from individuals, which are cited in order to demonstrate that torture and other violations of human rights have
and continue to take place in India, in particular by the Punjab police, and that Barapind's status as a political leader and an accused militant makes him particularly susceptible to mistreatment.

Sufficiency of Assurances. Barapind's submission claims that any diplomatic assurances that the USG obtains from India cannot protect Barapind from torture. In making this argument, the submission states that India has previously failed to honor diplomatic assurances that it would not torture Sikhs extradited to India by the United States. In particular, the submission focuses on the cases of Daya Singh Sandhu and Kamaljit Kaur Sandhu, both of whom were extradited to India in 1997 after the United States had procured assurances from the Government of India in late 1996 that they would not be tortured and would be afforded certain protections under the Indian Constitution and laws prohibiting torture and protecting persons against torture and degrading and inhuman treatment; the right to counsel; and the right to have counsel, family and representatives of the National Human Rights Commission of India visit them while in custody. Barapind's submission claims that, in spite of the assurances, the Sandhus were tortured "immediately upon their return," that they were denied access to counsel and fair trials, and that they were tried on charges that they were not extradited on in violation of the "rule of specialty" under treaty law and practice. These claims are supported by affidavits from the Sandhus.

Barapind also requests that extradition be denied because India will deny him access to counsel, because India will violate the rule of specialty, and because India will deny him a speedy trial.

Torture Convention Obligations

Under Article 3 of the Convention Against Torture, the United States is prohibited from extraditing a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." For the United States, in light of the Understanding included in the U.S. instrument of ratification for the Convention and the State Department regulations implementing the Convention, this means that extradition is precluded if it is "more likely than not" that the person will be tortured. Torture is defined by the applicable regulation, 22 CFR 95.1, as:
Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulted from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;
(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
(iii) The threat of imminent death;
(iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Likelihood of Torture

Whether it is more likely than not that a person will be tortured if extradited to a particular country will depend on a host of relevant considerations, see e.g., 22 CFR 95.2, including, for example and where applicable, previous torture, past and current human rights practices (such as a consistent pattern of gross, flagrant or mass violations of human rights), diplomatic assurances received, and available monitoring.

(a) Accusations of Past Torture. Embassy New Delhi has been “unable to confirm or refute Barapind’s specific torture claims, although the abuses alleged are consistent with other claims made by torture victims in India” (Tab 9). Embassy notes, as is generally known, that “[d]uring the Sikh insurgency in the 1980s and 1990s, police routinely tortured and/or killed terrorists’ families and...
associates” (Tab 10). Embassy New Delhi also has been “unable to authoritatively confirm or refute Barapind’s specific claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment,” though one of Embassy’s contacts “stated that Barapind’s relatives were tortured in 1988-89 as a matter of procedure, and that the police routinely tortured and/or killed terrorists’ families and/or associates” (Tab 9). In a June 16, 1993, letter to the Immigration Judge (IJ), the Department’s Office of Asylum Affairs noted “inconsistencies” and “anomalies” in Barapind’s asylum application that “would raise credibility questions” about his assertions (Tab 15).

(b) Current Practices. There is no doubt that torture generally remains a problem for Indian law enforcement.

Nonetheless, the Embassy reports that significant progress has been made. “Indian federal and state law prohibits torture. India today has many human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab.” India is now (since 1997) a signatory of (though not a party to) the Convention Against Torture, and the “Supreme Court has recently issued guidelines aimed at preventing and, if necessary, prosecuting incidents of torture and custodial abuse.” Prosecutions and convictions for police abuse, including in Punjab, have increased, though many alleged police violators, particularly from earlier, more violent times (including the officer Barapind accuses of having directed his torture), have not been tried for their reported offenses (Tab 9).

2 The IJ found Barapind’s testimony non-credible, and the BIA dismissed his appeal. However, the U.S. Court of Appeals for the Ninth Circuit, without itself deciding whether Barapind was credible, rejected most of the stated bases for the IJ’s determination and hence remanded the case to the BIA. See Barapind v. Rogers, No. 96-55541 (9th Cir. 1997) (unpublished). Shortly thereafter, the removal proceedings were stayed by the BIA pending the outcome of the extradition proceedings and, thus, no further credibility determinations were made by the BIA or the IJ.
torture still occurs in Punjab, Embassy New Delhi discounts the possibility of a new insurgency in Punjab that would lead to the types of abuses common in the 1980s and early 1990s.

Further, the Embassy notes that “[t]he free press is also sensitive to human rights.” “India’s free press, including in Punjab, actively pursues and exposes government excesses of all varieties, including police abuse, torture, and corruption” (Tab 10). Press interest extends to extraditions. The Embassy points to the “continuing Indian press coverage of Abu Salem, who was extradited from Portugal last year for his alleged role as the principal suspect in the March 12, 1993 Mumbai bombings that killed 250 and injured more than 700.” (Tab 11). We also note the recent press interest in the removal of prominent Sikh separatist Harpal Singh Cheema to India from the United States. See Anju Agnihotri Chaba, Deported Ex-Militant Says Khalistan His Life’s Aim, Indian Express, May 3, 2006, at 3 (noting that the newspaper interviewed Cheema, that he received “VIP treatment” at the Punjab police station where he was held, and that “nobody was stopped from meeting with him,” including Sikh political leaders).

Human rights monitoring and activism is also much improved. This is true both for NGOs and the National Human Rights Commission (NHRC). Embassy explains that “India has numerous activist human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab” (Tab 10). The NHRC “has over a decade of experience in investigating and assessing human rights violations in India. Their mandate includes both positive human rights violations and ‘negligence in the prevention of such violation’ . . . . [T]he NHRC is legally empowered to visit prisoners ‘in any jail or any other institution under the control of the State Government’ for this purpose. . . . The NHRC is an active organization that operates independently of the government and has loudly criticized some government institutions and actions” (Tab 11).

Progress is particular marked in Punjab. Embassy observes that “the law enforcement situation in Punjab in 2005 has dramatically improved over the atmosphere that existed during the insurgency in [the] 1980s-1990s, and can attest that the incidence of torture and custodial deaths in Punjab has decreased dramatically” (Tab 9). Thus, according to the Embassy, the “Punjab of today is different from the Punjab Barapind fled. Then, a blazing, foreign-supported insurgency raging across the Punjab threatened the security of the government in
Delhi and deepened divisions between India and Pakistan. Today, Punjab is one of the richest states in India, with a progressive, pro-agriculture government whose Chief Minister (a Sikh) is working to promote harmonious relations among Sikhs and between India and Pakistani Punjab. . . . The end of the Punjab insurgency in the 1990s ushered in a dramatic decline in custodial deaths and torture allegations. The current Indian Prime Minister and Army Chief are Sikhs. The intensive police and security force anti-insurgency efforts of the 1980s and 1990s are largely a thing of the past” (Tab 10).

India has signed the [Convention Against Torture]. As a signatory, India has good-faith obligation not to act against the objectives and purposes of the Convention.

The Indian Constitution provides for the protection of life and personal liberty. It guarantees accused persons the right to be defended by a legal practitioner of his or her choice. India has legislation for the protection of human rights. The National and States Human Rights Commissions can visit prisons and can enquire on their own initiative or on a petition into any complaint of human rights violation. Indian criminal law prohibits the use of force or causing hurt to extort confession. Persons violating these provisions are subject to prosecution and imprisonment. [Sections 330-331 of the Indian Penal Code enclosed.]
Further, family members, attorneys of a person extradited to India as well as the [National] Human Rights Commission have access to them. Officials of the country extraditing a fugitive may also have access on reciprocal basis. Thus [Barapind] on extradition to India will be dealt in accordance with the law. He will be entitled to all rights of defense, protection, and remedies available and shall not be subjected to any kind of torture.

In a follow-up diplomatic note (Tab 11), India clarified the definition of torture, as follows:

[Barapind] will be entitled to all the rights of defence, protection and remedies available and shall not be subjected to torture, as defined in the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, 1984.

... India as a signatory to the Torture Convention has a good faith obligation not to act against the objectives and purposes of the Convention. Indian criminal law prohibits the use of force or causing hurt to extort confession. The judicial decisions have interpreted the law to cover not only the physical hurt but the mental derangement/sufferings also. Persons violating these provisions are subject to prosecution and imprisonment.

(d) Credibility/Reliability of Assurances. Embassy New Delhi reports that the "descriptions of Barapind's protections under the Indian Constitution and Indian Law are accurate to the best of this Mission's knowledge. Similarly, this Mission believes to the best of its knowledge that the rights of access to Barapind by his family members and attorneys, the [NHRC], and U.S. diplomats (on a

3 The reciprocity language is standard for the Indians and has been used by them in previous assurances to us in extradition cases. It means that the Government of India will grant access provided that we grant access to Indian officials to visit persons extradited to the United States from India irrespective of nationality. We believe we could provide the same assurance to India regarding access, if requested.
reciprocal basis), as described, are accurate, and it is likely the Government of India will in practice comply with them" (Tab 10). The Embassy continues: "India’s relationship with the United States and the rest of the world is... dramatically different than it was less than a decade ago. India has far greater incentives to be seen as a reliable partner and a country that honors its international commitments.”

Barapind doubts that Indian assurances are credible, citing the case of the Sandhus.

(e) Conclusion. Given the changed circumstances in Punjab (including the end of the insurgency), the high-profile nature of this extradition, the strong

4 The Department’s July 1997 Addendum to the India Country Profile also stated: “A human rights group which is providing lawyers to represent the Sandhus reports that they are experiencing neither physical nor verbal abuse and are being examined by a doctor daily.”
accountability in place in the form of Indian human rights organizations (including the National Human Rights Commission) and media, the assurances provided by the Government of India, the guaranteed monitoring, the prospect of U.S. cooperation on future extraditions and law enforcement generally, and the much-improved bilateral relationship between the two countries, we do not believe it is more likely than not that Barapind will be tortured if extradited. This conclusion is well-stated by one of the Embassy’s contacts, an editor of a Punjabi newspaper, who reported “that ‘no one will touch [Barapind]’ because his case is high profile (in part because of the extradition) and because of the strength of human rights activists in the state” (Tab 9).

*Other Humanitarian Claims*

Barapind also claims that he will be denied access to counsel, that India will violate the rule of specialty by prosecuting him for crimes for which he was not found extraditable (citing the case of the Sandhus), and that India will deny him a speedy trial.

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5 Embassy New Delhi has assigned an officer to be a point of contact for Barapind and others acting on his behalf to receive complaints about his treatment, should he be extradited.
When an asylum application is pending but not finally adjudicated, the United States must take into account its international obligations under the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol), which incorporates certain obligations of the 1951 Convention Relating to the Status of Refugees (Refugee Convention). The Refugee Convention prohibits the return of a refugee where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. However, if “there are serious reasons for considering” that a person has committed a “serious non-political crime” outside the country of refuge prior to his or her admission to that country as a refugee, the provisions of the Refugee Convention do not apply. A U.S. court has determined that probable cause exists that Barapind has committed serious crimes for which India has sought his extradition (murder and attempted murder), and these crimes are not political. Consequently, there are serious reasons for considering that he has committed “serious non-political crimes[s],” and, therefore, he is excluded from the protections provided by the Refugee Protocol. Accordingly, U.S. obligations under the Refugee Protocol would not be breached by his extradition to India.

Law Enforcement Relationship with India

Issuance of the surrender warrant will be consistent with the USG objective of maintaining and improving the U.S.-India law enforcement relationship, of which extradition is a major component. Extradition between the two countries is based on a treaty with reciprocal and mutual obligations and benefits. The United States has ten extradition requests pending in India, some for five years or more. We continue to urge India to bring these requests to fruition at an early point. Completing the Barapind extradition, which spans more than a decade, will enhance the relationship.

Requirements of Extradition Treaty Satisfied

Having reviewed the documents provided by India and the Judge’s Order, we have concluded that the offenses for which Barapind has been found extraditable are covered by the 1931 U.S.-U.K. Extradition Treaty, applicable to India from March 9, 1942. The 1931 U.S.-U.K. Extradition Treaty was the applicable treaty in force at the time the Government of India requested Barapind’s extradition, and it was the basis upon which the U.S. Court considered

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the extradition request. As clearly shown by the Judge's Order, the Government of India has submitted: duly authenticated documents as required by the treaty; such evidence of criminality in regard to the offenses for which Barapind has been found extraditable as would have justified his apprehension and commitment in the United States; and sufficient evidence that the person sought by India was the person before the court during the extradition proceedings.

No exemption from, or condition to, extradition stipulated in the Treaty and Protocol appears applicable.

Notification of Decision

Barapind's case comes out of the Ninth Circuit, which in a previous case left open the possibility that the Department's decisions on surrender are reviewable by means of a habeas petition. Consequently, Barapind has specifically requested that we notify him of your decision on surrender so that he could, if necessary, seek such review. Though we are under no legal obligation to do so (and our practice is not to provide notice), if you determine that Barapind should be surrendered, we will notify him that you have signed a surrender warrant and allow him adequate time to decide whether to seek additional habeas relief. Such a petition would challenge the surrender decision on various grounds.

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6 A new extradition treaty between the United States and India entered into force on July 21, 1999.

7 While there is no judicial order or other legal obligation requiring the Department to notify Barapind of its decision, when the Ninth Circuit denied one of Barapind’s previous habeas petitions, it directed that “the denial [of the petition] be entered without prejudice to the filing of a new habeas petition should the Secretary of State decide to surrender Barapind prior to the completion of the BIA’s consideration of his application for asylum and withholding of deportation.” Barapind v. Reno, 225 F.3d 1100, 1115 (9th Cir. 2000). Further, a recent panel of the Ninth Circuit noted that “the rule of non-inquiry does not prevent an extraditee who fears torture upon surrender to the requesting government from petitioning for habeas corpus review of the Secretary of State’s decision to extradite him.” Prasoprat v. Benov, 421 F.3d 1009, 1016 n.5 (9th Cir. 2005) (citing Cornejo-Barreto v. Seifert, 218 F.3d 1004, 1009 n.5, 1016-17 (9th Cir. 2000)). Though we disagree with these rulings, given the state of play in the Ninth Circuit, it is, as a matter of policy, prudent to provide notice. The Department of Justice agrees that notification is appropriate in this case.
including the United States's obligations under the Torture Convention. Though Barapind has requested notification, it is unclear whether he will file a habeas petition. If he does file a petition, we believe we would prevail, and the decision to extradite would be upheld.