



United States Department of State

Washington, D.C. 20520

Case No.: 200603431
Segment LLEI 004 and LLEI 002

Mr. Amrit Singh
Staff Counsel
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

OCT 20 2008

Dear Mr. Singh:

I refer to our letter dated August 19, 2008 regarding the release of certain Department of State material under the Freedom of Information Act (Title 5 USC Section 552).

The search of the records of the Office of the Assistant Legal Adviser for Law Enforcement and Intelligence has been completed, resulting in the retrieval of a large volume of documents that have been broken into five separate segments for ease of handling. This letter addressed the fourth segment, which contains 45 documents responsive to your request. After reviewing these documents, we have determined that 19 may be released in full, 11 may be released with excisions, and 10 must be withheld in full. All released material is enclosed.

A decision on the remaining five documents requires interagency coordination: these originated in another government office, which will review them and respond to you directly.

An enclosure provides information on Freedom of Information Act exemptions and other grounds for withholding material. Where we have made excisions, the applicable exemptions are marked on each document. We have cited exemption (b)(5) for the ten documents withheld in full.

In the documents released in part, all non-exempt material that can reasonably be segregated from the exempt material has been released.

With respect to material withheld by the Department of State, you have the right to appeal our determination within 60 days. A copy of the appeals procedures is enclosed.

Please note segment number two contained no responsive documents.

We have now reviewed all of the documents retrieved in response to your request. Regarding the documents still awaiting interagency coordination, we will let you know when a final determination has been made. If you have any questions, you may write to the Office of Information Programs and Services, SA-2, Department of State, Washington, DC 20522-8100, or telephone us at (202) 261-8484. Please be sure to refer to the case number shown above in all correspondence about this case.

Sincerely,



Margaret P. Grafeld, Director
Office of Information Programs and Services

Enclosures:
As stated.

Rules and Regulations

Subpart F – Appeal Procedures

§171.52 Appeal of denial of access to, declassification of, amendment of, accounting of disclosures of, or challenge to classification of records.

- (a) *Right of administrative appeal.* Except for records that have been reviewed and withheld within the past two years or are the subject of litigation, any requester whose request for access to records, declassification of records, amendment of records, accounting of disclosure of records, or any authorized holder of classified information whose classification challenge has been denied, has a right to appeal the denial to the Department's Appeals Review Panel. This appeal right includes the right to appeal the determination by the Department that no records responsive to an access request exist in Department files. Privacy Act appeals may be made only by the individual to whom the records pertain.
- (b) *Form of appeal.* There is no required form for an appeal. However, it is essential that the appeal contain a clear statement of the decision or determination by the Department being appealed. When possible, the appeal should include argumentation and documentation to support the appeal and to contest the bases for denial cited by the Department. The appeal should be sent to: Chairman, Appeals Review Panel, c/o Appeals Officer, A/ISS/IPS/PP/LC, U.S. Department of State, SA-2, Room 8100, Washington, DC 20522-8100.
- (c) *Time limits.* The appeal should be received within 60 days of the date of receipt by the requester of the Department's denial. The time limit for response to an appeal begins to run on the day that the appeal is received. The time limit (excluding Saturdays, Sundays, and legal public holidays) for agency decision on an administrative appeal is 20 days under the FOIA (which may be extended for up to an additional 10 days in unusual circumstances) and 30 days under the Privacy Act (which the Panel may extend an additional 30 days for good cause shown). The Panel shall decide mandatory declassification review appeals as promptly as possible.
- (d) *Notification to appellant.* The Chairman of the Appeals Review Panel shall notify the appellant in writing of the Panel's decision on the appeal. When the decision is to uphold the denial, the Chairman shall include in his notification the reasons therefore. The appellant shall be advised that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable. In mandatory declassification review appeals, the Panel shall advise the requester of the right to appeal the decision to the Interagency Security Classification Appeals Panel under §3.5(d) of E.O. 12958.

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Withholding specifically authorized under an Executive Order in the interest of national defense or foreign policy, and properly classified.
Executive Order 12958, as amended, classification categories:
- 1.4(a) Military plans, systems or operations
 - 1.4(b) Foreign government information
 - 1.4(c) Intelligence activities, sources or methods, or cryptology
 - 1.4(d) Foreign relations or foreign activities of the US including confidential sources
 - 1.4(e) Scientific, technological or economic matters relating to national security, including defense against transnational terrorism
 - 1.4(f) USG programs for safeguarding nuclear materials or facilities
 - 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to US national security, including defense against transnational terrorism
 - 1.4(h) Information on weapons of mass destruction
- (b)(2) Related solely to the internal personnel rules and practices of an agency.
- (b)(3) Specifically exempted from disclosure by statute (other than section 552b of Title 5), e.g.:
- INA The Immigration and Nationality Act, Title 8 USC Section 1202(f)
 - CIA The Central Intelligence Agency Act of 1949, Title 50 USC Section 403(g)
 - ARMEX The Arms Export Control Act, Title 22 USC 2778(e)
 - EXPORT The Export Administration Act of 1979, 50 App. USC 2411(c)(1)
- (b)(4) Privileged/confidential trade secrets, commercial or financial information from a person.
- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product.
- (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Information compiled for law enforcement purposes that would:
- (A) Interfere with enforcement proceedings
 - (B) Deprive a person of a fair trial
 - (C) Constitute an unwarranted invasion of personal privacy
 - (D) Disclose confidential sources
 - (E) Disclose investigation techniques
 - (F) Endanger life or physical safety of any individual

Other Grounds for Withholding

NR Material not responsive to your FOIA request, excised in accordance with our agreement.

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Katrice G Mueller 06/20/2006 10:16:01 AM From DB/Inbox: Katrice G Mueller

Cable Text:
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TELEGRAM

June 20, 2006

To: SECSTATE WASHDC - IMMEDIATE
Action: SCA
From: AMEMBASSY NEW DELHI (NEW DELHI 4334 - IMMEDIATE)
TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN
Captions: SIPDIS, SENSITIVE
Subject: BARAPIND TRANSFERRED TO PUNJAB, REPORTED IN GOOD
CONDITION
Ref: 05 NEW DELHI 4449A. NEW DELHI 04283 B. STATE 33728 C.
NEW DELHI 994 D. STATE 6905 E. '05 NEW DELHI 9513 F.
12/01/05 POMPER EMAIL TO POST ATTACHING CAT SUBMISSION
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1. (SBU) Extradited terrorism suspect Kulbir Singh Barapind has been transferred to police custody at the Phillaur Police Station in Punjab and is in "good condition," reported Barapind's Punjab-based lawyer Darshan Singh Dyal. Initial reports on June 19 from Barapind's brother, Balwant Singh, suggested that Barapind had been tortured because he was supposedly seen "in a disheveled state and was having trouble walking." However, follow up phone conversations and emails with Barapind's U.S. and India based lawyers indicate that this claim is inaccurate, that Barapind has not been mistreated, and that his apparent weakness was because he had not taken blood pressure and diabetes medication. Barapind's Punjab-based lawyer Darshan Singh Dyal told us on June 20 that Barapind had not been abused.

2. (SBU) Barapind's state-appointed defense attorney Mandeep Sharma told us on June 19 that Barapind will likely remain in police custody until June 24 and then be remanded to judicial custody. Sharma stated that Barapind was taken for a medical examination on June 20 and that the presiding judge had ordered that all needed medication be provided. Sharma also commented that the judge agreed that Barapind would be allowed visitors twice a day who could verify his condition.

3. (SBU) Sukhman Dhani, a member of Barapind's stateside legal team, reported to us that Barapind's family had encountered difficulty locating him, and was getting the "run-around" from the Punjab police. He commented that the family was able to locate Barapind's place of detention near Jalandhar through media reports. Dhani also noted that Barapind's family was unable to attend the remand hearing, because it was moved from 11:00am to 6:00am without notice.

4. (SBU) Exercising USG rights under the extradition agreement to monitor Barapind's treatment in India, PolOff and PolFSN will seek to visit Barapind June 21 in Phillaur to verify his condition and remind Punjab authorities of their commitments under the terms of his extradition.

5. (U) Visit New Delhi's Classified Website:
(<http://www.state.sgov.gov/p/sa/newdelhi/>)
MULFORD

Additional Addressees:
None

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

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E.O. 12958: N/A
TAGS: PHUM, CJAN, CVIS, PTER, PREL, KCRM, PGOV, IN
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CONDITION

REF: A. NEW DELHI 04283

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B. STATE 33728
C. NEW DELHI 994
D. STATE 6905
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SUBMISSION
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End Cable Text

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Jagdeep Singh Sekhon, Esq.
Manjit Kaur Rai, Esq.
Karnardeep S. Athwal, Esq.

June 1, 2006

Kenneth R. Propp
Acting Assistant Legal Adviser
Office of Law Enforcement & Intelligence
Office of the Legal Adviser
United States Department of State
Washington, D.C. 20520

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

VIA FACSIMILE: (202) 647-7802

Re: Extradition of Kulvir Singh Barapind

Dear Mr. Propp:

I am in receipt of your letter, and hereby acknowledge that I have been duly advised by you and Jacob Cogan that the Deputy Secretary of State has authorized Kulvir Singh Barapind's extradition to India by signing a surrender warrant. I also confirm that I am aware that Mr. Barapind has until June 12, 2006, to file a civil action seeking an injunction against his surrender. I further confirm my understanding that if such an action is not filed the Department of State will proceed to execute Mr. Barapind's surrender.

What I hope that I have adequately communicated to Mr. Cogan in the past, I here communicate to you. Mr. Barapind's current concerns are with both the Government of India's motivation and ability to comply with the terms of the Convention Against Torture. To the extent possible we would like to discuss with the appropriate people at your office what mechanisms the Department of State has set in place to monitor Mr. Barapind's situation in India, and how representatives of Mr. Barapind can support these mechanisms. To this end, I have discussed with Mr. Cogan in the past regarding the possibility of securing an appropriate contact at the United States Embassy in New Delhi who could be contacted with information relevant to whether the Government of India is abiding by terms of the Convention Against Torture.


In the past, during discussions with the Department of State I have tried to be mindful regarding your office's policies that limit the sharing of details and specifics regarding the conditions of Mr. Barapind's surrender. I suspect similar limitations may apply to discussing the Department of State's monitoring of Mr. Barapind's situation in India. However, shedding whatever light your office can and providing an avenue for Mr. Barapind to communicate relevant concerns to a United States official at the Embassy would likely result in avoiding any challenge to execution of his surrender to India.

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I thus ask that your office schedule a teleconference to discuss – to the extent possible – the Department of State's monitoring of Mr. Barapind's situation in India; and providing a point of contact at the Embassy to whom Mr. Barapind representatives could communicate information relevant to whether his treatment is complying with the Convention Against Torture.

I look forward to hearing from you.

Sincerely



Jagdip Singh Sekhon, Esq.
Attorney for Kulvir Singh Barapind

cc: Jacob Cogan
David Glass

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ensaaf FIGHTING IMPUNITY IN INDIA

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ENSAAF

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Mie Lewis

Human Rights
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Richard J. Wilson

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November 23, 2005

Via: Federal Express (tel: 202-647-7324)

Linda Jacobson

Assistant Legal Adviser

Office of the Legal Adviser, Law Enforcement & Intelligence

U.S. Dept. of State

2201 C Street, NW, Rm. 5419

Washington, D.C. 20520

Re: Extradition of Kulvir Singh Barapind

Dear Ms. Jacobson,

Please find enclosed Kulvir Singh Barapind's application for relief from extradition to India under Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The enclosed application includes the following documents: 1) a brief and exhibits prepared by ENSAAF, a nonprofit organization fighting impunity in India, and 2) a brief and exhibits prepared by the Center for Human Rights & Global Justice of New York University School of Law. The ENSAAF exhibits include, among other documents, affidavits by two Sikhs previously extradited from the United States to India and an affidavit by human rights expert Brad Adams, Executive Director, Human Rights Watch/Asia. With this application and supporting documents, Mr. Barapind presents substantial and corroborated evidence that Indian officials will torture him if he is extradited to India.

We ask the Secretary of State to consider these materials in addition to the record developed at Mr. Barapind's asylum and extradition hearings, in exercising her duty pursuant to 22 C.F.R. § 95.2 - 95.3 (2000). We request the Secretary to comply with U.S. obligations under the Convention Against Torture and not sign the warrant surrendering Mr. Barapind to India.

Please contact us for further information.

Sincerely,


Sukhman Dhani, Esq.
Legal Director


Jaskaran Kaur, Esq.
Executive Director

Cc: Jagdip S. Sekhon, Esq.
Sekhon & Sekhon

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELL
DATE/CASE ID: 09 JUL 2008 200603431

Margaret Satterthwaite
Center for Human Rights & Global Justice
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**SUBMITTED TO THE HONORABLE DR. CONDOLEEZZA RICE,
UNITED STATES SECRETARY OF STATE**

**APPLICATION OF KULVIR SINGH BARAPIND
FOR RELIEF UNDER THE CONVENTION AGAINST TORTURE TO
DENY HIS EXTRADITION TO THE INDIAN GOVERNMENT**

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

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**SUBMITTED TO THE HONORABLE DR. CONDOLEEZZA RICE,
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FOR RELIEF UNDER THE CONVENTION AGAINST TORTURE TO
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TABLE OF CONTENTS

TABLE OF EXHIBITS iv

TABLE OF AUTHORITIES vi

STATEMENT OF INTEREST 1

I. INTRODUCTION 2

II. QUESTION PRESENTED 3

III. PROCEDURAL HISTORY 4

 A. THE ASYLUM PROCEEDINGS. 4

 B. THE EXTRADITION PROCEEDINGS. 4

IV. STATEMENT OF FACTS 8

 A. THE POLITICAL CONTEXT OF MR. BARAPIND'S TORTURE. .. 8

 B. MR. BARAPIND'S TORTURE AT THE HANDS OF THE INDIAN GOVERNMENT. 11

1. Mr. Barapind's June 1988 Detention And Torture By Indian Officials. 11

2. Mr. Barapind's July 1989 Detention And Torture By Indian Officials. 12

 C. THE TORTURE OF MR. BARAPIND'S FAMILY AND FRIENDS BY INDIAN OFFICIALS. 14

V. SUMMARY OF ARGUMENT 18

VI. ARGUMENT 21

 A. DIPLOMATIC ASSURANCES WILL NOT PROTECT MR. BARAPIND FROM TORTURE BY INDIAN OFFICIALS. 21

1. Indian Officials Tortured Daya Sandhu, Despite Diplomatic Assurances Promising Protection From Torture. 21

2. Indian Officials Tortured Kamaljit Sandhu, Despite Diplomatic Assurances Promising Protection From Torture. 22

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3. Mr. Barapind Cannot Challenge Violations Of Diplomatic Assurances And Will Have No Judicial Remedy To Protect Himself From Torture. 24

B. THE SECRETARY OF STATE MAY NOT EXTRADITE MR. BARAPIND BECAUSE INDIAN OFFICIALS WILL TORTURE HIM. 26

1. The Convention Against Torture Prohibits The Secretary Of State From Extraditing A Person Who Is More Likely Than Not To Be Tortured. 27

2. Substantial Evidence Establishes That Mr. Barapind Will Be Tortured Upon Extradition to India. 29

 a. Recent State Department and human right reports document flagrant, gross, and mass human rights violations in Punjab and India. 30

 b. Indian officials continue to torture individuals they suspect to be Sikh militants, and will also torture Mr. Barapind. 33

 c. Expert opinion agrees that Mr. Barapind is likely to be tortured because of the practice of custodial torture and death in Punjab and India and Mr. Barapind's status as a suspected militant. 38

 d. Indian officials previously tortured and threatened to kill Mr. Barapind, and also tortured his friends and family in their attempts to apprehend him. 41

 e. Mr. Barapind cannot relocate to another part of India to avoid torture. 43

3. Factors Unique To Mr. Barapind Further Establish That He Will Be Tortured Upon Extradition to India. 44

 a. The Indian government extrajudicially executed Mr. Barapind's alleged accomplices, and will mete out similar treatment to him. 45

 b. Indian officials tortured and killed one affiant and intimidated another affiant to fabricate evidence to support their extradition request of Mr. Barapind. 46

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c. At least one official responsible for Mr. Barapind's torture has been promoted to a senior police position. 47

d. India's laws do not adequately protect against torture, and, in fact, encourage torture during interrogations. 48

C. INDIA WILL DENY MR. BARAPIND A FAIR TRIAL, FURTHER ENSURING THAT HE WILL BE TORTURED. 50

1. India Will Deny Mr. Barapind Access To His Legal Counsel. 51

2. India Will Violate The Rule Of Specialty. 53

3. Indian Authorities Will Deny Mr. Barapind A Speedy Trial. 56

VII. CONCLUSION AND PRAYER FOR RELIEF 59

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TABLE OF EXHIBITS

- 1 MEDICAL FOUNDATION: LIVES UNDER THREAT (July 1999)
- 2 Affidavit of Kulvir Singh Barapind
- 3 Affidavit of Balwant Singh
- 4 Affidavit of Gurtej Singh
- 5 Affidavit of Sarwan Singh
- 6 ENSAAF, PUNJAB POLICE: FABRICATING TERRORISM THROUGH ILLEGAL
DETENTION AND TORTURE (Oct. 2005).
- 7 Affidavit of Daya Singh Sandhu with Certified English Translation
- 8 Affidavit of Kamaljit Kaur with Certified English Translation
- 9 Affidavit of Jagdip Singh Sekhon, former attorney for Daya Singh Sandhu
and Kamaljit Kaur Sandhu
- 10 Expert Affidavit of Ram Narayan Kumar, Director, South Asian
Orientation Course in Human Rights and Peace Studies, South Asian
Forum for Human Rights
- 11 Expert Affidavit of Brad Adams, Executive Director of Human Rights
Watch/Asia
- 12 Expert Affidavit of Rajvinder Singh Bains, Punjab & Haryana High Court
Lawyer
- 13 Affidavit of Narain Singh
- 14 *In the Matter of the Extradition of Kulbir Singh*, No. CIV-F-98-5489
OWW, Extradition Hearing Day 1, February 13, 2001, Reporter's
Transcript of Proceedings
- 15 Devender Pal Singh Bhullar, Application for Retracting Confession of the
Applicant-Accused Recorded During Police Custody, (March 1996)
- 16 *Cornejo v. Seifer*, Case No. 01-cv-662-AHS, Declaration of Samuel M.
Witten, Assistant Legal Advisor for Law Enforcement and Intelligence,
October 2001

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17

Daya Singh Lahoria v. Union of India, 2001 SOL Case No. 267 (Supreme Court
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8 C.F.R. §1208.18

22 C.F.R. § 95.1 *et seq.*

22 C.F.R. § 95.2 *et seq.*

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- Kamalithas v. INS*, 251 F.3d 1279 (9th Cir. 2001)
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- Khup v. Ashcroft*, 376 F. 3d 898 (9th Cir. 2004)
- Miranda v. Arizona*, 384 U.S. 436 (1966)
- Nuru v. Gonzales*, 404 F.3d 1207 (9th Cir. 2002)
- Powell v. Alabama*, 287 U.S. 45 (1932)
- Ratnam v. Ins*, 154 F.3d 990 (9th Cir. 1998)
- Singh v. Ashcroft*, 106 Fed. Appx. 638 (9th Cir. 2004) (unpublished)
- Singh v. Ashcroft*, 367 F.3d 1182 (9th Cir. 2004)
- Singh v. Ashcroft*, 75 Fed. Appx. 675 (9th Cir. 2003) (unpublished)
- Singh v. Moschorak*, 1993 U.S. Dist. LEXIS 19462 (D. Cal. 1993)
- Xiao v. Ashcroft*, 98 Fed. Appx. 632 (9th Cir. 2004)
- Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004)

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- AMNESTY INTERNATIONAL, 2005: THE STATE OF THE WORLD'S HUMAN RIGHTS (2005)
- AMNESTY INTERNATIONAL, BREAK THE CYCLE OF IMPUNITY AND TORTURE IN PUNJAB (Jan. 2003)
- AMNESTY INTERNATIONAL, HUMAN RIGHTS VIOLATIONS IN PUNJAB; USE AND ABUSE OF THE LAW (May 1991)
- AMNESTY INTERNATIONAL, INDIA: TORTURE, RAPE & DEATHS IN CUSTODY (1992)
- AMNESTY INTERNATIONAL, INDIA, WORDS INTO ACTION, RECOMMENDATIONS FOR THE PREVENTION OF TORTURE 15 (Jan. 2001)
- AMNESTY INTERNATIONAL, PUNJAB POLICE: BEYOND THE BOUNDS OF LAW (Aug. 1994)
- CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, ANALYSIS OF INTERNATIONAL LAW AND DOMESTIC LAW STANDARDS GOVERNING APPLICATIONS FOR RELIEF FROM EXTRADITION UNDER THE CONVENTION AGAINST TORTURE (April 2005)

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UNCLASSIFIED

UNCLASSIFIED

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INDIA

UNCLASSIFIED

UNCLASSIFIED

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Devender Pal Singh Bhullar v. State, N.C.T. of Delhi & Anr., 2002 SOL Case No. 672 (Supreme Court Dec. 2002)

UNCLASSIFIED

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STATEMENT OF INTEREST

Petitioner Kulvir Singh Barpind retained ENSAAF, through counsel, to prepare and submit his application for relief under the Convention Against Torture to the Hon. U.S. Secretary of State. ENSAAF is a 501(c)(3) non-profit organization, incorporated under the laws of the Commonwealth of Massachusetts. ENSAAF has no parent corporation and issues no shares of stocks. ENSAAF fights impunity in India for state-sponsored human rights abuses by working to bring perpetrators to justice, investigating and exposing human rights violations, and organizing survivors to engage in advocacy.

ENSAAF's interest in this case is directly related to its mission to advance the protection of human rights in India and its knowledge, based on primary and secondary research, that the Government of India will torture Kulvir Singh Barapind if he is extradited to India.

ENSAAF has completed several projects this year, including organizing a torture and trauma evaluation study in Amritsar, Punjab, conducted by the Physicians for Human Rights and the NYU/Bellevue Program for Survivors of Torture; documenting and publishing a report on torture and illegal detention during recent arrests of alleged Punjabi militants; and providing legal support to the petitioners in the Punjab mass cremations matter proceeding before the Indian National Human Rights Commission. ENSAAF has also provided materials, upon request, to the Immigration and Refugee Board of Canada regarding current human rights practices in India. For further information about ENSAAF please visit www.ensaaf.org.

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I.

INTRODUCTION

Kulvir Singh Barapind's extradition to India, pursuant to the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain ("1931 Treaty") Dec. 22, 1931, U.S.-Gr.Brit., T.S. No. 849 (1932), was certified on November 9, 2005. The Secretary of State for the United States of America must now decide whether to surrender Mr. Barapind to the Government of India, which includes a determination of whether his extradition is prohibited under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT", "Convention", or "Convention Against Torture"). 22 C.F.R. § 95.2(b). The Convention prohibits the Secretary from surrendering Mr. Barapind to India if it is more likely than not that Indian government officials will torture him. *See Cornejo-Barretto v. Seifert*, 218 F.3d 1004, 1013-1014 (9th Cir. 2000); *see also*, 22 C.F.R. § 95.2(a)(1). Mr. Barapind, through this application and accompanying evidence, demonstrates that Indian officials will torture him if he is extradited to India. Accordingly, Mr. Barapind submits that his extradition is prohibited under the Convention and its implementing regulations, and respectfully requests that the Secretary of State decline to surrender him to the Indian government.

Additionally, Mr. Barapind requests that if the Secretary possesses any information or evidence that is inconsistent with this application or the accompanying documents, he receive notice of that information or evidence and an opportunity to respond to it.

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II.

QUESTION PRESENTED

Whether the Government of India ("GOI") is more likely than not to torture Mr. Barapind in violation of the Convention Against Torture, where:

- a. the GOI has failed to honor diplomatic assurances that it will not torture Sikhs extradited by the United States; and
- b. with respect to Mr. Barapind:
 - i. the GOI brutally tortured Mr. Barapind on two occasions before he fled to the United States;
 - ii. the GOI brutally tortured Mr. Barapind's family and friends in its attempts to apprehend him;
 - iii. the GOI extrajudicially executed Mr. Barapind's alleged accomplices in the crimes underlying its extradition request;
 - iv. the GOI tortured, murdered, and coerced witnesses to procure "evidence" to support its request for Mr. Barapind's extradition; and
- c. with respect to current GOI practices:
 - i. custodial torture and death remain widespread and systematic throughout India and Punjab;
 - ii. the GOI has recently escalated its practice of torturing suspected Sikh militants and their sympathizers; and
 - iii. India's judiciary is incapable of preventing torture or providing fair trials.

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III.

PROCEDURAL HISTORY

A. THE ASYLUM PROCEEDINGS.

Kulvir Singh Barapind fled India in March 1993 and arrived in the United States on April 25, 1993. Since April 25, 1993, he has been in detention, first in the custody of the Immigration and Naturalization Service (INS) and, later, the U.S. Marshall. In June 1993, Mr. Barapind applied for asylum and withholding of deportation. On January 13, 1994, the Immigration Judge denied asylum to Mr. Barapind.¹ On July 26, 1994, the Board of Immigration Appeals (BIA) dismissed Mr. Barapind's appeal and barred him from claiming refugee status. In August 1994, Mr. Barapind filed a petition for writ of habeas corpus in the District Court for the Central District of California challenging the BIA's decision. In March 1996, the District Court remanded Mr. Barapind's asylum and withholding application for further proceedings before the BIA; Mr. Barapind appealed to the Court of Appeals for the Ninth Circuit. In May 1997, in *Barapind v. Rogers*, 114 F.3d 1193 (9th Cir. 1997) (unpublished), the Court of Appeals rejected the Immigration Judge's adverse credibility findings and veracity findings as to the criminal allegations made against Mr. Barapind by the Indian government. Additionally, the Court of Appeals affirmed the District Court's remand, but modified the District Court's remand order. In July 1997, a modified remand order was entered by the District Court, directing the BIA to re-adjudicate Mr. Barapind's asylum application.

B. THE EXTRADITION PROCEEDINGS.

On September 18, 1997, the government of India filed a request for the extradition of Kulvir Singh Barapind to India for 11 incidents involving allegations of murder, conspiracy to

¹ For a detailed procedural history, please see *In the Matter of the Extradition of Kulbir Singh*, 170 F.Supp.2d. 982, 985-7 (E.D. Cal. Sept. 2001).

UNCLASSIFIED

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murder, attempted murder, and robbery.² In October 1997, the BIA ordered Mr. Barapind's exclusion and asylum proceedings held in abeyance, pending the outcome of India's extradition request. In February 1998, Mr. Barapind filed a petition for writ of habeas corpus challenging the BIA's order. In April 1998, the magistrate judge of the District Court for the Eastern District of California stayed the extradition proceedings pending the outcome of the BIA's re-adjudication of Mr. Barapind's asylum application. The District Court for the Eastern District of California vacated the stay, and in June 1999, dismissed Mr. Barapind's habeas corpus petition. *Barapind v. Reno*, 72 F.Supp.2d 1132 (E.D. Cal. 1999). Mr. Barapind appealed to the Court of Appeals for the Ninth Circuit, and in August 2000, the Court of Appeals affirmed the dismissal on other grounds without prejudice. *See Barapind v. Reno*, 225 F.3d 1100, 1107-1113 (9th Cir. 2000). The Court of Appeals:

direct[ed] that the [district court's] denial 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.

Id. The extradition proceedings thus continued against Mr. Barapind while his asylum proceedings were held in abeyance.

On September 18, 2001, Judge Wanger of the District Court for the Eastern District of California certified Mr. Barapind's extradition on three charges: First Information Report (FIR) No. 100, the murder of Sahib Singh and the attempted murder of Makhan Ram; FIR No. 34, the murders of Balwant Singh Sarhal, Amar Nath Kanugo, Suda Ram and Jasbir Singh; and FIR No. 89, the murder of Kulwant Kaur. Judge Wanger refused extradition in charges relating to eight

² His extradition was sought under the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain ("1931 Treaty") Dec. 22, 1931, U.S.-Gr.Brit., T.S. No. 849 (1932). *In the Matter of the Extradition of Kulvir Singh*, 170 F.Supp. 2d. at 987.

UNCLASSIFIED

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other incidents—three because of the lack of probable cause³ and five because they fell under the political offense exception.⁴ As to the three incidents for which Judge Wanger found insufficient probable cause, Mr. Barapind had produced obliterating⁵ evidence that the Indian government had fabricated certain affidavits. One affiant died from police torture in the course of extracting his signature (FIR No. 220); a second affiant failed to identify any of the murderers of her husband in court, while her brother declared Mr. Barapind's name was inserted afterwards by the police in their complaint (FIR No. 52); and a third affiant's thumbprints were forcibly procured by the police after they threatened his life (FIR No. 87). *In the Matter of the Extradition of Kulvir Singh*, 170 F.Supp. 2d 982 (E.D. Cal. Sept. 2001).

In March 2004, a three-member panel of the Court of Appeals for the Ninth Circuit upheld Mr. Barapind's extradition for the three charges certified by Judge Wanger. *Barapind v. Enomoto*, 360 F.3d 1060 (9th Cir. 2004). On August 23, 2004, the Court of Appeals vacated the District Court's decision and reheard Mr. Barapind's case *en banc*. *Barapind v. Enomoto*, 381 F.3d 867 (9th Cir. 2004). The Court of Appeals issued its opinion on March 9, 2005, finding Mr. Barapind extraditable for two charges—FIR Nos. 100 and 89—and remanding the third charge, FIR No. 34, to the District Court for further consideration under the political offense exception.

³ "The Court of Appeals in this [Ninth] Circuit describes the review of probable cause as 'by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused was guilty.'" 170 F.Supp.2d 983, 982 (E.D. Cal. 2001).

⁴ The political offense exception found in article 6 of the extradition treaty governing this case bars extradition for crimes that are of a political character:

A fugitive criminal shall not be surrendered if the crime in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try to punish him for a crime or offense of a political character. Treaty for Mutual Extradition of Criminals Between the United States of America and Great Britain, Dec. 22, 1931, art. 6, U.S.-Gr. Brit., T.S. No. 849 (1932).

⁵ "[G]enerally, evidence that explains away or completely obliterates probable cause is the only evidence admissible at an extradition hearing, whereas evidence that merely controverts the existence of probable cause, or raises a defense, is not admissible." *In the Matter of the Extradition of Kulvir Singh*, 170 F.Supp.2d at 994, citing *Mainero v. Gregg*, 164 F.3d 1199, 1207 n.7 (9th Cir. 1999).

UNCLASSIFIED

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Barapind v. Enomoto, 400 F.3d 700 (9th Cir. 2005). In an Order dated October 24, 2005, the District Court certified Mr. Barapind for extradition for the charges contained in FIR 34.

UNCLASSIFIED

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IV.

STATEMENT OF FACTS

A. THE POLITICAL CONTEXT OF MR. BARAPIND'S TORTURE.

The movement for Sikh self-determination in Punjab, India developed after the Indian Army invaded the Harmandir Sahib (Golden Temple) complex in Amritsar, Punjab—the center of Sikh religious and political life—and around 40 other Sikh gurdwaras in June 1984, killing between 4000 and 8000 people, mostly pilgrims. In retaliation for this massacre, on October 31, 1984, Prime Minister Indira Gandhi was assassinated in Delhi by two Sikh members of her security staff. After the assassination, senior politicians and police officers orchestrated pogroms against Sikhs in Delhi and other cities across India, killing at least 3000 people, and burning Sikh homes and businesses. Jaskaran Kaur, *Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India*, 15 Harvard Human Rights Journal 269, 271 (Spring 2002).

The decade from 1984 to 1994 witnessed an escalation of militancy in Punjab and its repression by the Indian State. Reports published in this period by the U.S. Department of State and by several international human rights organizations demonstrate that the Indian government routinely used disappearances, extrajudicial executions, and custodial torture in its counter-insurgency operations. AMNESTY INTERNATIONAL, PUNJAB POLICE: BEYOND THE BOUNDS OF LAW (Aug. 1994); HUMAN RIGHTS WATCH/PHYSICIANS FOR HUMAN RIGHTS, DEAD SILENCE: THE LEGACY OF ABUSES IN PUNJAB (May 1994); U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1993: INDIA (1994); HUMAN RIGHTS WATCH, PUNJAB IN CRISIS: HUMAN RIGHTS IN INDIA (Aug. 1991); AMNESTY INTERNATIONAL, HUMAN RIGHTS VIOLATIONS IN PUNJAB; USE AND ABUSE OF THE LAW (May 1991); *see also*, for post-1994 reports,

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ENSAAF's Punjab human rights library at: <http://www.ensaaf.org/punjabhr.html>. For example, in its 1993 report *India: Human Rights Practices, 1993*, the Department of State reported:

In Punjab police continued to engage in extrajudicial killings including faked "encounter" killings. In the typical scenario, police take into custody a suspected militant or militant supporter without filing an arrest report. If the detainee dies during interrogation or is executed, officials deny he was ever in custody and claim he died during an armed encounter with police or security forces. Alternatively, police may claim to have been ambushed by militants while escorting a suspect. Although the detainee invariably dies in "crossfire," police casualties in these "incidents" are rare.

U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1993: INDIA (1994).

Human Rights Watch (HRW) described the police counter-insurgency operations as "the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder." HUMAN RIGHTS WATCH/PHYSICIANS FOR HUMAN RIGHTS, DEAD SILENCE:

THE LEGACY OF ABUSES IN PUNJAB, 2 (May 1994). In Mr. Barapind's case, the Court of Appeals for the 9th Circuit observed:

In the course of this conflict the government of India has resorted to gross disregard of human rights -- torture of suspects; detention of suspects for months or years without trial; abduction of suspects by the police without acknowledgment by the police that the kidnappings have occurred; and murder of suspects by the police in "encounters" or "escapes" staged by the police...

Barapind v. Rogers, 114 F.3d 1193, 1193 (9th Cir. 1997) (unpublished).

As part of its counter-insurgency operations, the Indian government passed several draconian laws sanctioning police impunity and facilitating human rights abuses. The Terrorist and Disruptive Activities (Prevention) Act ("TADA") of 1987 establishes *in camera* courts and authorizes the detention of persons in a "disturbed area" based on mere suspicion. For certain charges, detainees are presumed guilty until proven innocent. Further, in practice, TADA courts admit confessions extracted through torture. The Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983 empowered security forces to search premises and arrest people

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without warrant. Section 4 of the Special Powers Act empowered them to shoot to kill suspected terrorists, and Section 7 extended prosecutorial immunity as to any police action taken pursuant to the Act.⁶ Amnesty International described this act as license for the security forces "to torture and kill with impunity." AMNESTY INTERNATIONAL, INDIA: TORTURE, RAPE & DEATHS IN CUSTODY, 60 (1992). Freedom of speech and association were also severely curtailed.

Security forces targeted Mr. Barapind because of his involvement in the Sikh Students Federation ("SSF" or "Federation"); a political group advocating for a separate Sikh state called Khalistan. In Punjab, India, Mr. Barapind was a senior SSF member, serving in several leadership positions from local president to national joint secretary. As an SSF leader, Mr. Barapind's duties included speaking at rallies on religious and political issues, organizing membership drives, planning ceremonies to commemorate Sikh youth murdered by Indian security forces, and organizing direct actions and demonstrations against state repression.

Indian security forces repeatedly detained and brutally tortured Mr. Barapind. Their methods included suspending Mr. Barapind in the air from his wrists, which were tied behind his back, Exhibit 1, Figure 1, MEDICAL FOUNDATION: LIVES UNDER THREAT (July 1999); rolling a wooden log over his thighs to crush the muscles, *Id.*, Figure 4; stretching his legs apart at his waist to a 180-degree angle, *Id.*, Figure 2; and applying electric shocks. Each torture session lasted approximately 2.5 to 3.5 hours. Exhibit 2, *Affidavit of Kulvir Singh Barapind*, ¶26, 39. Indian security forces also tortured Mr. Barapind's family, in particular his brother, father, and brother-in-law. Moreover, they tortured and extrajudicially executed many of his close political associates, including many leaders of the Federation.

⁶ Section 7 states: No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act. Armed Forces (Punjab and Chandigarh) Special Powers Act (1983).

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B. MR. BARAPIND'S TORTURE AT THE HANDS OF THE INDIAN GOVERNMENT.

1. Mr. Barapind's June 1988 Detention And Torture By Indian Officials.

Indian security forces first tortured Mr. Barapind in June 1988. Nakodar city police apprehended Mr. Barapind from the Rahimpur bus station on June 12, 1988. Ex. 2, ¶17.

Nakodar police took Mr. Barapind to the police station, where Inspector Onkar Singh was in charge. *Id.*, ¶18. After the Inspector learned of Mr. Barapind's role in the Federation, he took Mr. Barapind to the torture room and directed his subordinates to strip Mr. Barapind of his clothes and tie Mr. Barapind's hands behind his back. As Mr. Barapind recounts in his affidavit:

There was a hook in the ceiling with a rope running through it. The hanging rope was tied to my wrists and I was hoisted into the air. The pain was unbearable and I felt as if my shoulders were being pulled from my body. Again, they [the police] asked me why I was in Rahimpur. While I was dangling, I was punched full-force in my stomach. As I jerked around from the blows, the pain in my shoulders became worse.

Id., ¶19. The police pulled Mr. Barapind down, and applied the next method of torture, the roller. While one officer put his knee in between Mr. Barapind's tied hands, another held his legs straight out in front of him. A third officer stood on top of a wooden roller, which two officers then rotated up and down Mr. Barapind's thighs ten to 15 times. A.R. 272. Next, the police stretched Mr. Barapind's legs apart at the waist, as far as they could, four to five times. *Id.* 273-5. Mr. Barapind felt as if he were ripping apart. Ex. 2, ¶20.

After stretching his legs, they again suspended him in the air from his wrists for eight to ten minutes, A.R. 276, then brought him to the ground and applied the roller, and again stretched his legs apart. After this first torture session, the police gave Mr. Barapind his clothes and threw him in a cell. Ex. 2, ¶21.

Early the next morning, Nakodar police brought Mr. Barapind back to the torture room. They repeated the same torture methods from the previous day. After stripping his clothes, the

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police suspended him by his wrists, applied the roller, and stretched his legs apart. Mr. Barapind lost consciousness twice during the torture session because of the unbearable pain. *Id.*, ¶22.

Later that afternoon, Mr. Barapind was transferred to the custody of Goraya police. *Id.* Officials began torturing him in the morning. Goraya police brought him to a torture room. They demanded that Mr. Barapind reveal the identities of Federation members. When Mr. Barapind refused to reveal names, they stripped him naked and tied his hands behind his back. Officials then suspended him from the ceiling. After a while, they lowered him and crushed his thighs with a roller. Officials then stretched his legs apart, causing Mr. Barapind to lose consciousness. *Id.*, ¶24.

When Mr. Barapind regained consciousness, the officials resumed their torture. Officials suspended Mr. Barapind from the ceiling, used the roller on his thighs, and stretched his legs apart, causing Mr. Barapind to lose consciousness again. *Id.*, ¶25. Goraya police illegally detained Mr. Barapind for eight days. *Id.*, ¶26.

Mr. Barapind was produced before the magistrate around June 17, and charged with sheltering militants, supplying arms to militants, and advocating for Khalistan. *Id.* The magistrate sent Mr. Barapind to Central Jail in Jalandhar, where he remained for five and a half months until his release on bail on November 30, 1988. The cases were later withdrawn or dropped by the authorities. *Id.*, ¶27.

2. Mr. Barapind's July 1989 Detention And Torture By Indian Officials.

Thereafter, police regularly raided Mr. Barapind's residence, harassing him and purportedly searching for contraband. *Id.*, ¶28. On July 21, 1989, the Punjab Police and the Central Reserve Police Force ("CRPF") apprehended Mr. Barapind from his home. The security forces took Mr. Barapind to a CRPF camp in Phagwara. *Id.*, ¶29. He was immediately taken to a

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torture room. Inspector Gurdev Singh and other officers accused Mr. Barapind of sheltering militants and hiding weapons. *Id.*, ¶30.

Officials stripped Mr. Barapind naked and tied his hands behind his back. Officials repeatedly suspended him in the air by his wrists, questioning him about the identities of senior Federation leaders. When he refused to answer their questions, the officials lowered him to the ground and crushed his thighs with a roller. *Id.*, ¶31. Next, they touched wires connected to a generator to his toe and little finger. Officials rotated a crank on the generator causing electric shocks to jolt Mr. Barapind's body. Officials then applied electric shocks to Mr. Barapind's ear lobes, penis, and one of his testicles. Throughout the torture, they accused him of provoking people against the government, of being a militant, and fighting for Khalistan. *Id.*, ¶32-3.

Officials continued torturing Mr. Barapind the following afternoon. They stripped him, hung him repeatedly from the ceiling, and crushed his thighs with a roller ten to 15 times. *Id.*, ¶34; A.R. 294. Next, officials forced Mr. Barapind to lie on his stomach, tied his hands behind his back, and tied his feet together. One official then sat on Mr. Barapind's buttocks, while another beat the soles of Mr. Barapind's feet with a wooden rod, striking his soles 30 to 40 times. After this beating, Mr. Barapind's feet swelled, causing his toenails to peel off. Ex. 2, ¶35; A.R. 296.

Later in the evening, the police transferred Mr. Barapind to the Criminal Investigation Agency (CIA) in Kapurthala. In the morning, Mr. Barapind was presented before Deputy Superintendent of Police (DSP) Bajwa. DSP Bajwa accused Mr. Barapind of demanding Khalistan and provoking people against the government. Ex. 2, ¶36.

Officials then took Mr. Barapind to the torture room, where they stripped him naked and tied his hands behind his back. Officials repeatedly suspended Mr. Barapind from the ceiling for

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ten to 12 minutes at a time, stretched his legs apart, and crushed his thighs with a roller. *Id.*, ¶36-7; A.R. 289. Officials also applied electric shocks to Mr. Barapind's toes, ear lobes, penis, and testicles. Officials then beat Mr. Barapind on his buttocks with leather straps. They threatened to kill him if he did not respond to their questions. Mr. Barapind "told them to go ahead and kill me as death was better than the torture I was receiving." He spent the night chained to the door of the cell. Ex. 2, ¶38.

Mr. Barapind was released on July 31, 1989 through public intervention. *Id.*, ¶39. In September 1989, security forces raided Mr. Barapind's house again and tried to arrest him. They punched him and beat him with wooden rods in front of a crowd of villagers that had gathered during the raid. The head of the village council intervened, however, and Mr. Barapind was not taken away. *Id.*, ¶40.

In April 1990, security forces raided Mr. Barapind's home looking for him. He, however, was away. Thereafter, Mr. Barapind went into hiding. *Id.*, ¶44-6. After three years of living in hiding, he fled to the United States in March 1993. *Id.*, ¶60.

C. THE TORTURE OF MR. BARAPIND'S FAMILY AND FRIENDS BY INDIAN OFFICIALS.

In their efforts to apprehend Mr. Barapind, security forces severely tortured Mr. Barapind's father, brother, and brother-in-law, and harassed and illegally detained the rest of his family. Security forces tortured Mr. Barapind's brother-in-law Balraj Singh, who was a government employee and uninvolved with Mr. Barapind, so severely that they shattered his legs. On four different occasions, when security forces raided Mr. Barapind's home but did not find him, they took family members hostage and tortured them. *See Exhibit 3, Affidavit of Balwant Singh.* According to Mr. Barapind's brother Balwant Singh, on one occasion, the police

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repeatedly threatened to "put us into such bad shape that we would be neither living nor dead," if they did not bring Mr. Barapind to the police station. *Id.*, ¶4. On another occasion, security forces threatened to kill Balwant Singh in place of Mr. Barapind. *Id.*, ¶7. Officials also threatened to lock up Mr. Barapind's entire family if their forces could not find Mr. Barapind, and repeatedly threatened Balwant Singh with Mr. Barapind's death. *Id.* Unwilling to endure further torture, Balwant Singh went into hiding and ultimately fled for Austria in March 1991, where he was granted asylum. *Id.*, ¶2.

Security forces also tortured Mr. Barapind's associates from the Federation in their efforts to apprehend Mr. Barapind. On May 30, 1988, Indian security forces illegally detained and tortured Gurtej Singh because of his association with Mr. Barapind. Exhibit 3, *Affidavit of Gurtej Singh*, ¶4. Senior Superintendent of Police (SSP) Mohammad Izhar Alam, the senior-most officer in the district, gave orders directing officials to torture Gurtej Singh and interrogate him about the whereabouts of Mr. Barapind, who had not yet been apprehended by security forces. *Id.*, ¶6.

During this arrest, Gurtej Singh was severely tortured several times over a period of two weeks. *Id.*, ¶10. He was also arrested and severely tortured on four other separate occasions. *Id.*, ¶17. During these torture sessions, officials suspended Gurtej Singh, attaching weights to his legs to increase the pressure on his arms and shoulders; crushed his thighs with a roller, standing on the roller to increase the pressure on Gurtej Singh's thighs; and tore his legs apart to 180 degrees, kicking him in his exposed groin. *Id.*, ¶5-10. Gurtej Singh also had to bear the constant screaming of other torture victims. *Id.*, ¶10.

After this two-week period of torture, officials transferred Gurtej Singh to the custody of Goraya Police. *Id.*, ¶11. At the Goraya police station, he met Mr. Barapind, who had been

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apprehended in early June and was also detained there after his first experiences of torture. *Id.* While detained at the police station, Gurtej Singh and Mr. Barapind discussed their respective experiences of torture. *Id.*, ¶12. Gurtej Singh observed the physical signs of torture on Mr. Barapind's body. He observed that Mr. Barapind could barely walk and had bruises on his arms and wrists. *Id.*, ¶13. Gurtej Singh also visited Mr. Barapind the day after Mr. Barapind was released from his second session of torture in 1989, and saw the physical effects of torture then, as well, observing that Mr. Barapind had great difficulty walking, and could not raise his arms. *Id.*, ¶16.

Sarwan Singh witnessed two incidents of Indian security forces torturing Mr. Barapind. In July 1989, he was detained with Mr. Barapind in a partially divided cell at the CRPF camp in Phagwara, after having been tortured several days earlier. Exhibit 4, *Affidavit of Sarwan Singh*, ¶7, 19. During the first torture session lasting two and a half hours, Sarwan Singh observed security officials pulling the rope that was suspending Mr. Barapind. He also saw security officials take a wooden roller from his side of the partition, and then heard Mr. Barapind's constant screams of pain from the torture. As Sarwan Singh states in his affidavit: "I thought they would kill him, and then kill me, too." *Id.*, ¶20-2.

In the morning, when Mr. Barapind was permitted to use the bathroom, he limped past the partial wall and saw Sarwan Singh; they exchanged a few words. Sarwan Singh knew Mr. Barapind from the Federation. He noted that Mr. Barapind could barely walk. *Id.*, ¶23. That afternoon, Sarwan Singh saw officials suspend Mr. Barapind and take bamboo rods from his side of the cell to beat Mr. Barapind. Officials also threatened to use those rods against him. After this torture session, which lasted for two and a half hours, officials took Mr. Barapind away. *Id.*, ¶24. They told Sarwan Singh they had transferred Mr. Barapind to the custody of

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Kapurthala police, *Id.* In February 1990, Mr. Barapind confirmed to Sarwan Singh that officials had taken him to CIA Staff (Kapurthala) and tortured him. Mr. Barapind told Sarwan Singh that he would not be able to endure further torture. *Id.*, ¶29.

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V.

SUMMARY OF ARGUMENT

Diplomatic assurances from the Government of India that it will not torture Mr. Barapind will fail to protect him from torture. On at least two prior occasions, India failed to honor diplomatic assurances that it would not torture Sikhs extradited by the United States to India. The United States extradited Daya Singh Sandhu and Kamaljit Kaur Sandhu to India in 1997, and Indian officials tortured both of them immediately upon their return. Daya Singh Sandhu and Kamaljit Kaur Sandhu were also tried for crimes beyond those for which they had been extradited, violating the rule of specialty found in the extradition treaty between the U.S. and India. India, thus, cannot be trusted to honor international agreements or treaties. India's refusal to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment further indicates that it is unwilling to comply with its international obligations. The United States, therefore, cannot satisfy its obligations under the Convention with respect to Mr. Barapind by obtaining meaningless and unenforceable assurances from India.

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT", "Convention", or "Convention Against Torture"), federal regulations implementing the CAT, case law on applications for relief under the Convention, and international law establish that the United States may not extradite a fugitive to a country where she or he is more likely than not to be tortured. *See generally*, amicus letter of CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, ANALYSIS OF INTERNATIONAL LAW AND DOMESTIC LAW STANDARDS GOVERNING APPLICATIONS FOR RELIEF FROM EXTRADITION UNDER THE CONVENTION AGAINST TORTURE (April 2005). This prohibition

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imposes a clear and nondiscretionary duty upon state agencies responsible for carrying out extraditions to refuse extradition where the fugitive is more likely than not to be tortured in the state requesting extradition.

In assessing the likelihood of torture of the applicant seeking relief under the Convention in the context of extradition, federal regulations require the Secretary of State to consider evidence of a consistent practice of gross, flagrant, or mass human rights violations by the requesting state. In addition, in the immigration context, courts have evaluated the applicant's previous experiences of torture, the ability to relocate within the country of removal, and the torture of those who share the same beliefs as the applicant, among other considerations. When applied to Mr. Barapind, these factors establish that he is more likely than not to be tortured if extradited to India. Numerous Department of State reports and reports of international and Indian human rights organizations document a consistent pattern and practice of gross, systematic, and mass human rights violations in Punjab and India. ENSAAF's recent report, PUNJAB POLICE: FABRICATING TERRORISM THROUGH ILLEGAL DETENTION AND TORTURE (Oct. 2005), Exhibit 6, further documents an escalation of illegal detention and torture by Indian officials against suspected militants and their sympathizers, such as Mr. Barapind. Human rights experts on India also agree that rampant violations in Punjab and India and Mr. Barapind's status as a suspected militant mean that Indian officials will likely torture Mr. Barapind upon return. Moreover, Mr. Barapind's brutal experiences of torture by Indian officials, the torture and murder of his family and associates, and threats to his life prior to his escape, all indicate that Mr. Barapind will be tortured or killed if extradited to India.

A particularized assessment of Mr. Barapind's risk reveals additional factors that further establish that he will be tortured if extradited to India. For example, among other considerations,

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Indian officials extrajudicially executed Mr. Barapind's alleged accomplices; Indian officials killed, tortured, and coerced individuals to fabricate evidence to support their extradition request for Mr. Barapind; and at least one official responsible for torturing Mr. Barapind holds a senior position in the Punjab police.

In deciding whether to grant extradition, the Secretary of State also considers whether the applicant will be denied a fair trial or humane treatment upon his return. Mr. Barapind will be denied access to counsel, denied the presence of counsel during interrogation, and denied confidential visits with counsel, all necessary to prepare his defense and report torture. Indian authorities will also detain Mr. Barapind for a prolonged and indefinite period, prior to the commencement of his trial, and will charge him with extra crimes in violation of the rule of specialty. These due process violations will increase the risk that Mr. Barapind will be tortured, illegally detained, and denied a judicial remedy to protect himself.

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VI.

ARGUMENT

A. DIPLOMATIC ASSURANCES WILL NOT PROTECT MR. BARAPIND FROM TORTURE BY INDIAN OFFICIALS.

Daya Singh Sandhu and Kamaljit Kaur Sandhu were extradited from the United States to India in 1997 with diplomatic assurances from the Indian government that they would not be tortured and cruelly treated. *See generally*, Exhibit 7, *Affidavit of Daya Singh Sandhu* and Exhibit 8, *Affidavit of Kamaljit Kaur Sandhu*; *see also*, Exhibit 9, *Affidavit of Jagdip Singh Sekhon*. Notwithstanding these assurances, Indian officials tortured them immediately upon arrival. *Id.* They were further denied access to counsel, fair trials, and subject to extra charges in violation of the rule of specialty (*infra*, VI. (C)). Diplomatic assurances will prove equally ineffective in Mr. Barapind's case, failing to protect him from torture and cruel treatment.

1. Indian Officials Tortured Daya Sandhu, Despite Diplomatic Assurances Promising Protection From Torture.

Daya Singh Sandhu, a leader of the Sikh Students Federation and proponent of Khalistan, was tortured numerous times by Indian security forces prior to his flight to the United States in 1995. Ex. 7, ¶3-8. India requested his extradition in 1996. *Id.*, ¶9. Daya Singh Sandhu implored the United States to refuse India's extradition request, because he feared he would be tortured again. *Id.*, ¶10. Notwithstanding his fear, the United States surrendered him to Indian agents in January 1997. *Id.*, ¶11.

From January 18, 1997 to March 1, 1997, security officials held Daya Singh Sandhu in incommunicado detention and tortured him. The torture included sleep deprivation, positional torture, and electric shocks after throwing cold water on his body. *Id.*, ¶11. *See, In re G-A-*, 2002 BIA LEXIS 12; 23 I. & N. Dec. 366, 370 (considering suspension for long periods in contorted

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positions and sleep deprivation as forms of torture). Further, since Daya Singh Sandhu has been in jail, he has received almost no medical care, leading to the development of severe medical problems. *Id.*, ¶16.

Daya Singh Sandhu's experiences foreshadow the treatment that Mr. Barapind will receive in India. Like Daya Singh Sandhu, Mr. Barapind held senior leadership positions within the Sikh Students Federation and is also an *Amritdhari* Sikh. Indian officials repeatedly tortured Daya Singh Sandhu and Mr. Barapind because of their political affiliation and opinion, causing them to flee to the United States. Further, the Indian government has accused both of criminal acts and considers them militants. Thus, like Daya Singh Sandhu, Mr. Barapind will also be tortured and cruelly treated, again.

2. Indian Officials Tortured Kamaljit Sandhu, Despite Diplomatic Assurances Promising Protection From Torture.

Kamaljit Kaur Sandhu, an *Amritdhari* Sikh and proponent of Khalistan, was tortured several times by Indian security forces. Ex. 8, ¶4-42. In 1995, she fled to the United States with her husband and son, seeking refuge. *Id.*, ¶51. In 1996, however, the Indian government requested her extradition. *Id.*, ¶56. In January 1997, the United States surrendered Kamaljit Kaur Sandhu to Indian agents despite her fears of torture. *Id.*, ¶57-8. Indian security forces tortured and cruelly treated her, as they did her husband, Daya Singh Sandhu.

Male Indian officials harshly interrogated Kamaljit Kaur Sandhu for 18 hours a day, with only a half hour break, for five weeks. *Id.*, ¶60-1. On three separate occasions, they deprived her of sleep and interrogated her for three continuous days and nights. *See, In re G-A-*, 2002 BIA LEXIS 12; 23 I. & N. Dec. 366, 370 (considering sleep deprivation a form of torture). If she dozed off, officials threw ice-cold water on her, even though it was winter. Officials alternately

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kept watch over her at night to ensure that she did not fall asleep. Officials also dragged her by her hair and pressured her to provide false confessions. Ex. 8, ¶63.

During this period, Kamaljit Kaur Sandhu was made to witness the torture of another detainee. *Do I v. Liu Qi*, 349 F. Supp. 2d 1258, 1269 (Oct. 2004) (being forced to watch the torture of another constitutes torture). Security forces repeatedly tortured a young man in the room above her, and Kamaljit Kaur Sandhu could hear his constant screaming. A senior police officer forcefully made her examine the youth's condition. The police had pulled out his nails and stuck pins in their place. Ex. 8, ¶64.

Jail authorities did not provide Kamaljit Kaur Sandhu with proper medical care. She was not provided any medicine for her asthma, nor did she receive the medications mailed to her, *Id.*, ¶66, in violation of international principles for the treatment of prisoners. United Nations Standard Minimum Rules for the Treatment of Prisoners, Aug. 30, 1995, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); *see also*, Principal 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

A medical doctor was even complicit in the torture of Kamaljit Kaur Sandhu by failing to report her torture. Ex. 8, ¶62. While in detention, she was also forced several times to clean her own urine and feces from the floor with her own hands. *Id.*, ¶68.

Indian officials tortured and cruelly treated Kamaljit Kaur Sandhu because of her support for Khalistan and her belief in the Sikh religion. Mr. Barapind shares the same belief in the Sikh religion and aspirations for self-determination. Like Kamaljit Kaur Sandhu, Mr. Barapind is also

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accused of criminal acts and considered a militant. Thus, like Kamaljit Kaur Sandhu, Mr. Barapind will also be tortured and cruelly treated, again.

3. Mr. Barapind Cannot Challenge Violations Of Diplomatic Assurances And Will Have No Judicial Remedy To Protect Himself From Torture.

Mr. Barapind would have no legal standing to challenge any violations of diplomatic assurances between the United States Government and the Government of India because he is not a party to the agreement. Further, assurances are not legally binding, and so, even the United States would not be able to enforce the provisions. Because assurances cannot be enforced, they are meaningless, as Daya Singh Sandhu's and Kamaljit Kaur Sandhu's experiences demonstrate, to protect Mr. Barapind from torture by Indian officials. Diplomatic assurances, thus, cannot protect Mr. Barapind from torture.

Diplomatic assurances are further ineffective in protecting Mr. Barapind from torture because: torture is imbedded and accepted in the culture and investigative methodology of India's law enforcement officials (*infra*, VI. (B)(2)(a)); security forces will have exclusive control over Mr. Barapind during police remand, the practice of detaining suspects at police stations for indefinite periods, without any possibility of oversight (*infra*, VI. (B)(2)(c) and (C)(1) and (2)); and Mr. Barapind has no right to counsel during interrogations (*infra*, VI. (C)(1)). Moreover, when Indian officials do torture Mr. Barapind, he will have no judicial remedy to redress or prevent further torture. In his expert affidavit, Ram Narayan Kumar writes:

Persons known to be associated with the Sikh self-determination movement cannot live without fear or persecution, and have no effective legal recourse to protect themselves from torture and other cruel, inhuman or degrading treatment or extrajudicial execution.

Exhibit 10, *Affidavit of Ram Narayan Kumar*, ¶26.

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In his expert affidavit, Brad Adams, Executive Director of Human Rights Watch/Asia, calls for immediate judicial reform in India in order to prevent further human rights abuses. Exhibit 11, *Affidavit of Brad Adams*, ¶9. Among other factors, he highlights “the malicious prosecution of Sikh activists, . . . the continued application of impunity provisions in the Code of Criminal Procedure, the existence and application of emergency laws, [and] the failure to ratify the Convention Against Torture” as diminishing any judicial remedy Mr. Barapind would have to protect himself from torture. *Id.*, ¶12.

Human rights attorney Rajvinder S. Bains describes in detail in his affidavit the ineffectiveness of the habeas corpus remedy—the primary remedy to prevent custodial abuse. He discusses how human rights lawyers, including himself, are threatened to prevent them from pursuing human rights cases against Indian officials; how the judiciary prolongs human rights cases, taking numerous years to reach decisions; how “during the course of the protracted litigation, complainants and witnesses are frequently harassed, intimidated and violently attacked by the Punjab Police to discourage them from proceeding in the case;” and how police routinely fabricate and destroy evidence in these cases and implicate complainants in false cases, while courts “deliberately ignore this reality of police interference and intimidation in the cases.” Exhibit 12, *Affidavit of Rajvinder S. Bains*, ¶11-16. Rajvinder Bains also affirms that courts ignore obvious signs of torture and still remand detainees to police custody. *Id.*, ¶17. A recent study published in the *Harvard Human Rights Journal* confirms that Indian courts are complicit in perpetuating violations of the right to life by denying habeas corpus petitions without an examination of the merits. Jaskaran Kaur, *Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India*, 15 *Harvard Human Rights Journal* 269 (Spring 2002).

UNCLASSIFIED

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In addition, under Sections 45 and 197 of the Indian Code of Criminal Procedure, criminal prosecutions or civil proceedings against members of the security forces cannot be commenced without special sanction from the government. India has failed to repeal these impunity provisions despite urgings from the United Nations Human Rights Committee and international human rights organizations. *See, e.g.,* Para. 21, U.N. Human Rights Committee, Concluding Observations, Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: India, Aug. 4, 1997, CCPR/C/79/Add.81.

In conclusion, India's history of dishonoring diplomatic assurances and the impossibility of seeking judicial protection from torture mean that India cannot be trusted to comply with international law against torture. The United States, therefore, cannot satisfy its obligations under the Convention Against Torture with respect to Mr. Barapind by obtaining diplomatic assurances from India.

B. THE SECRETARY OF STATE MAY NOT EXTRADITE MR. BARAPIND BECAUSE INDIAN OFFICIALS WILL TORTURE HIM.

Mr. Barapind will be tortured if he is extradited to India. Indian officials previously tortured and threatened to kill him. Officials also tortured his friends and family, and extrajudicially executed his alleged accomplices. The State Department's most recent report on human rights in India documents a continuing practice of torture by Indian officials. Moreover, recent reports document an escalating practice of illegal detention and torture of suspected militants and their sympathizers. Human rights experts on India are of the opinion that, given the prevalence of custodial torture in India and the accusations against Mr. Barapind, Indian officials are likely to torture him once he is in their custody. This evidence compels the conclusion that Mr. Barapind will be tortured if he is surrendered to Indian.

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1. The Convention Against Torture Prohibits The Secretary Of State From Extraditing A Person Who Is More Likely Than Not To Be Tortured.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/RES/39/708, reprinted at 23 I.L.M. 1027 (1984), modified 24 I.L.M. 535 (1985), ratified by the United States on October 21, 1994,⁷ prohibits the United States from "extradit[ing] a person to another State where there are substantial grounds for believing that he would be in danger of being subject to torture." CAT Art. 3(1). The United States interprets the phrase "where there are substantial grounds for believing that he would be in danger of being subject to torture" as "if it is more likely than not that he would be tortured." Sen. Exec. Rpt. 101-30, Resolution of Advice and Consent to Ratification (1990) (Ratification Resolution) at II.(2).

Congress enacted U.S. obligations under the CAT in the Foreign Affairs and Restructuring Act of 1998 (FARRA). The FARRA adopts the CAT definition of torture and expressly states that: "It shall be the policy of the United States not to . . . extradite . . . any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." FARRA § 2242(a), codified at note to 8 U.S.C. 1231.

The FARRA further directs "the appropriate agencies . . . to prescribe regulations to implement the obligations of the United States under Article 3" of the CAT. FARRA § 2242(b). The regulations implementing the policy against extraditing fugitives in danger of torture explicitly refer to the standard set out in Article 3 of the CAT:

(a) Article 3 of the Convention imposes on the parties certain obligations with respect to extradition. That Article provides as follows: (1) No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

⁷ Status of Ratifications, <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty14.asp> (last accessed August 22, 2005).

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22 C.F.R. § 95.2(a)(1).

Under the implementing federal regulations, the Department of State is required to consider whether the requested individual "is more likely than not" to be tortured in the State requesting extradition. 22 C.F.R. § 95.2(b). "More likely than not" means a chance greater than fifty percent that the individual will be tortured. *Hamoui v. Ashcroft*, 389 F.3d 821, 827 (9th Cir. 2004); see also *Khup v. Ashcroft*, 376 F.3d 898, 907 (9th Cir. 2004) (holding that the applicant was entitled to the CAT relief because there was at least a 51% chance that he would be tortured).

The regulations, consistent with the Convention, define torture as:

[A]ny 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 her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her 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.

22 C.F.R. §95.1(b)(1); CAT art. 1.1(same). Applying this definition, U.S. Courts have recognized the following acts as torture: severe beatings, electric shocks, being forced to witness the torture of another, suspension in awkward positions, sleep deprivation, beatings with instruments on the back, and beatings with instruments on the soles of the feet, among other methods. See *Xiao v. Ashcroft*, 98 Fed. Appx. 632 (9th Cir. 2004) (holding that beatings and electric shocks constitute torture); *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (considering electric shocks as torture); *Do I v. Liu Qi*, 349 F.Supp.2d 1258, 1269 (Oct. 2004) (being forced to watch the torture of another constitutes torture); *Al-Safer v. INS*, 2001 U.S. App. LEXIS 30140 (holding that severe beatings constitute torture); *Kataria v. INS*, 232 F.3d 1107, 1110 (9th Cir. 2000) (considering the Sikh Student Federation Member's beatings and electric shocks as

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torture); *Ratnam v. Ins.*, 154 F.3d 990 (9th Cir. 1998) (considering beatings as torture); *In re G-A-*, 2002 BIA LEXIS 12; 23 I. & N. Dec. 366, 370 (considering suspension for long periods in contorted positions, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet as forms of torture).

If the Secretary of State determines that it is more likely than not that a requesting government will torture an individual upon his extradition, then the Secretary must deny his surrender:

[T]he Secretary of State may not surrender any fugitive who is likely to face torture upon return. The FARR Act imposes a clear and nondiscretionary duty: the agencies responsible for carrying out . . . extradition . . . must ensure that those subject to their actions may not be returned if they are likely to be tortured.

Cornejo-Barreto v. Seifert, 218 F.3d 1004, 1013, 1014 (9th Cir. 2000).⁸

2. Substantial Evidence Establishes That Mr. Barapind Will Be Tortured Upon Extradition to India.

In assessing the likelihood of torture of the applicant seeking relief under the CAT in the context of extradition, the Secretary of State "shall take into account all relevant considerations," including "evidence of a consistent practice of gross, flagrant or mass human rights violations" by the government seeking extradition. 22 C.F.R. 95.2(a)(2). In addition to patterns and practices of gross human rights violations and other relevant considerations, courts adjudicating applications for relief under the CAT in the immigration context have considered evidence that the applicant was previously tortured, evidence of whether the applicant could relocate to another part of the country of removal where he is not likely to be tortured, *Nuri v. Gonzales*, 404 F.3d 1207, 1217 (9th Cir. 2002) citing 8 C.F.R. § 208.16(c)(3); see also

⁸ In *Cornejo-Barreto v. Seifert*, 389 F.3d 1307 (9th Cir. 2004), the Court vacated as moot the decision in *Cornejo-Barreto v. Seifert*, 379 F.3d 1075 (9th Cir. 2004), thus allowing the *Cornejo-Barreto v. Seifert*, 218 F.3d 1004 (9th Cir. 2000) decision to stand.

UNCLASSIFIED

Kamalthas v. INS, 251 F.3d 1279, 1282 (9th Cir. 2001) *citing* 8 C.F.R. § 208.16(c)(3), evidence of the torture of the applicant's friends, and evidence of the torture of those that share the same beliefs as the applicant. *Khup v. Ashcroft*, 376 F.3d 898, 907 (9th Cir. 2004). All of these considerations, developed in federal regulations and case law, establish that Mr. Barapind will be tortured if extradited to India.

a. Recent State Department and human rights reports document flagrant, gross, and mass human rights violations in Punjab and India.

In assessing Mr. Barapind's likelihood of torture, federal regulations require the Secretary of State to consider India's practice of flagrant, gross, and mass human rights violations. 22 C.F.R. 95.2(a)(2). Recent country reports reveal the widespread practice of torture and custodial deaths in Punjab and India. "[C]ountry conditions alone can play a decisive role in granting relief under the Convention." *Kamalthas v. INS*, 251 F.3d 1279, 1280, 1283 (9th Cir. 2001) (holding that a negative credibility finding in an asylum claim does not preclude relief under the Convention, especially where documented country conditions information corroborated the "widespread practice of torture against Tamil males"). The 2004 Department of State *Country Report on Human Rights Practices* in India confirms that custodial torture is routine:

[A]uthorities often used torture during interrogations and extorted money as summary punishment. . . . The prevalence of torture by police in detention facilities throughout the country was reflected in the number of cases of deaths in police custody. . . . In addition, police commonly tortured detainees during custodial interrogation. Although police officers were subject to prosecution for such offences under the Penal Code, the Government often failed to hold them accountable. According to AI [Amnesty International], torture usually took place during criminal investigations. Police routinely resorted to arbitrary and incommunicado detention, denied detainees access to lawyers and medical attention, and used torture or ill treatment to extract confessions.

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INDIA: U.S. DEP'T OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004. This same report confirms specific incidents of torture in Punjab, and notes that the Punjab Director General of Police received 17,000 human rights complaints in 2004 alone. *Id.* Amnesty International's (AI) 2005 world report also concludes that:

In Punjab the vast majority of police officers responsible for serious human rights violations during the period of militancy in the mid-1990s continued to evade justice, despite the recommendations of several judicial inquiries and commissions. The culture of impunity developed during that period continued to prevail and reports of abuses including torture and ill-treatment persisted.

AMNESTY INTERNATIONAL REPORT 2005: THE STATE OF THE WORLD'S HUMAN RIGHTS, at <http://web.amnesty.org/report2005/ind-summary-eng> (last visited June 21, 2005). AI's January 2003 report, AMNESTY INTERNATIONAL, BREAK THE CYCLE OF IMPUNITY AND TORTURE IN PUNJAB (Jan. 2003), documents custodial torture of human rights defenders, the poor, dalits, and women. Another AI report concludes that:

Corruption and extortion, lack of investigative expertise, a confession-oriented approach to interrogation, demands for instant punishment in the context of a crippled criminal justice system, the belief that punitive action will not be taken against torturers, and discriminatory attitudes are all reasons why torture and ill-treatment by law enforcement officials continues throughout the country.

AMNESTY INTERNATIONAL, AI Index ASA 20/03/2001, INDIA, WORDS INTO ACTION, RECOMMENDATIONS FOR THE PREVENTION OF TORTURE, 15 (January 2001), at www.amnesty.org/ailib/aipub/2001/ASA/20032001 (last visited November 20, 2005).

Moreover:

The lack of separate professional investigative departments within the police force, lack of scientific and technical resources and political pressures to "solve" crime, ensure that thorough and scientific investigation is rare and the use of torture or ill-treatment to produce confessions as a means of pinning blame for crime on individuals is common.

UNCLASSIFIED

UNCLASSIFIED

Id. According to a report from Physicians for Human Rights (Denmark), torture has been “widely prevalent” in Punjab in political cases:

The main purpose of torture is extortion and extracting confessions. All survivors interviewed and cases reviewed had been implicated on false charges for this purpose. The fabrication of criminal evidence is based on forced confessions by the police to substantiate charges against detainees is a prevalent practice. In fact, torture is such a common practice that most detainees expect it following arrest, unless they happen to have influential acquaintances or are prepared to pay large sums of money.

PHYSICIANS FOR HUMAN RIGHTS (DENMARK), EYES WIDE SHUT: TORTURE IN PUNJAB PREVAILS, REPORT OF A MISSION TO PUNJAB, INDIA, 3 (August 1999) (discussing case studies involving use of torture by Punjab Police to intimidate or harass Sikh nationalists and human rights activists).

Numerous print media also highlight the regularity of custodial abuse in India. A *Washington Post* article published in August 2004, stated that there were “1,307 reported deaths in police and judicial custody in India in 2002.”⁹ The article quotes Ravi Nair, director of the South Asia Human Rights Documentation Centre, as saying, “India has the highest number of cases of police torture and custodial deaths among the world’s democracies and the weakest law against torture.”¹⁰

The caseload of the Punjab State Human Rights Commission (PSHRC) reflects the high incidence of custodial abuse in Punjab. In August 2005, the Chairperson of the PSHRC stated that 80% of the complaints received by the PSHRC implicate police abuse.¹¹ From January 2004 to November 2004, the PSHRC received 14,189 complaints, including 87 reports of custodial deaths; the commission was only able to investigate 32 of the custodial death cases. Since 1997,

⁹Rama Lakshmi, *In India, Torture by Police is Frequent and Often Deadly*, *Washington Post*, Aug. 5, 2004, 11.

¹⁰ *Id.*

¹¹ *Cops need to amend ways, says Justice Anand*, *Tribune*, Aug. 20, 2005, at <http://www.tribuneindia.com/2005/20050820/punjab1.htm#14>.

UNCLASSIFIED

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the Commission has received 50,122 complaints, including 479 reports of custodial deaths.¹²

Frequent and recent Punjab media reports also demonstrate that police intimidation, custodial torture, and custodial death continue in Punjab, implicating even senior officers, despite the end of the counter-insurgency.¹³

b. Indian officials continue to torture individuals they suspect to be Sikh militants, and will also torture Mr. Barapind.

The Indian government believes that militancy is being revived in Punjab, and is torturing suspected Sikh militants and their supporters. In CAT determinations, courts have considered the torture of those that share the same beliefs as the applicant in assessing the applicant's likelihood of torture. *Khup v. Ashcroft*, 376 F.3d 898, 907 (9th Cir. 2001). Given that Mr. Barapind, like current victims of torture, is a proponent of Khalistan and has been accused of militant activity, he will also be tortured once extradited.

¹² Pradeep Sharma, *Custodial Deaths on the Rise in Punjab, says Rights Panel*, Tribune, Dec. 9, 2004, at <http://www.tribuneindia.com/2004/20041210/main5.htm>.

¹³ See, e.g., *Four cops booked on PSHRC orders*, Tribune, Jul. 31, 2005, at <http://www.tribuneindia.com/2005/20050731/punjab1.htm#24>; *Probe ordered into 'torture of farmer'*, Tribune, Jul. 28, 2005, at <http://www.tribuneindia.com/2005/20050728/punjab1.htm#15>; *Youth alleges illegal detention, torture*, Tribune, Jul. 18, 2005, at <http://www.tribuneindia.com/2005/20050718/punjab1.htm#17>; Sushil Goyal, *Dalit alleges police torture*, Tribune, Jul. 17, 2005, at <http://www.tribuneindia.com/2005/20050717/punjab1.htm#15>; Chander Parkash and Ravi Dhaliwal, *Torture case: Inquiry holds three policemen guilty*, Tribune, May 25, 2005, at <http://www.tribuneindia.com/2005/20050525/punjab1.htm#8>; *Cop suspended for 'torturing' farmer*, Tribune, May 24, 2004, at <http://www.tribuneindia.com/2005/20050524/punjab1.htm#22>; *Girl 'tortured' by cops, hospitalized*, Tribune, May 9, 2005, at <http://www.tribuneindia.com/2005/20050509/punjab1.htm#4>; *Undertrial says he was branded by officials*, Tribune, April 26, 2005, at <http://www.tribuneindia.com/2005/20050426/punjab1.htm>; *Woman alleges rape in police custody*, Tribune, April 26, 2005, <http://www.tribuneindia.com/2005/20050426/punjab1.htm#9>; *Rakesh tortured to death by police: report*, Tribune, March 9, 2005; *Dalit dies in police custody*, Tribune, Feb. 12, 2005, <http://www.tribuneindia.com/2005/20050212/punjab1.htm>; *Dalit beaten to death by police*, Tribune, Feb. 7, 2005, <http://www.tribuneindia.com/2005/20050207/main7.htm>; Varinder Walia, *Class IV Student Given Electric Shocks by SI?*, Tribune, Jan. 19, 2005, at <http://www.tribuneindia.com/2005/20050120/main6.htm>; *Woman Seeks Justice for Son*, Tribune, Aug. 20, 2004, at <http://www.tribuneindia.com/2004/20040820/punjab1.htm#4>; *Panel Seeks Report on Police Torture*, Tribune, July 28, 2004, at <http://www.tribuneindia.com/2004/20040728/punjab1.htm>.

UNCLASSIFIED

UNCLASSIFIED

Since June 2005, the Punjab police have arrested over 70 people on militancy-related charges,¹⁴ alleging that militants are attempting to revive their struggle.¹⁵ Most recently, on November 22, 2005, Director General of [Punjab] Police S.S. Virk stated that international members of the Khalistan Commando Force, the group to which the Indian Government accuses Mr. Barapind of belonging, were active again, and that Punjab Police would pursue these individuals through extradition.¹⁶ In its 2005 annual report, India's Ministry of Home Affairs also stated that efforts continue to be made to revive the militancy.¹⁷

Numerous reports have emerged, however, that these arrests cover up periods of illegal detention, torture, and implication in fabricated cases.¹⁸ ENSAAF's investigation into these recent arrests exposes a pattern of custodial abuse of alleged militants. In August and September

¹⁴ Ritu Sarin, *Old ghosts return to Punjab with new faces*, Indian Express, Jul. 24, 2005, at http://www.indianexpress.com/full_story.php?content_id=75016.

¹⁵ See, e.g., Ritu Sarin, *Old ghosts return to Punjab with new faces*, Indian Express, Jul. 24, 2005, at http://www.indianexpress.com/full_story.php?content_id=75016; 3 *Hawara accomplices held from Narpur-Bedi*, Tribune, Jul. 21, 2005, at <http://www.tribuneindia.com/2005/20050721/punjab1.htm#2>; *Hawara's arms supplier arrested*, Tribune, Jul. 16, 2005, at <http://www.tribuneindia.com/2005/20050716/nation.htm#1>; *Remand of Hawara's wife extended*, Tribune, June 25, 2005, at <http://www.tribuneindia.com/2005/20050625/punjab1.htm#19>; *Arms, ammunition seized from Hawara's accomplices*, Tribune, June 17, 2005, at <http://www.tribuneindia.com/2005/20050617/punjab1.htm#5>; *One held for links with Hawara*, Tribune, Jun. 12, 2005, at <http://www.tribuneindia.com/2005/20050612/punjab1.htm#2>; *One more Babbar Khalsa militant held*, Tribune, June 8, 2005, at <http://www.tribuneindia.com/2005/20050608/punjab1.htm#7>. In the past year and a half alone, prior to June 2005, the Punjab police have engaged in numerous arrests and recoveries of weapons which they attributed to an alleged revival of the militancy. *Explosives Seized in Tarn Taran*, Tribune, Dec. 16, 2003, at <http://www.tribuneindia.com/2003/20031216/punjab1.htm#16>; *Four Babbar Khalsa Terrorists Arrested*, Tribune, May 13, 2004, at <http://www.tribuneindia.com/2004/20040513/main5.htm>. *Efforts on to Revive Militancy, says KLF Chief*, Tribune, Aug. 16, 2004, at <http://www.tribuneindia.com/2004/20040816/punjab1.htm#14>. *KLF Chief Harnek Arrested*, Tribune, Aug. 15, 2004, at <http://www.tribuneindia.com/2004/20040815/punjab1.htm#23>. *AK 47 Seized from Babbar Khalsa Activist*, Tribune, Sept. 9, 2004, at <http://www.tribuneindia.com/2004/20040909/punjab1.htm#53>. *Anti-Social Elements Misleading Media, Says SSP*, Tribune, Sept. 13, 2004, at <http://www.tribuneindia.com/2004/20040913/punjab1.htm#15>. *Dreaded Terrorist Arrested*, Tribune, Sept. 27, 2004, at <http://www.tribuneindia.com/2004/20040927/punjab1.htm#11>.

¹⁶ *Punjab Police To Help Indicted Officials: DGP*, Tribune, Nov. 22, 2005, at <http://www.tribuneindia.com/2005/20051123/punjab1.htm>

¹⁷ S Satyanarayanan, *Efforts still on to revive militancy in Punjab: Home*, Tribune, May 9, 2005, at <http://www.tribuneindia.com/2005/20050509/nation.htm#7>.

¹⁸ See, e.g., *Hawara's aides sent to judicial custody*, Tribune, Jul. 30, 2005, at <http://www.tribuneindia.com/2005/20050730/punjab1.htm#18>; *Manjot booked in false case, claims human rights counsel*, Tribune, Jul. 28, 2005, at <http://www.tribuneindia.com/2005/20050728/cth1.htm#9>; Pradeep Sharma, *Hawara accomplices in police custody*, Tribune, July 12, 2005, at <http://www.tribuneindia.com/2005/20050713/cth1.htm#27>.

UNCLASSIFIED

UNCLASSIFIED

2005, ENSAAF documented 28 cases of detention of Punjabis accused of militancy-related activities. Its report, *PUNJAB POLICE: FABRICATING TERRORISM THROUGH ILLEGAL DETENTION AND TORTURE* (Oct. 2005), reveals that Indian security forces routinely resorted to illegal and incommunicado detention. Ex. 6. Further, Punjab police frequently tortured the detainees. Torture methods included electric shocks, tearing the legs apart at the waist, and pulling out the hair and beard of the detainees, among other techniques. *Id.* The police also threatened and detained immediate family members of the targeted individuals. *Id.* Since the release of this report, another eight cases of militancy-related arrests have been reported, including claims of illegal detention.¹⁹

Among the most egregious examples of recent torture is the custodial torture of Narain Singh. In February 2004, Narain Singh, a proponent of Khalistan, was charged for allegedly participating in the Burail jail break, where three Sikhs accused of assassinating the Chief Minister of Punjab-escaped from jail. Exhibit 13, *Affidavit of Narain Singh*, ¶24. Indian police illegally detained and tortured him for two days before acknowledging his arrest. *Id.*, ¶25. Sumedh Singh Saini, who was then Senior Superintendent of Police, and now holds one of the senior most ranks as Inspector General of Punjab Police, applied electric shocks to Narain Singh's genitals 200 times²⁰ and suspended him from his wrists. Ex. 13, ¶25-26. Narain Singh was held in jail for 15 months, until April 29, 2005, when he was released on bail.²¹

¹⁹ See, *Punjab Police Claims Foil Plan Of Babbar Khalsa Terrorist*, WebIndia123.Com, Nov. 20, 2005, at <http://news.webindia123.com/news/showdetails.asp?id=167858&cat=India>; *Jail Warder, 2 Others Held For Links With Hawara*, WebIndia.Com, Nov. 20, 2005, at <http://news.webindia123.com/news/showdetails.asp?id=167743&cat=India>; *Illegal Confinement Of Two Sparks Row*, Tribune, Nov. 19, 2005, at <http://www.tribuneindia.com/2005/20051120/punjab1.htm#4>; *Militant Arrested In Amritsar*, Tribune, Nov. 5, 2005 at <http://www.tribuneindia.com/2005/20051106/punjab1.htm#18>; *Arms Recovered From Hawara's Aide*, Tribune, Oct. 31, 2005, at <http://www.tribuneindia.com/2005/20051101/punjab1.htm#5>.

²⁰ *Jailbreak: Chaura says I was tortured*. ExpressIndia. April 30, 2005. <http://cities.expressindia.com/fullstory.php?newsid=127206> (last accessed May 5, 2005).

²¹ *Jailbreak: Chaura says I was tortured*. ExpressIndia. April 30, 2005. <http://cities.expressindia.com/fullstory.php?newsid=127206> (last accessed May 5, 2005).

UNCLASSIFIED

UNCLASSIFIED

Further, Narain Singh has faced numerous malicious prosecutions and episodes of torture because of his political opinion and suspected militancy affiliations. None of the 16 prosecutions have led to a conviction. Fourteen of the cases were dismissed because of a total lack of evidence against Narain Singh. Nonetheless, police have continued to file fabricated charges, arbitrarily detain, and torture him. Ex. 13, ¶12-24.

Like Narain Singh, Mr. Barapind will be tortured because the Indian government has accused him of being a militant, as reflected by statements made by India to the United States and the nature of the extradition charges. In determining Mr. Barapind's risk of torture, it is also important to consider the alleged activity he is accused of engaging in by India. Committee Against Torture, General Comment 1, *Communications concerning the return of a person to a State where there may be grounds he would be subjected to torture (article 3 in the context of article 22)*, U.N. Doc. A/53/44, annex IX at 52 (1998), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 (2003) (in determining an applicant's risk of torture, it is important to consider the alleged activity the applicant is accused of engaging in by the State concerned).

In Mr. Barapind's asylum hearing, Federal Bureau of Investigation (FBI) Agent Javier Colon testified that the Indian government informed the FBI that Mr. Barapind is a member of the Khalistan Commando Force (KCF), a militant group. A.R. 177. Further, after his first experience of torture in detention in June 1988, Mr. Barapind was charged with sheltering militants, supplying arms to militants, and advocating for Khalistan. Ex. 2, ¶26. These charges were later dropped. *Id.*, ¶27. Lastly, India has charged Mr. Barapind with violations of the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1987, further indicating that it considers Mr. Barapind a terrorist. *See, In the Matter of the Extradition of Kulvir Singh*, 170

UNCLASSIFIED

UNCLASSIFIED

F.Supp.2d at 1032-3 ("Although extradition is not sought for TADA offenses, most of Barapind's cases include TADA charges").

Recognizing the likelihood of torture and persecution that Sikhs like Mr. Barapind face in India, numerous U.S. courts have found their fears of future torture and persecution credible. *See Singh v. Ashcroft*, 106 Fed. Appx. 638, 640 (9th Cir. 2004) (unpublished) (Sikh Student Federation member, who was threatened with death and beaten, along with his father, compelled a conclusion that he had a well-founded fear of future persecution); *Singh v. Ashcroft*, 367 F.3d 1182, 1189 (9th Cir. 2004) (Sikh petitioner, who was detained and tortured for his alleged association with the separatist movement, made a plausible claim for asylum or withholding of removal); *Singh v. Ashcroft*, 75 Fed. Appx. 675 (9th Cir. 2003) (unpublished) (Sikh petitioner, who was persecuted because of his support for the Sikh Student Federation and militants, was entitled to a presumption of a well-founded fear of future persecution); *Kataria v. INS*, 232 F.3d 1107, 1110 (9th Cir., 2000) (Sikh Student Federation member, who was tortured because of his Federation membership and treasury activities, was entitled to a presumption of a well founded fear of future persecution); *Singh v. Moschorak*, 1993 U.S. Dist. LEXIS 19462 (D. Cal., 1993) (Sikh Student Federation member, who organized political protests, demonstrations, and boycotts, and was arrested and tortured for organizing such activities, would face threats to his life or liberty if returned to India.). Mr. Barapind, thus, as a former senior Sikh Student Federation leader and accused militant, is likely to be tortured again.

Even if Mr. Barapind is acquitted and released, police could easily re-arrest and torture him on false pretexts, as has been the experience of Narain Singh. Like Narain Singh, Mr. Barapind is also a proponent of Khalistan, an *Amritdhari* Sikh, and an accused militant. Because Indian officials continue to round up and torture people they perceive as suspected militants,

UNCLASSIFIED

UNCLASSIFIED

such as those cases discussed in ENSAAF's report, Mr. Barapind will be tortured if extradited to India. The Indian government's perception that people are attempting to revive the militancy presents further danger for Mr. Barapind, because it would place Mr. Barapind into an environment of extrajudicial violence as part of counter-insurgency operations.²² Mr. Barapind, thus, will never be free from the likelihood of torture.

c. Expert opinion agrees that Mr. Barapind is likely to be tortured because of the practice of custodial torture and death in Punjab and India and Mr. Barapind's status as a suspected militant.

Expert opinion establishes that impunity and the lack of any serious reform to the structure of security forces allow custodial torture and death to continue in Punjab and India. The experts also agree that Mr. Barapind faces a high likelihood of torture as a suspected militant. In their expert affidavits, Brad Adams, Executive Director of Human Rights Watch/Asia, leading Punjab human rights expert Ram Narayan Kumar, and Punjab human rights attorney Rajvinder Singh Bains, describe the continuing abuses in Punjab and India and the high likelihood of torture that Mr. Barapind faces as a suspected militant. Brad Adams describes a "culture of 'encounter killings'" in his affidavit, which continues to pose danger to previously targeted individuals:

Human rights abuses by security forces against Sikhs continue....Indian security forces continue to operate without adequate accountability, engaging in serious human rights abuses not just in conflict-zones but also when dealing with criminal suspects and detainees... During the decade of counter-insurgency operations in Punjab, from 1984 to 1994, security forces targeted politically active Sikhs and those who defended the victims and their families, such as human rights attorneys, with murder, disappearances, torture, illegal detention and implication in fabricated cases. These persons continue to be targeted and implicated in false criminal cases.

²² See *supra*, IV. (A): The Context of Mr. Barapind's Torture, for examples of abuses committed during the counter-insurgency of 1980s and 1990s.

UNCLASSIFIED

UNCLASSIFIED

Ex. 11, ¶6-11. Brad Adams further states that, “[p]ersons associated with the Sikh self-determination movement continue to be persecuted,” and calls for “immediate judicial reform to end the culture of ‘encounter killings,’ extrajudicial executions of suspected criminals.” *Id.*, ¶9.

Ram Narayan Kumar, whose extensive experience includes the documentation of more than one thousand cases of torture, extrajudicial execution and disappearances in Punjab, and interviews of police officers implicated in these human rights abuses, Ex. 10, ¶9, warns that:

[C]ountry conditions in India have not changed in a sufficient manner to allow for the safe return of people, like Kulvir Singh Barapind, who suffered past persecution, including torture, and risk future persecution, including torture, because of their political activities and the impunity granted to those who perpetrated human rights violations.

Id., ¶21. He further states:

Persons known to be associated with the Sikh self-determination movement cannot live without fear of persecution, and have no effective legal recourse to protect themselves from torture, and other cruel, inhuman or degrading treatment or extrajudicial execution. India’s interest in prosecuting Kulvir lies solely in punishing those who participated in and believe in the Sikh self-determination movement. If Kulvir Singh is returned, he will be subject to repeated torture throughout the remaining course of his life until he publicly rejects his political beliefs or he is killed. . . . Even if he is acquitted, it is highly likely he will be rearrested and tortured again. My experience in documenting human rights violations by security forces in Punjab has revealed that Punjab Police routinely immediately rearrested and tortured individuals after they were released on bail or acquitted. Thus, Kulvir Singh’s experience will be no exception to this rule.

Id., ¶26-27.

Punjab & Haryana High Court lawyer Rajvinder Singh Bains, who has brought over 125 habeas corpus petitions in the High Court, Ex. 12, ¶7, asserts that: “Sikhs criminally charged are at further risk of interference in their cases and of extrajudicial violence. Sikhs in police remand are frequently and routinely tortured into giving involuntary confessions. . . . Courts, ignoring the obvious signs of torture and the intent of police to engage in extrajudicial violence, repeatedly remand the accused to police custody after a simple assertion by police that the accused is needed for further interrogation and investigation.” *Id.*, ¶17. Thus, as a criminal

UNCLASSIFIED

UNCLASSIFIED

defendant, Mr. Barapind will be remanded to police custody upon surrender to India, and will be "routinely" tortured.

Moreover, during Mr. Barapind's extradition proceedings in 2001, Punjab militancy and international terrorism expert Dr. Mahmood testified that that Mr. Barapind faced a significant risk of "severe torture" by Indian officials because he was a widely regarded political leader in Punjab, more aptly described as a "folk hero", whom Indian security forces feared could revitalize the Khalistan movement. Exhibit 14, *In the Matter of the Extradition of Kulbir Singh*, No. CIV-F-98-5489 OWW, Extradition Hearing Day 1, February 13, 2001, Reporter's Transcript of Proceedings, P. 65, 67-8. Dr. Mahmood further testified, in response to the question of whether diplomatic assurances would be able protect Mr. Barapind, that Mr. Barapind would be at "substantial risk" of torture because India's commitment to human rights is neither "fundamental" nor "durable." *Id.*, P. 81-82. Dr. Mahmood's testimony was un rebutted.

The Extradition Court concluded:

Barapind has submitted un rebutted evidence that the Indian police and their agents sometimes used false identifications, false encounter killings, extra-judicial detentions, torture, and coercive methods in their efforts to suppress militant Sikh separatists.

In the Matter of the Extradition of Kulvir Singh, 170 F.Supp.2d 982, 1023 (E.D. Cal. Sept. 2001).

A consistent pattern and practice of custodial torture and deaths in India, and specifically in Punjab, of suspected militants or Sikh activists increases the likelihood that Indian officials will torture Mr. Barapind in their custody. Mr. Barapind cannot escape this widespread and general practice of custodial torture, and possibly, death.

UNCLASSIFIED

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d. Indian officials previously tortured and threatened to kill Mr. Barapind, and also tortured his friends and family in their attempts to apprehend him.

Substantial evidence establishes that Indian security forces brutally tortured Mr. Barapind. Review of a CAT claim begins by determining whether the applicant for relief was a victim of past torture. *Nuru v. Gonzales*, 404 F.3d at 1217 (9th Cir. 2002); *see also Kamalthas v. INS*, 251 F.3d at 1282 (9th Cir. 2001) (holding that evidence of an applicant's past torture is relevant in assessing whether he is more likely than not to be tortured). Past torture indicates how the government will behave in the future. *Nuru v. Gonzales*, 404 F.3d at 1217. An individual, who has been tortured and has escaped to another country, is likely to be tortured again if returned to the country where he was tortured, unless circumstances or conditions specific to that individual have changed. *Id.* at 1217-18.

In support of his claim for relief under the Convention, Mr. Barapind has provided, among other evidence, an affidavit detailing the brutal manner in which security forces tortured him. Ex. 2. His credible testimony²³ alone is sufficient to sustain his burden of proof. 8 C.F.R. 208.16(c)(2) ("The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration."); *see also, Kamalthas v. INS*, 251 F.3d at 1284 (9th Cir. 2001) (holding that an applicant's credible testimony alone is sufficient to sustain his or her burden of proof). In addition to his own testimony and affidavit, Mr. Barapind offers the affidavits of three corroborating witnesses to his torture and its effects: Gurtej Singh, a political asylee in the United States, Ex. 4, Sarwan Singh, also living in the U.S., Ex. 5, and Mr. Barapind's brother Balwant Singh, who received asylum in Austria. Ex. 3.

²³ In an unpublished opinion, the Court of Appeals for the 9th Circuit reversed the immigration judge's adverse credibility finding, remanding Mr. Barapind's case for further proceedings. Mr. Barapind has not had the opportunity for a new hearing because of India's intervening extradition request, which caused his immigration proceedings to be held in abeyance until the resolution of his extradition proceedings. *Barapind v. Rogers*, 114 F.3d 1193 (9th Cir. May 1997).

UNCLASSIFIED

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Indian officials detained Mr. Barapind on three occasions, during two of which he was brutally tortured for several hours each day over several days. During these torture sessions, officials repeatedly: suspended Mr. Barapind from his wrists tied behind his back; beat him; crushed his thigh muscles with a heavy wooden roller; tore his legs apart at the waist to a 180-degree angle; repeatedly beat the soles of his feet with wooden rods; and applied electric shocks to his genitals, toes, fingers, and ear lobes. *See Xiao v. Ashcroft*, 98 Fed. Appx. 632 (9th Cir. 2004) (holding that beatings and electric shocks constitute torture); *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (considering electric shocks as torture); *Al-Safer v. INS*, 2001 U.S. App. LEXIS 30140 (holding that severe beatings constitute torture); *Kataria v. INS*, 232 F.3d 1107, 1110 (9th Cir., 2000) (considering the Sikh Student Federation Member's beatings and electric shocks as torture); *Ratnam v. Ins*, 154 F.3d 990 (9th Cir. 1998) (considering beatings as torture); *In re G-A-*, 2002 BIA LEXIS 12; 23 I. & N. Dec. 366, 370 (considering suspension for long periods in contorted positions, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet as forms of torture).

The torture of Mr. Barapind's friends and family also supports a finding that Mr. Barapind will be tortured if extradited. *See Khup v. Ashcroft*, 376 F.3d 898, 901, 907 (9th Cir. 2004) (holding that the torture of the applicant's friend, even though the applicant escaped torture, helped establish that the applicant was more likely than not to be tortured upon his return). Both Gurtej Singh and Sarwan Singh recount the brutal manner in which they were tortured because of their connection to Mr. Barapind. Ex. 4 and 5, (*supra*, IV. (C)).

The Indian government's persecution of Mr. Barapind's family further corroborates their intent to torture Mr. Barapind. Mr. Barapind's brother, Balwant Singh, provides an affidavit detailing the inhuman manner in which he was tortured and detained by Indian security forces as

UNCLASSIFIED

UNCLASSIFIED

part of their effort to pressure Mr. Barapind into surrendering, and how Indian officials threatened to murder him and his brother Kulvir Singh. Ex. 3, (*supra*, IV. (C)). Balwant Singh also discusses the torture, violent attacks, and illegal detentions perpetrated by Indian security forces against his parents and brother-in-law, whose legs were shattered by Indian officials, to force Mr. Barapind's surrender. *Id.*

The credible, corroborated, and consistent evidence that Indian officials tortured Mr. Barapind, and his friends and family in their attempts to apprehend him, supports a finding that Mr. Barapind is more likely than not to be tortured in India. Mr. Barapind's past experiences of torture, combined with a consistent pattern and practice of torture in Punjab and India, compel the conclusion that he will be tortured in India.

e. Mr. Barapind cannot relocate to another part of India to avoid torture.

Evidence relevant to the assessment of CAT relief includes the viability of relocating to another part of the country to avoid torture. 8 C.F.R. § 208.16(c)(3). If Mr. Barapind is extradited, the United States will surrender him directly into the custody of Indian officials, who will interrogate, charge, and try him for his alleged crimes. Once Mr. Barapind is in their custody, his ability to relocate to another part of India to avoid torture will be foreclosed.

Even if Mr. Barapind could relocate to another part of India to avoid torture, Indian security officials would find him. The United States has specifically commented on the difficulty individuals face in relocating from Punjab, and on Mr. Barapind's particular inability to do so. The Department of State's June 16, 1993 Advisory Opinion, filed in Mr. Barapind's asylum case, states: "The Indian Authorities would of course have the ability and authority to locate the applicant if he were to move elsewhere in the country." Letter from Roger Dankert, Director, Office of Asylum Affairs, Bureau of Human Rights & Humanitarian Affairs. Exhibit

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11, A.R. 1141, 1145. *See also*, Resource Information Center, U.S. Immigration & Naturalization Service, *India: Information on Relocation of Sikhs from Punjab to Other Parts of India*, May 2003 (stating "Observers generally agree that Punjab's police will try to catch a wanted suspect no matter where [he] is relocated in India.").

Ram Narayan Kumar, the leading Punjab human rights expert, also concludes that relocation is not an option for Mr. Barapind, because Indian security forces regularly travel outside their jurisdictions to apprehend or eliminate their targets. Ex. 10, ¶2. Police and intelligence agencies maintain lists of "wanted people"—criminals or "politically inconvenient persons." Research Directorate, Immigration and Refugee Board of Canada, *India: Freedom of Movement, in particular, the ability to relocate from Punjab to other parts of India*, Jan. 1999 (Ottawa). Additionally, according to the director of the South Asian Human Rights Documentation Centre, the police in many Indian cities now require landlords to provide information about their tenants. Resource Information Center, U.S. Immigration & Naturalization Service, *India: Information on Relocation of Sikhs from Punjab to Other Parts of India*, May 2003.²⁴ Thus, even in the unlikely event that Mr. Barapind is released from custody, he could not escape torture by relocating to another part of the country.

3. Factors Unique To Mr. Barapind Further Establish That He Will Be Tortured Upon Extradition to India.

Courts have conducted particularized assessments of the risk of torture when examining applications for relief under the CAT. *Nuru v. Gonzales*, 404 F.3d at 1217 (holding that unless circumstances or conditions specific to an applicant who has suffered past torture have changed, he is more likely than not to be tortured in the country he escaped). In Mr. Barapind's case, in

²⁴ *See also*, *Police act against erring landlords*, Tribune, Jul. 27, 2005, at <http://www.tribuneindia.com/2005/20050727/delhi.htm#3>.

UNCLASSIFIED

UNCLASSIFIED

addition to the factors that are traditionally considered (*supra*, VI. (B)(2)), several factors unique to him further establish that he will be tortured if extradited to India: 1) the Indian government extrajudicially executed Mr. Barapind's alleged accomplices; 2) at least one official responsible for Mr. Barapind's torture holds a senior police position in Punjab, where Mr. Barapind will be detained and tried if extradited; and 3) Indian laws do not criminalize torture or adequately protect against it.

a. The Indian government extrajudicially executed Mr. Barapind's alleged accomplices, and will mete out similar treatment to him.

Mr. Barapind's alleged accomplices in all of the extradition charges were extrajudicially executed in faked "encounters." In the standard parlance of the Indian security forces, the word "encounter" is used as a euphemism for an extrajudicial execution. HUMAN RIGHTS WATCH/PHYSICIANS FOR HUMAN RIGHTS, *DEAD SILENCE: THE LEGACY OF ABUSES IN PUNJAB*, 1 (May 1994); *see also*, Ex. 11, ¶9.

As stated above, in its 1993 report *India: Human Rights Practices, 1993*, the Department of State described such "encounter" killings:

In Punjab police continued to engage in extrajudicial killings including faked "encounter" killings. In the typical scenario, police take into custody a suspected militant or militant supporter without filing an arrest report. If the detainee dies during interrogation or is executed, officials deny he was ever in custody and claim he died during an armed encounter with police or security forces. Alternatively, police may claim to have been ambushed by militants while escorting a suspect. Although the detainee invariably dies in "crossfire," police casualties in these "incidents" are rare.

U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1993: INDIA (1994).

According to Mr. Barapind, the following alleged accomplices, identified in the FIRs filed by the Indian government in its extradition request, were extrajudicially executed: Ranjit Singh Rana in December 1991 (FIR Nos. 52, 87, 193); Harminder Singh in early 1992 (FIR No. 34);

UNCLASSIFIED

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Gurdeep Singh Deepa in December 1992 (FIR Nos. 23, 34, 94, 100, 113, 114, 193, 2002); Manjinder Singh in December 1992 (FIR No. 100); and Manjit Singh Billa in 1992 (FIR Nos. 100, 193). Ex., ¶62; *See also, In the Matter of the Extradition of Kulvir Singh*, 170 F.Supp.2d at 1005 (affidavit of ASI Inderjit Singh stating that Gurdeep Singh, Manjinder Singh and Manjit Singh were killed in police encounters). Given that Indian officials extrajudicially executed Mr. Barapind's alleged accomplices, they are likely to torture him, and may even kill him.

b. Indian officials tortured and killed one affiant and intimidated another affiant to fabricate evidence to support their extradition request of Mr. Barapind.

In his review of probable cause for the different extradition charges brought against Mr. Barapind, Judge Wanger of the Eastern District Court of California dismissed three cases because of the Indian government's use of torture, threats to life, and fabrication of evidence to support the charges. In his discussion of FIR 220, Judge Wanger describes how the key witness statement—a forced confession obtained from Tarlochan Singh allegedly identifying Mr. Barapind as an accomplice—was procured by police after torturing Tarlochan Singh. *In the Matter of the Extradition of Kulvir Singh*, 170 F.Supp.2d 982, 1029 (E.D. Cal., Sept. 2001). Tarlochan Singh was subsequently killed by the Punjab Police. *Id.* at 1028. In discussing the obliteration of probable cause in FIR 87, Judge Wanger describes how the sole alleged witness Rattan Singh was taken to Phillaur police station in 1998, threatened with his life, and forced to put his thumb-print on blank sheets of paper. *Id.* at 1022-3. In a third case, FIR No. 52, Judge Wanger found no probable cause after the affiant failed to identify any of the murderers of her husband in court, while her brother declared that Mr. Barapind's name was inserted afterwards by the police in their complaint. *Id.* at 1020. The Indian government's use of torture, threats to life, and fabrication to procure evidence in Mr. Barapind's extradition case

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foreshadows the methods they will use against him if he is extradited to Punjab, further indicating that he will be tortured.

c. At least one official responsible for Mr. Barapind's torture has been promoted to a senior police position.

At least one police official responsible for Mr. Barapind's torture has been promoted to the senior-most ranks of the Punjab Police since Mr. Barapind fled India. Mohamed Izhar Alam bears command responsibility for the torture of Mr. Barapind in 1988 when he served as Senior Superintendent of Police of Jalandhar,²⁵ and direct responsibility for the torture of Gurtej Singh in his attempts to elicit information regarding Mr. Barapind. Ex. 4, ¶6, 9. Since then, Mr. Izhar Alam has been promoted to Additional Director General of Police (Administration), one of the highest ranks in the entire Punjab Police structure.²⁶ In August 2003, Redress, a London-based human rights organization working for reparations for torture survivors, criticized the British government for admitting Mr. Izhar Alam to a joint Anglo-Indian police conference, providing specific evidence that he tortured Sikhs.²⁷

Thus, if extradited, Mr. Barapind will be surrendered to officials who wield even greater powers and who have profited from engaging in extrajudicial violence. As Ram Narayan Kumar, a leading Punjab human rights expert, stresses: "These promotions ensure that perpetrators of gross human rights violations continue to operate in a climate of impunity and continue their abusive practices." Ex. 10, ¶23.

²⁵ Ministry of Home Affairs (Government of India), *The Civil List of Indian Police Service, as on 1st January 1989*, 102 (Alam was appointed as Senior Superintendent of Police of Jalandhar on April 27, 1988).

²⁶ Punjab police, List of Senior Officers, at <http://www.punjabpolice.org/struct/index1.html> (last accessed Aug. 23, 2005).

²⁷ Redress, *Redress Expresses Deep Concern at the Attendance of Alleged Indian Torturers at Anglo-Indian Police Conference Convened by Merseyside Police*, 2 Sept. 2003, at <http://www.redress.org/PRESS%20STATEMENT%20%20SEPT%202003.pdf>; Dr. Frances D'Souza (Exec. Dir., Redress), *Letter to Chief Constable Norman Bettison*, 27 Aug. 2003 at <http://www.ensaaf.org/LettertoChiefConstable.pdf>.

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d. India's laws do not adequately protect against torture, and, in fact, encourage torture during interrogations.

India has refused to ratify the Convention Against Torture, which is a strong consideration in determining the likelihood of an individual's risk of torture. *Khan v. Canada*, Communication No. 15/1994, Committee Against Torture, U.N. Doc. A/50/44 a 46 (1994) (because Pakistan was not a party to the CAT, the applicant's return would put him in danger of torture). Further, over the past ten years, India has repeatedly refused to permit country visits by the United Nation's Special Rapporteur on the Question of Torture, drawing concerned mention in his report. U.N. Doc. E/CN.4/2004/56.

Moreover, India's domestic laws offer poor protection against torture. Neither its constitution nor statutory laws expressly prohibit torture, nor even define it. REDRESS, RESPONSES TO HUMAN RIGHTS VIOLATIONS: THE IMPLEMENTATION OF THE RIGHT TO REPARATION FOR TORTURE IN INDIA, NEPAL AND SRI LANKA, 13 (Feb. 2003). India's Penal Code contains no explicit criminal offence of torture. *Id.* Even more alarmingly, the Indian Evidence Act and Criminal Procedure Code do not explicitly prohibit the use of torture to extract evidence. *Id.*

Confessions extracted through torture are admissible as evidence in TADA courts,²⁸ in direct violation of Article 15 of the CAT.²⁹ For example, Davinderpal Singh Bhullar, an accused Sikh militant, was tortured and sentenced to death. After the Punjab police disappeared his father in 1991 and repeatedly harassed and tortured his family, professor Bhullar fled to Germany in December 1994 to seek political asylum. Germany deported Professor Bhullar in

²⁸ Although the TADA lapsed in May 1995, the Indian government continues to apply it against individuals for crimes that allegedly occurred prior to May 1995.

²⁹ Article 15: Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

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early 1995, later ruling that it was a mistake.³⁰ In December 2002, the Supreme Court of India upheld the death sentence of Davinderpal Singh Bhullar, in spite of international protest. *Devender Pal Singh Bhullar v. State, N.C.T. of Delhi & Anr.*, 2002 SOL Case No. 672 (Supreme Court Dec. 2002). His death sentence was based on a confession extracted through torture, and on a unilateral theory of conspiracy, where his alleged co-conspirator, Daya Singh Sandhu, was acquitted. See Exhibit 15, *Application for Retracting Confession of the Applicant-Accused Recorded During Police Custody*, (March 1996). Moreover, the Court imposed death notwithstanding the dissent of the senior-most judge, an unprecedented departure from tradition in India.

Furthermore, officials who torture have virtual immunity from prosecution. Their wide powers under the law and the impossibility of proceeding with prosecutions unless specifically sanctioned by the central or state government, shield them from criminal liability. REDRESS, RESPONSES TO HUMAN RIGHTS VIOLATIONS: THE IMPLEMENTATION OF THE RIGHT TO REPARATION FOR TORTURE IN INDIA, NEPAL AND SRI LANKA, 15 (Feb. 2003). Officials, thus, have an incentive to torture Mr. Barapind, because they will not be held accountable for the manner in which their information is procured.

In conclusion, the current pattern and practice of custodial torture and death in Punjab and India, Mr. Barapind's past experiences of torture, the torture of Mr. Barapind's friends and family, Mr. Barapind's inability to relocate within India, and the recent torture of alleged Sikh militants, establish that Mr. Barapind is more likely than not to be tortured if extradited to India. Further, a particularized assessment of Mr. Barapind's risk reveals additional considerations that increase his likelihood of torture in India: Mr. Barapind's alleged accomplices were

³⁰ Christa Nickels, Chairwoman of the Committee on Human Rights & Humanitarian Aid, Bundestag, *Letter to President of India Dr. A.P.J. Abdul Kalam*, 22 Jan. 2003.

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extrajudicially executed; Mr. Barapind's torturers are still at large; and India's laws encourage torture. Together, these considerations present overwhelming evidence that Mr. Barapind will be tortured.

C. INDIA WILL DENY MR. BARAPIND A FAIR TRIAL, FURTHER ENSURING THAT HE WILL BE TORTURED.

Mr. Barapind will not receive a fair trial if extradited to India, violating American and international standards of due process, and further ensuring that he will be tortured. In reviewing whether to grant an extradition request, the Secretary of State will consider "whether the fugitive is likely to be persecuted or denied a fair trial or humane treatment upon his return." Exhibit 16, *Cornejo v. Seifer*, Case No. 01-cv-662-AHS, Declaration of Samuel M. Witten, Assistant Legal Advisor for Law Enforcement and Intelligence, October 2001, ¶ 4.7.

In its 2004 *Country Report on Human Rights Practices* on India, the U.S. Department of State notes the likelihood of prolonged pretrial detention and secret trials with respect to security suspects such as Mr. Barapind:

The court system remained severely overloaded, resulting in the detention of thousands of persons awaiting trial for periods longer than they would receive if they had been convicted. Prisoners were held for months or even years before obtaining a trial date. In July, the Ministry of Law and Justice reported that there were 29,622 cases pending before the Supreme Court, and 3,269,224 before the state High Courts. The NHRC [National Human Rights Commission] reported that 75 percent of the country's total inmates were prisoners waiting for trial. . . The Criminal Procedure Code provides that trials be conducted publicly, except in proceedings involving official secrets, trials in which statements prejudicial to the safety of the State might be made, or under provisions of special security legislation.

INDIA: U.S. DEP'T OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004.

Further, the experiences of Kamaljit Kaur Sandhu, Daya Singh Sandhu, and Narain Singh, demonstrate that Indian authorities will deny Mr. Barapind access to his attorneys; detain him indefinitely without trial; violate the doctrine of specialty; and maliciously prosecute him.

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1. India Will Deny Mr. Barapind Access To His Legal Counsel.

American jurisprudence and international principles emphasize the importance of unfettered access to one's attorney in a fair trial. Access to counsel encompasses two key requirements: first, the attorney, if requested, must be present during interrogation of the suspect; and second, communication between the attorney and client must be confidential. *See, e.g., Escobedo v. Illinois*, 378 U.S. 478 (1964) (holding that once a suspect is in police custody and is interrogated about a specific crime, the denial of assistance of counsel violates constitutional rights); *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (stating that once a detainee "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking *there can be no questioning*"). The United States Supreme Court has emphasized the necessity of assistance of counsel at every step of the proceedings against the defendant. *See, e.g., Geders v. United States*, 425 U.S. 80 (1976); *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) ("the right to be heard by counsel . . . requires the guiding hand of counsel at every step in the proceedings against [the defendant]"). The Indian National Human Rights Commission has also developed guidelines for the treatment of detainees post-arrest, stating that a detainee "should be permitted to meet his lawyer at any time during the interrogation."³¹

A meaningful right to the assistance of counsel requires confidentiality in client-attorney discussions. Confidentiality is necessary to ensure that detainees feel secure in reporting any custodial abuse. Principle 18, of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), emphasizes the right to adequate time and facilities for legal consultations with counsel; confidential communications, "without delay

³¹ National Human Rights Commission, Important Instructions, On Visits to Police Lock-Ups, Letter to CMs, p56 (November 1999).

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or censorship” between a detainee and his legal counsel; and attorney-client interviews that “may be within sight, but not within the hearing, of a law enforcement official.”

India, however, routinely violates these due process norms, primarily through the practice of police remand. Police remand allows authorities to detain criminal suspects for interrogation without access to their attorneys or communication with anyone outside of detention. Two Sikhs extradited from the United States to India in 1997 and current Sikh political detainees have experienced human rights violations, including torture and denial of the right to counsel, during police remand. *See generally*, ENSAAF, PUNJAB POLICE: FABRICATING TERRORISM THROUGH ILLEGAL DETENTION AND TORTURE (Oct. 2005).

Upon the extradition to India of Daya Singh Sandhu and Kamaljit Kaur Sandhu, both were interrogated by officials of the Central Bureau of Investigation (CBI) at the CBI office for two to three hours. Ex. 8, ¶59. Mr. and Mrs. Sandhu repeatedly requested the opportunity to consult with their attorney, but these requests were denied. *Id.* While in police remand or incommunicado detention, which lasted two months for Daya Singh Sandhu and five weeks for Kamaljit Kaur Sandhu, police officials allowed the Sandhus to meet with their attorneys in custody once for a period of fifteen minutes. Ex. 7 ¶11; Ex. 8, ¶ 60-1. Thus, police interrogated them without the presence of their attorneys, and prevented them from accessing anyone in the outside world, facilitating their torture. Even in jail, government officials attended all meetings between Kamaljit Kaur Sandhu and her family members or attorneys. Other prisoners were permitted private meetings. Ex. 8, ¶65.

This lack of access to attorneys, which prevented abuses from being reported, led the United States government to believe that the Sandhus were receiving regular medical visits and

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humane treatment.³² However, as Daya Singh Sandhu and Kamaljit Kaur Sandhu both reveal in their affidavits, the police tortured them during police remand, and jail authorities denied them medical treatment, and confidential visits with their attorneys. Ex. 7, ¶11, 16; Ex. 8, ¶59-64, 66. A medical doctor was even complicit in the torture of Kamaljit Kaur Sandhu by failing to report her torture. Ex. 8, ¶62.

These severe restrictions on attorney access continue to expose Sikh political detainees to torture and due process violations. During two days of incommunicado detention, Narain Singh was unable to gain access to his attorney, Rajvinder S. Bains. During that time, police tortured Narain Singh, planted a weapon on him, and procured an alleged confessional statement. Ex. 13, ¶25, 27. While in jail, in violation of the Punjab Jail Manual and Supreme Court judgments, authorities prohibited Narain Singh from passing confidential written materials to, or having confidential meetings with, his attorney. *Id.*, ¶30.

Thus, the experiences of the Sandhus and Narain Singh demonstrate that Mr. Barapind faces a heightened risk of torture because of the denial of effective assistance of counsel—in particular, access to counsel, the presence of counsel during interrogation, and confidential visits and exchange of materials with counsel. These restrictions make it impossible for detainees to report incidents of custodial torture and secure intervention. Because detainees are held incommunicado during police remand, police officials torture detainees with impunity.

2. India Will Violate The Rule Of Specialty.

In its *en banc* decision finding Mr. Barapind extraditable for two offenses, and remanding the third offense to the District Court for the Eastern District of California, the Court

³² Department of State, July 1997 Addendum to the India Country Profile, p.2 alleges: "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."

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of Appeals for the Ninth Circuit discussed the doctrine of specialty. The doctrine, found both in case law and the extradition treaty governing Mr. Barapind's return:

"[P]rohibits the requesting nation from prosecuting the extradited individual for any offense other than that for which the surrendering state agreed to extradite," Quinn, 783 F.2d at 783...[The doctrine] is incorporated into the terms of the Treaty, see art. 7 ("A person surrendered can in no case be . . . brought to trial . . . for any other crime or offence . . . than those for which the extradition shall have taken place . . .").

Barapind v. Enomoto, 400 F.3d 744, 749 (9th Cir. 2005). Despite this treaty provision, both Daya Singh Sandhu and Kamaljit Kaur Sandhu were charged with crimes beyond those for which they had been extradited. Four extra charges were brought against Daya Singh Sandhu, and two extra charges were brought against Kamaljit Kaur Sandhu. Ex. 7, ¶14.

Some of the extra charges brought against both Daya Singh Sandhu and Kamaljit Kaur Sandhu were charges under the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1987. *Id.*; Ex. 8, ¶65. In 2000, the Sandhus filed petition No. 2697-2698 before the Supreme Court of India challenging the extra charges as a violation of the doctrine of specialty. Ex. 7, ¶14. In *Daya Singh Lahoria v. Union of India*, 2001 SOL Case No. 267, the Supreme Court upheld the doctrine of specialty:

The aforesaid Article [Article 7 of the Extradition Treaty] unequivocally indicates that the person concerned cannot be tried for any other crime or offence than those for which the extradition shall have taken place until he has been restored or has had the opportunity of returning to the territories of the High Contracting Party by whom he has been surrendered... The doctrine of specialty is yet another established rule of international law relating to extradition. Thus, when a person is extradited for a particular crime, he can be tried only for that crime.

Exhibit 17, *Daya Singh Lahoria v. Union of India*, 2001 SOL Case No. 267 (Supreme Court Apr. 2001). Nevertheless, the Indian government continues to prosecute Daya Singh Sandhu and Kamaljit Kaur Sandhu under other extra charges, in violation of the Indian Supreme Court judgment. Ex. 7, ¶14; Ex. 8, ¶67. The lower courts have also ignored and refused to follow the

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Supreme Court's judgment. One lower court's refusal has led Daya Singh Sandhu to receive a sentence of seven years in a charge filed in violation of the doctrine of specialty. Ex. 7, ¶14.

The application of TADA to Mr. Barapind would ensure that he would be denied a fair trial, and that he would be indefinitely detained and tortured. TADA sanctions the use of *in camera* courts; presumes that detainees are guilty until proven innocent for certain charges; allows for secret witnesses against the defense; and, in practice, TADA courts admit confessions extracted through torture. U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1994: INDIA (1995); U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1993: INDIA (1994).

It is highly likely that Mr. Barapind will be prosecuted under TADA, given the Indian government's propensity to violate the doctrine of specialty, the previous TADA charges against Mr. Barapind, and the retroactive use of TADA against alleged Sikh separatists. For example, in February 2004, according to the U.S. Department of State, the government charged former Member Parliament Simranjit Singh Mann, a supporter of Sikh independence, under TADA for "an inflammatory speech" he allegedly made in 1991. *See, e.g.*, U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004: INDIA (2005).

TADA violates principles of due process in American and international jurisprudence, meant to provide for fair trials and protect against torture. For example, the TADA provision presuming guilt unless the defendant is proven innocent violates the International Covenant on Civil and Political Rights (ICCPR), Article 14(2), which states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law." G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 Dec. 16, 1966, *entered into force* 23 March 1976, 999 U.N.T.S. 171. Further, the opportunity to

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use a confession obtained through duress or torture encourages torture. Davinderpal Singh Bhullar, a Sikh proponent of Khalistan deported from Germany to India in January 1995 and kept in incommunicado detention or police remand for two months, was sentenced to death on the basis of a confession extracted through torture that was admitted in a TADA court. Exhibit 15, *Application for Retracting Confession of the Applicant-Accused Recorded During Police Custody*, (March 1996). As the United Nations Special Rapporteur on the Question of Torture highlighted in his report:

Apart from this statement, no other corroborated evidence was said to have been presented by the prosecution. Of the 133 prosecution witnesses, none was said to have identified Professor Bhullar.

UN Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted pursuant to Commission resolution 2002/38, E/CN.4/2003/68/Add.1. *See also*, UN Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, submitted pursuant to Commission resolution 2002/36, E/CN.4/2003/3/Add.1.

Thus, after having litigated his extradition case in the United States for nearly nine years, and having prevailed as to eight of the 11 charges because of a lack of probable cause or the political offense exception, Mr. Barapind now faces the likelihood of being tried for extra charges in India, despite the doctrine of specialty.

3. Indian Authorities Will Deny Mr. Barapind A Speedy Trial.

Mr. Barapind will be detained for an excessive and arbitrary period prior to the commencement of his trial. International law requires speedy trials. Article 9(3) of the International Covenant for Civil and Political Rights (ICCPR) stresses that a detainee "shall be entitled to trial within a reasonable time or to release." G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 Dec. 16, 1966, *entered into force* 23 March

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1976, 999 U.N.T.S. 171. Article 14 maintains that one must be "tried without undue delay." *Id.*; *see also*, Principle 38, United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988): "A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial." India's practice drastically departs from these standards.

As discussed above, the U.S. Department of State Country Report cites serious flaws in Indian criminal trials, leading to "thousands of persons awaiting trial for periods longer than they would receive if they had been convicted." U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004: INDIA (2005). Both Daya Singh Sandhu and Kamaljit Kaur Sandhu were held in pre-trial detention for five years, prior to the commencement of their trials on the charges for which they had been extradited. Ex. 7, ¶24; Ex. 8, ¶69. In another case from Calcutta brought against Daya Singh Sandhu, the maximum punishment allowed is three years. However, the trial in this case is still pending, and Daya Singh Sandhu has already served eight years in pre-trial detention. Ex. 7, ¶12. Because Mr. Barapind's case is similar to Mr. and Mrs. Sandhu's cases, Mr. Barapind will also suffer prolonged pre-trial detention.

In conclusion, Mr. Barapind will be denied a fair trial and due process in India, increasing his likelihood of torture and indefinite detention. Other Sikhs like Mr. Barapind have been tortured and crippled in their ability to prepare their defenses because they were denied access to counsel, denied counsel during interrogation, and denied confidential visits and exchanges of materials with counsel. Charging Mr. Barapind under TADA would further increase his likelihood of torture and an unfair trial, because TADA courts admit confessions extracted through torture, operate in secrecy, and presume guilt. Finally, routine and excessive

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pretrial detention, and violations of the rule of specialty, will further ensure that Mr. Barapind will suffer an indefinite detention, exceeding the sentences of his alleged crimes.

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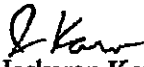
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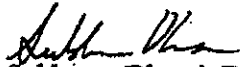
CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner respectfully requests the Secretary of State to grant his application for relief under the Convention Against Torture, and thereby decline to surrender him to the Indian government.

Respectfully submitted,

Dated: November 23, 2005


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TELEGRAM

February 09, 2006

To: SECSTATE WASHDC - PRIORITY

Action: SA

From: AMEMBASSY NEW DELHI (NEW DELHI 994 - PRIORITY)

TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN

Captions: SIPDIS, SENSITIVE

Subject: AMBASSADORIAL ASSESSMENT OF BARAPIND EXTRADITION ASSURANCES

Ref: A. STATE 6905 B. 05 NEW DELHI 9513 C. 96 NEW DELHI 14669

1. (SBU) The MEA on February 7 sent Diplomatic Note T-413/11/2004 with reference to the requested extradition of Kulbir Singh Barapind (Ref A), along with the text of the relevant section of the Indian Penal Code. The Note outlines that persons extradited to India are protected by law from torture and that Barapind's family, attorneys, and the National Human Rights Commission will have access to Barapind during his incarceration. The GOI also assured that officers of the USG will have access to persons in Indian custody, including Barapind, on a reciprocal basis. Ambassador's assessment of these assurances follows the text.

GOI Assurances

2. (U) With reference to the requested extradition of Kulbir Singh Barapind (referred to in the Indian note as Kulbir Singh Kulbeera aka Barapind) and USG obligation under the Convention Against Torture, the MEA has provided the following diplomatic note:

Begin text of MEA Diplomatic Note T-413/11/2004, dated 6 February 2006:

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to their Note Verbale No. 06/054/Pol dated 18th January, 2006 has the honour to state that in the context of the extradition of Kulbir Singh Kulbeera aka Barapind, India has signed the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, 1984. 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. Extracts from the Indian Penal Code of relevant sections are enclosed.

Further, family members, attorneys of a person extradited to India as well as the Human Rights Commission have access to them. Officials of the country extraditing a fugitive may also have access on reciprocal basis.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

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Thus Kulbir Singh Kulbeera aka 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.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurances of its highest consideration.

End Text.

Begin text of Extract from the Indian Penal Code:

330. Voluntarily causing hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offense or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offense or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

End Text.

Assessment of Assurances

3. (SBU) India signed the Convention against Torture in 1997. 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 National Human Rights Commission (NHRC), and US diplomats (on a reciprocal basis), as described, are accurate and, it is likely the Government of India will in practice comply with them. ✓

4. (SBU) During the Sikh insurgency in the 1980s and 1990s, police routinely tortured and/or killed terrorists' families and associates. Today, however, India has numerous activist human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. The free press is also sensitive to human rights, and the Supreme Court has recently issued guidelines aimed at preventing and, if necessary, prosecuting incidence of torture and custodial abuse. The NHRC has emerged as an increasingly forceful advocate for the observance of human rights. } to

5. (SBU) 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

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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.

India's free press, including in Punjab, actively pursues and exposes government excesses of all varieties, including police abuse, torture, and corruption. 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.

6. (SBU) As noted in the 2004 Human Rights Report, however, custodial abuse, including sometimes torture, remains a problem in India, and many alleged police violators, particularly from earlier, more violent times, (including the officer Barapind accused of having directed his torture) have not been tried for their reported offenses. The Indian media reported, however, that 59 Punjab police officers were found guilty of human rights violations in 2004, and the Director General of Punjab Police reported that criminal proceedings had begun in the cases of two persons who died in police custody during the year.

7. (SBU) Despite the improved situation, torture and other forms of custodial abuse do continue to occur in all parts of India. As a consequence, many cases like Barapind's may also revolve around personal testimony that is subject to coercion or force.

8. (SBU) While we cannot guarantee absolutely that Mr. Barapind would not face torture or other forms of custodial abuse, this Mission is satisfied that, given the assurances provided by the Government of India and the high profile of this case, it is more likely than not that Mr. Barapind's rights would be respected and that he would not face torture while in custody in India. The level of confidence that Mr.

Barapind would not be abused could be further increased by establishing a program of monitoring of his situation by one or more human rights NGOs, or Embassy staff. His extended family and local media will also provide a level of oversight.

9. (SBU) As noted in the note conveying the GOI's assurances, 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. The National and State Human Rights Commissions should be able to visit Barapind in prison. Assuming Barapind is also permitted to have contact with NGO activists, they will help ensure that abuses, if they occur, are aired in the Indian media.

10. (SBU) India's relationship with the United States and the rest of the world is also dramatically different than it was less a decade ago. India has far greater incentives to be seen as a reliable partner and a country that honors its international commitments. All this, together with the high-profile nature of this case and India's interest in being able to return others for prosecution in the future, should help protect Mr. Barapind's freedom from abuse.

MULFORD

Additional Addressees:
None

cc:
AMCONSUL CALCUTTA
AMCONSUL CHENNAI
AMCONSUL MUMBAI
DEPT OF JUSTICE WASHDC
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TAGS: CJAN, CVIS, PTER, PREL, KCRM, PHUM, PGOV, IN
SUBJECT: AMBASSADORIAL ASSESSMENT OF BARAPIND EXTRADITION
ASSURANCES

REF: A. STATE 6905
B. 05 NEW DELHI 9513
C. 96 NEW DELHI 14669

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United States Department of State

Washington, D.C. 20520

May 15, 2006

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INFORMATION MEMO FOR THE DEPUTY SECRETARY

FROM: SCA – Donald A. Camp, Acting ^{DC}
L – John B. Bellinger, III ^{JB}

SUBJECT: Extradition of Kulvir Singh Barapind – Torture Convention
Submission.

In our view, it is not more likely than not that Mr. Barapind would be tortured if he were returned to India. We have reached that conclusion for the reasons outlined in detail in the accompanying action memorandum and its attachments, including the Country Report for Human Rights for India. In particular, India has provided categorical assurances that Mr. Barapind will not be tortured. We therefore believe that the surrender of Mr. Barapind to India would not be inconsistent with U.S. treaty obligations under Article 3 of the Convention Against Torture. This judgment has been confirmed by Ambassador Mulford in 2006 New Delhi 994.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

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Cogan, Jacob K

From: Jagdip Sekhon [jagdip@sekhonlaw.com]
Sent: Thursday, March 30, 2006 11:30 PM
To: Pomper, Stephen E
Subject: BARAPIND



**Jagdip Singh Sekhon, Esq.
Manjit Kaur Rai, Esq.
Kamardeep S. Athwal, Esq.**

March 30, 2006

Stephen Pomper
United States Department of Justice
Office of the Legal Adviser Room 5419
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

VIA Electronic Mail: PomperSE2@state.gov

re: KULVIR SINGH BARAPIND

DECISION AS TO SURRENDER

Dear Mr. Pomper:

I thought that since the date the United States Department of State had identified as a deadline for rendering decision regarding the surrender of Kulvir Singh Barapind – April 14, 2006 – is approaching, it would be appropriate that we speak and confer as to whether the government is able to adhere to its time frame for Mr. Barapind's surrender, and in the event he is surrendered, providing a point of contact at the United States Embassy in New Delhi to facilitate necessary monitoring.

I thus ask that you schedule a teleconference to discuss these matters. On one day's notice, I will be available to do so on any day at any time during the week of April 3, 2006. I expect that we would like David Glass's participation in the conversation, and I would also like to include Sukhman Dhama as well.

UNITED STATES DEPARTMENT OF STATE
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DATE/CASE ID: 09 JUL 2008 200603431

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I write further to advise you of the topics that I would seek to discuss with you at the teleconference.

First, I trust that as of the writing of this letter there has not been a change in the time frame within which the Department of State expects to reach a decision regarding the surrender of Mr. Barapind. If there is any change I ask that you inform me at the teleconference.

Second, in the event the decision is to surrender, I would like to coordinate securing a contact at the United States Embassy to whom we could communicate concerns regarding the treatment Mr. Barapind is receiving in India. I anticipate that electronic mail would be the most appropriate median for such communications.

Additionally, Mr. Pomper, in order to assist you in understanding as to what types of communications the Embassy could expect from us, I would like to delineate what would trigger such a communication:

1. Any evidence that Mr. Barapind has suffered treatment that violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)].
2. Any evidence that the Indian government is violating its treaty obligations or the treaty proscriptions under the Treaty for the Extradition Treaty of the United States and United Kingdom of 1931, 47 Stat. 2122 (1932).
3. Any evidence that there is an imminent danger that the Indian government or its agents may violate the Convention Against Torture or the U.S-U.K. Extradition Treaty of 1931. Examples of such imminent threats that we would alert the Embassy to include:
 - a. changes in Mr. Barapind's custody status;
 - b. prolonged detention;
 - c. or denial of due process rights such as access to counsel.

Mr. Pomper you likely know better than I that monitoring of Mr. Barapind's situation is crucial. This is sadly confirmed by the *United States Department of State's Country Reports on Human Rights Practice - 2005: India* (Bureau of Democracy, Human Rights and Labor: March 2006); and the continued denial of due process to Daya Singh "Lahoria" and his wife Kamaljit Kaur. I expect that you will accept our modest offer to facilitate the Embassy's monitoring of Mr. Barapind.

You had in our previous conversation asked who we would like to designate as the individuals that would contact the Embassy if the need arises. For this purpose we would like to designate ENSAAF attorneys Sukhman Dhami and Jaskaran Kaur.

I hope that the above helpfully surmises what I would like to discuss with you next week at date and time that you chose. Nevertheless, if any of the above is not clear please do contact me.

I look forward to hearing from you Mr. Pomper as to the time when are scheduling our

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teleconference.

Sincerely,

Jagdip Singh Sekhon, Esq.

cc: DAVID GLASS

4/4/2006

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AFFIDAVIT

I, Mrs. Kamaljit Kaur Sandhu, wife of Mr. Daya Singh Sandhu alias Daya Singh Lahoria, am a resident of village-township Bharal, Police Station Malerkotla, District Sangrur, Panjab (India), and declare the following under oath:

1. I was born in India on July 28, 1970 and my mother raised me in Panjab (India). I am an Amritdhari Sikh.
2. I married Daya Singh Sandhu in 1987. I have one son Surinder Singh Sandhu (Surinder) from this marriage. Surinder was born on October 8, 1988 and currently lives in the United States.
3. I submit this affidavit in support of Kulvir Singh Barapind's application for relief under the Convention Against Torture. In my affidavit, I describe my experiences in Panjab before leaving India, my return from the United States and my experiences upon returning to India. Despite diplomatic assurances given by the Indian government to the United States government, after my return to India, I was tortured, I was kept in jail for a prolonged period without trial, and suffered many other difficulties, torture, and humiliation, which I describe below.

My Experiences in Panjab before Leaving India in 1995

4. The Indian government and its security forces persecuted my husband and I, as well as our families, because of our support for a right to an independent Sikh state called Khalistan.
5. One morning in May 1988, at approximately 5:00 a.m., security forces from Mal Mandi Interrogation Center, Amritsar, led by a police officer popular by the name of "Bai," raided our home and arrested me for the first time.
6. At that time the Indian security forces had again deployed thousands of troops in Amritsar and it appeared that the Indian government again planned to take some military action at Harmandir Sahib (the Golden Temple) in Amritsar, Panjab.
7. Initially, my father-in-law and mother-in-law stated to the police that my husband, Daya Singh Sandhu, was already in their custody and asked why they were troubling us.
8. The policeman replied to my father-in-law that he did not have to tell him who was and was not in their custody. He further stated that he did not come for my husband, but that he had instead come for the "big Taksali in the house." I realized he was referring to me because my mother, brother and I were all members of the Sikh religious institution named the Damdami Taksal.

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9. The policeman then grabbed me. My father-in-law, mother-in-law and sister-in-law begged the policeman not to arrest me, telling them that I was pregnant. The policeman, however, did not listen to them at all and threw them to the ground and kicked them and insulted them.
10. They then blindfolded me and placed me in a van and transported me a few hours to the Mal Mandi interrogation center in Amritsar.
11. At the Mal Mandi interrogation center, I was initially presented before an officer. The policemen threw me at the officer's feet and then removed my blindfold. While I was lying at the officer's feet, he insulted me and cursed at me for being supportive of my religion and Khalistan. Another officer present there blew cigarette smoke on my face and deeply insulted my religion.
12. After this, the officer ordered the policemen to place me in a cell. I was horrified and scared when I saw the bloody clothes of Sikhs who had been previously tortured at the police station on the floor of the cell. The cell smelled of death.
13. There were six policemen in the cell. I was made to stand and they started to slap me on my face. When I fell to the ground, they started kicking me.
14. As I lay on the floor, the policemen searched me and found on my body some medicine tablets. Responding to questions of the policemen in charge, I explained that I was pregnant and that the tablets were for morning sickness. He chillingly stated to the others "take care of her." One of the other policemen pleaded to no avail that "we must be careful, because she is pregnant," but his statements had no impact.
15. The officer stated, "I want you to beat her good." Another policeman stated, "Kick her in the stomach!!!"
16. The policemen then continued to hit and beat me. As they kicked me they called me a "whore" and "bitch." They accused our family of being "militant sympathizers" and they accused my husband of being a "militant."
17. After beating me for approximately five minutes, they placed me in a cell with other young Sikh women. Thereafter, one by one, the policemen would interrogate us, removing us from the cell and presenting us before the police officer and Inspector.
18. They treated me in the above manner for four days. They kept me for a total of fifteen days at the Mal Mandi Interrogation Center. During my entire stay, the policemen deprived me from sleeping, forcing me to sit up awake all night.
19. They constantly humiliated me. I recall an instance when I asked a policeman for water to drink, and the policeman responded by pointing behind me and stating, "See that cup over there, drink from that." The cup in the corner was the cup where the prisoners would urinate.

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20. After keeping me in Mal Mandi for a total of fifteen days, the security forces sent me to the Kotwali detention facility in Amritsar. While I was at the Kotwali police station, the police was arresting dozens of young men and women. It seemed they were captured in the course of a massive military operation.
21. At the Kotwali detention facility, I was detained with two women, who were tortured severely. It was at Kotwali where I witnessed the most horrifying scenes of my life. I witnessed police rounding up dozens of young men, lining them up in the court yard, and then summarily executing them without any legal proceedings. I will never forget the sounds of the automatic weapons carrying out these extrajudicial executions.
22. I remained at Kotwali for twenty days, and then the police filed charges against me and transferred me to the Amritsar jail.
23. While I was at Amritsar jail, lawyers arranged for a bond for my release. However, the warden at the facility advised my father-in-law that if I was bonded out, the security forces would again arrest me and take me to the police station where they would again interrogate me and even torture me. It was in the interest of my safety to stay in jail. I, thus, remained in jail.
24. I was thereafter transferred to the Ludhiana Jail, and then after a short time, I was transferred to the Sangrur Jail.
25. At this point I was in the ninth month of my pregnancy. My father-in-law hired a lawyer who again arranged for me to be bonded out of jail. Then my father-in-law talked to the warden at the Sangrur jail and asked him to release me without notifying the Panjab police.
26. Indian security forces and police from Bagha Purana Police Station arrested me a second time, approximately one month after my husband's January 1990 arrest.
27. At the time the police arrested me, they also arrested my father-in-law, brother-in-law (husband's elder brother) Gurnam Singh, and sister-in-law Sukhwant Kaur and her husband Swaran Singh.
28. The police then transported the five of us to the Bagha Purana police station, where we were separated. The police took me to a cell, where an officer and five other policemen were waiting for me.
29. The police station's Sub-Inspector Paramjit Singh started insulting me, and threatened to harm my entire family. He accused all of us of supporting militants and accused my husband himself of being a militant.

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30. The officer then ordered the policemen to beat me. I was slapped across the left side of my face, and while I was dazed, I was grabbed from the back of my neck and was thrown to the ground face down. One policeman then pulled my arms behind my back and forced my hands into a clasped position behind my neck. He forcibly kept my arms in that position. Other policemen then grabbed both of my feet and forcibly extended my legs apart. They then proceeded to beat me with a leather belt. The pain from the blows was excruciating and I was screaming in agony.
31. Three to four minutes later, a policeman grabbed me by my hair and pulled my head back, while other policemen forced me into a seated position with my legs, in front of me, stretching them forcibly. Two officers kept my legs in that position. My hands were then tied behind my back.
32. Next a policeman inserted his leg between my tied hands and back, bent his leg, and pulled my head back to ensure that my back remained erect.
33. Then two policemen tied both of my toes together, placed a heavy iron "roller" across my legs and thighs and rolled it slowly over my thighs. The "roller" was approximately two and a half feet wide and ten inches thick. As they were rolling the roller over my thighs it seemed as if it was crushing my muscles.
34. After that, I was then thrown into a cell with my sister-in-law Sukhwant Kaur. The policemen then removed her from the cell, took her to the interrogation room, and tortured her, including rolling the "roller" over her thighs.
35. The policemen returned her to the cell, and took me back to the interrogation room, where they tortured me again and beat me with a leather belt, and rolled the "roller" over my thighs twice as described above.
36. While the police were hitting and beating me, they were insulting me as a woman and a Sikh, and were mocking the Khalistan movement.
37. I was detained at the Bagha Purana police station for twelve days, and during that time, the police continued to treat me horribly.
38. The most brutal torture I endured before I fled, was the last occasion I was tortured at Bagha Purana police station.
39. When I was presented before the policemen, one of them grabbed me. I tried to wrestle myself away from his grasp, but then I was pummeled with wooden sticks and fell to the ground from the force of the blows. The police then beat me with a leather belt and again tied my toes together and rolled the heavy iron "roller" over my legs.
40. After the "roller" was applied to my thighs, the police ripped the sleeves of my shirt and applied electric current to my shoulders utilizing a hand crank generator.

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41. Connected to the generator were two wires, and after the policemen, using the hand crank, created a sufficient amount of electric current, the wires were then applied against my shoulders resulting in a pain beyond description. A few moments after the electric current was applied, I fell unconscious.
42. The Indian security forces during our detention also tortured my sister-in-law's husband. During this entire time, whenever I was tortured, there were never any female officers present.
43. My sister-in-law was kept in illegal detention at Bagha Purana police station for thirteen days.
44. In October 1991, Officer Brar from Malerkotla police illegally detained and tortured my brother-in-law (husband's elder brother) Gurnam Singh, father-in-law, sister-in-law and her husband in Sandaur police post. They released my sister-in-law after thirteen days, but detained everyone else for four months in their police post.
45. In December 1991, SSP Grewal of Patiala police illegally detained my brother-in-law (husband's elder brother), his wife, three sisters-in-law (Sukhwant Kaur, Gurdial Kaur and Baljinder Kaur) and Sukhwant Kaur's husband Swaran Singh and Baljinder Kaur's husband Apjit Singh at Mai Ki Sran police post. They were released after one and a half months of extensive torture.
46. On August 5, 1992, police took my sister-in-law, her husband and her son Balraj Singh, my brother-in-law (husband's elder brother), and my father-in-law. C.I.A. Staff Handiaiya (Barnala) took my sister-in-law and her son. They released my sister-in-law after five days but her son Balraj Singh has been missing since then. Malerkotla police released my father-in-law and brother-in-law after detaining and torturing them for ten days, but they illegally detained my brother-in-law for one full month.
47. In April 1993, SSP Grewal of Patiala Police arrested my sister-in-law, her husband, my brother-in-law, my father-in-law and my mother and took them to Mai Ki Sran and tortured them. After all of this, they released them in June. In July/August 1993, SSP Grewal illegally detained and tortured all of them again for three months in Malerkotla police station.
48. In October 1993, the in-charge of CIA Staff Handiaiya (Barnala), Bharpur Singh, detained and tortured my sister-in-law for eight days and her husband for one and a half months. After this, police officer Nirmal Singh of Sandaur police station arrested them again and kept them in detention for one month.
49. In March 1995, CIA Staff Handiaiya raided our house at 2 a.m. at night and detained my sister-in-law and her husband, blindfolding them and taking them away. They released my sister-in-law's husband after a while, but they took my sister-in-law first

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to Sheka Jhaloor Police Post and then to Barnala, where they detained her for thirteen days and tortured her with methods such as the roller and electric shocks.

50. In October 1995, DSP Brar of Malerkotla police illegally detained and tortured my sister-in-law's son Gurjeet Singh in Lacha Bandhi police post for 28-29 days. During this time, they tied his hands behind his back with a rope and many times suspended him from the ceiling by his wrists. They tortured him in many other inhumane ways.

Flight to America and Return to India

51. In July 1995, me, my husband Daya Singh and Surinder, escaped security forces and fled India to the United States of America.
52. After arriving in America, we stayed in New York at the house of a fellow Sikh for about one month.
53. In New York, we were planning for our future and thinking where we could live, and also learning about the asylum application process in the U.S.
54. In August 1995, when we were in Minneapolis, Minnesota, to meet a friend who had promised to help us with living arrangements, agents of the Immigration and Naturalization Service (INS) and Federal Bureau of Investigation (FBI) arrested my family and our friend.
55. After arrest, I was in INS detention. First, I was kept in Minnesota, then Wisconsin, then Colorado, and at last in Fort Worth, Texas.
56. I stayed in Fort Worth for about three weeks, and then in March 1996, after the Indian government made an extradition request against my husband and me, the INS sent me to the United States Marshal.
57. During our asylum and extradition proceedings, in our statements, pleadings, and written testimony, we repeatedly expressed our fears that if we were sent back to India, we would again be subjected to torture and repression. According to my understanding, on the basis of my repeatedly expressed fears of torture, diplomatic assurances were obtained that I would be protected from torture and repression. Despite these assurances, after my return to India, I was tortured.
58. My husband and I were taken back to India in January 1997 and placed in the custody of the Central Bureau of Investigation (CBI).

My Experiences After My Return to India

59. On my return to India on January 17, my husband and I were flown under the supervision of SSP Khargavat (Jaipur, Rajasthan) from Bombay airport to Delhi airport, with our eyes blindfolded and a mask covering our faces. After that, we

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were taken in a car to the Delhi office of the CBI. We were interrogated in the CBI office for two to three hours, during which my husband repeatedly asked to call our lawyer, but they did not listen to us at all. After this, the CID (Central Investigation Department) personnel took us to Jaipur. There, after keeping me for two to three hours in the BSF cantonment in Amer Fort, they took me to a judge's house and procured my remand.

60. After this, they kept me and my husband in Amer Fort in separate cells where I was kept for one month and seven days in remand.
61. During the entire period of remand, except for letting us meet our lawyer once, we were not given permission to meet anyone else. During this time, CID, CBI, Bengal Police and Rajasthan Police would come everyday to interrogate us. They interrogated me everyday from 6 a.m. in the morning until midnight. During the entire day, they would only give me about a half hour break from interrogation in the afternoon. During the entire interrogation, neither my lawyer was present, nor were any female police personnel present.
62. During this period I was shown to a doctor only once, when I was vomiting blood, and the doctor was not the prison doctor. Even upon my repeatedly asking, the doctor did not tell me the cause of the blood in my vomit, and sent me back after giving me an injection.
63. I was tortured during this remand. Sometimes my interrogation would start at 6 AM and continue without interruption for the next three days. I was not allowed to sleep at all during these three days and nights. The entire night, three to four constables and an SHO would keep watch over me. There were three SHOs and their constables, who would alternately keep watch over me. I was kept in the interrogation room during these periods, and was kept awake all night. If I would fall asleep, they would pour cold water over my face, even though it was the winter, and awaken me. I was subjected to this interrogation sequence three times. Outside of these interrogations, too, I was humiliated all the time, and once they grabbed me by my hair and dragged me. They repeatedly pressured me to confess to false allegations. SSP Khargawat even said that "if they had caught me in India earlier, my pieces would not have been found anywhere."
64. During this period, there was a Muslim youth in detention at the same place, and he was being tortured by the police. Since his detention room was above mine, I heard his screams all the time, which made me panic. One day SSP Khargawat forcefully made me examine this youth's condition. The police had tortured this young man so much that they had pulled his nails out and stuck pins in their place. After showing me this, SSP Khargawat commented that "you were going to be treated the same way." I still cannot forget that frightening scene.
65. On February 22, I was taken to the TADA court in Ajmer (Rajasthan), from where I was sent to Ajmer jail under judicial custody. This TADA case was filed against me

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after my extradition to India. During this custody, I was kept in solitary confinement for three entire years. If any family member came to visit me, we had to meet in the presence of CID officials, whereas other prisoners were freely allowed to meet their relatives in private. Meanwhile my husband Daya Singh was jailed in Delhi, and we were not allowed to meet during these three years.

66. I suffer from asthma and whenever I fell ill, I was not provided any medicine, which led to my suffering great difficulties. In that jail, the medicines arriving for the prisoners were sold off elsewhere by doctors who kept the money.
67. In the year 2000, we filed writ petition (criminal) No. 256/2000 and special leave petition (criminal) No. 2697-2698/2000 in the Supreme Court upon which the Supreme Court declared that the TADA cases filed against us after our extradition to India were invalid and the TADA clauses were taken off our burden. However, the remaining false charges filed against us after our return to India are still standing. We will again have to knock on the door of the Supreme Court for these remaining charges.
68. There were court dates for the cases against me in the Jaipur Sessions Court, but no hearings were conducted. During this, I was kept in barracks with 34 or 35 other women. The rooms there were very filthy. Three times, I was forced to clean the clogged toilet and several times I was forced to clean up my urine and feces from the floor with my own hands.
69. In the year 2002, the hearings for my case started and the decision was handed down on October 20, 2004, sentencing me to seven years in prison while my husband was given a life sentence. This was the case of the kidnapping of Rajinder Mirda.
70. My time served in jail was counted towards my sentence but my husband's life sentence was deemed to begin from the day of the decision.
71. We have spent at least Rs. 600,000/- in fighting the cases in the Supreme Court and our family has been ruined. There is still one case against me, proceeding in the Calcutta court, under IPC section 420. This case has been going on for one and a half years, but there have been no hearings during this period. I have to go to Calcutta every month due to these court dates.
72. The police and CID came to my house twice so far, and inquired about us from our relatives, due to which we are living under considerable mental anguish.

Chandigarh, March 13, 2005

(signed)
Affiant

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ATTESTATION

I, the above affiant, declare this under oath that all of the statements in this affidavit are, according to my knowledge, true and correct and no part of it is false, and I have not omitted anything. If there is anything false in this affidavit, I understand that I am liable for prosecution under the laws of the United States of America and India.

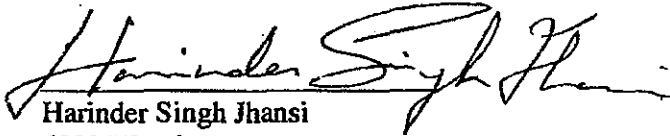
Place: Chandigarh
Date: 13-03-2005

(signed)
Affiant

CERTIFICATION

I, Harinder Singh Jhansi, declare that I am fluent in English and Panjabi and the above is a true and correct translation from Panjabi to English of the enclosed Panjabi document.

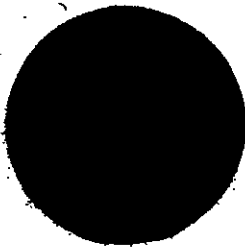
Executed on May 2, 2005 in San Antonio, Texas.



Harinder Singh Jhansi
6038 Woodway Court
San Antonio, TX 78249

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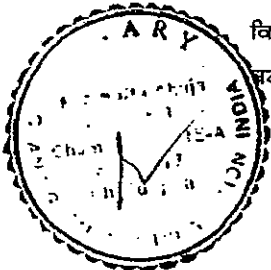
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ਹਲਕੀਆ ਬਿਆਨ

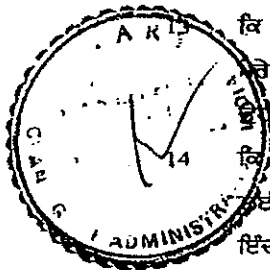
ਮੈਂ, ਸ਼੍ਰੀਮਤੀ ਕਮਲਜੀਤ ਕੌਰ ਸੰਧੂ ਪਤਨੀ ਸ. ਦਿਆ ਸਿੰਘ ਸੰਧੂ ਉਰਫ ਦਿਆ ਸਿੰਘ ਲਾਹੌਰੀਆ, ਪਿੰਡ ਕਸਬਾ ਭਰਾਲ, ਥਾਣਾ ਮਲੋਰਕੋਟਲਾ, ਜਿਲ੍ਹਾ ਸੰਗਰੂਰ, ਪੰਜਾਬ (ਭਾਰਤ), ਦੀ ਵਸਨੀਕ ਹਾਂ ਅਤੇ ਹਲਕ ਨਾਲ ਨਿਮਨਲਿਖਤ ਬਿਆਨ ਕਰਦੀ ਹਾਂ :-

- 1 ਕਿ ਮੈਂ 28 ਜੁਲਾਈ 1970 ਨੂੰ ਭਾਰਤ ਵਿਖੇ ਪੈਦਾ ਹੋਈ ਸੀ ਅਤੇ ਮੇਰੀ ਮਾਂ ਨੇ ਮੇਰਾ ਪਾਲਣ ਪੋਸ਼ਣ ਪੰਜਾਬ (ਭਾਰਤ) ਵਿਚ ਕੀਤਾ। ਮੈਂ ਅੰਮ੍ਰਿਤਸਰੀ ਸਿੱਖ ਹਾਂ।
- 2 ਕਿ ਮੈਂ 1987 ਵਿਚ ਦਿਆ ਸਿੰਘ ਸੰਧੂ ਨੂੰ ਵਿਆਹੀ ਗਈ। ਇਸ ਵਿਆਹ ਤੋਂ ਮੇਰਾ ਇਕੋ ਬੱਚਾ ਸੁਰਿੰਦਰ ਸਿੰਘ ਸੰਧੂ (ਸੁਰਿੰਦਰ) ਹੈ। ਸੁਰਿੰਦਰ 8 ਅਕਤੂਬਰ, 1988 ਨੂੰ ਪੈਦਾ ਹੋਇਆ ਅਤੇ ਇਸ ਸਮੇਂ ਯੂਨਾਈਟੇਡ ਸਟੇਟਸ ਵਿਖੇ ਰਹਿ ਰਿਹਾ ਹੈ।
- 3 ਕਿ ਮੈਂ ਇਹ ਹਲਕੀਆ ਬਿਆਨ ਕੁਲਵੀਰ ਸਿੰਘ ਬੜਾ ਪਿੰਡ ਦੇ ਤਸਦਦ ਦੇ ਖਿਲਾਫ ਕੀਤੀ ਗਈ ਸਹਿਮਤੀ ਦੇ ਤਹਿਤ, ਦਿੱਤੀ ਅਰਜੀ ਦੇ ਹੱਕ ਵਿਚ ਦੇ ਰਹੀ ਹਾਂ। ਮੈਂ ਆਪਣੇ ਹਲਕੀਆ ਬਿਆਨ ਵਿਚ ਭਾਰਤ ਛੱਡਣ ਤੋਂ ਪਹਿਲਾਂ ਪੰਜਾਬ ਵਿਚ ਮੇਰੇ ਤਜਰਬੇ, ਅਮਰੀਕਾ ਤੋਂ ਮੈਨੂੰ ਵਾਪਿਸ ਲਿਆਉਣ ਅਤੇ ਮੇਰੇ ਵਾਪਿਸ ਆਉਣ ਤੇ ਭਾਰਤ ਵਿਚ ਹੋਏ ਮੇਰੇ ਤਜਰਬੇ ਬਾਰੇ ਖੁਲਾਸਾ ਕਰ ਰਹੀ ਹਾਂ। ਭਾਰਤੀ ਸਰਕਾਰ ਵੱਲੋਂ ਅਮਰੀਕੀ ਸਰਕਾਰ ਨੂੰ ਦਿੱਤੇ ਗਏ ਰਾਜਨੀਤਿਕ ਭਰੋਸੇ ਦੇ ਬਾਵਜੂਦ, ਮੈਨੂੰ ਭਾਰਤ ਵਾਪਿਸ ਲਿਆਏ ਜਾਣ ਤੇ, ਮੇਰੇ ਉਪਰ ਤਸਦਦ ਕੀਤਾ ਗਿਆ, ਮੈਨੂੰ ਬਿਨਾ ਕਿਸੇ ਸੁਣਵਾਈ ਤੋਂ ਲੰਬੇ ਸਮੇਂ ਤੱਕ ਜੇਲ ਵਿਚ ਰਹਿਣਾ ਪਿਆ ਅਤੇ ਹੋਰ ਵੀ ਬਹੁਤ ਸਾਰੀਆਂ ਤਕਲੀਫਾਂ, ਤਸਦਦ ਅਤੇ ਅਪਮਾਨ ਸਹਿਣਾ ਪਿਆ ਜੋ ਕਿ ਮੈਂ ਹੇਠਾਂ ਬਿਆਨ ਕਰ ਰਹੀ ਹਾਂ।
- 4 1995 ਵਿਚ ਭਾਰਤ ਛੱਡਣ ਤੋਂ ਪਹਿਲਾਂ ਪੰਜਾਬ ਵਿਚ ਹੋਏ ਮੇਰੇ ਤਜਰਬੇ ਭਾਰਤ ਦੀ ਸਰਕਾਰ ਅਤੇ ਇਸਦੇ ਸੁਰਖਿਆ ਬਲਾਂ ਨੇ ਮੇਰੇ ਉਪਰ, ਮੇਰੇ ਪਤੀ ਅਤੇ ਸਾਡੇ ਪਰਿਵਾਰਾਂ ਉਪਰ, ਸਿੱਖਾਂ ਦੇ ਆਪਣੇ, ਅਜ਼ਾਦ ਦੇਸ਼ ਖਾਲਿਸਤਾਨ ਦੇ ਹੱਕ ਵਿਚ ਹੋਣ ਕਰਕੇ ਜੁਲਮ ਕੀਤਾ।
- 5 ਮਈ 1988 ਦੀ ਇਕ ਸਵੇਰ, ਕਰੀਬ ਸਵੇਰੇ ਪੰਜ ਵਜੇ, ਮਾਲ ਮੰਡੀ, ਇਨਟੈਰੋਗੇਸ਼ਨ ਸੈਂਟਰ, ਅੰਮ੍ਰਿਤਸਰ ਤੋਂ ਆਏ ਪੁਲਿਸ ਅਫਸਰ ਜੋ ਕਿ ਬਾਈ ਦੇ ਨਾਂ ਨਾਲ ਮਸ਼ਹੂਰ ਸਨ, ਅਤੇ ਭਾਰਤੀ ਸੁਰਖਿਆ ਬਲਾਂ ਨੇ ਸਾਡੇ ਘਰ ਤੇ ਛਾਪਾ ਮਾਰਿਆ ਅਤੇ ਪਹਿਲੀ ਵਾਰ ਮੈਨੂੰ ਗ੍ਰਿਫਤਾਰ ਕੀਤਾ।
- 6 ਉਸ ਸਮੇਂ ਭਾਰਤੀ ਸੁਰਖਿਆ ਬਲਾਂ ਦੀਆਂ ਹਜ਼ਾਰਾਂ ਟੁਕੜੀਆਂ ਇਕ ਵਾਰ ਫਿਰ ਤੋਂ ਅੰਮ੍ਰਿਤਸਰ ਵਿਖੇ ਤੈਨਾਤ ਕਰ ਦਿੱਤੀਆਂ ਗਈਆਂ ਸਨ ਅਤੇ ਇਥੇ ਲੱਗਦਾ ਸੀ ਕਿ ਭਾਰਤੀ ਸਰਕਾਰ ਨੇ ਫਿਰ ਤੋਂ ਹਰਮੰਦਰ ਸਾਹਿਬ (ਸਵਰਣ ਮੰਦਰ) ਜੋ ਕਿ ਅੰਮ੍ਰਿਤਸਰ, ਪੰਜਾਬ ਵਿਖੇ ਹੈ, ਉਪਰ ਸੈਨਿਕ ਹਲਮਾ ਕਰਨ ਦੀ ਯੋਜਨਾ ਬਣਾਈ ਹੈ।



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- 7 ਕਿ ਪਹਿਲਾਂ ਮੇਰੇ ਸੱਸ ਸਹੁਰੇ ਨੇ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੂੰ ਕਿਹਾ ਕਿ ਮੇਰਾ ਪਤੀ ਦਿਆ ਸਿੰਘ ਸੰਧੂ ਤਾਂ ਪਹਿਲਾਂ ਤੋਂ ਹੀ ਉਹਨਾਂ ਦੀ ਹਿਰਾਸਤ ਵਿਚ ਹੈ, ਤਾਂ ਫਿਰ ਉਹ ਸਾਨੂੰ ਕਿਉਂ ਤੰਗ ਕਰ ਰਹੇ ਹਨ।
- 8 ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਮੇਰੇ ਸੁਹਰੇ ਨੂੰ ਜਵਾਬ ਦਿੱਤਾ ਕਿ ਉਹਨਾਂ ਨੂੰ ਦਸੱਣ ਦੀ ਜ਼ਰੂਰਤ ਨਹੀਂ ਹੈ ਕਿ ਕੌਣ ਉਸਦੀ ਹਿਰਾਸਤ ਵਿਚ ਹੈ ਅਤੇ ਕੌਣ ਨਹੀਂ ਹੈ। ਉਸਨੇ ਅੱਗੇ ਕਿਹਾ ਕਿ ਉਹ ਮੇਰੇ ਪਤੀ ਲਈ ਨਹੀਂ ਆਇਆ ਬਲਕਿ ਉਹ ਘਰ ਵਿਚਲੇ ਵੱਡੇ ਟਕਸਾਲੀ ਲਈ ਆਇਆ ਹੈ। ਮੈਨੂੰ ਮਹਿਸੂਸ ਹੋਇਆ ਹੈ ਕਿ ਉਹ ਮੇਰੇ ਥਾਰੇ ਗੱਲ ਕਰ ਰਿਹਾ ਹੈ ਕਿਉਂਕਿ ਮੈਂ, ਮੇਰੀ ਮਾਤਾ ਅਤੇ ਮੇਰਾ ਭਰਾ, ਅਸੀਂ ਸਭ ਸਿੱਖ ਧਰਮ ਦੀ ਇੱਕ ਸੰਸਥਾ ਦਮਦਮੀ ਟਕਸਾਲ ਦੇ ਮੈਂਬਰ ਸੀ।
- 9 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਮੈਨੂੰ ਫੜ ਲਿਆ। ਮੇਰੀ ਸੱਸ, ਸਹੁਰੇ ਅਤੇ ਨਨਾਣ ਨੇ ਪੁਲਿਸ ਵਾਲੇ ਤੋਂ, ਇਹ ਦੱਸ ਕੇ ਕਿ ਮੈਂ ਮਾਂ ਬਨਣ ਵਾਲੀ ਹਾਂ, ਮੈਨੂੰ ਗ੍ਰਿਫਤਾਰ ਨਾ ਕਰਨ ਦੀ ਭੀਖ ਮੰਗੀ। ਪਰ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਉਹਨਾਂ ਦੀ ਇੱਕ ਨਾ ਸੁਣਦਿਆਂ ਉਹਨਾਂ ਨੂੰ ਧੱਕੇ ਦੇ ਕੇ ਜ਼ਮੀਨ ਤੇ ਸੁੱਟ ਦਿੱਤਾ ਅਤੇ ਲੱਤਾਂ ਮਾਰੀਆਂ ਅਤੇ ਉਹਨਾਂ ਦੀ ਬੇਇਜ਼ਤੀ ਕੀਤੀ।
- 10 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਉਹਨਾਂ ਨੇ ਮੇਰੀਆਂ ਅੱਖਾਂ ਤੇ ਪਟੀ ਬੰਨ ਦਿੱਤੀ ਅਤੇ ਮੈਨੂੰ ਇੱਕ ਵੈਨ ਵਿਚ ਬਿਠਾ ਕੇ, ਕੁਝ ਘੰਟੇ ਦੇ ਸਫਰ ਤੋਂ ਬਾਅਦ, ਅੰਮ੍ਰਿਤਸਰ ਵਿਖੇ ਮਾਲ ਮੰਡੀ, ਇੰਟੈਰੋਗੇਸ਼ਨ ਸੈਂਟਰ ਵਿਖੇ ਪਹੁੰਚਾ ਦਿੱਤਾ।
- 11 ਕਿ ਮਾਲ ਮੰਡੀ ਇੰਟੈਰੋਗੇਸ਼ਨ ਸੈਂਟਰ ਵਿਖੇ ਮੈਨੂੰ ਸਭ ਤੋਂ ਪਹਿਲਾਂ ਇਕ ਅਫਸਰ ਸਾਹਮਣੇ ਪੇਸ਼ ਕੀਤਾ ਗਿਆ। ਪੁਲਿਸਵਾਲਿਆਂ ਨੇ ਮੈਨੂੰ ਉਸ ਅਫਸਰ ਦੇ ਪੈਰਾਂ ਵਿਚ ਸੁੱਟ ਦਿੱਤਾ ਅਤੇ ਫਿਰ ਮੇਰੀਆਂ ਅੱਖਾਂ ਤੇ ਬੰਨੀ ਪੱਟੀ ਬੋਲ ਦਿੱਤੀ। ਜਦੋਂ ਮੈਂ ਉਸ ਅਫਸਰ ਦੇ ਪੈਰਾਂ ਤੇ ਗਿਰੀ ਹੋਈ ਸੀ, ਉਸ ਵੇਲੇ ਉਸਨੇ ਮੇਰੀ ਬੇਇਜ਼ਤੀ ਕੀਤੀ ਅਤੇ ਮੇਰੇ ਧਰਮ ਅਤੇ ਖਾਲਿਸਤਾਨ ਦੇ ਹੱਕ ਵਿਚ ਹੋਣ ਕਰਕੇ ਬਹੁਤ ਬੁਰਾ ਭਲਾ ਕਿਹਾ। ਉਥੇ ਮੌਜੂਦਾ ਇਕ ਹੋਰ ਅਫਸਰ ਨੇ ਸਿਗਰਟ ਦਾ ਧੂੰਆਂ ਮੇਰੇ ਮੂੰਹ ਉਪਰ ਛੱਡਿਆ ਅਤੇ ਮੇਰੇ ਧਰਮ ਦੀ ਬਹੁਤ ਬੇਇਜ਼ਤੀ ਕੀਤੀ।
- 12 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਉਸ ਅਫਸਰ ਨੇ ਪੁਲਿਸਵਾਲਿਆਂ ਨੂੰ, ਮੈਨੂੰ ਕੋਠੜੀ ਵਿਚ ਛੱਡ ਆਉਣ ਦਾ ਹੁਕਮ ਦਿੱਤਾ। ਜਦੋਂ ਮੈਂ ਕੋਠੜੀ ਦੀ ਜ਼ਮੀਨ ਤੇ, ਉਹਨਾਂ ਸਿੱਖਾਂ ਦੇ, ਜਿਨ੍ਹਾਂ ਤੇ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਪਹਿਲਾਂ ਤਸਦੱਦ ਕੀਤੇ ਸੀ, ਦੇ ਖੂਨ ਨਾਲ ਲੱਥ ਪੱਥ ਕਪੜੇ ਵੇਖੇ ਤਾਂ ਮੈਂ ਬਹੁਤ ਡਰ ਗਈ। ਉਸ ਕੋਠੜੀ ਵਿਚੋਂ ਮੇਰੇ ਮੌਤ ਦੀ ਬੰ ਆ ਰਹੀ ਸੀ।



ਕਿ ਕੋਠੜੀ ਵਿਚ ਛੇ ਪੁਲਿਸ ਵਾਲੇ ਸਨ। ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ ਖੜਾ ਕੀਤਾ ਅਤੇ ਮੇਰੇ ਮੂੰਹ ਉਪਰ ਕੱਪੜ ਮਾਰਨ ਲੱਗੇ। ਜਦੋਂ ਮੈਂ ਜ਼ਮੀਨ ਤੇ ਗਿਰ ਗਈ ਤਾਂ ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ ਠੱਡੇ ਮਾਰਨੇ ਸ਼ੁਰੂ ਕਰ ਦਿੱਤੇ ।
 ਕਿ ਮੈਂ ਜ਼ਮੀਨ ਤੇ ਗਿਰੀ ਹੋਈ ਸੀ ਤਾਂ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੇਰੀ ਤਲਾਸ਼ੀ ਕੀਤੀ ਅਤੇ ਉਹਨਾਂ ਨੂੰ ਮੇਰੇ ਕੋਲੋਂ ਦਵਾਈ ਦੀਆਂ ਗੋਲੀਆਂ ਮਿਲੀਆਂ। ਪੁਲਿਸ ਇੰਚਾਰਜ ਦੇ ਸਵਾਲ ਦੇ ਜਵਾਬ ਵਿਚ ਮੈਂ ਦੱਸਿਆ ਕਿ ਮੈਂ ਮਾਂ ਬਨਣ ਵਾਲੀ

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ਹਾਂ ਅਤੇ ਇਹ ਗੱਲੀਆਂ ਮੇਰੇ ਜੀ ਕੱਚਾ ਹੋਣ ਤੇ ਲੈਣ ਲਈ ਹਨ। ਉਸਨੇ ਵਹਿਸ਼ੀ ਤਰੀਕੇ ਨਾਲ ਦੂਸਰਿਆਂ ਨੂੰ ਕਿਹਾ, 'ਇਸਦਾ ਧਿਆਨ ਰੱਖਣਾ'। ਇਕ ਪੁਲਿਸਵਾਲੇ ਨੇ ਉਸਨੂੰ ਮਿੰਨਤ ਕਰਕੇ ਕਿਹਾ ਕਿ 'ਸਾਨੂੰ ਧਿਆਨ ਰੱਖਣਾ ਚਾਹੀਦਾ ਹੈ, ਕਿਉਂਕਿ ਇਹ ਮਾਂ ਬਨਣ ਵਾਲੀ ਹੈ, ਪਰ ਇਸਦਾ ਉਸ ਉਪਰ ਕੋਈ ਅਸਰ ਨਹੀਂ ਹੋਇਆ।

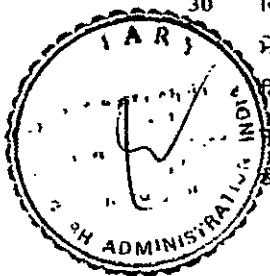
- 15 ਕਿ ਉਸ ਅਫਸਰ ਨੇ ਕਿਹਾ, 'ਮੈਂ ਚਾਹੁੰਦਾ ਹਾਂ ਕਿ ਇਸਨੂੰ ਚੰਗੀ ਤਰਾਂ ਕੁੱਟਿਆ ਜਾਵੇ, ਇਕ ਹੋਰ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਕਿਹਾ, 'ਇਸਦੇ ਢਿੱਡ ਵਿਚ ਠੱਡੇ ਮਾਰੋ'।
 - 16 ਕਿ ਉਸ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਵਾਲੇ ਮੈਨੂੰ ਮਾਰਦੇ ਕੁੱਟਦੇ ਰਹੇ। ਮੈਨੂੰ ਮਾਰਨ ਦੇ ਨਾਲ ਨਾਲ ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ 'ਚੁੜੀਲ' ਅਤੇ 'ਕੁੱਤੀ' ਕਹਿ ਕੇ ਬੁਲਾਇਆ। ਉਹਨਾਂ ਨੇ ਸਾਡੇ ਪਹਿਵਾਰ ਤੇ 'ਖਾੜਕੂਆਂ ਦੇ ਹਮਦਰਦ' ਹੋਣ ਦਾ ਇਲਜ਼ਾਮ ਲਗਾਇਆ ਅਤੇ ਮੇਰੇ ਪਤੀ ਤੇ ਖਾੜਕੂ ਹੋਣ ਦਾ ਇਲਜ਼ਾਮ ਵੀ ਲਗਾਇਆ।
 - 17 ਕਿ ਕਰੀਬ ਪੰਜ ਮਿਨਟ ਮੈਨੂੰ ਕੁੱਟਣ ਤੋਂ ਬਾਅਦ ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ ਕੁਝ ਹੋਰ ਜਵਾਨ ਸਿੱਖ ਔਰਤਾਂ ਨਾਲ ਇਕ ਕੋਠੜੀ ਵਿਚ ਬੰਦ ਕਰ ਦਿੱਤਾ। ਇਸ ਤੋਂ ਬਾਅਦ ਉਹ ਇੱਕ ਇੱਕ ਕਰਕੇ ਸਾਥੋਂ ਪੁੱਛ ਗਿੱਛ ਕਰਦੇ ਅਤੇ ਕੋਠੜੀ ਵਿਚੋਂ ਬਾਹਰ ਕੱਢ ਕੇ ਪੁਲਿਸ ਅਫਸਰ ਅਤੇ ਇੰਸਪੈਕਟਰ ਸਾਹਮਣੇ ਪੇਸ਼ ਕਰਦੇ।
 - 18 ਕਿ ਉਹਨਾਂ ਨੇ ਚਾਰ ਦਿਨਾਂ ਤੱਕ ਮੇਰੇ ਨਾਲ ਉੱਪਰ ਲਿਖੇ ਅਨੁਸਾਰ ਵਿਹਾਰ ਕੀਤਾ। ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ ਮਾਲ ਮੰਡੀ ਇੰਟੈਰਗੇਸ਼ਨ ਸੈਂਟਰ ਵਿਖੇ ਪੰਦਰਾਂ ਦਿਨ ਰਖਿਆ। ਜਿਨਾ ਸਮਾਂ ਮੈਂ ਉਥੇ ਰਹੀ, ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੈਨੂੰ ਸੋਣ ਨਹੀਂ ਦਿੱਤਾ ਅਤੇ ਸਾਰੀ ਰਾਤ ਮੈਨੂੰ ਜਬਰਦਸਤੀ ਥਿਠਾ ਕੇ ਰਖੱਦੇ।
 - 19 ਕਿ ਉਹਨਾਂ ਨੇ ਹਰ ਸਮੇ ਮੇਰੀ ਬੇਇਜ਼ਤੀ ਕੀਤੀ। ਮੈਨੂੰ ਯਾਦ ਹੈ ਕਿ ਇਕ ਵਾਰੀ ਜਦੋਂ ਮੈਂ ਇਕ ਪੁਲਿਸ ਵਾਲੇ ਤੋਂ ਪੀਣ ਲਈ ਪਾਣੀ ਮੰਗਿਆ ਤਾਂ ਉਸਨੇ ਮੈਨੂੰ ਜਵਾਬ ਦਿੰਦਿਆਂ ਮੇਰੇ ਪਿਛਲੇ ਪਾਸੇ ਵੱਲ ਇਸ਼ਾਰਾ ਕਰਦਿਆਂ ਕਿਹਾ, 'ਉਹ ਵੇਖ ਉਧਰ ਇੱਕ ਕੱਪ ਪਿਆ ਹੈ, ਉਸ ਵਿਚੋਂ ਪੀ ਲੈ। ਕੋਠੇ ਵਿਚ ਪਏ ਉਸ ਕੱਪ ਵਿਚ ਉਥੋਂ ਦੇ ਕੋਈ ਮਿਸ਼ਾਬ ਕਰਦੇ ਸਨ।
 - 20 ਕਿ ਮਾਲ ਮੰਡੀ ਵਿਖੇ ਕੁਲ ਪੰਦਰਾਂ ਦਿਨ ਮੈਨੂੰ ਰੱਖਣ ਤੋਂ ਬਾਅਦ ਸੁਰਖਿਆ ਬਲਾਂ ਨੇ ਮੈਨੂੰ ਕੋਠਵਾਲੀ ਕੇਦਖਾਨੇ, ਅੰਮ੍ਰਿਤਸਰ, ਭੇਜ ਦਿੱਤਾ। ਜਦੋਂ ਮੈਂ ਕੋਠਵਾਲੀ ਪੁਲਿਸ ਸਟੇਸ਼ਨ ਵਿਚ ਸੀ, ਉਸ ਸਮੇਂ ਪੁਲਿਸ ਦਰਜਨਾਂ ਦੇ ਹਿਸਾਬ ਨਾਲ ਜਵਾਨ ਮਰਦ ਅਤੇ ਔਰਤਾਂ ਨੂੰ ਗ੍ਰਿਫ਼ਤਾਰ ਕਰ ਕੇ ਲਿਆ ਰਹੀ ਸੀ। ਇੰਝ ਪ੍ਰਤੀਤ ਹੁੰਦਾ ਸੀ ਕਿ ਉਹਨਾਂ ਸਭ ਨੂੰ ਕਿਸੇ ਵੱਡੀ ਫੌਜੀ ਕਾਰਵਾਈ ਦੇ ਤਹਿਤ ਫੜਿਆ ਗਿਆ ਹੋਵੇ।
- ਕਿ ਕੋਠਵਾਲੀ ਕੇਦਖਾਨੇ ਵਿਚ ਮੈਨੂੰ ਦੋ ਔਰਤਾਂ ਨਾਲ ਰਖਿਆ ਗਿਆ ਸੀ, ਜਿਹਨਾਂ ਉਪਰ ਬੁਰੀ ਤਰਾਂ ਤਸਦੱਦ ਕੀਤਾ ਗਿਆ ਸੀ। ਕੋਠਵਾਲੀ ਵਿਖੇ ਹੀ ਮੈਂ ਆਪਣੀ ਜਿੰਦਗੀ ਦੇ ਸਭ ਤੋਂ ਡਰਾਵਣੇ ਦ੍ਰਿਸ਼ ਵੇਖੇ। ਮੈਂ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੂੰ ਦਰਜਨਾਂ ਜਵਾਨ ਮਰਦਾਂ ਨੂੰ ਫੜ ਕੇ, ਵਰਾਂਡੇ ਵਿਚ ਲਾਈਨ ਵਿਚ ਖੜਾ ਕਰਕੇ ਉਹਨਾਂ ਨੂੰ ਥਿਠਾ ਕਿਸੇ ਕਾਨੂੰਨੀ ਕਾਰਵਾਈ ਕੀਤੇ ਮਾਰਦਿਆਂ ਵੇਖਿਆ।



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- ਮੇਂ ਉਹਨਾਂ ਆਟੋਮੈਟਿਕ ਹਥਿਆਰਾਂ ਦੀ ਆਵਾਜ਼ ਜਿਹਨਾਂ ਨਾਲ ਉਹਨਾਂ ਨੂੰ ਗੈਰ-ਕਾਨੂੰਨੀ ਤਰੀਕੇ ਨਾਲ ਮਾਰਿਆ ਜਾ ਰਿਹਾ ਸੀ, ਕਦੇ ਨਹੀਂ ਭੁੱਲ ਸਕਦੀ।
- 22 ਕਿ ਕੋਤਵਾਲੀ ਵਿਖੇ ਵੀਹ ਦਿਨ ਰਹੀ ਅਤੇ ਫਿਰ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੇਰੇ ਖਿਲਾਫ ਕੇਸ ਦਰਜ ਕਰਕੇ ਮੈਨੂੰ ਅੰਮ੍ਰਿਤਸਰ ਜੇਲ ਭੇਜ ਦਿੱਤਾ।
- 23 ਕਿ ਜਦੋਂ ਮੈਂ ਅੰਮ੍ਰਿਤਸਰ ਜੇਲ ਵਿਚ ਸੀ ਤਾਂ ਵਕੀਲ ਨੇ ਮੇਰੀ ਰਿਹਾਈ ਲਈ ਜਮਾਨਤ ਦਾ ਇੰਤਜ਼ਾਮ ਕੀਤਾ। ਪਰ ਜੇਲ ਦੀ ਵਾਰਡਨ ਨੇ ਮੇਰੇ ਸੁਹਰੇ ਨੂੰ ਸਲਾਹ ਦਿੱਤੀ ਕਿ ਜੇ ਮੈਨੂੰ ਜੇਲ ਤੋਂ ਛੁਡਵਾ ਲਿਆ ਗਿਆ ਤਾਂ ਸੁਰਖਿਆ ਬਲ ਮੈਨੂੰ ਫਿਰ ਗ੍ਰਿਫਤਾਰ ਕਰ ਲੈਣਗੇ ਅਤੇ ਮੈਨੂੰ ਥਾਣੇ ਵਿਚ ਲੈ ਜਾਣਗੇ ਜਿੱਥੇ ਉਹ ਫਿਰ ਮੇਰੀ ਪੁੱਛ ਗਿੱਛ ਕਰਨਗੇ ਅਤੇ ਮੇਰੇ ਤੇ ਤਸ਼ੱਦਦ ਵੀ ਕਰਨਗੇ। ਇਸ ਲਈ ਜੇਲ ਵਿਚ ਚਹਿਣ ਵਿਚ ਹੀ ਮੇਰੀ ਸੁਰਖਿਆ ਹੈ। ਇਸ ਤਰ੍ਹਾਂ ਮੈਂ ਜੇਲ ਵਿਚ ਹੀ ਰਹੀ।
- 24 ਕਿ ਉਸ ਤੋਂ ਬਾਅਦ ਮੈਨੂੰ ਲੁਧਿਆਣਾ ਜੇਲ ਭੇਜ ਦਿੱਤਾ ਗਿਆ ਅਤੇ ਕੁਝ ਸਮੇਂ ਬਾਅਦ ਮੈਨੂੰ ਸੰਗਰੂਰ ਜੇਲ ਭੇਜ ਦਿੱਤਾ ਗਿਆ।
- 25 ਕਿ ਇਸ ਸਮੇਂ ਮੇਰਾ ਨੌਵਾਂ ਮਹੀਨਾ ਚੱਲ ਰਿਹਾ ਸੀ। ਮੇਰੇ ਸੁਹਰੇ ਨੇ ਇਕ ਵਕੀਲ ਕੀਤਾ ਜਿਸਨੇ ਮੈਨੂੰ ਜੇਲ ਤੋਂ ਛੁਡਾਉਣ ਲਈ ਜਮਾਨਤ ਦਾ ਇੰਤਜ਼ਾਮ ਕੀਤਾ। ਇਸ ਤੋਂ ਬਾਅਦ ਮੇਰੇ ਸੁਹਰੇ ਨੇ ਸੰਗਰੂਰ ਜੇਲ ਦੀ ਵਾਰਡਨ ਨਾਲ ਗੱਲ ਕੀਤੀ ਕਿ ਤਾਂ ਜੋ ਉਹ ਮੈਨੂੰ ਪੰਜਾਬ ਪੁਲਿਸ ਨੂੰ ਜਾਣਕਾਰੀ ਦਿੱਤੇ ਬਗੈਰ ਛੁਡਵਾ ਦੇਵੇ।
- 26 ਕਿ ਬਾਘਾ ਪੁਰਾਣਾ ਥਾਣੇ ਦੀ ਪੁਲਿਸ ਅਤੇ ਭਾਰਤੀ ਸੁਰਖਿਆ ਬਲਾਂ ਨੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਜਨਵਰੀ 1990 ਵਿਚ ਗ੍ਰਿਫਤਾਰ ਕਰਨ ਤੋਂ ਕਰੀਬ ਇੱਕ ਮਹੀਨੇ ਬਾਅਦ ਮੈਨੂੰ ਦੂਸਰੀ ਬਾਰ ਗ੍ਰਿਫਤਾਰ ਕੀਤਾ।
- 27 ਕਿ ਉਸ ਸਮੇਂ ਮੈਨੂੰ ਗ੍ਰਿਫਤਾਰ ਕਰਨ ਦੇ ਨਾਲ ਨਾਲ ਉਹਨਾਂ ਨੇ ਮੇਰੇ ਸੁਹਰੇ, ਮੇਰੇ ਜੇਠ ਗੁਰਨਾਮ ਸਿੰਘ, ਮੇਰੀ ਨਨਾਣ ਸੁਖਵੰਤ ਕੌਰ ਅਤੇ ਉਸਦੇ ਪਤੀ ਸਵਰਨ ਸਿੰਘ ਨੂੰ ਵੀ ਗ੍ਰਿਫਤਾਰ ਕੀਤਾ।
- 28 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਨੇ ਸਾਨੂੰ ਪੰਜਾਂ ਨੂੰ ਬਾਘਾ ਪੁਰਾਣਾ ਪੁਲਿਸ ਥਾਣੇ ਭੇਜ ਦਿੱਤਾ ਜਿਥੋਂ ਸਾਨੂੰ ਅਲੱਗ ਕਰ ਦਿੱਤਾ ਗਿਆ। ਪੁਲਿਸ ਵਾਲੇ ਫਿਰ ਮੈਨੂੰ ਇਕ ਕੋਠੜੀ ਵਿਚ ਲੈ ਗਏ ਜਿੱਥੇ ਇਕ ਪੁਲਿਸ ਅਫਸਰ ਅਤੇ ਪੰਜ ਹੋਰ ਪੁਲਿਸ ਵਾਲੇ ਪਹਿਲਾਂ ਤੋਂ ਹੀ ਮੇਰਾ ਇੰਤਜ਼ਾਮ ਕਰ ਰਹੇ ਹਨ।
- 29 ਕਿ ਥਾਣੇ ਵਿਚ ਸਥ ਇੰਸਪੈਕਟਰ ਪਰਮਜੀਤ ਸਿੰਘ ਨੇ ਮੇਰੀ ਬੇਇੱਜ਼ਤੀ ਕਰਨੀ ਸ਼ੁਰੂ ਕਰ ਦਿੱਤੀ ਅਤੇ ਮੇਰੇ ਸਾਰੇ ਪਰਿਵਾਰ ਨੂੰ ਨੁਕਸਾਨ ਪਹੁੰਚਾਉਣ ਦੀ ਵੀ ਧਮਕੀ ਦਿੱਤੀ। ਉਸਨੇ ਸਾਡੇ ਸਾਰਿਆਂ ਤੇ ਖਾੜਕੂਆਂ ਦਾ ਸਾਥ ਦੇਣ ਦਾ ਇਲਜ਼ਾਮ ਲਾਇਆ ਅਤੇ ਮੇਰੇ ਪਤੀ ਤੇ ਖਾੜਕੂ ਹੋਣ ਦਾ ਇਲਜ਼ਾਮ ਲਾਇਆ।
- 30 ਕਿ ਉਸ ਅਫਸਰ ਨੇ ਫਿਰ ਪੁਲਿਸਵਾਲਿਆਂ ਨੂੰ ਮੈਨੂੰ ਕੁਟੌਣ ਦਾ ਹੁਕਮ ਦਿੱਤਾ। ਮੇਰੇ ਮੂੰਹ ਦੇ ਖੱਬੇ ਪਾਸੇ ਕੱਪੜ ਮਾਰੇ ਗਏ ਅਤੇ ਹਾਲੇ ਮੈਂ ਘਬਰਾਈ ਹੋਈ ਸੀ ਕਿ ਮੈਨੂੰ ਉਹਨਾਂ ਨੇ ਮੇਰੀ ਗਰਦਨ ਤੋਂ ਫੜ ਲਿਆ ਅਤੇ ਮੈਨੂੰ ਮੂੰਹ ਦੇ ਭਾਰ ਮਸ਼ੀਨ ਤੇ ਸੁੱਟ ਦਿੱਤਾ। ਇਕ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਫਿਰ ਮੇਰੀਆਂ ਬਾਹਾਂ ਨੂੰ ਫੜ ਕੇ ਮੇਰੀ ਪਿੱਠ ਦੀ ਤਰਫ ਪਿਛਲੇ ਪਾਸੇ ਵੱਲ ਖਿੱਚੀਆਂ ਅਤੇ ਮੇਰੀ ਗਰਦਨ ਦੇ

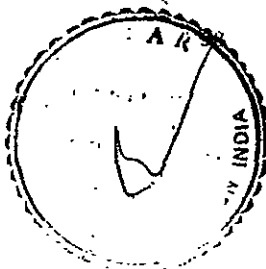


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ਪਿੱਛੇ ਜਕੜ ਲਈਆਂ। ਉਸਨੇ ਜਬਰਦਸਤੀ ਮੇਰੀਆ ਬਾਹਾਂ ਨੂੰ ਉਸ ਤਰੀਕੇ
ਫੜੀ ਰੱਖਿਆ। ਦੂਸਰੇ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੇਰੇ ਦਵੇਂ ਪੈਰ ਫੜ ਲਏ ਅਤੇ
ਮੇਰੀਆਂ ਲੱਤਾਂ ਨੂੰ ਜਬਰਦਸਤੀ ਦੂਰ ਦੂਰ ਖਿਚਿਆ । ਇਸ ਤੋਂ ਬਾਅਦ
ਉਹਨਾਂ ਨੇ ਮੈਨੂੰ ਚਮੜੇ ਦੀ ਬੈਲਟ ਨਾਲ ਮਾਰਨਾ ਸ਼ੁਰੂ ਕਰ ਦਿੱਤਾ। ਉਹਨਾਂ
ਦੀ ਮਾਰ ਦਾ ਦਰਦ ਬਰਦਾਸ਼ਤ ਤੋਂ ਬਾਹਰ ਸੀ ਅਤੇ ਮੈਂ ਦਰਦ ਅਤੇ
ਤਕਲੀਫ਼ ਕਾਰਨ ਚੀਕ ਰਹੀ ਸੀ।

- 31 ਕਿ ਤਿੰਨ ਚਾਰ ਮਿੰਟ ਬਾਅਦ, ਇਕ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਮੈਨੂੰ ਬਾਲਾਂ ਤੋਂ ਫੜ ਕੇ
ਮੇਰੇ ਸਿਰ ਨੂੰ ਪਿੱਛੇ ਦੀ ਤਰਫ ਖਿਚਿਆ ਅਤੇ ਦੂਸਰੇ ਪੁਲਿਸਵਾਲਿਆਂ ਨੇ ਮੈਨੂੰ
ਬਿਠਾ ਕੇ ਮੇਰੀਆਂ ਲੱਤਾਂ, ਮੇਰੇ ਸਾਹਮਣੇ ਪਾਸੇ, ਬਾਹਰ ਦੀ ਤਰਫ ਖਿਚਣੀਆਂ
ਸ਼ੁਰੂ ਕਰ ਦਿੱਤੀਆਂ। ਦੋ ਅਫਸਰਾਂ ਨੇ ਮੇਰੀਆਂ ਲੱਤਾਂ ਨੂੰ ਉਸੇ ਤਰਾਂ ਫੜੀ
ਰੱਖਿਆ। ਫਿਰ ਮੇਰੇ ਹੱਥਾਂ ਨੂੰ ਮੇਰੀ ਪਿੱਠ ਦੀ ਤਰਫ ਬੰਨ ਦਿੱਤਾ ਗਿਆ।
- 32 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਵਾਲੇ ਨੇ ਆਪਣੀ ਲੱਤ ਮੇਰੇ ਬੰਨੇ ਹੋਏ ਹੱਥਾਂ
ਅਤੇ ਮੇਰੀ ਪਿੱਠ ਵਿਚਕਾਰ ਦੇ ਦਿੱਤੀ ਅਤੇ ਆਪਣੀ ਲੱਤ ਨੂੰ ਮੋੜ ਲਿਆ ਅਤੇ
ਫਿਰ ਮੇਰੇ ਸਿਰ ਨੂੰ ਪਿੱਛੇ ਦੀ ਤਰਫ ਖਿਚਿਆ ਤਾਂ ਜੋ ਮੇਰੀ ਪਿੱਠ ਸਿੱਧੀ ਰਹੇ।
- 33 ਕਿ ਫਿਰ ਦੋ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੇਰੇ ਪੈਰਾਂ ਦੇ ਦਵੇਂ ਅੰਗੂਠੇ ਬੰਨ ਦਿੱਤੇ
ਅਤੇ ਇਕ ਲੰਬੇ ਦਾ ਬਹੁਤ ਭਾਰੀ 'ਰੋਲਰ' ਮੇਰੀਆਂ ਲੱਤਾਂ ਅਤੇ ਪੱਟਾਂ ਉਪਰ
ਰਖਿਆ ਅਤੇ ਫਿਰ ਹੌਲੀ ਹੌਲੀ ਉਸ ਰੋਲਰ ਨੂੰ ਮੇਰੇ ਪੱਟਾਂ ਉਪਰ ਘੁਮਾਉਣ
ਲੱਗੇ। ਉਹ ਰੋਲਰ ਕਰੀਬ ਛਾਈ ਫੁੱਟ ਚੌੜਾ ਅਤੇ ਦਸ ਇੰਚ ਮੋਟਾ ਸੀ।
ਜਦੋਂ ਉਹ ਰੋਲਰ ਨੂੰ ਮੇਰੇ ਪੱਟਾਂ ਉਪਰ ਘੁਮਾ ਰਹੇ ਸਨ ਤਾਂ ਲੱਗ ਰਿਹਾ ਸੀ
ਕਿ ਜਿਵੇਂ ਉਹ ਮੇਰੇ ਪੱਟਾਂ ਨੂੰ ਮਸਲ ਰਹੇ ਹੋਣ।
- 34 ਕਿ ਉਸ ਤੋਂ ਬਾਅਦ ਮੈਨੂੰ, ਮੇਰੀ ਨਨਾਣ ਸੁਖਵੰਤ ਕੌਰ ਨਾਲ ਇਕ ਕੋਠੜੀ
ਵਿਚ ਸੁੱਟ ਦਿੱਤਾ। ਇਸ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਵਾਲੇ ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਪੁੱਛ
ਗਿਛ ਵਾਲੇ ਕਮਰੇ ਵਿਚ ਲੈ ਗਏ ਅਤੇ ਉਸ ਉਪਰ ਤਸ਼ਦੱਦ ਕੀਤੇ ਅਤੇ
ਉਸਦੇ ਪੱਟਾਂ ਉਪਰ ਵੀ ਰੋਲਰ ਫੇਰਿਆ।
- 35 ਕਿ ਪੁਲਿਸਵਾਲੇ ਫਿਰ ਉਸਨੂੰ ਕੋਠੜੀ ਵਿਚ ਵਾਪਿਸ ਛੱਡ ਗਏ ਅਤੇ ਮੈਨੂੰ ਫਿਰ
ਤੋਂ ਪੁੱਛ ਗਿਛ ਵਾਲੇ ਕਮਰੇ ਵਿਚ ਲੈ ਗਏ, ਜਿੱਥੇ ਉਹਨਾਂ ਨੇ ਫਿਰ ਮੇਰੇ ਤੇ
ਤਸ਼ਦੱਦ ਢਾਹੇ ਅਤੇ ਮੈਨੂੰ ਚਮੜੇ ਦੀ ਬੈਲਟ (ਪੇਟੀ) ਨਾਲ ਮਾਰਿਆ ਅਤੇ ਦੋ
ਵਾਰੀ, ਉਪਰ ਦੱਸੇ ਅਨੁਸਾਰ, ਮੇਰੇ ਉਪਰ ਰੋਲਰ ਫੇਰਿਆ।
- 36 ਕਿ ਜਦੋਂ ਪੁਲਿਸਵਾਲੇ ਮੈਨੂੰ ਮਾਰ ਕੁੱਟ ਰਹੇ ਸਨ, ਉਹ ਮੈਨੂੰ ਔਰਤ ਅਤੇ ਸਿੱਖ
ਹੋਣ ਕਰਕੇ ਬੇਇਜ਼ਤ ਵੀ ਕਰ ਰਹੇ ਸਨ ਅਤੇ ਖਾਲਿਸਤਾਨ ਲਹਿਰ ਦੀ ਖਿੱਲੀ
ਵੀ ਉਡਾ ਰਹੇ ਸਨ।
- 37 ਕਿ ਮੈਨੂੰ ਬਾਰਾਂ ਦਿਨ ਬਾਘਾ ਪੁਰਾਣਾ ਥਾਣਾ ਵਿਚ ਕੈਦ ਰੱਖਿਆ ਗਿਆ ਅਤੇ
ਉਸ ਦੌਰਾਨ ਮੇਰੇ ਨਾਲ ਬਹੁਤ ਬੁਰਾ ਵਿਹਾਰ ਕੀਤਾ ਗਿਆ।
ਕਿ ਮੇਰੇ ਭੱਜਣ ਤੋਂ ਪਹਿਲਾਂ ਮੇਰੇ ਉਪਰ ਸਭ ਤੋਂ ਜਿਆਦਾ ਤਸ਼ਦੱਦ ਉਸ
ਸਮੇਂ ਹੋਇਆ ਜਦੋਂ ਮੇਰੇ ਉਪਰ ਅਖੀਰਲੀ ਵਾਰ ਬਾਘਾ ਪੁਰਾਣਾ ਥਾਣਾ ਵਿਖੇ
ਤਸ਼ਦੱਦ ਢਾਹੇ ਗਏ।



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- 39 ਕਿ ਜਦੋਂ ਮੈਨੂੰ ਪੁਲਿਸਵਾਲਿਆਂ ਸਾਹਮਣੇ ਪੇਸ਼ ਕੀਤਾ ਗਿਆ ਤਾਂ ਇੱਕ ਨੇ ਮੈਨੂੰ ਜਕੜ ਲਿਆ। ਮੈਂ ਆਪਣੇ ਆਪ ਨੂੰ ਉਸਦੀ ਜਕੜ ਵਿਚੋਂ ਛੁਡਵਾਉਣ ਦੀ ਕੋਸ਼ਿਸ਼ ਕੀਤੀ ਤਾਂ ਮੈਨੂੰ ਲੱਕੜੀ ਦੇ ਡੰਡੇ ਨਾਲ ਮਾਰਿਆ ਗਿਆ ਅਤੇ ਮੈਨੂੰ ਉਹਨਾਂ ਦੇ ਮੁੱਕੇ ਦੇ ਜੌਰ ਕਾਰਨ ਧਰਤੀ ਤੇ ਗਿਰ ਗਈ। ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਫਿਰ ਮੈਂ ਚਮੜੇ ਦੀ ਬੈਲਟ ਨਾਲ ਮਾਰਿਆ ਅਤੇ ਫਿਰ ਤੋਂ ਪੈਰਾਂ ਦੇ ਅੰਗੂਠੇ ਬੰਨ ਕੇ ਉਹਨਾਂ ਉਪਰ ਰੋਲਰ ਫੇਰਿਆ।
- 40 ਕਿ ਪੱਟਾਂ ਉਪਰ ਰੋਲਰ ਫੇਰਨ ਤੋਂ ਬਾਅਦ ਪੁਲਿਸ ਵਾਲਿਆਂ ਨੇ ਮੇਰੇ ਕਮੀਜ਼ ਦੀਆਂ ਬਾਹਾਂ ਫਾੜ ਦਿੱਤੀਆਂ ਅਤੇ ਮੇਰੇ ਮੋਢੇ ਉਪਰ, ਹੱਥ ਨਾਲ ਚੱਲਣ ਵਾਲੇ ਜਨਰੇਟਰ ਦੀ ਮਦਦ ਨਾਲ, ਕਰੰਟ ਲਾਇਆ।
- 41 ਕਿ ਜਨਰੇਟਰ ਨੂੰ ਦੋ ਤਾਰਾਂ ਜੁੜੀਆਂ ਹੋਈਆਂ ਸੀ ਅਤੇ ਜਿਵੇਂ ਹੀ ਪੁਲਿਸਵਾਲਾ ਉਸਦਾ ਹੱਥ ਘੁੰਮਾ ਕੇ ਉਸ ਵਿਚ ਕਰੰਟ ਪੈਦਾ ਕਰਦਾ ਸੀ, ਉਹ ਤਾਰਾਂ ਮੇਰੇ ਮੋਢਿਆਂ ਉਪਰ ਲਗਾ ਦਿੱਤੀਆਂ ਜਾਂਦੀਆਂ ਸਨ, ਜਿਸ ਕਾਰਨ ਜੋ ਦਰਦ ਹੁੰਦਾ ਸੀ ਉਹ ਬਿਆਨ ਨਹੀਂ ਕੀਤਾ ਜਾ ਸਕਦਾ। ਕਰੰਟ ਲਾਉਣ ਤੋਂ ਕੁਝ ਸਮੇਂ ਬਾਅਦ ਹੀ ਮੈਂ ਬੇਹੋਸ਼ ਹੋ ਗਈ।
- 42 ਕਿ ਸਾਨੂੰ ਕੈਦ ਵਿਚ ਰੱਖੇ ਜਾਣ ਸਮੇਂ ਭਾਰਤੀ ਸੁਰਖਿਆ ਬਲਾਂ ਨੇ ਮੇਰੀ ਨਨਾਣ ਦੇ ਪਤੀ ਤੇ ਵੀ ਤਸ਼ੱਦਦ ਕੀਤੇ। ਇਸ ਸਾਰੇ ਸਮੇਂ ਦਰਨ ਮੇਰੇ ਉਪਰ ਜਦੋਂ ਵੀ ਤਸ਼ੱਦਦ ਕੀਤੇ ਗਏ, ਉਸ ਸਮੇਂ ਕੋਈ ਵੀ ਮਹਿਲਾ ਪੁਲਿਸ ਉੱਥੇ ਮੌਜੂਦ ਨਹੀਂ ਹੁੰਦੀ ਸੀ।
- 43 ਕਿ ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਬਾਘਾ ਪੁਰਾਣਾ ਥਾਣੇ ਵਿਚ ਤੋਰਾਂ ਦਿਨ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ ਰਖਿਆ ਗਿਆ।
- 44 ਕਿ ਅਕਤੂਬਰ 1991 ਵਿਚ ਮਲੇਰਕੋਟਲਾ ਪੁਲਿਸ ਦੇ ਅਫਸਰ ਬਰਾੜ ਨੇ ਮੇਰੇ ਜੇਠ ਗੁਰਨਾਮ ਸਿੰਘ, ਸਹੁਰੇ, ਨਨਾਣ ਅਤੇ ਨਨਾਣ ਦੇ ਪਤੀ ਨੂੰ ਸੰਦੇਹ ਚੌਕੀ ਵਿਖੇ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ ਰਖਿਆ ਅਤੇ ਤਸ਼ੱਦਦ ਕੀਤਾ। ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਉਹਨਾਂ ਨੇ ਤੋਰਾਂ ਦਿਨ ਬਾਅਦ ਛੱਡ ਦਿੱਤਾ ਪਰ ਥਾਕੀਆਂ ਨੂੰ ਚਾਰ ਮਹੀਨੇ ਤੱਕ ਆਪਣੀ ਕੈਦ ਵਿਚ ਰਖਿਆ।
- 45 ਕਿ ਦਸੰਬਰ 1991 ਵਿਚ ਪਟਿਆਲਾ ਪੁਲਿਸ ਦੇ ਐਸ ਐਸ ਪੀ ਗਰੇਵਾਲ ਨੇ ਮੇਰੇ ਜੇਠ ਅਤੇ ਜੇਠਾਣੀ ਅਤੇ ਤਿੰਨ ਨਨਾਣਾਂ (ਸੁਖਵੰਤ ਕੌਰ, ਗੁਰਦਿਆਲ ਕੌਰ ਅਤੇ ਬਲਜਿੰਦਰ ਕੌਰ) ਅਤੇ ਸੁਖਵੰਤ ਕੌਰ ਦੇ ਪਤੀ, ਸਵਰਨ ਸਿੰਘ ਅਤੇ ਬਲਜਿੰਦਰ ਕੌਰ ਦੇ ਪਤੀ ਅਪਜੀਤ ਸਿੰਘ ਨੂੰ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ 'ਮਾਈ ਕੀ ਸਰਾਂ' ਚੌਕੀ ਵਿਖੇ ਰਖਿਆ ਅਤੇ ਕਰੀਬ ਡੇਢ ਮਹੀਨੇ ਬਾਅਦ ਕਾਫੀ ਤਸ਼ੱਦਦ ਕਰਨ ਤੋਂ ਬਾਅਦ ਹੀ ਛੱਡਿਆ।
- 46 ਕਿ 5 ਅਗਸਤ 1992 ਨੂੰ ਪੁਲਿਸ ਨੇ ਮੇਰੀ ਨਨਾਣ, ਉਸਦੇ ਪਤੀ ਅਤੇ ਉਸਦੇ ਬੇਟੇ ਬਲਰਾਜ ਸਿੰਘ, ਮੇਰੇ ਜੇਠ ਅਤੇ ਮੇਰੇ ਸਹੁਰੇ ਨੂੰ ਪੁਲਿਸ ਨੇ ਚੁੱਕ ਲਿਆ। ਮੇਰੀ ਨਨਾਣ ਅਤੇ ਉਸਦੇ ਬੇਟੇ ਨੂੰ ਸੀ ਆਈ ਏ ਸਟਾਫ਼ ਹੱਡਿਆਇਆ (ਚਰਨਾਲਾ) ਵਾਲੇ ਲੈ ਗਏ। ਉਹਨਾਂ ਨੇ ਪੰਜ ਦਿਨਾਂ ਬਾਅਦ ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਛੱਡ ਦਿੱਤਾ ਪਰ ਉਸਦਾ ਬੇਟਾ ਬਲਰਾਜ ਸਿੰਘ ਉਸ ਸਮੇਂ ਤੋਂ ਹੀ ਗਾਇਬ ਮੇਰੇ ਸਹੁਰੇ ਅਤੇ ਜੇਠ ਨੂੰ ਮਲੇਰਕੋਟਲਾ ਪੁਲਿਸ ਨੇ ਦਸ ਦਿਨ ਤੱਕ



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ਤਸੀਹੇ ਦੇਣ ਤੋਂ ਬਾਅਦ ਛੱਡਿਆ ਪਰ ਮੇਰੇ ਨਨਦੇਈਏ ਨੂੰ ਉਹਨਾਂ ਨੇ ਪੂਰਾ ਇਕ ਮਹੀਨਾ ਆਪਣੀ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ ਰਖਿਆ ।

47 ਕਿ ਅਪਰੈਲ 1993 ਵਿਚ ਪਟਿਆਲਾ ਪੁਲਿਸ ਦੇ ਐਸ ਐਸ ਪੀ ਗਰੇਵਾਲ ਨੇ ਮੇਰੀ ਨਨਾਣ, ਉਸਦੇ ਪਤੀ, ਮੇਰੇ ਜੇਠ, ਮੇਰੇ ਸਹੁਰੇ ਅਤੇ ਮੇਰੀ ਮਾਂ ਨੂੰ ਫਿਰ ਤੋਂ ਗ੍ਰਿਫਤਾਰ ਕੀਤਾ ਅਤੇ ਮਾਈ ਕੀ ਸਰਾਂ ਵਿਖੇ ਲਿਜਾ ਕੇ ਇਹਨਾਂ ਨੂੰ ਤਸੀਹੇ ਦਿੱਤੇ। ਇਸ ਸਭ ਤੋਂ ਬਾਅਦ ਉਹਨਾਂ ਨੂੰ ਜੂਨ ਵਿਚ ਛੱਡਿਆ ਗਿਆ। ਜੁਲਾਈ / ਅਗਸਤ 1993 ਵਿਚ ਐਸ ਐਸ ਪੀ ਗਰੇਵਾਲ ਨੇ ਇਹਨਾਂ ਸਭ ਨੂੰ ਫਿਰ ਤੋਂ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ ਲਿਆ ਅਤੇ ਮਲੇਰਕੋਟਲਾ ਥਾਣੇ ਤਿੰਨ ਮਹੀਨੇ ਤੱਕ ਤਸੀਹੇ ਦਿੰਦੇ ਰਹੇ।

48 ਕਿ ਅਕਤੂਬਰ 1993 ਵਿਚ ਸੀ ਆਈ ਏ ਸਟਾਫ ਹੱਡਿਆਇਆ (ਬਰਨਾਲਾ) ਦੇ ਇਨਚਾਰਜ ਭਰਪੂਰ ਸਿੰਘ ਨੇ ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਅੱਠ ਦਿਨ ਹਿਰਾਸਤ ਵਿਚ ਰੱਖਿਆ ਅਤੇ ਮੇਰੇ ਨਨਦੇਈਏ ਨੂੰ ਡੇਢ ਮਹੀਨੇ ਤੱਕ ਹਿਰਾਸਤ ਵਿਚ ਰੱਖ ਕੇ ਤਸੀਹੇ ਦਿੰਦੇ ਰਹੇ। ਇਸ ਤੋਂ ਬਾਅਦ ਸੰਦੌੜ ਥਾਣੇ ਦੇ ਪੁਲਿਸ ਅਫਸਰ ਨਿਰਮਲ ਸਿੰਘ ਨੇ ਇਹਨਾਂ ਸਭ ਨੂੰ ਦੋਬਾਰਾ ਗ੍ਰਿਫਤਾਰ ਕੀਤਾ ਅਤੇ ਇਕ ਮਹੀਨੇ ਤਕ ਆਪਣੀ ਹਿਰਾਸਤ ਵਿਚ ਰਖਿਆ ।

49 ਕਿ ਮਾਰਚ 1995 ਵਿਚ ਸੀ ਆਈ ਏ ਸਟਾਫ ਹੱਡਿਆਇਆ ਨੇ ਸਾਡੇ ਘਰ ਰਾਤ ਨੂੰ ਦੋ ਵਜੇ ਛਾਪਾ ਮਾਰਿਆ ਅਤੇ ਮੇਰੀ ਨਨਾਣ ਅਤੇ ਉਸਦੇ ਪਤੀ ਨੂੰ ਦੋਬਾਰਾ ਹਿਰਾਸਤ ਵਿਚ ਲੈ ਲਿਆ ਅਤੇ ਉਹਨਾਂ ਦੀਆਂ ਅੱਖਾਂ ਉੱਤੇ ਪਟੀ ਬੰਨ ਕੇ ਲੈ ਗਏ। ਮੇਰੇ ਨਨਦੇਈਏ ਬਾਅਦ ਉਹਨਾਂ ਨੇ ਕੁਝ ਦੋਰ ਬਾਅਦ ਛੱਡ ਦਿੱਤਾ ਪਰ ਮੇਰੀ ਨਨਾਣ ਨੂੰ ਉਹ ਪਹਿਲਾਂ ਚੋਕੀ ਸ਼ੇਖਾ ਝਲੂਰ ਅਤੇ ਬਾਅਦ ਵਿਚ ਬਰਨਾਲਾ ਲੈ ਗਏ ਜਿੱਥੇ ਉਸਨੂੰ ਤੇਰਾਂ ਦਿਨ ਰਖਿਆ ਅਤੇ ਉਸਤੇ ਰੋਲਰ ਚਲਾਉਣ ਅਤੇ ਕਰੰਟ ਲਾਉਣ ਵਰਗੇ ਤਸੀਹੇ ਦਿੱਤੇ।

50 ਕਿ ਅਕਤੂਬਰ 1995 ਵਿਚ ਮੇਰੀ ਨਨਾਣ ਦੇ ਬੇਟੇ ਗੁਰਜੀਤ ਸਿੰਘ ਨੂੰ ਮਲੇਰਕੋਟਲਾ ਦੇ ਡੀ ਐਸ ਪੀ ਬਰਾੜ ਨੇ ਗੈਰਕਾਨੂੰਨੀ ਹਿਰਾਸਤ ਵਿਚ ਲਿਆ ਅਤੇ ਲਛੌਂ ਬੱਧੀ ਚੋਕੀ ਵਿਖੇ 28 / 29 ਦਿਨ ਰਖਿਆ ਅਤੇ ਤਸੀਹੇ ਦਿੱਤੇ। ਇਸ ਦੌਰਾਨ ਉਸਦੇ ਹੱਥ ਪਿਠ ਦੀ ਤਰਫ ਬੰਨ ਕੇ ਉਹਨਾਂ ਨੂੰ ਰੱਸੀ ਨਾਲ ਬੰਨ ਕੇ ਉਸਨੂੰ ਕਈ ਵਾਰੀ ਛੱਤ ਨਾਲ ਲਟਕਾਇਆ ਗਿਆ ਅਤੇ ਹੋਰ ਵੀ ਕਈ ਅਣ-ਮਨੁੱਖੀ ਤਸੀਹੇ ਦਿੱਤੇ ਗਏ।

ਅਮਰੀਕਾ ਦੀ ਉਡਾਣ ਅਤੇ ਭਾਰਤ ਵਾਪਸੀ

51 ਕਿ ਜੁਲਾਈ 1995 ਵਿਚ ਮੈਂ, ਮੇਰੇ ਪਤੀ ਦਯਾ ਸਿੰਘ ਅਤੇ ਸੁਰਿੰਦਰ, ਭਾਰਤੀ ਸੁਰਖਿਆ ਬਲਾਂ ਤੋਂ ਬਚ ਕੇ, ਭਾਰਤ ਛੱਡ ਕੇ ਯੂਨਾਇਟਿਡ ਸਟੇਟਸ ਆਫ ਅਮੇਰੀਕਾ ਭੱਜ ਗਏ।

52 ਕਿ ਅਮਰੀਕਾ ਆਉਣ ਤੋਂ ਬਾਅਦ ਅਸੀਂ ਨਿਊਯਾਰਕ ਵਿਖੇ ਆਪਣੇ ਧਰਮ ਦੇ ਇਕ ਬੰਦੇ ਦੇ ਘਰ ਕਰੀਬ ਇਕ ਮਹੀਨਾ ਠਹਿਰੇ।



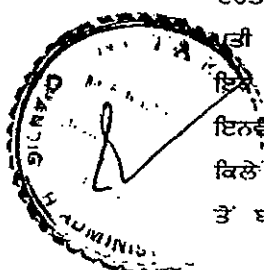
ਅਸੀਂ ਨਿਊਯਾਰਕ ਵਿਖੇ ਅਸੀਂ ਆਪਣੇ ਭਵਿੱਖ ਬਾਰੇ ਯੋਜਨਾ ਬਣਾ ਰਹੇ ਸੀ ਅਤੇ ਸੋਚ ਰਹੇ ਸੀ ਕਿ ਅਸੀਂ ਕਿੱਥੇ ਰਹਿ ਸਕਦੇ ਹਾਂ ਅਤੇ ਨਾਲ ਹੀ ਅਮਰੀਕਾ ਵਿਚ ਅਸਾਇਲਮ ਵਿਚ ਅਰਜ਼ੀ ਦੇਣ ਦੇ ਤਰੀਕੇ ਦੀ ਜਾਣਕਾਰੀ ਲੈ ਰਹੇ ਸਾਂ।

UNCLASSIFIED

- 54 ਕਿ ਅਗਸਤ 1995 ਨੂੰ ਜਦੋਂ ਅਸੀਂ ਮਿਨੀਏਪਲਸ, ਮਿਨੀਸੋਟਾ ਵਿਖੇ ਆਪਣੇ ਇਕ ਸਿੱਤਰ, ਜਿਸਨੇ ਕਿ ਸਾਨੂੰ ਵਾਅਦਾ ਕੀਤਾ ਸੀ ਕਿ ਉਹ ਸਾਡੇ ਰਹਿਣ ਦੇ ਇੰਤਜ਼ਾਮ ਕਰਨ ਵਿਚ ਮਦਦ ਕਰੇਗਾ, ਨੂੰ ਮਿਲਣ ਜਾ ਰਹੇ ਸੀ ਤਾਂ ਇਮੀਗਰੇਸ਼ਨ ਐਂਡ ਨੈਚਰਲਾਈਜ਼ੇਸ਼ਨ ਸਰਵਿਸ (ਆਈ ਐਨ ਐਸ) ਅਤੇ ਫੰਡਰਲ ਬਿਊਰੋ ਆਫ ਇਨਵੈਸਟੀਗੇਸ਼ਨ ਦੇ ਏਜੰਟਾਂ ਨੇ ਮੇਰੇ ਪਰਿਵਾਰ ਅਤੇ ਸਿੱਤਰ ਨੂੰ ਗ੍ਰਿਫਤਾਰ ਕਰ ਲਿਆ।
- 55 ਕਿ ਗ੍ਰਿਫਤਾਰੀ ਤੋਂ ਬਾਅਦ ਮੈਂ ਆਈ ਐਨ ਐਸ ਦੀ ਕੈਦ ਵਿਚ ਰਹੀ। ਮੈਨੂੰ ਸਭ ਤੋਂ ਪਹਿਲਾਂ ਮਿਨੀਸੋਟਾ ਫਿਰ ਵਿਸਕੋਨਸਿਨ, ਫਿਰ ਕੋਲੋਰਾਡੋ ਅਤੇ ਅਖੀਰ ਵਿਚ ਫੋਰਟ ਵਰਥ, ਟੈਕਸਾਸ ਵਿਖੇ ਰਖਿਆ ਗਿਆ।
- 56 ਕਿ ਮੈਂ ਫੋਰਟ ਵਰਥ ਵਿਖੇ ਕਰੀਬ ਤਿੰਨ ਹਫ਼ਤੇ ਰਹੀ ਅਤੇ ਫਿਰ ਮਾਰਚ 1996 ਨੂੰ, ਭਾਰਤ ਸਰਕਾਰ ਵੱਲੋਂ ਮੈਨੂੰ ਅਤੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਭਾਰਤ ਵਾਪਿਸ ਲਿਆਉਣ ਲਈ ਅਰਜ਼ੀ ਦੇਣ ਤੋਂ ਬਾਅਦ, ਮੈਨੂੰ ਆਈ ਐਨ ਐਸ ਤੋਂ ਯੂਨਾਈਟਿਡ ਸਟੇਟ ਮਾਰਸ਼ਲ ਕੋਲ ਭੇਜ ਦਿੱਤਾ ਗਿਆ।
- 57 ਕਿ, ਅਸੀਂ, ਅਸਾਇਲਮ ਲੈਣ ਅਤੇ ਭਾਰਤ ਵਾਪਸੀ ਦੀ ਕਾਰਵਾਈ ਸਮੇਂ ਆਪਣੇ ਬਿਆਨਾਂ, ਦਰਖਾਸਤਾਂ ਅਤੇ ਲਿਖਤੀ ਬਿਆਨਾਂ ਵਿਚ ਵਾਰ ਵਾਰ ਆਪਣੇ ਡਰ ਨੂੰ ਜ਼ਾਹਿਰ ਕੀਤਾ ਕਿ ਜੇ ਸਾਨੂੰ ਵਾਪਿਸ ਭਾਰਤ ਭੇਜਿਆ ਗਿਆ ਤਾਂ ਸਾਡੇ ਉੱਪਰ ਫਿਰ ਤੋਂ ਤਸ਼ਦਦ ਅਤੇ ਜ਼ੁਲਮ ਕੀਤੇ ਜਾਣਗੇ। ਮੇਰੀ ਜਾਣਕਾਰੀ ਅਨੁਸਾਰ ਮੇਰੇ ਵਾਰ ਵਾਰ ਤਸ਼ਦਦ ਕੀਤੇ ਜਾਣ ਦੇ ਡਰ ਜਤਾਉਣ ਤੇ ਭਾਰਤ ਕੋਲੋਂ ਰਾਜਸੀ ਭਰੋਸਾ ਲਿਆ ਗਿਆ ਸੀ ਕਿ ਤਸ਼ਦਦ ਅਤੇ ਜ਼ੁਲਮ ਤੋਂ ਮੇਰੀ ਰਖਿਆ ਕੀਤੀ ਜਾਵੇਗੀ। ਇਹ ਭਰੋਸਾ ਦੇਣ ਦੇ ਬਾਵਜੂਦ ਵੀ, ਭਾਰਤ ਵਾਪਸੀ ਤੋਂ ਬਾਅਦ, ਮੇਰੇ ਉੱਪਰ ਤਸ਼ਦਦ ਕੀਤਾ ਗਿਆ।
- 58 ਜਨਵਰੀ 1997 ਨੂੰ ਮੈਨੂੰ ਅਤੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਭਾਰਤ ਵਾਪਿਸ ਲਿਆਉਣ ਦਾ ਫਿਰਿਆ ਅਤੇ ਸਾਨੂੰ ਸੈਂਟਰਲ ਬਿਊਰੋ ਆਫ ਇਨਵੈਸਟੀਗੇਸ਼ਨ (ਸੀ ਬੀ ਆਈ) ਦੀ ਹਿਰਾਸਤ ਵਿਚ ਦੇ ਦਿੱਤਾ ਗਿਆ।

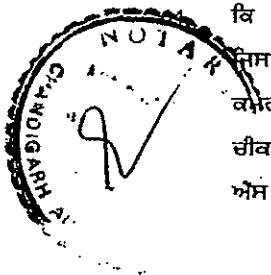
ਭਾਰਤ ਵਾਪਸੀ ਤੋਂ ਬਾਅਦ ਦੇ ਤਜਰਬੇ

- 59 17 ਜਨਵਰੀ ਨੂੰ ਮੇਰੀ ਭਾਰਤ ਵਾਪਸੀ ਤੇ ਮੈਨੂੰ ਅਤੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਅੱਖਾਂ ਬੰਨ ਕੇ ਅਤੇ ਮੂੰਹ ਉਤੇ ਨਕਾਬ ਪਾ ਕੇ ਬੰਬੇ ਏਅਰਪੋਰਟ ਤੋਂ ਐਸ ਐਸ ਪੀ ਖਤਗਾਵਤ (ਜੈਪੁਰ, ਰਾਜਸਥਾਨ) ਦੀ ਅਗਵਾਈ ਹੇਠ ਜਹਾਜ਼ ਰਾਹੀਂ ਦਿੱਲੀ ਏਅਰਪੋਰਟ ਲਿਆਉਣ ਦਾ ਫਿਰਿਆ। ਉਸ ਤੋਂ ਬਾਅਦ ਸਾਨੂੰ ਗੱਡੀ ਵਿਚ ਦਿੱਲੀ ਵਿਖੇ ਸੀ ਬੀ ਆਈ ਦੇ ਦਫਤਰ ਵਿਚ ਲਿਜਾਇਆ ਗਿਆ। ਸੀ ਬੀ ਆਈ ਦੇ ਦਫਤਰ ਵਿਚ 2 / 3 ਘੰਟੇ ਸਾਡੀ ਪੁਛ ਗਿੱਛ ਕੀਤੀ ਗਈ ਜਿਸ ਦੌਰਾਨ ਮੇਰੇ ਪਤੀ ਨੇ ਕਈ ਵਾਰੀ ਸਾਡੇ ਵਕੀਲ ਨੂੰ ਬੁਲਾਉਣ ਲਈ ਕਿਹਾ, ਪਰ ਸਾਡੀ ਇਸ ਨਾ ਸੁਣੀ ਗਈ। ਇਸ ਤੋਂ ਬਾਅਦ ਸਾਨੂੰ ਸੀ ਆਈ ਡੀ (ਸੈਂਟਰਲ ਇਨਵੈਸਟੀਗੇਸ਼ਨ ਡਿਪਾਰਟਮੈਂਟ) ਵਾਲੇ ਜੈਪੁਰ ਲੈ ਗਏ। ਉਥੇ ਮੈਨੂੰ ਅਮੇਰ ਕਿਲੋ ਵਿਚ ਸਥਿਤ ਬੀ ਐਸ ਐਫ ਦੀ ਛਾਉਣੀ ਵਿਚ 2 / 3 ਘੰਟੇ ਰੱਖਣ ਤੋਂ ਬਾਅਦ ਇਕ ਜੱਜ ਦੇ ਘਰ ਲੈ ਗਏ ਜਿਥੋਂ ਮੇਰਾ ਰਿਮਾਂਡ ਲਿਆ ਗਿਆ।



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- 60 ਕਿ ਇਸ ਤੋਂ ਬਾਅਦ ਮੈਨੂੰ ਅਤੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਅਮੋਰ ਦੇ ਕਿਲੇ ਵਿਚ ਹੀ ਅਲੱਗ ਅਲੱਗ ਕੋਠੜੀਆਂ ਵਿਚ ਰਖਿਆ ਗਿਆ ਜਿਥੇ ਮੈਨੂੰ ਰਿਮਾਂਡ ਦੇ ਦੌਰਾਨ ਇਕ ਮਹੀਨਾ ਅਤੇ ਸੱਤ ਦਿਨ ਰਖਿਆ।
- 61 ਕਿ ਪੂਰੀ ਰਿਮਾਂਡ ਦੇ ਸਮੇਂ ਦੌਰਾਨ ਸਾਨੂੰ ਸਿਰਫ ਇਕ ਵਾਰੀ ਵਕੀਲ ਨੂੰ ਮਿਲਾਉਣ ਤੋਂ ਇਲਾਵਾ ਕਿਸੇ ਨੂੰ ਵੀ ਮਿਲਣ ਦੀ ਇਜਾਜ਼ਤ ਨਹੀਂ ਦਿੱਤੀ ਗਈ। ਇਸ ਦੌਰਾਨ ਸੀ ਆਈ ਡੀ. ਸੀ ਬੀ ਆਈ, ਬੰਗਾਲ ਪੁਲਿਸ ਅਤੇ ਰਾਜਸਥਾਨ ਪੁਲਿਸ ਹਰ ਰੋਜ਼ ਸਾਡੇ ਤੋਂ ਪੁੱਛ ਗਿੱਛ ਲਈ ਆਉਂਦੀ ਰਹੀ। ਹਰ ਰੋਜ਼ ਸਵੇਰੇ ਛੇ ਵਜੇ ਤੋਂ ਰਾਤ ਬਾਰਾਂ ਵਜੇ ਤੱਕ ਮੇਰੇ ਤੋਂ ਪੁੱਛ ਗਿੱਛ ਕੀਤੀ ਜਾਂਦੀ ਰਹੀ। ਸਾਰੇ ਦਿਨ ਵਿਚ ਉਹ ਮੈਨੂੰ ਦੁਪਹਿਰ ਕਰੀਬ ਇਕ ਵਜੇ ਅੱਧੇ ਘੰਟੇ ਲਈ ਅਰਾਮ ਕਰਨ ਦਿੰਦੇ ਅਤੇ ਸਾਰੀ ਪੁੱਛਗਿੱਛ ਦੌਰਾਨ ਨਾ ਹੀ ਸਾਡਾ ਵਕੀਲ ਅਤੇ ਨਾ ਹੀ ਮਹਿਲਾ ਪੁਲਿਸ ਉਥੇ ਮੌਜੂਦ ਸੀ।
- 62 ਕਿ ਇਸ ਦੌਰਾਨ ਮੈਨੂੰ ਸਿਰਫ ਇਕ ਵਾਰੀ, ਖੁਨ ਦੀਆਂ ਉਲਟੀਆਂ ਲਗਣ ਤੇ ਹੀ ਡਾਕਟਰ ਨੂੰ ਦਿਖਾਇਆ ਗਿਆ, ਇਹ ਡਾਕਟਰ ਜੇਲ ਦਾ ਡਾਕਟਰ ਨਹੀਂ ਸੀ। ਮੇਰੇ ਕਈ ਵਾਰ ਪੁੱਛਣ ਤੇ ਵੀ ਉਸ ਡਾਕਟਰ ਨੇ ਮੈਨੂੰ ਖੁਨ ਦੀਆਂ ਉਲਟੀਆਂ ਆਉਣ ਦਾ ਕਾਰਨ ਨਹੀਂ ਦੱਸਿਆ ਅਤੇ ਇਕ ਇੰਜੇਕਸ਼ਨ ਦੇ ਕੇ ਵਾਪਿਸ ਭੇਜ ਦਿੱਤਾ।
- 63 ਕਿ ਇਸ ਰਿਮਾਂਡ ਦੇ ਦੌਰਾਨ ਮੇਰੇ ਉੱਤੇ ਤਸ਼ੱਦਦ ਕੀਤੇ ਗਏ। ਕਈ ਵਾਰੀ ਉਹ ਮੇਰੇ ਤੋਂ ਸਵੇਰੇ ਛੇ ਵਜੇ ਤੋਂ ਪੁੱਛ ਗਿੱਛ ਕਰਨਾ ਸ਼ੁਰੂ ਕਰ ਦਿੰਦੇ ਅਤੇ ਅਗਲੇ ਤਿੰਨ ਦਿਨ ਤੱਕ ਲਗਾਤਾਰ ਸਵਾਲ ਜਵਾਬ ਕਰਦੇ ਰਹਿੰਦੇ। ਇਸ ਦੌਰਾਨ ਪੂਰੇ ਤਿੰਨ ਦਿਨ ਅਤੇ ਰਾਤ ਉਹ ਮੈਨੂੰ ਸੌਣ ਨਾ ਦਿੰਦੇ। ਸਾਰੀ ਰਾਤ 3 / 4 ਸਿਪਾਹੀ ਅਤੇ ਇਕ ਐਸ ਐਚ ਓ ਮੇਰੇ ਉੱਤੇ ਨਜ਼ਰ ਰਖਦੇ। ਉਥੇ ਤਿੰਨ ਐਸ ਐਚ ਓ ਅਤੇ ਉਹਨਾਂ ਦੇ ਸਿਪਾਹੀ ਸਨ, ਜੋ ਵਾਰੀ ਵਾਰੀ ਮੇਰੇ ਕੋਲ ਡਿਊਟੀ ਤੇ ਬੈਠਦੇ। ਇਸ ਦੌਰਾਨ ਮੈਨੂੰ ਇਨਟੈਰੀਗੇਸ਼ਨ ਵਾਲੇ ਕਮਰੇ ਵਿਚ ਰੱਖਿਆ ਜਾਂਦਾ। ਉਹ ਮੈਨੂੰ ਸਾਰੀ ਰਾਤ ਸੌਣ ਨਾ ਦਿੰਦੇ। ਜੇ ਨੀਂਦ ਆ ਵੀ ਜਾਂਦੀ ਤਾਂ ਸਰਦੀ ਦਾ ਮੋਸਮ ਹੋਣ ਦੇ ਬਾਵਜੂਦ ਵੀ ਠੰਢਾ ਪਾਣੀ ਮੇਰੇ ਮੂੰਹ ਉੱਤੇ ਪਾ ਕੇ ਮੈਨੂੰ ਜਗਾ ਦਿੰਦੇ। ਉਹਨਾਂ ਨੇ ਇਹ ਪੂਰਾ ਸਿਲਸਿਲਾ ਮੇਰੇ ਨਾਲ ਤਿੰਨ ਵਾਰੀ ਕੀਤਾ। ਆਮ ਦਿਨਾਂ ਦੇ ਦੌਰਾਨ ਵੀ ਉਹ ਮੈਨੂੰ ਹਰ ਸਮੇਂ ਜਲੀਲ ਕਰਦੇ ਰਹਿੰਦੇ ਅਤੇ ਇਕ ਵਾਰੀ ਮੈਨੂੰ ਵਾਲਾਂ ਤੇ ਫੜ ਕੇ ਵੀ ਘੜੀਸਿਆ। ਉਹ ਵਾਰ ਵਾਰ ਮੇਰੇ ਉੱਤੇ ਜੋਰ ਪਾਉਂਦੇ ਕਿ ਮੈਂ ਝੂਠੇ ਇਲਜ਼ਾਮ ਕਬੂਲ ਲਵਾਂ। ਐਸ ਐਸ ਪੀ ਖੜਗਾਵਤ ਨੇ ਇਥੋਂ ਤੱਕ ਵੀ ਕਿਹਾ 'ਜੇ ਕਿਤੇ ਤੂੰ ਸਾਨੂੰ ਪਹਿਲਾਂ ਹਿੰਦੁਸਤਾਨ ਵਿਚ ਮਿਲ ਜਾਂਦੀ ਤਾਂ ਤੇਰੇ ਚੀਥੜੇ ਵੀ ਨਹੀਂ ਸੀ ਲੱਭਦੇ'।



ਕਿ ਇਸ ਦੌਰਾਨ ਇਕ ਮੁਸਲਮਾਨ ਨੌਜਵਾਨ ਉਹਨਾਂ ਦੀ ਹਿਰਾਸਤ ਵਿਚ ਸੀ, ਜਿਸ ਉਪਰ ਪੁਲਿਸ ਵਲੋਂ ਤਸ਼ੱਦਦ ਕੀਤਾ ਜਾ ਰਿਹਾ ਸੀ। ਕਿਉਂ ਜੋ ਉਸਦਾ ਕਮਰਾ ਮੇਰੇ ਕਮਰੇ ਦੇ ਉਪਰ ਸੀ ਇਸ ਲਈ ਮੈਨੂੰ ਹਰ ਵੇਲੇ ਉਸਦੀਆਂ ਚੀਕਾਂ ਸੁਣਾਈ ਦਿੰਦੀਆਂ ਜਿਸ ਕਾਰਨ ਮੈਂ ਬਹੁਤ ਘਬਰਾ ਜਾਂਦੀ। ਇਕ ਦਿਨ ਐਸ ਐਸ ਪੀ ਖੜਗਾਵਤ ਨੇ ਉਸ ਲੜਕੇ ਦੀ ਹਾਲਤ ਮੈਨੂੰ ਜ਼ਬਰਦਸਤੀ

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ਦਿਖਾਈ। ਪੁਲਿਸ ਨੇ ਉਸ ਉਪਰ ਇੰਨਾ ਤਸਦੱਦ ਕੀਤਾ ਸੀ ਕਿ ਉਸ ਦੇ ਨੰਗੇ
ਤੱਕ ਉਖਾੜ ਕੇ ਉਸ ਵਿਚ ਆਲ ਪਿੰਨ ਗੱਡ ਦਿੱਤੇ ਸਨ। ਇਹ ਸਭ ਮੈਨੂੰ
ਦਿਖਾ ਕੇ ਐਸ ਐਸ ਪੀ ਖੜਗਵਤ ਨੇ ਮੈਨੂੰ ਕਿਹਾ 'ਤੇਰੇ ਨਾਲ ਵੀ ਇਹੋ ਹੀ
ਵਿਹਾਰ ਕਰਨਾ ਸੀ'। ਮੈਨੂੰ ਉਹ ਡਰਾਉਣਾ ਦ੍ਰਿਸ਼ ਅੱਜ ਤੱਕ ਨਹੀਂ ਭੁਲਦਾ।

65 ਕਿ 22 ਫਰਵਰੀ ਨੂੰ ਮੈਨੂੰ ਟਾਡਾ ਕੋਰਟ, ਅਜਮੇਰ (ਰਾਜਸਥਾਨ) ਵਿਖੇ ਪੇਸ਼
ਕੀਤਾ ਗਿਆ ਜਿਥੇ ਮੈਨੂੰ ਜੁਡੀਸ਼ੀਅਲ ਕਸਟਡੀ ਵਿਚ ਅਜਮੇਰ ਜੇਲ ਭੇਜ ਦਿੱਤਾ
ਗਿਆ। ਟਾਡਾ ਦਾ ਇਹ ਕੇਸ ਮੇਰੇ ਉਪਰ ਭਾਰਤ ਵਾਪਸੀ ਤੋਂ ਬਾਅਦ
ਪਾਇਆ ਗਿਆ ਸੀ। ਇਸ ਦੌਰਾਨ ਮੈਨੂੰ ਜੇਲ ਵਿਚ ਪੂਰੇ ਤਿੰਨ ਸਾਲ ਇਕੱਲੀ
ਨੂੰ ਕੋਠੜੀ ਵਿਚ ਰਖਿਆ ਗਿਆ। ਜੇ ਕੋਈ ਪਰਿਵਾਰਿਕ ਮੈਂਬਰ ਮੈਨੂੰ ਮਿਲਣ
ਆਉਂਦਾ ਤਾਂ ਉਹ ਸਿਰਫ ਸੀ ਆਈ ਡੀ ਵਾਲਿਆਂ ਦੀ ਮੌਜੂਦਗੀ ਵਿਚ ਹੀ
ਮਿਲ ਸਕਦਾ ਸੀ ਜਦੋਂਕਿ ਦੂਸਰੇ ਕੇਸੀਆਂ ਨੂੰ ਆਪਣੇ ਰਿਸ਼ਤੇਦਾਰਾਂ ਨੂੰ ਮਿਲਣ
ਦੀ ਖੁੱਲੀ ਇਜਾਜ਼ਤ ਸੀ। ਇਸ ਦੌਰਾਨ ਮੇਰੇ ਪਤੀ ਦਾ ਸਿੰਘ ਨੂੰ ਦਿੱਲੀ ਵਿਖੇ
ਰਖਿਆ ਗਿਆ ਅਤੇ ਸਾਨੂੰ ਤਿੰਨ ਸਾਲ ਮਿਲਣ ਵੀ ਨਹੀਂ ਦਿੱਤਾ ਗਿਆ।

66 ਕਿ ਮੈਨੂੰ ਦਮੇ ਦੀ ਸ਼ਿਕਾਇਤ ਹੋ ਅਤੇ ਜੇ ਮੈਂ ਕਦੇ ਵੀ ਬਿਮਾਰ ਹੋਈ ਤਾਂ
ਮੈਨੂੰ ਦਵਾਈ ਮੁਹਈਆ ਨਹੀਂ ਕਰਵਾਈ ਜਾਂਦੀ ਸੀ, ਜਿਸ ਕਾਰਨ ਮੈਨੂੰ ਬਹੁਤ
ਤਕਲੀਫ ਸਹਾਰਨੀ ਪਈ। ਉਸ ਜੇਲ ਵਿਚ ਕੇਸੀਆਂ ਦੇ ਨਾਂ ਦੇ ਆਈਆਂ
ਦਵਾਈਆਂ ਉਥੋਂ ਦੇ ਡਾਕਟਰ ਬਾਹਰ ਵੇਚ ਕੇ ਪੈਸਾ ਖੁਦ ਰੱਖ ਲੈਂਦੇ ਸਨ।

67 ਕਿ ਸੰਨ 2000 ਵਿਚ ਅਸੀਂ ਸੁਪਰੀਮ ਕੋਰਟ ਵਿਚ ਰਿਟ ਪਟਿਸ਼ਨ (ਕ੍ਰਿਮੀਨਲ)
ਨੰਬਰ 256 / 2000 ਅਤੇ ਸਪੈਸ਼ਲ ਲੀਵ ਪਟਿਸ਼ਨ (ਕ੍ਰਿਮੀਨਲ) ਨੰਬਰ
2697-2698 / 2000 ਫਾਇਲ ਕੀਤਾ ਜਿਸ ਦੇ ਫੈਸਲੇ ਦੌਰਾਨ ਸੁਪਰੀਮ ਕੋਰਟ
ਨੇ ਸਾਡੀ ਭਾਰਤ ਵਾਪਸੀ ਤੋਂ ਬਾਅਦ ਸਾਡੇ ਉਪਰ ਟਾਡਾ ਤਹਿਤ ਲਗਾਏ ਗਏ
ਇੱਲਜ਼ਮਾਂ ਨੂੰ ਨਾਵਾਜਿਬ ਕਰਾਰ ਦਿੱਤਾ ਅਤੇ ਟਾਡਾ ਦੀਆਂ ਧਾਰਾਵਾਂ ਸਾਡੇ
ਉਪਰੋਂ ਹਟਾ ਲਈਆਂ ਗਈਆਂ। ਪਰ ਬਾਕੀ ਦੇ ਝੂਠੇ ਇਲਜ਼ਮ ਜੋ ਕਿ ਸਾਡੀ
ਭਾਰਤ ਵਾਪਸੀ ਤੋਂ ਬਾਅਦ ਸਾਡੇ ਉਪਰ ਲਗਾਏ ਗਏ ਸਨ, ਉਹ ਹਾਲੇ ਵੀ
ਬਰਕਰਾਰ ਹਨ। ਇਹਨਾਂ ਕੇਸਾਂ ਲਈ ਸਾਨੂੰ ਫਿਰ ਦੋਬਾਰਾ ਤੋਂ ਸੁਪਰੀਮ ਕੋਰਟ
ਦਾ ਦਰਵਾਜ਼ਾ ਖੜਕਾਉਣਾ ਪਵੇਗਾ।

68 ਕਿ ਜੈਪੁਰ ਸੈਸ਼ਨ ਕੋਰਟ ਵਿਚ ਮੇਰੇ ਉਪਰ ਚਲ ਰਹੇ ਕੇਸ ਦੀਆਂ ਤਰੀਕਾਂ
ਪੈਂਦੀਆਂ ਰਹੀਆਂ ਪਰ ਕਿਸੇ ਵੀ ਕੇਸ ਦੀ ਸੁਣਵਾਈ ਨਹੀਂ ਹੋਈ। ਇਸ
ਦੌਰਾਨ ਮੈਨੂੰ ਜਿਸ ਬੇਰਕ ਵਿਚ ਰਖਿਆ, ਉਸ ਵਿਚ 34-35 ਹੋਰ ਔਰਤਾਂ
ਸਨ। ਉਸ ਕਮਰੇ ਵਿਚ ਬਹੁਤ ਗੰਦਗੀ ਸੀ। ਤਿੰਨ ਵਾਰੀ ਮੇਰੇ ਤੋਂ ਬੰਦ
ਹੋਇਆ ਗਟਰ ਸਾਫ ਕਰਵਾਇਆ ਗਿਆ ਅਤੇ ਮੈਨੂੰ ਕਈ ਵਾਰ ਕਮਰੇ ਵਿਚੋਂ
ਆਪਣੀ ਟੱਟੀ ਪਿਸ਼ਾਬ ਵੀ ਆਪਣੇ ਹੱਥਾਂ ਨਾਲ ਸਾਫ ਕਰਨੀ ਪਈ।

69 ਕਿ ਸੰਨ 2002 ਵਿਚ ਮੇਰੇ ਕੇਸ ਦੀ ਸੁਣਵਾਈ ਸ਼ੁਰੂ ਹੋਈ ਅਤੇ 20-10-04
ਵਿਚ ਇਸ ਕੇਸ ਦਾ ਫੈਸਲਾ ਹੋਇਆ ਅਤੇ ਮੈਨੂੰ ਸੱਤ ਸਾਲ ਦੀ ਸਜ਼ਾ ਸੁਣਾਈ
ਗਈ ਅਤੇ ਮੇਰੇ ਪਤੀ ਨੂੰ ਉਮਰ ਕੈਦ ਹੋਈ। ਇਹ ਕੇਸ ਰਾਜਿੰਦਰ ਸਿਰਦਾ ਨੂੰ
ਅਜ਼ਾਦ ਕਰਨ ਦਾ ਕੇਸ ਸੀ।

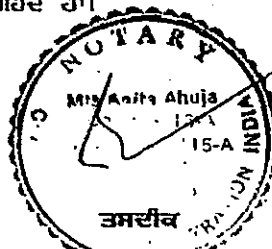


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- 70 ਕਿ ਮੇਂ ਜਿੰਨਾ ਸਮਾਂ ਜੇਲ ਵਿਚ ਅੰਡਰ ਟ੍ਰਾਇਲ ਕੱਢਿਆ ਸੀ ਉਸਨੂੰ ਸਜ਼ਾ ਵੱਜੋਂ ਗਿਣ ਲਿਆ ਗਿਆ। ਪਰ ਮੇਰੇ ਪਤੀ ਦੀ ਸਜ਼ਾ ਉਸ ਸਮੇਂ ਤੋਂ ਹੀ ਸ਼ੁਰੂ ਮੰਨੀ ਗਈ ਜਦੋਂ ਇਹ ਫੈਸਲਾ ਸੁਣਾਇਆ ਗਿਆ ਸੀ।
- 71 ਕਿ ਸੁਪਰੀਮ ਕੋਰਟ ਵਿਚਲਾ ਇਹ ਸਭ ਕੇਸ ਲੜਨ ਵਿਚ ਹੁਣ ਤੱਕ ਅਸੀਂ ਘੱਟੋ ਘੱਟ 6 ਲੱਖ ਰੁਪਿਆ ਖਰਚ ਚੁੱਕੇ ਹਾਂ ਅਤੇ ਸਾਡਾ ਸਾਰਾ ਘਰ ਪਰਿਵਾਰ ਬਰਬਾਦ ਹੋ ਗਿਆ। ਹਾਲੇ ਮੇਰੇ ਉਪਰ ਇਕ ਕੇਸ ਆਈ ਪੀ ਸੀ ਦੀ ਧਾਰਾ 420 ਅਧੀਨ ਕੱਲਕਤੇ ਦੀ ਕੋਰਟ ਵਿਚ ਵੀ ਚੱਲ ਰਿਹਾ ਹੈ। ਇਸ ਕੇਸ ਨੂੰ ਚਲਾਇਆ ਡੇਢ ਸਾਲ ਹੋ ਗਿਆ, ਪਰ ਹਾਲੇ ਤੱਕ ਇਸ ਦੀ ਕੋਈ ਸੁਣਵਾਈ ਨਹੀਂ ਹੋਈ ਅਤੇ ਹਰ ਵਾਰੀ ਤਰੀਕਾਂ ਹੀ ਪੈਂਦੀਆਂ ਰਹਿੰਦੀਆਂ ਹਨ ਅਤੇ ਇਸੇ ਕਾਰਣ ਮੈਨੂੰ ਹਰ ਮਹੀਨੇ ਕੱਲਕਤੇ ਜਾਣਾ ਪੈਂਦਾ ਹੈ।
- 72 ਕਿ ਪੁਲਿਸ ਅਤੇ ਸੀ ਆਈ ਡੀ ਹਾਲੇ ਵੀ ਦੋ ਵਾਰੀ ਸਾਡੇ ਘਰ ਆਏ ਅਤੇ ਸਾਡੇ ਰਿਸ਼ਤੇਦਾਰਾਂ ਤੋਂ ਸਾਡੇ ਬਾਰੇ ਪੁੱਛ-ਗਿੱਛ ਕੀਤੀ, ਜਿਸ ਕਾਰਨ ਅਸੀਂ ਸਭ ਮਾਨਸਿਕ ਤਨਾਵ ਵਿਚ ਰਹਿੰਦੇ ਹਾਂ।

ਚੰਡੀਗੜ੍ਹ
ਮਿਤੀ:- 13-03-2005



Karnal
ਬਿਆਨਕਰਤਾ

ਮੇਂ ਉਪਰੋਕਤ ਬਿਆਨਕਰਤਾ ਘਰ-ਨਾਲ ਸਹੀ ਖਾ ਕੇ ਬਿਆਨ ਕਰਦੀ ਹਾਂ ਕਿ ਇਸ ਹਲਫੀਆ ਬਿਆਨ ਦੇ ਸਾਰੇ ਤੱਕ ਮੇਰੀ ਜਾਣਕਾਰੀ ਅਨੁਸਾਰ ਸਹੀ ਅਤੇ ਦਰੁਸਤ ਹਨ ਅਤੇ ਇਸ ਦਾ ਕੋਈ ਭਾਗ ਝੂਠਾ ਨਹੀਂ ਹੈ ਅਤੇ ਕੁਝ ਵੀ ਲੁਕਾਇਆ ਨਹੀਂ ਗਿਆ ਅਤੇ ਜੇ ਇਸ ਵਿਚ ਕੋਈ ਚੀਜ਼ ਝੂਠ ਹੋਵੇ ਤਾਂ ਯੁਨਾਈਟੈਡ ਸਟੇਟਸ, ਅਮਰੀਕਾ ਅਤੇ ਭਾਰਤ ਦੇ ਕਾਨੂੰਨ ਤਹਿਤ, ਮੇਂ ਸਜ਼ਾ ਦੀ ਹੱਕਦਾਰ ਹਾਂ।

ਚੰਡੀਗੜ੍ਹ
ਮਿਤੀ:- 13-03-2005

Karnal
ਬਿਆਨਕਰਤਾ

ATTESTED
Mrs Anita Ahuja
Notary, Chandigarh

[Signature]

18/3/2005

ATTESTED
Mrs Anita Ahuja
Notary, Chandigarh

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I, Jagdip Singh Sekhon, declare as follows:

1. I am an attorney admitted into practice by the State Bar of California.
2. I represented Daya Singh Sandhu and his wife Kamaljeet Kaur Sandhu from July of 1995 to January of 1997.
3. I represented them in deportation proceedings initiated by the Attorney General of the United States of America in July of 1995.
4. I also represented them in extradition proceedings initiated by the Government of India in February of 1996 through the Secretary of State of the United States of America.
5. In both proceedings Mr. and Mrs. Sandhu's defense was based on their fear of persecution or torture at the hands of government security forces and their agents in India.
6. The pivotal facts in their applications were that in India:
 - a. Security forces had illegally detained and tortured both Mr. and Mrs. Sandhu. The torture methods included, among other things: electric shocks, a massive wooden log rolled over their thighs, and suspension from the ceiling by their arms;
 - b. Mr. Sandhu was detained as a political prisoner under the Terrorist and Disruptive Activities (Prevention) Act (TADA) for over one year without any opportunity to review or challenge the evidence upon which his detention was based;
 - c. Security forces illegally detained and tortured their friends, family members, and political colleagues in their attempts to discourage Mr. and Mrs. Sandhu from their political activities, and secure information that would lead to their arrest; and
 - d. Security forces arrested and extrajudicially executed Mr. Sandhu's nephew -- the son of his sister -- targeting him because of his relationship with Mr. Sandhu.
7. The above evidence was independently corroborated, and their application was supported by Amnesty International and the Immigrants' Rights Project of the American Civil Liberties Union.
8. In the deportation proceedings, Mr. and Mrs. Sandhu asserted their defense through an asylum application filed pursuant to § 1158 of Title 8 of the United

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States Code, filed with the Office of the Immigration Judge in Minneapolis, Minnesota.

9. In the extradition proceedings, Mr. and Mrs. Sandhu asserted their defense through an application filed pursuant to Article III of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, filed with Office of Legal Advisor at the United States Department of State.
10. The Attorney General did not adjudicate the asylum application because of the institution of extradition proceedings, assuming the position that the application was not ripe for consideration because it may become mooted by extradition.
11. The Department of State, as I understand, did review the application for relief from extradition under the Convention Against Torture.
12. Sally Cummings was the contact at the Office of the Legal Advisor, and my co-counsel Mary Boresz Pike and I had numerous conversations with Ms. Cummings between August of 1996 and January of 1997.
13. During the course of our conversations, Ms. Cummings explained the general procedures for consideration of applications filed with the Department of State for relief from extradition pursuant to the Convention Against Torture.
14. She further explained that, if the Department of State found that Mr. and Mrs. Sandhu were in danger of being subjected to torture in India, the Secretary of State may deny extradition or, alternatively, surrender Mr. and Mrs. Sandhu after securing "diplomatic assurances" that ostensibly would protect them.
15. During the course of our conversations, Ms. Cummings did not reveal to me or Ms. Pike the substantive standards for review of applications under the Convention Against Torture or any information specific to the applications of Mr. and Mrs. Sandhu.
16. Ms. Cummings did not: advise me or Ms. Pike about the progress of Mr. and Mrs. Sandhu's application; discuss any evidence that was being considered by the Department of State with respect to their applications; request any further evidence; or request any clarifications as to the evidence we filed.
17. Ms. Cummings cordially and professionally explained that the government procedures for determining whether or not to surrender relators did not allow for transparency.
18. In January of 1997, I was advised by a member of the Sikh community in Dallas, Texas, who regularly visited Mr. and Mrs. Sandhu in detention, that they were no longer in the detention facility and that he believed that they had been surrendered to the Indian government.

Sekhon, Decl. -- 2
UNCLASSIFIED

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19. The report was confirmed in India's print media.
20. Ms. Pike confirmed their surrender with Ms. Cummings at the Department of State.
21. Because we were not informed of the decision by the Department of State as to Mr. and Mrs. Sandhu's application under the Convention Against Torture, or of any diplomatic assurances procured to protect Mr. and Mrs. Sandhu from torture, Ms. Pike sent a letter to the Department of State imploring them to monitor Mr. and Mrs. Sandhu's safety from torture.
22. Following January of 1997, I did not have any further contact with the Department of State regarding Mr. and Mrs. Sandhu.
23. I also did not hear from Mr. and Mrs. Sandhu until over a year later, even though I am the guardian of their son Surinder and he, at the time of the surrender was living with me, and for that matter continues to live with me.
24. Following their extradition, I did hear from members of the Sikh community that the United States government was reportedly monitoring Mr. and Mrs. Sandhu's situation in India and that the United States Consular in India was reportedly in contact with doctors who were visiting Mr. and Mrs. Sandhu to monitor their physical well-being. However, I could not independently corroborate such statements with Mr. and Mrs. Sandhu themselves.
25. The information regarding the monitoring of Mr. and Mrs. Sandhu's well-being by the Consular was, I thought, confirmed by the Department of State's "July 1997 Addendum" to the *India: Comments on Country Conditions and Asylum Claims* published by the Bureau of Democracy, Human Rights, and Labor in June 1996.
26. I was, however, concerned by news I received over the years from India regarding Mr. and Mrs. Sandhu, including the fact that the Indian government did not honor the rule of speciality and prosecuted Mr. and Mrs. Sandhu for crimes that fell outside the scope for which they had been extradited.

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27. After Mrs. Sandhu's release from custody in India in late 2004 that I learned about the torture she suffered at the hands of the Indian security forces, and that a doctor never visited her during her over seven years of incarceration.

I, Jagdip Singh Sekhon, declare under the penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Executed on this 27th day of April 2005, in San Francisco,
California.



Jagdip Singh Sekhon

Sekhon, Decl. -- 4
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

RAMIRO CORNEJO-BARRETO,)	
)	
Petitioner,)	Case No. 01-cv-662-AHS
)	
v.)	
)	
W. H. SEIFERT, Warden,)	
)	
Respondent.)	
)	

DECLARATION OF SAMUEL M. WITTEN

I, Samuel M. Witten, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I am the Assistant Legal Adviser for Law Enforcement and Intelligence ("L/LEI") in the Office of the Legal Adviser of the U.S. Department of State ("Department"), Washington, D.C. L/LEI, which I supervise, is responsible for providing legal advice to the Department on all law enforcement matters of significance to the Department and managing the Department's responsibilities in cases of international extradition. I am a career member of the U.S. Government's Senior Executive Service and have supervised the management of the Department's international extradition responsibilities since December 17, 1996. The following statements provide a general overview of the process of extraditing a fugitive from the United States to a foreign

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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2

country. They are not intended to be an exhaustive description of all of the steps that might be undertaken in particular cases. I make these statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. Extradition requests made to the United States begin when a formal extradition request is presented to the State Department by a diplomatic note from the requesting State's embassy in Washington, or through a similar diplomatic communication. Upon receiving the request with properly certified supporting documents, an attorney within L/LEI reviews the materials to determine: (a) whether an extradition treaty is in effect between the requesting State and the United States; (b) whether the request appears to come within the scope of the treaty; and (c) whether, on the face of the supporting documents, there is no clearly-evident defense to extradition under the treaty (for example, that the offense is a political offense). If the attorney is satisfied that the extradition request facially satisfies these requirements, L/LEI transmits the request and documents to the Department of Justice for further review and, if appropriate, the commencement of extradition proceedings before a United States magistrate judge or a United States district judge.

3. The extradition judge conducts a hearing to examine

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3

whether extradition would be lawful under the terms of the treaty and the relevant provisions of United States law, 18 U.S.C.

§§ 3181 - 3196. If he or she finds that a fugitive is extraditable on any or all of the charges for which extradition is sought, the extradition judge will certify the fugitive's extraditability to the Secretary of State, who is the U.S. official responsible for determining ultimately whether to surrender the fugitive to the requesting State. See 18 U.S.C. §§ 3184, 3186. In U.S. practice, the extradition judge's decision whether to certify extraditability is not dependent on consideration of any humanitarian claims, such as the age or health of the fugitive, in determining the legality of extradition. Similarly, under the long-established "rule of non-inquiry," consideration of the likely treatment of the fugitive if he were to be returned to the country requesting extradition should not be a part of the decision to certify extraditability. Instead, such issues are considered by the Secretary of State in making the final extradition decision.

4. After the Secretary of State receives a certification of extraditability from a magistrate judge or district judge as set forth above, the second phase of the extradition process begins, wherein the Secretary must decide whether a fugitive who has been found extraditable by a court should actually be extradited to a requesting State. In determining whether a fugitive should be

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4

extradited, the Secretary may consider de novo any and all issues properly raised before the extradition court (or a court to which the fugitive has submitted a petition for a writ of habeas corpus for review of the extradition court's decision), as well as any other considerations for or against surrender. Among these other considerations are humanitarian issues and matters historically arising under the rule of non-inquiry, including whether the extradition request was politically motivated, whether the fugitive is likely to be persecuted or denied a fair trial or humane treatment upon his return, and, since the entry into force for the United States of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention") in 1994, specifically whether it is more likely than not that the fugitive would face torture in the requesting State.

5. The United States has undertaken the obligation under Article 3 of the Torture Convention not to extradite a person to a country where "there are substantial grounds for believing that he would be in danger of being subjected to torture." An Understanding included in the United States' instrument of ratification of the treaty establishes that the United States interprets this phrase to mean "if it is more likely than not that he would be tortured." As the U.S. official with ultimate responsibility for determining whether a fugitive will be extradited, the Secretary carries out the obligation of the

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5

United States under the Torture Convention.

6. The Department's regulations at 22 C.F.R. Part 95, which the Department promulgated pursuant to section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105-277, outline the procedures for considering the question of torture when the Secretary determines whether a fugitive will be extradited. Whenever allegations relating to torture are brought to the Department's attention by the fugitive or other interested parties, appropriate policy and legal offices within the Department with regional or substantive expertise review and analyze information relevant to the particular case in preparing a recommendation to the Secretary. The Department's Bureau of Democracy, Human Rights, and Labor, which drafts the U.S. Government's annual Human Rights Reports (discussed below in paragraph 7), is a key participant in this process. The views of the relevant regional bureau, country desk, or U.S. Embassy also play an important role in the Department's evaluation of torture claims, because our regional bureaus, country desks, and Embassies are knowledgeable about matters such as human rights, prison conditions, and prisoners' access to counsel, in general and as they may apply to a particular case in a requesting State.

7. The Department will consider information concerning judicial and penal conditions and practices of the requesting State, including the Department's annual Human Rights Reports,

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6

and the relevance of that information to the individual whose surrender is at issue.¹ The Department will examine materials submitted by the fugitive, persons acting on his behalf, or other interested parties, and will examine other relevant materials that may come to its attention.

8. In determining whether a fugitive will be extradited, the Secretary must determine whether it is more likely than not that the particular fugitive will be tortured in the country requesting extradition. Based on the analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State or to deny surrender of the fugitive. Or, in some cases, the Secretary might condition the extradition on the requesting State's provision of assurances related to torture or aspects of the requesting State's criminal justice system that protect against mistreatment, such as that the fugitive will have regular access to counsel and the full protections afforded under that State's constitution or laws. Whether such assurances are sought is decided on a case-by-case basis. In several cases in recent years, the Secretary signed a warrant only after the Department engaged in a diplomatic dialogue and received adequate assurances of humane treatment

¹The Human Rights Reports are the official State Department reports to Congress on human rights conditions in individual countries for a given year as mandated by law (sections 116(d) and 502(b) of the Foreign Assistance Act of 1961, as amended, and section 505(c) of the Trade Act of 1974, as amended).

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7

from the requesting State.

9. When evaluating assurances or other information provided by the requesting State, Department officials, including the Secretary, consider the identity, position, or other information concerning the official relaying the assurances, and political or legal developments in the requesting State that would provide context for the assurances provided. Department officials, including the Secretary, may also consider U.S. diplomatic relations with the requesting State when evaluating assurances. For instance, Department officials may make a judgment regarding the requesting State's incentives and capacities to fulfill its assurances to the United States, including the importance to the requesting State of maintaining an effective extradition relationship.

10. In some cases, the Department has asked governmental or non-governmental human rights groups in the requesting State to monitor the condition of a fugitive extradited from the United States. As with the issue of assurances, the decision whether to seek a monitoring arrangement is made on a case-by-case basis, based on the circumstances of a particular case, which could include the identity of the requesting State, the nationality of the fugitive, the groups or persons that might be available to monitor the fugitive's condition, the ability of such groups or persons to provide effective monitoring, and similar

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8

considerations.

11. The Department's ability to seek and obtain assurances from a requesting State depends in part on the Department's ability to treat dealings with the foreign government with discretion. Consistent with the diplomatic sensitivities that surround the Department's communications with requesting States concerning allegations relating to torture, the Department does not make public its decisions to seek assurances in extradition cases in order to avoid the chilling effects of making such discussions public and the possible damage to our ability to conduct foreign relations. Seeking assurances may be seen as raising questions about the requesting State's institutions or commitment to the rule of law, even in cases where the assurances are sought to highlight the issue for the requesting State and satisfy ourselves that the requesting State is aware of the concerns that have been raised and is in a position to undertake a commitment of humane treatment of a particular fugitive. There also may be circumstances where it may be important to protect sources of information (such as sources within a foreign government) about torture allegations, who want to keep their identity or the specific information they provide confidential.

12. If the Department is required to make public its communications with a requesting State concerning allegations of

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9

torture, that State, as well as other States, would likely be reluctant to communicate frankly with the United States concerning such issues. I know from experience that the delicate diplomatic exchange that is often required in these contexts cannot occur effectively except in a confidential setting. Later review in a public forum of the Department's dealings with a requesting State regarding extradition matters would thus seriously undermine our ability to investigate torture allegations and to reach acceptable accommodations with requesting States.

13. A judicial decision overturning a determination made by the Secretary after extensive discussions and negotiations with a requesting State could seriously undermine our foreign relations. Moreover, judicial review of the Secretary's determination to surrender a fugitive to a requesting State inevitably would add delays to extradition in what is already frequently a lengthy process. A new round of judicial review and appeal could undermine the requesting State's ability to prosecute and also harm our efforts to press other countries to act more expeditiously in surrendering fugitives for trial in the United States.

I declare under the penalty of perjury that the foregoing is true and correct.

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10

Executed on __ October 2001.

Samuel M. Witten

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the parties have been given an opportunity to examine him and

(3) the testimony, in the opinion of the court, differs from the statement in a material particular or the witness denies the contents of the statement or alleges that he does not remember its contents.

As a rule, Section 10A(a) governs the admissibility of prior out of court statements except in the limited circumstances set forth in Section 10A(b). Section 10A(b) provides:

The court may admit a statement referred to in subsection (a) even if the person who made it is not a witness either because he refuses to testify or is [**96] incapable of testifying or because he cannot be brought to court since he is not alive or cannot be found, provided that the court is satisfied, from the circumstances of the case, that improper means have been used to dissuade or prevent the person who made the statement from giving testimony.

Since 1981, the Supreme Court of Israel has ruled several times that the "improper means" used to prevent a witness from testifying, referred to in Section 10A(b), must come from a source related to the defendant. In this case, Section 10A(b) does not apply because the witnesses are in prison serving their sentences. They will be brought to testify unless the defendant or someone

related to him exerts undue [**422] pressure on the witnesses not to testify or causes their death or disappearance. Further, under Section 10A(b), it is the prosecutor that carries the burden of establishing, to the court's satisfaction, that improper methods were used to prevent the witness from being available to testify in court. . . . Section 10A(c) permits a court to accord the out of court statement weight and credibility if the court finds indicia of truth. Finally, the court may not convict a person on the basis [**97] of a prior out of court statement without something else in the record to strengthen the finding. See Section 10A(d).

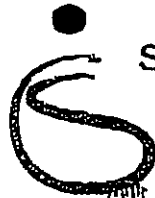
[10]. . . . The admissibility of the defendant's confession remains a matter within the court's discretion pursuant to Section 12 of the Evidence Ordinance and it is the prosecutor, that at all times, bears the burden of establishing that the confession was "freely and voluntarily" given. Where such evidence is not produced or it is withheld, for whatever reason, the confession is not admissible.

[11]. Finally, we offer our assurance that if Atta is extradited to Israel, his interrogation will not employ torture, physical or psychological, or inhumane treatment or improper means, as described in the testimony before the Court. This statement does not mean, implicitly or explicitly, that Israel uses any inhumane methods of interrogation, at any time, in order to [elicit] information.

DORIT BEINISH
STATE ATTORNEY
MINISTRY OF JUSTICE

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SEKHON & SEKHON
A LAW CORPORATION

2004 MAR 24 A 10:26

March 24, 2004

Stanley A. Boone, Assistant United States Attorney
Office of the United States Attorney
1130 "O" Street Room 3654
Fresno, Ca 93721

re: PROPOSE SETTLEMENT FOR KULVIR SINGH BARAPIND

Dear Mr. Boone:

As I communicated with you this past week, Kulvir Singh Barapind is leaning towards settling his case instead of seeking rehearing of the March 10, 2004 decision of the United States Court of Appeals for the Ninth Circuit affirming the certification of his extradition to India, and litigating any other matters that are related to his return to India. Although I have not had an opportunity to determine the precise terms of a settlement of the case with Mr. Barapind, he and I have discussed general terms that would be acceptable.

On behalf of Mr. Barapind I set forth the following guidelines for a settlement of Mr. Barapind's litigation:

1. The Government of the United States pursuant to its responsibilities under the Convention Against Torture:
 - a. secures diplomatic assurances from the Government of India that Mr. Barapind's treatment in India will be consistent with the standards established by the United Nations for prisoners, and that he will be afforded the protections he is entitled to under international law and the laws of India;
 - b. and affords Mr. Barapind a procedure to notify the Government of the United States of any treatment that he is suffering, that is in contravention of these assurances;
 - c. and he is afforded a legal mechanism in the United States to enforce these protections.
2. Mr. Barapind is provided a legal mechanism in the United States to enforce his rights under international law, extradition law, and the governing treaty.
3. The Government of India agrees to crediting Mr. Barapind's time in detention in the United States towards any criminal sentence that

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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1313 "N" Street, Suite 202 Sacramento, CA 95824-1930 Telephone: 916 444 5581 Fax: 916 444 6744

may be imposed on him as a result of a conviction in India for the extraditable offenses.

- 4. Mr. Barapind will withdraw his application for relief under § 208 and § 243(h) of the Immigration and Nationality Act; and
- 5. Mr. Barapind will not seek rehearing of the March 10, 2004 decision of the United States Court of Appeals for the Ninth Circuit affirming the certification of his extradition.

As always, Mr. Boone, thank you for your exceptional professionalism. I am most readily reached at (415) 394-5143.

Sincerely,



Jagdip Singh Sekhon
Attorney for Kulvir Singh Barapind

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United States Department of State



Washington, D.C. 20520

June 15, 2004

Jagdip Singh Sekhon
Sekhon & Sekhon
601 Montgomery St., Suite 402
San Francisco, CA 94111-2607

Dear Mr. Sekhon:

This is in response to your letter dated May 8 regarding the extradition case of Mr. Kulvir Singh Barapind. I would like to confirm the following points made in the letter to you dated September 11, 2002 from Sara Criscitelli, then a U.S. Department of Justice attorney, and in subsequent letters between Ms. Criscitelli and you on related issues.

First, you may submit any documentation, including written argument and evidence, that you believe is relevant regarding the likelihood that Mr. Barapind will be tortured in India. Second, although Ms. Criscitelli's letter to you did not address the issue, you are correct that the Department of State will not provide to Mr. Barapind or other witnesses an opportunity for oral argument or other form of live testimony. Third, the Department of State will not advise you or Mr. Barapind of any findings made by the Department regarding Mr. Barapind's torture claims, or of assurances, if any, that may have been obtained from the Government of India. Of course, if the Secretary determined that Mr. Barapind was likely to be tortured if he were extradited to India, the United States would inform the Government of India that it was denying India's extradition request.

Fourth, the U.S. Government continues to take the position that Cornejo-Barreto v. Seifert, 218 F.3d 1004 (9th Cir. 2000), is not consistent with U.S. law, and the Department of Justice continues to litigate that case before the Ninth Circuit. That said, assuming that the Cornejo litigation is ongoing and its status unresolved at the time that the Secretary makes a decision regarding Mr. Barapind's extradition, the United States will make an exception to its well-established policy in this unusual circumstance and will inform you if and when the Secretary of State

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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decides to sign a surrender warrant for Mr. Barapind. However, if the Cornejo case has been resolved in the U.S. Government's favor at that time, we will not provide such notice.

Fifth, as detailed in Ms. Criscitelli's September 11, 2002 letter, the United States does not read the conclusion in Barapind v. Reno, 225 F.3d 1100 (9th Cir. 2000), as recognizing Mr. Barapind's entitlement to judicial review of an asylum claim following an extradition decision. We remain of the view that the Ninth Circuit's decision in that case does not require the U.S. Government to notify Mr. Barapind of the Secretary of State's extradition decision.

Sixth, your letter asks about the time frame for submitting documentation in support of Mr. Barapind's torture claims and the date on which the Department of State will begin to consider that documentation. As you know, Ms. Criscitelli indicated to you in her September 19, 2002 letter that the U.S. Government will hold off on extraditing Mr. Barapind until the Ninth Circuit decides the case. If the Ninth Circuit denies Mr. Barapind's petition seeking rehearing and/or en banc review of his case, we will view such action as permitting his removal at any time after the surrender warrant is issued, unless a court orders some further stay. If Mr. Barapind's petition is denied, the Secretary of State will take up consideration of Mr. Barapind's extradition immediately thereafter. Accordingly, although there is no fixed rule about when you would need to submit documentation, we would strongly suggest that you submit whatever materials you wish to have considered within the first two to three weeks of the two calendar month period following the Ninth Circuit's decision.

Seventh, you ask whether the Department of State will advise you about what documentation or evidence the Secretary is considering other than that submitted by Mr. Barapind. The answer is no. The Secretary of State may consider de novo any and all issues properly raised before the extradition court, as well as any other considerations for or against surrender, but for a number of reasons he does not make public all of the information that is before him.

Finally, your letter asks whether the Department of State will advise when it has arrived at a decision. That question is answered above.

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June 22, 2004

Linda Jacobson
Assistant Legal Adviser, L/LEI
Office of the Legal Adviser
Room 5419
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

re: **Kulvir Singh Barapind**

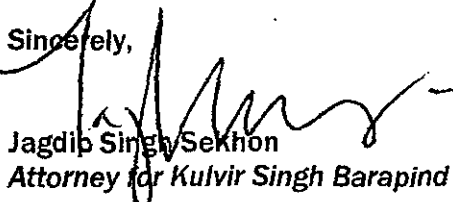
Application for Protection Under Convention Against Torture

Dear Ms. Jacobsen:

Thank you for your very thoughtful letter of June 15, 2004, answering my questions as to the procedures relating to Kulvir Singh Barapind's extradition to India, including an application for relief under the Convention Against Torture. The letter was thorough and clear.

Although we may be considered to be on opposing sides as to the issue of Mr. Barapind's extradition proceedings, I nonetheless wanted to share with you that I am continually impressed with the quality of professionalism from the United States Department of State. I have communicated this to your colleagues in the past, but after receiving your letter, felt compelled to do the same with you.

Sincerely,


Jagdip Singh Sekhon
Attorney for Kulvir Singh Barapind

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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TO SECSTATE WASHDC IMMEDIATE 2820

UNCLAS SECTION 01 OF 02 NEW DELHI 002852

SENSITIVE

E.O. 12958: DECL: N/A
TAGS: PREL, CJAN, PHUM, IN
SUBJECT: INDIA PROVIDES HUMAN RIGHTS ASSURANCES RELATED TO
POSSIBLE EXTRADITION OF S.S. SANDHU AND R.S. GILL

REF: (A) NEW DELHI 02460; (B) STATE 68730;
(C) 98 NEW DELHI 5439; (D) 96 NEW DELHI 14669

THE FOLLOWING INFORMATION IS SENSITIVE BUT UNCLASSIFIED.
PLEASE PROTECT ACCORDINGLY.

1. (SBU) DEPT PLEASE PASS TO L/LEI:SWITTEN, MBASSLE,
CJOHNSON; SA/INS:SHKRAFT,RHAYNES; DOJ/OIA:SCRISCITELI

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PAGE 02 NEW DE 02852 01 OF 02 281231Z

2. (SBU) EMBASSY ON APRIL 28 RECEIVED FROM THE INDIAN
EXTERNAL AFFAIRS MINISTRY (MEA) A DIPLOMATIC NOTE AND NON-
PAPER RESPONDING TO THE EMBASSY'S REQUEST FOR ASSURANCES
REGARDING THE POSSIBLE EXTRADITION FROM THE U.S. TO INDIA
OF RANJIT SINGH GILL AND SUKHMINDER SINGH SANDHU (REF B).
IT HAS BEEN CLEAR FROM OUR DISCUSSIONS WITH MEA OFFICIALS
ON THESE CASES THAT THEY UNDERSTAND US LEGAL REQUIREMENTS
AND ARE ANXIOUS TO SATISFY THEM. AFTER CONSULTATIONS WITH
OTHER MINISTRIES, MEA OFFICIALS AFFIRMED THAT, IF
EXTRADITED, GILL AND SINGH WOULD BE TRIED EXPEDITIOUSLY.

Page - 1

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Date Printed:
06-Dec-2005

DOC_NBR: 2000NEWDE02852

CHANNEL: n/a
HANDLING: SBU

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3. (SBU) BEGIN VERBATIM TEXT OF GOI DIP NOTE
NO. T-413/10/87(P.T) DATED APRIL 25, 2000:

Page 1

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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messages10 (2)

THE MINISTRY OF EXTERNAL AFFAIRS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA IN NEW DELHI AND HAS THE HONOUR TO INFORM THAT IN THE MATTER EXTRADITION OF SUKHMINDER SINGH SANDHU AND RANJIT SINGH GILL FROM THE UNITED STATES TO INDIA SUFFICIENT LEGAL, JUDICIAL AND QUASI JUDICIAL SAFEGUARDS ARE AVAILABLE UNDER THE VARIOUS INDIAN STATUTES AGAINST THE TORTURE OF CRIMINALS IN INDIA.

ARTICLE 21 OF THE INDIAN CONSTITUTION GUARANTEES LIFE AND LIBERTY OF A PERSON, AND SECTIONS 338 AND 331 OF THE INDIAN PENAL CODE PROHIBIT TORTURE. PERSONS VIOLATING THESE PROVISIONS ARE SUBJECT TO PROSECUTION UNDER THE LAW EVEN IF THEY ARE PUBLIC SERVANTS. IN ADDITION TO THESE PROVISIONS, ARTICLE 22 OF THE INDIAN CONSTITUTION GUARANTEES THE RIGHT TO CONSULT WITH COUNSEL.

INDIA HAS ENACTED A LEGISLATION CALLED "PROTECTION OF HUMAN UNCLASSIFIED

PAGE 03 NEW DE 02852 01 OF 02 281231Z
RIGHTS ACTS", UNDER WHICH A NATIONAL HUMAN RIGHTS COMMISSION HAS BEEN CONSTITUTED WHICH HAS POWERS TO INVESTIGATE THE VIOLATIONS OF HUMAN RIGHTS, EITHER UPON COMPLAINTS MADE TO IT OR SUO MOTO. NEEDLESS TO SAY THAT THE NATIONAL HUMAN RIGHTS COMMISSION SHALL HAVE ACCESS TO THE EXTRADITEES.

APART FROM THIS, THE FAMILY MEMBERS OF THE ACCUSED (FUGITIVE CRIMINAL IN THIS CASE) ARE ENTITLED TO VISIT THEM. IN ADDITION, THE INDIAN GOVERNMENT HAS NO OBJECTION IN ALLOWING ACCESS TO THE OFFICIALS OF THE US GOVERNMENT TO MEET THE FUGITIVE CRIMINALS IN JAIL ON A CASE TO CASE AND RECIPROCAL BASIS SUBJECT TO THE PROVISIONS OF INDIA LAWS.

THE MINISTRY OF EXTERNAL AFFAIRS AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE EMBASSY OF THE UNITED STATES OF AMERICA IN NEW DELHI THE ASSURANCES OF ITS HIGHEST CONSIDERATION.

END VERBATIM TEXT OF DIPLOMATIC NOTE

4. (SBU) BEGIN VERBATIM TEXT OF ATTACHED NON-PAPER:

THE FUGITIVE OFFENDERS/EXRADITEES ON RETURN TO INDIA TO FACE PROSECUTION ARE HANDED OVER TO THE INVESTIGATION/ PROSECUTION AGENCY OF THE STATE GOVERNMENT CONCERNED HAVING

Page - 2

UNCLASSIFIED

Date Printed: 06-Dec-2005 DOC_NBR: 2000NEWDE02852 CHANNEL: n/a HANDLING: SBU 1

JURISDICTION OVER THE SPECIFIC OFFENCE FOR WHICH EXTRADITION HAS BEEN AGREED TO AND SURRENDER MADE IN RESPECT OF THE EXTRADITEE.

IMMEIDATELY UPON ARRIVAL, AND WITHIN A PERIOD OF 24 HRS OF UNCLASSIFIED

PAGE 04 NEW DE 02852 01 OF 02 281231Z
THEIR REACHING INDIA, THE EXTRADITEE HAS TO BE PRODUCED BEFORE A MAGISTRATE. IF THE PROSECUTING AGENCY/AGENCIES

Page 2

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UNCLASSIFIED

messages10 (2)

SEEK POLICE CUSTODY, TO CARRY ON FURTHER INVESTIGATION, THE MAGISTRATE MAY, AT HIS DISCRETION ALLOW IT FOR A MAXIMUM PERIOD OF 15 DAYS. OTHERWISE THE ACCUSED IN REMANDED TO JUDICIAL CUSTODY IN PRISON.

IN THIS PARTICULAR CASE SINCE THE EXTRADITION OF SUKHMINDER SINGH SANDHU HAS BEEN GRANTED FOR AN OFFENCE COMMITTED IN RAJASTHAN, HE WILL BE HANDED OVER TO RAJASTHAN POLICE. SIMILARLY, MR. GILL WOULD BE HANDED OVER TO THE DELHI POLICE.

THE PROSECUTION WOULD BE CARRIED OUT BY THE CONCERNED STATE GOVERNMENTS BUT THE CENTRAL BUREAU OF INVESTIGATION (CBI) MAY HAVE AN ADVISORY ROLE. THE RULE OF SPECIALITY AS AGREED TO IN THE EXTRADITION TREATY BETWEEN INDIA AND USA WILL BE STRICTLY OBSERVED AND THE USED WOULD S THETAND TRIAL ONLY IN RESPECT OF THE OFFENCES FOR WHICH THE EXTRADITION IS GRANTED BY THE UNITED STATES OF AMERICA.

END VERBATIM TEXT OF NON PAPER.

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PAGE 01 NEW DE 02852 02 OF 02 281232Z
ACTION L-00

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	JUSE-00	VCE-00	AC-01	NEA-00	NSAE-00	OCS-03	PPT-01
	ACE-00	IRM-00	VO-03	SA-00	DSCC-00	LBA-00	PRM-01
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FM AMEMBASSY NEW DELHI
TO SECSTATE WASHDC IMMEDIATE 2821

UNCLAS SECTION 02 OF 02 NEW DELHI 002852

Page - 3

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E.O. 12958: DECL: N/A
TAGS: PREL, CJAN, PHUM, IN
SUBJECT: INDIA PROVIDES HUMAN RIGHTS ASSURANCES RELATED TO POSSIBLE EXTRADITION OF S.S. SANDHU AND R.S. GILL

5. (SBU) EMBASSY WILL FORWARD ORIGINAL COPIES OF THE ABOVE TWO DOCUMENTS NEXT WEEK BY CLASSIFIED POUCH.

WILLS

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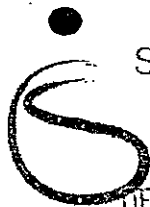
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Page 3

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SEKHON & SEKHON
A LAW CORPORATION

RELEASED IN FULL

L/LEI
DEPARTMENT OF STATE

2004 MAY 19 P 12: 28

May 8, 2004

Linda Jacobson
Assistant Legal Adviser, L/LEI
Office of the Legal Adviser
Room 5419
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

re: Kulvir Singh Barapind

Application for Protection Under Convention Against Torture

Dear Ms. Jacobsen:

I am writing you regarding Kulvir Singh Barapind's application for protection under the Convention Against Torture ("CAT").

As you may be aware, Mr. Barapind's extradition to India was certified for three offenses in the United States District Court by an extradition magistrate. See *In re Extradition of Singh*, 170 F. Supp. 2d 982 (E.D. Cal. 2001). He has appealed the certification of his extradition to the United States Court of Appeals for the Ninth Circuit, and his appeal is pending.

In 2001 Sarah Criscitelli, an attorney for the United States Department of State, was kind enough to outline the procedures governing a relator's application for protection under CAT. I wanted to confirm my understanding of what Ms. Criscitelli communicated and also confirm that the information she provided me is still accurate.

For your convenience I have enclosed Ms. Criscitelli's letter.

Ms. Criscitelli advised that on behalf of Mr. Barapind, I may submit any documentation I believe relevant regarding the likelihood that he will be tortured in India. The documentation may include written argument and evidence. I further understand that the Department of State will take such evidence under submission. The Department of State, however, will not provide Mr. Barapind an opportunity for oral argument, or provide Mr. Barapind any sort of hearing to present evidence, even if he wishes to present live percipient or expert testimony.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 03 SEP 2008 200603431

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601 Montgomery Street Suite 4122 San Francisco, CA 94111-7647 Telephone: 415 398 1290 Fax: 415 394 1293
1314 H Street Suite 2002 Sacramento, CA 95814 1989 Telephone: 916 444 0551 Fax: 916 444 0264

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I also understand, the Department of State will not advise Mr. Barapind, or I as his representative, of any findings made pursuant to his application, or, of any decision made by the Department of State. Thus I, nor Mr. Barapind, will be advised whether the Department of State decides that it will surrender Mr. Barapind without any diplomatic assurances regarding his safety; or if the Department of State secures such diplomatic assurances; or if the Department of State refuses to surrender Mr. Barapind based on the grounds that it would be in violation of CAT.

Ms. Criscitelli further advised me that the Department of State does not read *Carnejo-Barretto v. Seifert*, 218 F.3d 1004 (9th Cir. 2000), or *Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000), to entitle Mr. Barapind to notice of a decision to surrender him even though: 1) *Cornejo-Barretto v. Seifert* recognized a relator's right of action to challenge determinations made by the Department of State under CAT; and, 2) *Barapind v. Reno* recognized that in the event the Department of State decides to surrender Mr. Barapind, he is entitled to challenge whether he can be surrendered to India without an adjudication of his application for asylum.

In addition to seeking confirmation regarding the above, I would like to ask three additional questions:

First, what is the time frame for submitting the application?

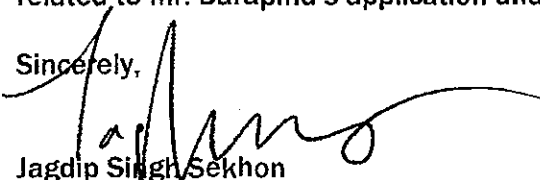
Second, when will the Department of State begin its consideration of the application?

Third, if in the adjudication of Mr. Barapind's application the Department of State is considering evidence other than that submitted by Mr. Barapind, will the Department of State advise me of what evidence it is considering and provide me an opportunity to respond to it?

Fourth, will the Department of State advise when it has arrived at a decision?

I look forward to your response. If you would like to discuss any matter related to Mr. Barapind's application under CAT, please do call me.

Sincerely,


Jagdip Singh Sekhon
Attorney for Kulvir Singh Barapind

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

ET 122-

RELEASED IN FULL

**INTERNATIONAL AND DOMESTIC LAW STANDARDS
GOVERNING APPLICATIONS FOR RELIEF FROM
EXTRADITION UNDER THE CONVENTION AGAINST
TORTURE**

Margaret Satterthwaite
Research Director
Center for Human Rights & Global Justice
New York University School of Law

Angelina Fisher
Assistant Research Scholar
Center for Human Rights & Global Justice
New York University School of Law

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

TABLE OF CONTENTS

INTEREST OF THE CHRGJ.....1

SUMMARY OF THE LETTER.....1

ANALYSIS.....3

A. WHERE THERE ARE SUBSTANTIAL GROUNDS FOR BELIEVING THAT AN INDIVIDUAL WOULD BE IN DANGER OF BEING SUBJECTED TO TORTURE UPON TRANSFER TO A SPECIFIC COUNTRY, THE TRANSFER OF THE INDIVIDUAL WOULD BE A VIOLATION OF U.S. OBLIGATIONS UNDER THE UNITED NATIONS CONVENTION AGAINST TORTURE.....3

 i. *The United States is Prohibited by CAT from Sending An Individual to a Country Where the Person Would be Subjected to Torture*.....3

 ii. *The Prohibition against Refoulement Plainly Applies to Extradition*.....6

 iii. *The Prohibition Against Refoulement is Absolute and Nonderogable*.....8

 iv. *Application*.....10

B. WHERE CIRCUMSTANCES INDICATE THAT THERE ARE SUBSTANTIAL GROUNDS FOR BELIEVING THAT UPON TRANSFER TO A STATE AN INDIVIDUAL WOULD BE IN DANGER OF BEING SUBJECTED TO TORTURE, THE TRANSFER OF THE INDIVIDUAL TO SUCH STATE COULD BE A VIOLATION OF CUSTOMARY INTERNATIONAL LAW.....11

C. WHERE CIRCUMSTANCES INDICATE THAT IT IS MORE LIKELY THAN NOT THAT AN INDIVIDUAL WOULD BE TORTURED UPON A TRANSFER TO A STATE, THE TRANSFER OF THAT INDIVIDUAL TO SUCH STATE WOULD BE A VIOLATION OF U.S. LAW.....16

 i. *U.S. Law Governing Extradition*.....16

 ii. *Standard of Proof and Evidence Required in CAT Claims*.....17

 iii. *The Process of Extradition*.....17

 iv. *Review of the Decision of the Secretary of State*.....19

 v. *Application to the Facts*.....23

TABLE OF DOCUMENTS.....24

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INTERNATIONAL AND DOMESTIC LAW STANDARDS GOVERNING APPLICATIONS FOR RELIEF FROM EXTRADITION UNDER THE CONVENTION AGAINST TORTURE

SUBMITTED TO THE HON. DR. CONDOLEEZZA RICE, U.S. SECRETARY OF STATE

In the matter of the Extradition of Kulvir Singh Barapind, Application for Relief under the Convention Against Torture of Kulvir Singh Barapind,

The Center for Human Rights and Global Justice, New York University School of Law (the "CHRGJ") respectfully submits this letter in support of the legal position taken by the applicant, Kulvir Singh Barapind.¹

INTEREST OF THE CHRGJ

The CHRGJ at New York University School of Law focuses on issues related to "global justice," and aims to advance human rights and respect for the rule of law through cutting-edge advocacy and scholarship. The CHRGJ promotes human rights research, education and training, and encourages interdisciplinary research on emerging issues in international human rights and humanitarian law. The CHRGJ has been particularly active in examining international and U.S. legal standards applicable to transfers of individuals from the custody of the United States. In October 2004, the CHRGJ, together with the Association of the Bar of the City of New York issued a lengthy report, *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions"* (New York: ABCNY & NYU School of Law, 2004).

SUMMARY OF THE LETTER

The right to be free from torture and cruel, inhuman or degrading treatment is a right firmly entrenched in international law and clearly protected by U.S. law. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT" or "the Convention")² makes it clear that the right to be free from torture is absolute and nonderogable. The treaty also sets out, in Article 3, the accompanying right to be free from extradition or other transfer to a state where there is a substantial risk of torture (also known as the right of *non-refoulement*).

¹ For purposes of the legal analysis set out in this letter, the CHRGJ assumes the facts presented by Mr. Kulvir Singh Barapind in his Application for Relief under the Convention Against Torture and in the accompanying affidavits to be true and credible. It is not our intention to assess these facts, but instead to shed light on the legal standards relevant to Mr. Barapind's application for relief.

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature December 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984), entered into force June 26, 1987, 1465 U.N.T.S. 85, 23 I.L.M. 1027 (1984), as modified, 24 I.L.M. 535, available at <http://www.ohchr.org/english/law/cat.htm> (last visited Apr. 19, 2005).

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The United States ratified CAT in October 1994 with certain reservations. Upon ratification, the United States declared that it would interpret the CAT Article 3 phrase "where there are substantial grounds for believing that he would be in danger of being subjected to torture" to mean "if it is more likely than not that he would be tortured."³

In addition to being set out in CAT, the prohibitions against torture and *non-refoulement* are included in the International Covenant on Civil and Political Rights,⁴ another treaty binding on the United States. The prohibitions are also enshrined in numerous major international and regional human rights treaties and have been recognized by international bodies and regional courts as fundamental human rights protections reflected in customary international law.

The prohibition against torture and *refoulement* also forms part of positive U.S. law. In 1994, the same year the U.S. ratified CAT, Congress enacted a federal law criminalizing acts of torture.⁵ Several years later, Congress enacted the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), which explicitly provides that "It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."⁶ To implement the provisions of CAT that prohibit extradition and other transfers where there is a risk of torture, FARRA instructed all relevant agencies to promulgate regulations implementing this policy. In the context of extradition, "[t]he FARR Act imposes a clear and nondiscretionary duty: the agencies responsible for carrying out expulsion, extradition, and other involuntary returns, must ensure that those subject to their actions may not be returned if they are likely to face torture."⁷

³ Sen. Exec. Rpt. 101-30, Resolution of Advice and Consent to Ratification (1990) (Ratification Resolution) at II.(2). This is the standard commonly used by the United States in determining whether to withhold removal for fear of persecution. See *INS v. Stevic*, 467 U.S. 407, 429-30 (1984).

⁴ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 Dec. 16, 1966, entered into force 23 March 1976, 999 U.N.T.S. 171 (ICCPR). Although the ICCPR does not contain a direct prohibition against *refoulement*, the Human Rights Committee has interpreted Article 7 to require that states party to the ICCPR "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*." Human Rights Committee, General Comment 20, Article 7, U.N. Doc. A/47/40 (1992) reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HR/GEN/1/Rev.1 at 30 (1994), (HRC General Comment 20), para. 9

⁵ 18 U.S.C. §2340 *et seq.* Domestic legislation was required because the Senate's advice and consent to CAT ratification was subject to the declaration that CAT was not self-executing. See Ratification Resolution, *supra* note 3..

⁶ Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII, § 2242; 8 U.S.C. 1231 note (FARRA).

⁷ *Cornejo-Barreto v. Seifert*, 218 F.3d 1004 (9th Cir. 2000) at 1012, *rev'd*, 379 F.3d 1075 (9th Cir. 2004), *vacated as moot* 389 F.3d 1307 (9th Cir. 2004).

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The regulations implementing this policy in the context of extradition refer explicitly to the standard set out in Article 3 of CAT,⁸ and describe the procedures that the Department follows when determining whether extradition should proceed in the face of a concern about torture. The regulations provide that in order to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, the State Department will consider whether the requested extraditee “is more likely than not” to be tortured in the State requesting extradition.⁹ At least one Circuit Court has determined that a decision of the secretary of state may be subject to judicial review.¹⁰

ANALYSIS

A. WHERE THERE ARE SUBSTANTIAL GROUNDS FOR BELIEVING THAT AN INDIVIDUAL WOULD BE IN DANGER OF BEING SUBJECTED TO TORTURE UPON TRANSFER TO A SPECIFIC COUNTRY, THE TRANSFER OF THE INDIVIDUAL WOULD BE A VIOLATION OF U.S. OBLIGATIONS UNDER THE UNITED NATIONS CONVENTION AGAINST TORTURE.

i. The United States is Prohibited by CAT from Sending An Individual to a Country Where the Person Would be Subjected to Torture

CAT defines and prohibits torture and conduct that is considered cruel, inhuman or degrading,¹¹ and prohibits the transfer or *refoulement* of a person to a state that may subject the individual to torture.¹² CAT further requires all ratifying states to prevent,

⁸ 22 C.F.R. § 95.2(a)(1).

⁹ 22 C.F.R. § 95.2(b).

¹⁰ *Cornejo-Barreto v. Seifert*, 218 F.3d 1004 (9th Cir. 2000) (holding that individuals who fear torture upon return to a state of extradition may present a habeas claim under the general habeas statute, 22 U.S.C. §2241, alleging violation of, CAT via the Administrative Procedure Act, following the Secretary of State’s decision to surrender the alien). Subsequently, the Ninth Circuit held that its statement in *Cornejo* was advisory and nonbinding. *Cornejo-Barreto v. Seifert*, 379 F.3d 1075 (9th Cir. 2004). Most recently, upon a rehearing *en banc*, the Court vacated the opinion published in 379 F.3d 1085 (9th Cir. 2004) as moot, leaving the earlier decision (218 F.3d 1004 (9th Cir. 2000) undisturbed. *Cornejo-Barreto v. Seifert*, 389 F.3d 1307 (9th Cir. 2004).

¹¹ CAT, *supra* note 2, art. 1.

¹² *Id.* art. 3.1. As the Convention’s preamble notes, at the time of CAT’s formulation, torture and CID treatment were already prohibited by Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and also by the U.N. General Assembly’s Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Punishment. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) art. 5, available at <http://www.unhcr.ch/udhr/lang/eng.htm> (last visited Apr. 19, 2005) (providing that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 Dec. 16, 1966, entered into force 23 March 1976, 999 U.N.T.S. 171 available at <http://www.ohchr.org/english/law/ccpr.htm> (last visited Apr. 19, 2005) (ICCPR), art. 7 (“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); Declaration on the Protection of All Persons from Being

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

investigate and criminalize acts of torture, as well as complicity or other participation in torture by officials and individuals acting with the consent or acquiescence of an official.¹³

Torture is defined by CAT 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.¹⁴

CAT prohibits the transfer of individuals to states where they are in danger of torture. The rule is set out in Article 3(1):

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹⁵

Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975), available at

<http://www.ohchr.org/english/law/declarationcat.htm> (last visited Apr. 19, 2005).

¹³ CAT, supra note 2, art. 4.1.

¹⁴ When ratifying CAT, the United States specified its understanding concerning the definition of "torture." The U.S. specified that the mental pain or suffering included in the definition of "torture" refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) 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; (3) the threat of imminent death; or (4) 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 the personality. See 136 CONG. REC. S17486-01 (daily ed. Oct. 27, 1990); see also United Nations Treaty Collection: Declarations and Reservations, available at

http://www.unhcr.ch/html/menu3/b/treaty12_asp.htm (last visited Apr. 19, 2005). The understanding is discussed in Association of the Bar of the City of New York, *Human Rights Standards Applicable to the United States' Interrogation of Detainees*, April 2004 (HR Standards Report) available at <http://www.abcnyc.org/pdf/HUMANRIGHTS.pdf> (last visited Apr. 19, 2005), at 20-21. Acts that the CAT Committee has held constitute torture are discussed in greater detail in the HR Standards Report, at 16-17.

¹⁵ The CAT *non-refoulement* obligation prohibits transfers to states where an individual is in danger of torture, and not transfers to states where the individual faces the danger of CID treatment or punishment. This was a deliberate choice on the part of the drafters who were concerned that although "torture" could be defined with specificity, a definition of CID treatment or punishment was less easily specified. J. HERMAN BURGERS & HANS DANIELIUS, *THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR*

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CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The scope of CAT's protection against *refoulement* is broad, imposing an obligation upon the state not only to prevent torture in its own territory, but also to ensure that an individual is not exposed to a risk of torture outside the state's own borders, including in considering whether or not to extradite a person to another state.¹⁶

The CAT *non-refoulement* obligation applies to all individuals who "would be in danger of being subjected to torture" (emphasis added) and not just to individuals who would be tortured upon transfer. The focus is on the future danger – on the potential torture that might occur. A ratifying state violates the treaty whenever it transfers an individual in the face of this risk, regardless of whether torture in fact occurs upon transfer.

In assessing whether such a risk exists, CAT requires ratifying states to determine whether "substantial grounds for believing that [an individual] would be in danger of being subjected to torture" exist. The treaty specifies that "the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."¹⁷ In commentary and decisions, the CAT Committee has

DEGRADING TREATMENT OR PUNISHMENT (1988), at 70, 74, 122-23. However, the Human Rights Committee has interpreted the ICCPR (to which the United States is also a party), to impose the prohibition against *refoulement* to states where an individual faces the danger of CID treatment as well as the danger of torture. The United States should also be guided by the jurisprudence of the European Court of Human Rights and its Commission, interpreting Article 3 of the European Convention, *infra* note 48. Article 3 of the European Convention prohibits torture and CID treatment or punishment but does not include a prohibition against *refoulement*. Nevertheless, the European Court and the European Commission have interpreted European Convention Article 3 to prohibit transfers to states in which an individual may be subjected to torture or to CID treatment or punishment. See *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989).

¹⁶ BURGERS & DANIELIUS, *supra* note 15, at 125 (stating that Article 3 "makes it clear that a State is not only responsible for what happens in its own territory, but it must also refrain from exposing an individual to serious risks outside its territory by handing him or her over to another State from which treatment contrary to [CAT] might be expected.") According to the CAT Committee, "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited." Committee Against Torture, General Comment 1, *Communications concerning the return of a person to a State where there may be grounds he would be subjected to torture (article 3 in the context of article 22)*, U.N. Doc. A/53/44, annex IX at 52 (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 279 (2003) (CAT Article 3 Comment), para.2. Similarly, the U.N. Human Rights Committee has stated that under the ICCPR "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*. States parties should indicate in their reports what measures they have adopted to that end." Human Rights Committee, General Comment 20, *Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment* (44th Sess. 1992), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994) (HRC General Comment 20).

¹⁷ CAT, *supra* note 2, art. 3(2).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

provided guidance on interpretation of the *non-refoulement* standard, and the considerations that should be taken into account in assessing the danger of torture.

First, the CAT Committee has interpreted "substantial grounds" to mean that "the risk of torture must be assessed [by the State Party and the Committee] on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."¹⁸ Second, the CAT Committee has determined that the "substantial grounds for belief" standard requires both (i) a general assessment of the conditions in the state to which an individual is to be transferred,¹⁹ and (ii) a particularized assessment of the danger of torture to the individual facing a transfer.²⁰ This means that both the general country conditions and the particular situation of the individual in question are relevant considerations, though the CAT Committee has indicated that a showing of risk under either prong may be sufficient without more. For example, the CAT Committee has stated that applicants should not be returned to states where reports of conditions indicate the danger of torture and the state of return is not a party to CAT.²¹

ii. *The Prohibition Against Refoulement Plainly Applies to Extradition*

The scope of the CAT prohibition against *refoulement* was broadly drafted to ensure that no individual may be transferred to a state where he or she would be tortured. The provision applies to:

- (i) all types of transfer by a ratifying state (including deportations or transfers pursuant to extradition treaties); and
- (ii) all persons at risk of torture; and
- (iii) all countries where that risk exists.

¹⁸ CAT Article 3 Comment, *supra* note 16, para. 6.

¹⁹ Among the sources of information the CAT Committee will consider is whether the state to which an individual may be returned is "one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights." CAT Article 3 Comment, *supra* note 16, para 8.

²⁰ According to the CAT Committee, "The grounds for belief are subjective to the individual in danger of being tortured." *Id.* para. 7. To assess a particular individual's risk, the CAT Committee will look to whether the individual has engaged in activity "within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question." *Id.* para 8. *See also Mutombo v. Switzerland*, Communication No. 13/1993, Committee Against Torture, U.N. Doc. A/49/44 at 45 (1994) (applicant for CAT relief must show that the risk of torture is specific to that individual).

²¹ *See Mutombo v. Switzerland*, *supra* note 20; *Khan v. Canada*, Communication No. 15/1994, Committee Against Torture, U.N. Doc. A/50/44 at 46 (1994) (the Committee found that because Pakistan was not a party to CAT, the petitioner's return would not only put him in danger of torture, but would strip him of any possibility of applying for protection under CAT). On the other hand, the fact that the state of return is a party to CAT does not preclude a finding that a particular person may be at risk of torture in that state. *Alan v. Switzerland*, Communication No. 21/1995, Committee Against Torture, U.N. Doc. CAT/C/16/D/21/1995 (1996).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The original draft of Article 3(1) referred to expulsion and return only. The reference to extradition was added to make clear that Article 3 would "cover all measures by which a person is physically transferred to another state."²² Because of the breadth of this provision's scope, concerns were raised during the drafting of CAT about whether the *non-refoulement* obligation could conflict with states' obligations under existing extradition treaties. According to a report of the Working Group of states responsible for negotiating the text of CAT:

Some delegations indicated that their States might wish, at the time of signature or ratification of the Convention or accession thereto, to declare that they did not consider themselves bound by Article 3 of the Convention, in so far as that article might not be compatible with obligations towards States not Party to the Convention under extradition treaties concluded before the date of the signature of the Convention.²³

Thus, states were aware of and on notice that a reservation or declaration asserting the primacy of extradition treaties over the CAT prohibition against *refoulement* could be made at the time of ratification. In fact, the initial package of declarations, reservations and understandings to accompany CAT sent by President Reagan to the Senate for ratification included a recommended reservation that "[t]he U.S. does not consider itself bound by Article 3 insofar as it conflicts with the obligations of the United States toward States not a party to the Convention under bilateral extradition treaties with such states."²⁴ This proposed reservation was excluded from the final instrument of U.S. ratification. The rejection of this requested reservation was in line with procedures established prior to the ratification of CAT. The U.S. government has explained that, before ratification of CAT, "the Department of State relied on the law and practice of the United States to provide authority for declining to extradite a fugitive to another State party where there are substantial grounds to believe he would be in danger of being

²² BURGERS & DANIELIUS, *supra* note 15, at 126. The reference to *refoulement* originates in, but differs from, Article 33 of the Refugee Convention, which states that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Convention Relating to the Status of Refugees, opened for signature July 28, 1951, 19 U.S.T. 6259, 6261, 189 U.N.T.S. 150, 152, entered into force Apr. 22, 1954, available at <http://www.ohchr.org/english/law/refugees.htm> (last visited Apr. 19, 2005). While the Refugee Convention protects only persons who meet one of five specified categories that form a basis for persecution under the Refugee Convention, CAT was intended to apply to "any person who, for whatever reason, is in danger of being subjected to torture if handed over to another country." BURGERS & DANIELIUS, *supra* note 15, at 125.

²³ U.N. Doc. E/CN.4/1367, para. 18, cited in BURGERS & DANIELIUS, *supra* note 15, at 126-27. In fact, no such reservation was made by any state.

²⁴ S. Treaty Doc. No. 100-20, at iii, 9-14 (1988) (adding that "This reservation would eliminate the possibility of conflicting treaty obligations. This is not to say, however, that the United States would ever surrender a fugitive to a State where he would actually be in danger of being subjected to torture. Pursuant to his discretion under domestic law, and existing treaty bases for denying extradition, the Secretary of State would be able to satisfy himself on this issue before surrender.").

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

*subjected to torture.*²⁵ (emphasis added). The proposed reservation to CAT Article 3 was out of step with the historical leadership of the U.S. as a “vigorous supporter of the international fight against torture,” where “[torture] is categorically denounced as a matter of policy and as a tool of state authority.”²⁶ In the years since the U.S. ratified the Convention, regulations and procedures have been promulgated to give full force to Article 3’s prohibition on *réfoulement* in the context of extradition.

iii. *The Prohibition Against Refoulement is Absolute and Nonderogable*

Article 2(2) of CAT provides that

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.²⁷

The absolute nature of the prohibition of torture was specifically referenced in CAT to clarify that freedom from torture is one of “the few fundamental rights of the individual” from which no derogation is permitted under international law, even in times of war or other emergency.²⁸ After the terrorist attacks of September 11, 2001, the CAT Committee issued a statement in which it condemned the attacks, expressed “profound condolences to the victims, who were nationals of some 80 countries, including many States parties to [CAT],” and reminded states of the non-derogable nature of their CAT obligations.²⁹ The CAT Committee highlighted the obligations contained in article 2 (prohibition of torture under all circumstances), article 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and article 16 (prohibiting CID treatment or punishment). The Committee added that these provisions must be observed in all circumstances, and expressed confidence that “whatever responses to the threat of

²⁵ Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention; Initial reports of States parties due in 1995: United States of America, CAT/C/28/Add.5, Feb. 8, 2000, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.28.Add.5.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.28.Add.5.En?OpenDocument) (last visited April 19, 2005) (U.S. Initial CAT Report), para. 165.

²⁶ *Id.* The same sentiment was expressed by President Bush on the United Nations International Day in Support of Victims of Torture: “The United States is committed to the world-wide elimination of torture and we are leading this fight by example.” President George W. Bush, Statement by the President on the United Nations International Day in Support of Victims of Torture (June 26, 2003) (transcript available at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html> (last visited Apr. 19, 2005)).

²⁷ CAT, *supra* note 2.

²⁸ BURGERS & DANIELIUS, *supra* note 15, at 124.

²⁹ Committee against Torture, U.N. Doc. No. CAT/C/XXVII/Misc.7, Nov. 22, 2001; *see also* Committee Against Torture U.N. Doc. No. A/52/44, para. 258 (1997) (“[A] State party to the Convention [against Torture] ... is precluded from raising before [the] Committee [against Torture] exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.”); Committee Against Torture, U.N. Doc. No. A/51/44, paras. 180-222 (1997), Inquiry under Article 20 (same).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

international terrorism are adopted by States parties, such responses will be in conformity with the obligations undertaken by them in ratifying the Convention against Torture.”³⁰

The CAT Committee has specifically addressed the *non-refoulement* obligations of ratifying states when considering the return of asylum seekers and other foreigners who may present a security risk:

[T]he test of article 3 of the Convention is absolute. Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under obligation not to return the person concerned to that State. The nature of the activities in which the person concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention.³¹

The CAT Committee’s holding has been echoed by the Human Rights Committee, which is charged with monitoring the implementation of the ICCPR.³² In its General Comment No. 20 on article 7 of the ICCPR, the Human Rights Committee commented on the link between removal, expulsion or *refoulement* of non-nationals and torture noting that:

States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.³³

The Human Rights Committee has also acknowledged the difficulties that a state faces in a prolonged fight against terrorism, but has determined that “no exceptional circumstances whatsoever can be invoked as a justification for torture.”³⁴

³⁰ Committee against Torture, U.N. Doc. No. CAT/C/XXVII/Misc.7, Nov. 22, 2001. Similarly, although not binding under international law, a resolution specifically focusing on the need to protect human rights and fundamental freedoms while countering terrorism was adopted for the first time by the General Assembly on 18 December 2002. (General Assembly, *Protection of human rights and fundamental freedoms while countering terrorism*, U.N. Doc. No. A/RES/57/219 (Feb. 27, 2003). It affirmed that states must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

³¹ *Paez v. Sweden*, Communication No. 39/1996, Committee Against Torture, U.N. Doc. CAT/C/18/D/39/1996 (1997).

³² The U.S. Senate ratified the ICCPR on April 2, 1992, and the ICCPR came into force for the United States on September 8, 1992. See 138 Cong. Rec. S4783-84 (daily ed. Apr. 2, 1992); United Nations Treaty Collection: Declarations and Reservations, available at <http://www.unhcr.ch/html/menu3/b/treaty12.asp.htm> (last visited Apr. 21, 2005). Thus, interpretation of the *non-refoulement* principle under the ICCPR is helpful to the interpretation of the norm under CAT.

³³ HRC General Comment 20, *supra* note 16, para. 9.

³⁴ Conclusions and recommendations of the Committee against Torture, Egypt, U.N. Doc. CAT/C/CR/29/4 (2002), para. 4.

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

iv. *Application*

CAT specifies certain considerations that must be taken into account when a state is deciding whether or not there are substantial grounds for believing that an individual would be in danger of being tortured. Article 3 requires the relevant decision-maker to weigh all relevant evidence, including the existence, in the state of destination, of a consistent pattern of gross, flagrant or mass violations of human rights.³⁵ In addition, as stated above, the fact that a country of destination has not ratified CAT is also a relevant consideration.

Although India signed CAT in 1997, it has not ratified the Convention.³⁶ While this fact is not dispositive, it is relevant to the assessment of the extraditee's risk. In addition, the most recent Department of State Country Report on Human Rights Practices in India pointed to a widespread pattern of torture in India, noting that although

[t]he law prohibits torture, and states that confessions extracted by force generally are inadmissible in court ... authorities often used torture during interrogations ... Because many alleged torture victims died in custody, and others were afraid to speak out, there were few firsthand accounts, although marks of torture often were found on the bodies of deceased detainees. The prevalence of torture by police in detention facilities throughout the country was reflected in the number of cases of deaths in police custody. Police and jailers typically assaulted new prisoners for money and personal articles. In addition, police commonly tortured detainees during custodial interrogation. Although police officers were subject to prosecution for such offenses under the Penal Code, the Government often failed to hold them accountable. According to [Amnesty International], torture usually took place during criminal investigations and following unlawful and arbitrary arrests.³⁷

The affidavits submitted in support of the Application for Relief under the Convention Against Torture suggest that an individual in the position of Mr. Kulvir Singh Barapind will more likely than not be tortured if extradited to India. Accordingly, a decision to extradite Mr. Kulvir Singh Barapind under such circumstances would constitute a violation of Article 3 of CAT.

³⁵ CAT, *supra* note 2, art. 3(2).

³⁶ U.N. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment, *status of ratifications*, United Nations, *Treaty Series*, vol. 1465, p. 85, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty14.asp> (last visited Apr. 19, 2005).

³⁷ U.S. DEP'T. OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003: INDIA (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41740.htm> (last visited Apr. 19, 2005).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

B. WHERE CIRCUMSTANCES INDICATE THAT THERE ARE SUBSTANTIAL GROUNDS FOR BELIEVING THAT UPON TRANSFER TO A STATE AN INDIVIDUAL WOULD BE IN DANGER OF BEING SUBJECTED TO TORTURE, THE TRANSFER OF THE INDIVIDUAL TO SUCH STATE COULD BE A VIOLATION OF CUSTOMARY INTERNATIONAL LAW

The prohibition against torture and ill-treatment has risen to the level of *jus cogens* – a peremptory norm of international law.³⁸ The prohibition against *refoulement* is also often recognized as a norm of customary international law.³⁹ The U.N. Special Rapporteur on Torture has stated that “The principle of *non-refoulement* is an inherent part of the overall absolute and imperative nature of the prohibition of torture and other forms of ill-treatment.”⁴⁰

That the prohibition against *refoulement* to states where an individual faces the danger of torture is a broadly accepted norm is also shown in part by the large number of

³⁸ See *Case of Al-Adsani v. United Kingdom*, [2001] Eur. Ct.H.R. 752 (21 November 2001) (expressly finding that the prohibition on torture is a *jus cogens* norm); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 702 (1986) (same). See also *Abebe-Jira v. Negewo*, 72 F.3d 844, 847 (11th Cir. 1996); *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 716 (9th Cir. 1992); *Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1006 (9th Cir. 2000); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003); *Mehinovic v. Vuckovic*, 198 Supp. 2d 1322 (N.D. Ga.2002); *Doe v. Islamic Salvation Front*, 993 F. Supp. 3, 7 (D.D.C. 1998); *Doe v. Unocal*, 963 F. Supp. 880, 890 (C.D. Cal. 1997); Human Rights Watch, *Still at Risk: Diplomatic Assurances no Safeguard against Torture* (2005), Human Rights Watch vol. 17, No.4(D).

³⁹ GUY S. GOODWIN-GILL, INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES 141 (1978); G. STENBERG, NON-EXPULSION AND NON-REFOULEMENT: THE PROHIBITION AGAINST REMOVAL OF REFUGEES WITH SPECIAL REFERENCE TO ARTICLES 32 AND 33 OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES (1989); Martin A. Rogoff, *Interpretation of International Agreements by Domestic Court and the Politics of International Treaty Relations: Reflections on Some Recent Decisions of the United States Supreme Court*, 11 Am. U.J. Int'l L. & Pol'y 559, 579 (1996); David Weissbrodt and Isabel Hörtreiter, *The Principle of Non-refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-refoulement Provisions of Other International Human Rights Treaties*, 5 Buff. Hum. Rts. L. Rev., 1, 7 (1999); Arthur Helton, *Applying Human Rights Law in U.S. Asylum Cases*, 3 Int'l Civ. Liberties Rep. 1, 2 (2000); A. Montavon-McKillip, *CAT Among Pigeons: The Convention Against Torture, A Precarious Intersection Between International Human Rights Law and U.S. Immigration*, 44 Ariz. L. Rev. 247, 269 (2002). The Inter-American Court of Human Rights has similarly held that the prohibition against torture is a *jus cogens* norm, which prohibits an individual from return to a country where that person is likely to be tortured, even if the individual is suspected of terrorist activities. Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. Court H.R., OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000 (para. 154). (“[T]he prohibition of torture as a norm of *jus cogens* – as codified in the American Declaration generally, and Article 3 of the U.N. Convention against Torture in the context of expulsion – applies beyond the terms of the 1951 [Refugee] Convention. The fact that a person is suspected of or deemed to have some relation to terrorism does not modify the obligation of the State to refrain from return where substantial grounds of a real risk of inhuman treatment are at issue.”).

⁴⁰ Report by the Special Rapporteur on Torture, Theo van Boven to the United Nations General Assembly, U.N. Doc.A/59/324, Aug. 23, 2004, paras. 25-29, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/498/52/PDF/N0449852.pdf?OpenElement>.

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

treaties that incorporate the prohibition, and the number and variety of states that have ratified them.⁴¹ CAT has been ratified by an overwhelming majority of states.⁴² The states that have not signed or ratified CAT are states that have yet to recognize fully the prohibition against torture in their own domestic law or practice. The practice of the states that have ratified or signed CAT also supports the conclusion that the *non-refoulement* principle embodied in CAT is widely accepted.⁴³

The inclusion of similar prohibitions in a number of multinational or regional treaties enacted before CAT also supports the status of *non-refoulement* as a rule of customary international law, and shows that the protection afforded by the principle has expanded over time.⁴⁴ For example, Article 13 of the Inter-American Torture Convention provides that:

⁴¹ To determine whether a principle included in international treaties is a part of customary international law, U.S. courts will look to, *inter alia*, the "relative influence of [non-ratifying or signatory states] in international affairs. *Flores v. Peru*, 343 F.3d 140 (2nd Cir. 2003) at 163. States that are not party to CAT include: Angola, the Bahamas, Barbados, Bhutan, Brunei Darussalam, the Central African Republic, Democratic People's Republic of Korea, the Dominican Republic, Gambia, Guinea-Bissau, India, Madagascar, Nauru, Nicaragua, Pakistan, San Marino, Sao Tome and Principe, Thailand and Sudan. For a full list of states that are not party to CAT, *see*

<http://www.unhchr.ch/tbs/doc.nsf/newhvstatby treaty?OpenView&Start=1&Count=250&Expand=1.1#1.1> (last visited Apr. 19, 2005). Many of these states have a relatively low profile in international affairs. Significantly, many of these states have committed themselves to the *non-refoulement* principle by ratifying other treaties that include the principle, including, for example, the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, *concluded on* Sept. 10, 1969, *entered into force* June 20, 1974, 1001 U.N.T.S. 45 (ratified by 44 states to date). For ratification status of these treaties, *see* Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, *available at* <http://www.unhchr.ch/pdf/report.pdf> (Status of Ratifications) (last visited Apr. 19, 2005).

⁴² As of June 9, 2004, CAT had been ratified by 136 states and signed by 12 additional states. Only two states, the United States and Germany, entered reservations to Article 3. *See* Status of Ratifications, *supra* note 41 (last visited Apr. 19, 2005). Neither reservation indicates an intent to derogate from CAT's *non-refoulement* requirement. The U.S. ratification of CAT states its understanding that Article 3.1's requirement of "substantial grounds" to mean "if it is likely than not that he would be tortured." *Id.* Germany declared its opinion that Article 3 expressed an obligation on the part of a state, which was met by existing German domestic law. *Id.*

⁴³ Fifty-four states have recognized the competence of the Committee against Torture to receive and process individual communications concerning those states' practices under CAT Article 22. *See* Status of Ratifications, *supra* note 41.

⁴⁴ *See, e.g.*, American Convention on Human Rights, Nov. 22, 1969, KAV 2305, 9 ILM 673 (1970), O.A.S. Treaty Series No. 36, art. 5, P 2, OEA/Ser. L.V/II.23 doc. rev. 2, art. 5 *entered into force* July 18, 1978, *available at* <http://www.cidh.org/Basicos/basic3.htm> (last visited Apr. 19, 2005) (American Convention). Article 22(8) of the American Convention states that "In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinion." However, Article 27 of the American Convention allows a state to derogate from Article 22 (and other provisions) during "times of war or other public emergency that threaten the independence and security of the State party." *See also* 1987 Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, *entered into force* February 28, 1987, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 83 (1992), *available at*

UNCLASSIFIED

• CHRGI ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting States.⁴⁵

In Africa, regional treaties containing a *non-refoulement* standard include the Convention Governing the Specific Aspects of Refugee Problems in Africa⁴⁶ and the African [Banjul] Charter on Human and Peoples' Rights.⁴⁷

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention)⁴⁸ does not contain an explicit prohibition against *refoulement*. However, Article 3 of the Convention provides that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." The European Court has interpreted Article 3 to encompass a prohibition against *refoulement*, based on what it expressly identifies as a set of shared norms: the "common heritage of political traditions, ideals, freedom and 'the rule of law' of the states party to the European Convention."⁴⁹ In the seminal case of *Soering v. United Kingdom*, the European Court of

<http://www.oas.org/juridico/english/Treaties/a-51.html> (last visited Apr. 19, 2005).

- ⁴⁵ Unlike CAT and the European Court of Human Rights' case law on *refoulement*, the Inter-American Convention threshold for knowledge of likelihood of torture is not "substantial" grounds, but rather, *any* ground for belief that a person will be subject to torture or CID treatment.
- ⁴⁶ The Convention Governing the Specific Aspects of Refugee Problems in Africa, *adopted* 1974, *entered into force* June 20, 1974, 1001 U.N.T.S. 45, *available through* <http://www.africa-union.org/home/Welcome.htm> (last visited Apr. 19, 2005), art. 2(3) ("No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened....").
- ⁴⁷ *Adopted* 26 June 1981, *entered into force* Oct. 21, 1986, OAU Doc. CAB/LEG/67/3, Rev. 5, *reprinted in* 21 I.L.M. 58 (1982), *available through* <http://www.africa-union.org/home/Welcome.htm> (last visited Apr. 19, 2005), art. 2(3) ("No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return or to remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2").
- ⁴⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *opened for signature* Nov. 4, 1950, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 which *entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively, *available at* <http://www.echr.coe.int/Convention/webConvenENG.pdf> (last visited Apr. 19, 2005) (European Convention).
- ⁴⁹ *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989), para. 88. The jurisprudence of the European Commission in interpreting the principle of *non-refoulement* under the European Convention is particularly instructive because CAT Article 3's prohibition of *refoulement* is based in part on the jurisprudence of the European Commission of Human Rights. According to Burgers and Danelius (who participated in the drafting of CAT and whose authoritative text on the treaty includes discussion of the CAT *travaux préparatoires*), CAT Article 3 was "inspired by the case law of the European Commission of Human Rights with regard to Article 3 of the European Convention The Commission has considered that the prohibition of torture and inhuman or degrading treatment in

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

Human Rights held that the extradition to the United States of a German citizen accused of murder in the United States and arrested in the United Kingdom would be a violation of Article 3 of the European Convention. The court emphasized the absolute, non-derogable prohibition on torture and of other inhuman or degrading treatment and held that:

Article 3 makes no provision for exceptions and no derogation from it is permissible in time of war or other national emergency. This absolute prohibition of torture and of inhuman or degrading treatment or punishment under the terms of the Convention shows that Article 3 enshrines one of the fundamental values of the democratic societies making up the Council of Europe. It is also to be found in similar terms in other international instruments such as the 1966 International Covenant on Civil and Political Rights and the 1969 American Convention on Human Rights and is generally recognised as an internationally accepted standard.⁵⁰

The court also examined whether the European Convention's Article 3 prohibition against torture and CID treatment also applied to the extradition of an individual to a state where the individual was at substantial risk for torture or CID treatment. The court concluded that it did:

The fact that [CAT] should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 of the European Convention. It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed [I]n the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article.⁵¹

article 3 of the European Convention does not only oblige a State to prevent torture within its own territory, but also to refrain from handing a person over to another State where he might, with some degree of probability, be subjected to torture." BURGERS & DANIELIUS, *supra* note 15, at 125; *see also id.* at 125-128 (describing European Commission case law and the negotiations and discussions among states that lead to the final version of CAT Article 3, incorporating the European Commission's interpretation of Article 3 of the European Convention).

⁵⁰ *Soering v. United Kingdom*, *supra* note 49.

⁵¹ *Id.*

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The European Court subsequently confirmed its decision and extended the prohibition on *refoulement* to any kind of forced removal or transfer of an individual where there are substantial grounds to believe the person would face torture or ill-treatment.⁵²

The European Court of Human Rights has also addressed the norm of *non-refoulement* in the context of terrorism and national security. The Court has held that the prohibition against *refoulement* is based on "one of the most fundamental values of democratic society,"⁵³ and may not be violated even on national security grounds.⁵⁴ In *Chahal v. United Kingdom*,⁵⁵ the government of the United Kingdom claimed that the petitioner was a threat to the United Kingdom's national security, refused his claim for asylum and issued a deportation order. The Court found that Chahal would be in danger of ill-treatment if sent to India, and stated that the absolute nature of Article 3 applied to expulsion cases to block risky transfers. With respect to the United Kingdom's claim that the petitioner posed a threat to its national security, the Court stated that:

The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. . . . The prohibition provided by Article 3 against ill-treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion. . . . In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.⁵⁶

The jurisprudence of these regional courts is not binding on the United States. The uniformity with which these courts renounce *refoulement* to states where a person would be in danger of being subjected to torture, however, reinforces the status of the

⁵² *Cruz Varas v. Sweden*, 201 Eur. Ct. H.R. (ser. A) (1989) paras. 69-70 (holding that European Convention Article 3's prohibition against a state's transfer of an individual to another state where the person will face a real risk of torture or CID treatment applies to expulsions as well as extraditions); *Vilvarajah and Others v. United Kingdom*, 215 Eur. Ct. H.R. (ser. A) (1991) para 103 (same).

⁵³ *Chahal v. United Kingdom*, 23 Eur. Ct. H.R. 413 (ser. A) (1996), para. 79.

⁵⁴ *Tomasi v. France*, 15 Eur. Ct. H.R. 1 (Ser. A) (1992), para. 15 ("The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.").

⁵⁵ 23 Eur. Ct. H.R. 413 (ser. A) (1996).

⁵⁶ *Id.* paras. 79-80. See also *Ahmed v. Austria*, 24 Eur. H.R. Rep. 278, 287 and 291 (1997) (even individuals that a transferring state classifies as "undesirable or dangerous" may not be extradited or transferred to a state "where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture.").

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

prohibitions against torture and *refoulement* as fundamental norms of international law. The extradition of an individual like Mr. Kulvir Singh Barapind to India under circumstances which indicate that he would be in danger of being tortured would thus be a violation of such norms.

C. WHERE CIRCUMSTANCES INDICATE THAT IT IS MORE LIKELY THAN NOT THAT AN INDIVIDUAL WOULD BE TORTURED UPON TRANSFER TO A STATE, THE TRANSFER OF THAT INDIVIDUAL TO SUCH STATE WOULD BE A VIOLATION OF U.S. LAW

When Congress implemented CAT's *non-refoulement* provisions through FARRA, it required relevant agencies to promulgate all regulations necessary to ensure that the U.S. does not risk contravening the rule.⁵⁷ The FARRA Regulations broadly protect three categories of people: (i) individuals subject to "summary exclusion" (also known as "expedited removal"), (ii) individuals subject to removal orders, and (iii) individuals subject to extradition orders. The various executive agencies use different procedures when applying CAT protections to these categories of individuals. Since the matter at hand relates solely to an extradition order, the discussion here is restricted to legal standards applicable to the process of extradition.

i. U.S. Law Governing Extradition

Generally, extradition from the United States is governed by 18 U.S.C. § 3184, which confers jurisdiction on "any justice or judge of the United States" or any authorized magistrate to conduct an extradition hearing under the relevant extradition treaty. Under this statutory scheme, the extradition judge conducts a hearing in which the government must establish the following elements: (1) the court has jurisdiction over the subject matter and individual; (2) the crime charged is an extraditable offense under the relevant extradition treaty; (3) there is probable cause that the detainee committed the alleged offenses; and, (4) the detainee has not shown by a "preponderance of the evidence" a valid defense to the extradition.⁵⁸ If, based on the evidence presented in the extradition hearing, the government establishes these factors then the court may certify a detainee's extraditability. Such judicial determination is "neither a final determination of guilt or innocence nor a final determination of [the state's] treaty and foreign policy obligations;" rather, it is a preliminary jurisdictional and evidentiary finding.⁵⁹ If the judge certifies a detainee as extraditable, the process shifts to the secretary of state.

⁵⁷ FARRA, *supra* note 6, §2242(b).

⁵⁸ 18 U.S.C. § 3184; *see also* *Hooker v. Klein*, 573 F.2d 1360, 1367 (9th Cir. 1978), *cert. denied*, 439 U.S. 932, 58 L. Ed. 2d 327, 99 S. Ct. 323 (1978); *In re Petition of France for the Extradition of Philippe Sauvage*, 819 F. Supp. 896, 897 (S.D. Ca. 1993); *Matter of Demjanjuk*, 603 F. Supp. 1468, 1470 (N.D. OH 1985), *citing*, *Bingham v. Bradley*, 241 U.S. 511, 60 L. Ed. 1136, 36 S. Ct. 634 (1916); *In Re Extradition*, 915 F. Supp. 206 (D. Guam 1995); *Quinn v. Robinson*, 783 F.2d 887, 783 (9th Cir. 1986); *Cornejo-Barreto v. Seifert*, 218 F.2d 1004, 1009-1010.

⁵⁹ 18 U.S.C. § 3184; *In Re Extradition*, 915 F. Supp. 206 (D. Guam 1995).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

Sections 3184 and 3186 vest the secretary of state with the responsibility for the final determination of whether to surrender an alleged fugitive to a foreign state by means of extradition.⁶⁰ The regulations pertaining to extradition quote Article 3 of CAT,⁶¹ and specify that “in order to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, the State Department considers the question of whether a person facing extradition from the United States ‘is more likely than not’ to be tortured in the State requesting extradition when appropriate in making this determination.”⁶² Using the language of CAT Article 3, the regulations stipulate that in making this determination, the authorities must take into account “all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”⁶³

ii. *Standard of Proof and Evidence Required in CAT Claims*

The type of evidence needed to establish that an individual is “more likely than not” to be tortured upon extradition is not set out in the regulations. However, for CAT claims in the context of immigration proceedings, the following evidence is generally considered:⁶⁴ (i) evidence of past torture inflicted upon the applicant;⁶⁵ (ii) evidence that

⁶⁰ 22 C.F.R. §95.2(b).

⁶¹ 22 C.F.R. § 95.2(a)(1).

⁶² 22 C.F.R. § 95.2(b).

⁶³ 22 C.F.R. § 95.2(a)(2).

⁶⁴ 8 C.F.R. § 208.16(c)(3), § 1208.16(c)(3). See generally Virgil Wiebe et al., *Asking for a Note from Your Torturer: Corroboration and Authentication Requirements in Asylum, Withholding and Torture Convention Claims*, in 1 American Immigration Lawyers Association, 2001-02 Immigration and Nationality Law Handbook 414 (Randy P. Auerbach et al. eds., 2001). Jurisprudence of the Board of Immigration Appeals (BIA) is not very helpful here. The BIA generally determines each applicant's claim on a case-by-case basis, looking to factors such as the applicant's race, ethnicity, religion and sex, specific country conditions and the nature of the crime the applicant committed. *Matter of M-B-A-*, 23 I. & N. Dec. 474 (BIA 2002); *Matter of G-A-*, 23 I. & N. Dec. 366 (BIA 2002). For example, in 2002 the BIA granted protection to an Iranian Christian of Armenian descent, who had been convicted for drug crimes in the United States, based on his religion, ethnicity, U.S. drug convictions, and the length of time he spent in the United States. *Matter of M-B-A-*, *supra*. At the same time, the BIA denied protection to a Nigerian woman who was also convicted of a drug-related crime. *Matter of G-A-*, *supra*. In each case, the BIA looked to the applicants' testimony as well as the findings of the Department of State and various human rights groups about the conditions in the applicants' respective countries. Compare *Matter of M-B-A-*, *supra* at 479 (citing the State Department's human rights report to determine that in Nigeria “domestic and international rights groups generally operate without government restriction”); *Matter of G-A-*, *supra* (quoting the 1999 State Department human rights report entry for Iran that there is “widespread use of torture and other degrading treatment” in Iran). According to Gordon, Mailman and Yale-Loehr, the authors of an authoritative treatise on U.S. immigration law and procedure, “[e]ssentially, while the ‘more likely than not’ standard requires only ‘preponderance of the evidence,’ the [BIA] in practice is looking for current and meaningful evidence pertaining to how individuals similarly situated have been treated, not ‘a chain of assumptions and a fear of what might happen.’” CHARLES GORDON, STANLEY MAILMAN, & STEPHEN YALE-LOEHR, IMMIGRATION LAW AND PROCEDURE (Matthew Bender & Co. 2005), (GORDON & MAILMAN) ch. 33.10 (citations omitted).

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (iii) evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable;⁶⁶ and (iv) other relevant information regarding conditions in the country of removal.⁶⁷ The regulations state that the applicant's own credible testimony, without corroboration, may be sufficient to establish whether the "more likely than not" standard has been met.⁶⁸ Similar considerations are relevant here, and should guide the secretary of state's determination.

iii. *The Process of Extradition*

Generally, a decision to certify a detainee as extraditable is made initially by a judicial officer, and then the decision is presented to the secretary of state. If the individual subject to an extradition order asserts that he or she will be subject to torture in the state of extradition, "appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant."⁶⁹ Even if the individual does not make a claim pursuant to CAT, the State Department will give consideration "to the requesting country's human rights record, as set forth in the annual Country Reports on Human Rights Practices, from the perspective of Article 3 [of CAT]."⁷⁰

The details of the process by which the secretary of state considers CAT claims in the context of extradition is not known as this process has not generally been made public. However, some guidance can be gleaned from the manner in which the secretary of state makes determinations regarding the transfers of individuals outside the extradition process. For example, according to the Ambassador-at-Large for War Crimes

⁶⁵ 8 C.F.R. § 208.16(c)(3)(i), § 1208.16(c)(3)(i). See also e.g., *Kioski v. Sweden*, Comm. No. 41/1996, Committee Against Torture, 16th Sess., P 9.3, CAT/C/16/D/41/1996 (1996) available at http://www.asylumlaw.org/docs/CAT/Kioski_v_Sweden.pdf (last visited May 23, 2001) (claimant's "history of detention and torture should be taken into account when determining whether she would be in danger of being subjected to torture upon her return"); GORDON AND MAILMAN, *supra* note 64.

⁶⁶ See 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999).

⁶⁷ GORDON AND MAILMAN, *supra* note 64.

⁶⁸ 8 C.F.R. § 208.16(c)(2), § 1208.16(c)(2). See *Matter of Ibez-Gamboa*, File No. A74-129-892 (BIA May 24, 2000), reported in 5 *Bender's Immigr. Bull.* 571 (June 15, 2000) (deferral of removal granted based on respondent's own testimony regarding past torture and threatened future abuse, as well as the State Department's findings regarding the strong likelihood of persecution in Cuba of former political prisoners). See also *Matter of [name not provided]*, [Number not provided] (BIA Aug. 9, 2000), reported and discussed in 77 *Interpreter Releases* 1224 (Aug. 28, 2000) (grant of deferral of removal upheld for respondent who credibly testified regarding his particular danger of being tortured because of his sexual orientation if returned to El Salvador). But see *Wang v. Ashcroft*, 320 F.3d 130, 144 (2nd Cir. 2003) (in the context of a deportation, the court found that a testimony of a claimant who deserted the Chinese army "(1) that he was beaten for his first [military desertion] attempt [in China], (2) that he was told that he would be beaten to death if he deserted again, (3) that he was likely to be imprisoned if returned to China, and (4) that persons he knew had not fared well in Chinese prisons" was "not sufficient to establish that Wang is "more likely than not" to be tortured if returned to China.")

⁶⁹ U.S. Initial CAT Report, *supra* note 25, para. 167.

⁷⁰ *Id.*

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

Issues, in the context of transfers of individuals from Guantánamo to foreign states, the main concern of the State Department is to ensure that:

the foreign government concerned will treat the detainee humanely, in a manner consistent with its international obligations, and will not persecute the individual on the basis of his race, religion, nationality, membership in a social group, or political opinion. The Department is particularly mindful of the longstanding policy of the United States not to transfer a person to a country if it determines that it is more likely than not that the person will be tortured or, in appropriate cases, that the person has a well-founded fear of persecution and would not be disqualified from persecution protection on criminal- or security-related grounds.⁷¹

Thus, acting under her obligation to implement FARRA's codification of the prohibition on *refoulement*, the secretary of state will decline to authorize transfer of an individual who is more likely than not to be tortured upon return.

iv. *Review of the Decision of the Secretary of State to Transfer a Detainee in the face of a risk of torture*

The DOS regulations implementing the *non-refoulement* obligation assert that decisions of the secretary of state concerning surrender of alleged fugitives for extradition "are matters of executive discretion not subject to judicial review."⁷² The regulations further provide that

pursuant to FARRA Section 2242(d), notwithstanding any other provision of law, no court shall have jurisdiction to review these regulations, and nothing in Section 2242 shall be construed as providing any court jurisdiction to consider or review claims raised under the convention or Section 2242, or any other determination made with respect to the application of the policy set forth in Section 2242(a), except as part of the review of a final order of removal pursuant to Section 242 of the INA.⁷³

As the regulations note, the final clause allowing for review in the context of final orders of removal is not applicable to extradition.⁷⁴ Despite the language in the regulation precluding other forms of judicial review, in at least one case, the Ninth Circuit Court of Appeals has held that a petitioner may seek judicial review of a decision to extradite him

⁷¹ *Mahmoad Abdah et. al. v. Bush*, Civil Action No. 04-1254 (D.D.C. 2005), Exhibit: *Declaration of Pierre-Richard Prosper* (on file with the Center for Human Rights and Global Justice) ("Prosper Declaration").

⁷² 22 C.F.R. § 95.4.

⁷³ *Id.*

⁷⁴ *Id.*

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

by the secretary of state.⁷⁵ This holding was based in part on the concern by the Court that while FARRA imposed on the secretary of state a duty to ensure that individuals are not returned to states where they will be tortured, the DOS regulations appear to give the secretary of state the discretion to decide to return an individual even in the face of such a risk.⁷⁶ Reasoning that the agency's treatment of the mandatory duty not to return as a discretionary matter would be "contrary to both the statute and the Convention," the Court held that the petitioner would have the ability to seek review via a habeas petition once the Secretary had decided to surrender him to the requesting state.

Such a conclusion is consistent with CAT, which requires each state party to enact legislative and administrative measures to prevent torture.⁷⁷ Interpreting these obligations, the CAT Committee has expressed particular concern about instances in which individuals are transferred to requesting states without the right to appeal the decision to surrender them.⁷⁸ Most recently, the CAT Committee, in *Agiza v. Sweden*,⁷⁹

⁷⁵ See text accompanying note 10. In addition, in *Mironescu v. Costner et al.*, 345 F. Supp. 2d 538 (D.C. N.C. 2004), the U.S. District Court for the Middle District of North Carolina left open the possibility that a decision on extradition by the Secretary of State could be subject to judicial review, noting simply that the issue was not ripe since in that case the Secretary had not yet rendered the decision.

⁷⁶ See *Cornejo-Barreto*, *supra* note 7 at 1014 ("Although the statute imposes a mandatory duty on the Secretary to implement the FARR Act, the regulations promulgated by the Department of State indicate that the Secretary's duty is discretionary. . . We generally defer to an agency's construction of the statute it administers. . . We are required, however, to reject those interpretations that are contrary to Congressional intent. . . We therefore reject the argument, advanced by the government, that these regulations preclude judicial review of the Secretary's extradition decisions. . . Congress indicated its preference for agency enforcement of the U.S. obligations under the Torture Convention in the FARR Act. This scheme is consistent with Article 3 of the Torture Convention, which states that "the competent authorities" are required to ensure that extraditees are not returned if there "are substantial grounds for believing" that the fugitive "would be in danger of being subjected to torture." What *would* be contrary to both the statute and the Convention, is a finding that the Secretary's decisions are wholly discretionary. Article 3 is written in mandatory, not precatory language: "no State Party shall . . . extradite" a person likely to face torture. . . The FARR Act is similarly forceful: U.S. agencies are directed to "implement the obligations of the United States under Article 3" of the Torture Convention. As a principle of statutory construction, "we generally construe Congressional legislation to avoid violating international law." . . . In this case, the most straightforward construction is perfectly consistent with international law. (citations omitted).

⁷⁷ See CAT, *supra* note 2, art. 2(1) ("Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction") and Article 2(2) ("No exceptional circumstances whatsoever . . . may be invoked as a justification of torture.").

⁷⁸ Committee Against Torture, *Concluding Observations*, Sweden, U.N. Doc. CAT/C/XXVIII/CONCL.1, para. 6 (2002) ("The Committee [against Torture] . . . records its concern at the following: . . . (b) The Special Control of Foreigners Act, known as the anti-terrorism law, allows foreigners suspected of terrorism to be expelled under a procedure which might not be in keeping with the Convention, because there is no provision for appeal.").

⁷⁹ *Agiza v. Sweden*, Communication No. 233/2003, Committee Against Torture, U.N. Doc. CAT/C/34/D/233/2003, 20 May 2005. In *Agiza v. Sweden*, Ahmed Agiza was expelled from Sweden to Egypt. Agiza sought asylum in Sweden, but was excluded from refugee status based on evidence he was associated with Islamist groups responsible for acts of terrorism. To justify the expulsions, the Swedish government relied upon "diplomatic assurances" or formal guarantees from the Egyptian

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

held that article 3 of CAT must be interpreted as encompassing a remedy for its breach.⁸⁰ Specifically, the CAT Committee stated that “the right to an effective remedy contained in article 3 requires...an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise.”⁸¹ The CAT Committee further noted that “[w]hile national security concerns might justify some adjustment to be made to the particular process of review, the mechanism chosen must continue to satisfy article 3’s requirements of effective, independent and impartial review.”⁸²

The CAT Committee’s decision in *Agiza v. Sweden* is consistent with the Committee’s prior jurisprudence. In *Arana v. France*, the CAT Committee found violations of CAT Article 3, in part because the handover of the detainee by the French police to the Spanish police was not subject to judicial oversight:

The deportation was effected under an administrative procedure, which the Administrative Court of Pau had later found to be illegal, entailing a direct handover from police to police.... At the time of the consideration of the [previous] report..., the Committee expressed its concern at the practice whereby the police hand over individuals to their counterparts in another country ...without the intervention of a judicial authority and without any possibility for the author to contact his family or his lawyer. That meant that a detainee’s rights had not been respected and had placed the author in a situation where he was particularly vulnerable to possible abuse. The Committee recognizes the need for close cooperation between States in the fight against crime and for effective measures to be agreed upon for that purpose. It believes, however, that such measures must fully respect the rights and fundamental freedoms of the individuals concerned.⁸³

government that the two men would not be tortured and would have fair trials upon return. Agiza alleged that while in detention in Egypt he was subjected to torture. The CAT Committee found that Sweden breached its obligations under articles 3 and 22 of CAT.

⁸⁰ *Agiza v Sweden, supra note 79, para. 13.7*

⁸¹ *Id.*

⁸² *Agiza v. Sweden, supra note 79, para. 13.8*

⁸³ *Arana v. France, Communication No. 63/1997, Committee Against Torture, U.N. Doc. CAT/C/23/D/63/1997 (2000)*, para. 11.5. In *Arana v. France*, an individual who had been convicted in France of belonging to the Basque separatist group ETA was sought by Spanish police on suspicion that he was a member of the ETA leadership. Spain sought deportation from France through an administrative procedure, whereby detainees could be exchanged between the two nations’ police forces without judicial oversight or *intervention*.

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

The reasoning of the CAT Committee finds resonance in the case of *Shamayev and others v Georgia and Russia*,⁸⁴ decided by the European Court of Human Rights on April 12, 2005. *Shamayev* concerned individuals who were subject to extradition from Georgia to Russia on the basis of a request by the government of Russia. The Russian authorities sought the men for various crimes of terrorism. The applicants were detained by Georgian officials and transferred to Russia without having been informed of the decision to extradite them, and without having an opportunity to challenge the decision to return them, despite their fear of torture. The European Court of Human Rights found that Georgia had violated the applicants' right to an effective remedy, combined with the right to be free from torture, as guaranteed by Articles 13 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁸⁵ The Court found that the Convention had been violated when the Georgian authorities prevented the applicants from seeking relief from transfer on the basis that they feared torture if returned to Russia.⁸⁶

A 2002 case decided by the Supreme Court of Canada also supports the reasoning of the CAT Committee.⁸⁷ In *Manickavasagam Suresh v. The Minister of Citizenship and Immigration and the Attorney General of Canada*, the Court examined the adequacy of procedural safeguards in the context of the *non-refoulement* obligation set out in CAT Article 3. The Court held that "[g]iven Canada's commitment to the CAT, we find that ... the phrase 'substantial grounds' raises a duty to afford an opportunity to demonstrate and defend those grounds."⁸⁸ The court added that "[w]here the Minister is relying on written assurances from a foreign government that a person would not be tortured, the refugee must be given an opportunity to present evidence and make submissions as to the value of such assurances."⁸⁹ While this case is of course not legally binding on the United States, it offers useful guidance on the interpretation of U.S. CAT obligations.

⁸⁴ *Affaire Chamalev et 12 autres c. Géorgie et Russie (Shamayev and others v. Georgia and Russia)*, ___ Eur. H.R. Rep. ___ (2005). (not yet available in English).

⁸⁵ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra* note 48.

⁸⁶ *Chamalev*, *supra* note 84. at paras. 460-461.

⁸⁷ *Manickavasagam Suresh v. The Minister of Citizenship and Immigration and the Attorney General of Canada (Suresh v. Canada)*, 2002, SCC 1. File No. 27790, January 11, 2002 available at http://www.lexum.umontreal.ca/csc-scc/en/pub/2002/vol1/html/2002scr1_0003.html (last visited Apr. 19, 2005).

⁸⁸ *Id.* para. 119.

⁸⁹ *Id.* para. 123.

UNCLASSIFIED

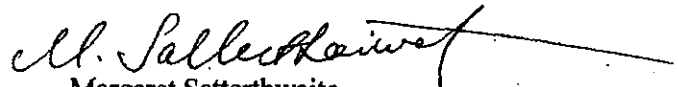
CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

v. *Application to the Facts*

Based on the analysis above, we conclude that the secretary of state is under an obligation to consider all relevant facts when exercising her duty to withhold extradition of an individual who is more likely than not to be tortured upon surrender. The relevant facts in this case include the existence in India of a consistent pattern of gross, flagrant or mass violations of human rights, the experience of other similarly situated returnees to India who report that they were tortured upon return, and the particularized circumstances facing Mr. Kulvir Singh Barapind himself. Extradition of Mr. Barapind to India under circumstances which indicate that it is more likely than not that he would be tortured would plainly violate U.S. law and policy. Finally, because of the mandatory nature of the duty imposed on agencies in FARRA, it is likely that the Ninth Circuit Court of Appeals would subject a decision by the secretary of state to extradite Mr. Barapind to judicial review using the rule set out in *Cornejo-Barreto v. Siefert*.

For the foregoing reasons, we urge the secretary of state to exercise her duty to withhold extradition where the relevant facts demonstrate that it is more likely than not that an individual will be subjected to torture upon return. Assuming the facts are true as alleged in the case of Mr. Barapind, extradition should be withheld in this case.

Respectfully submitted.



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New York University School of Law

May 27, 2005

UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

TABLE OF DOCUMENTS

INTERNATIONAL

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UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

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UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

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22 C.F.R. § 95.2(a)(1), (b); 95.4

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UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

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UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

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UNCLASSIFIED

CHRGJ ANALYSIS OF INTERNATIONAL AND DOMESTIC LAW STANDARDS

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UNCLASSIFIED

INDEX

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10. *Paez v. Sweden*, Communication No. 39/1996, Committee Against Torture, U.N. Doc. CAT/C/18/D/39/1996 (1997).
11. *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989).
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UNCLASSIFIED

UNCLASSIFIED

INDEX

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12. *Vilvarajah and Others v. United Kingdom*, 215 Eur. Ct. H.R. (ser. A) (1991)

APPENDIX

STATE OF ISRAEL

DORIT BEINISH, I hereby declare that:

1. I am State Attorney for the State of Israel and I have practiced law for twenty-two years. In my official capacity, I, and my duly appointed representatives, represent the State of Israel in all matters in which the State of Israel is a party, including all criminal prosecutions. In addition, I have personally participated in numerous criminal investigations and trials. During my practice in the State Attorney's Office, I have had responsibility for the execution of the criminal laws of the State of Israel and I have become knowledgeable about the laws of Israel and the decisions of our courts.

2. On 25th June 1987, Israel submitted a Request to the United States for the Extradition of Mahmoud El-Abed Ahmad, also known as Mahmoud Abed Atta (hereinafter, "Atta"), so that he could be tried in [**92] Israel on charges of murder, attempted murder, causing harm with aggravating intent, attempted arson, and conspiracy to commit a felony. I am familiar with the evidence and the charges in this case, and with the content of the files of Israel regarding this matter. If Atta is extradited to Israel in accordance with the Request, he will be tried before the District Court of Jerusalem for the criminal offenses set out in the Request.

3. The District Court of Jerusalem has jurisdiction over this matter. It is not a military court. It is a court before which civilian criminal offenders are tried. The Court will be composed of three legally trained, professional judges, who owe allegiance to no one but the law and are subject to no authority other than the law.

4. In accordance with Article XIII of the Convention on Extradition between Israel and the United States, Atta will be tried in Israel for only those offenses set forth in Israel's Request for Extradition. Atta will not be tried before any military court or tribunal and will not be charged with any offenses provided for under any military law or regulations of Israel.

5. The offenses set out in Israel's request to extradite Atta [**93] are ordinary criminal charges, under Israel's Penal Law, which would be brought against any person who was accused of similar acts.

6. Atta's trial in Israel will be a criminal trial, conducted in conformity with established judicial procedures. Atta will be afforded [**421] all rights and protections set out in Israel's Penal Law, Criminal Procedure Law, and Evidence Ordinance, as well as those rights set forth in all other laws pertaining to criminal trials. In criminal trials in Israel, the accused is

presumed to be innocent and the State has the burden of proving the guilt of the accused beyond a reasonable doubt. Atta will be permitted to be represented by counsel of his choosing from lawyers who are members of the Israel Bar. All trial proceedings will be translated into a language in which Atta is fluent. Atta's attorney will be permitted to cross-examine witnesses presented by the prosecution. Similarly, in accordance with Israel's Criminal Procedure Law, Atta will be entitled to have his own witnesses testify on his behalf. If Atta so chooses, he may testify on his own behalf.

7. Upon Atta's extradition to Israel he will be held in a civilian detention facility in accordance with Israel's [**94] Prison Ordinance and regulations promulgated pursuant thereto. Atta will be detained in a prison facility in Israel and not in the Administered Territories. Subject to the regulations governing the operations of Israel's prisons, Atta will be permitted visits by members of his family. Atta may receive an unlimited number of visits by his attorney during regular visiting hours at the prison facility. Officials of the United States Embassy may make arrangements to visit Atta while he is incarcerated. If Atta is convicted of any of the charges alleged in the Extradition Request, his detention will be continued in a prison facility under the same terms and conditions set forth above.

....

[8]. . . the Court inquired about the application of Section 10A of the Evidence Ordinance Law, 5733-1973 (hereinafter referred to as the "Evidence Ordinance") The legislative intent in enacting Section 10A was to protect a witness that provides a statement in a criminal proceeding and to bring criminals to justice. The legislative objective was to make a prior, out of court statement admissible in order to eliminate any benefit that might otherwise be derived from asserting improper pressure [**95] upon a witness to change his testimony at trial or refuse to testify. Section 10A only applies to the statements of *witnesses* in a criminal proceeding and does not apply to the *defendant's* statements as it relates to his particular trial. A defendant's statement is dealt with by the provisions of Section 12 of the Evidence Ordinance.

Section 10A(a) provides as follows:

A written statement made by a witness out of court shall be admissible as evidence in a criminal proceeding if --

- (1) its making has been proved at the trial and
- (2) the person who made it is a witness at the trial and



T-413/11/2004

विदेश मंत्रालय, नई दिल्ली
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI6th February, 2006

RELEASED IN FULL

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to their Note Verbale No. 06/054/Pol dated 18th January, 2006 has the honour to state that in the context of the extradition of Kulbir Singh Kulbeera @ Barapind, India has signed the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, 1984. As a signatory, India has good-faith obligation not to act against the objectives and purposes of the Convention.

2. 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. Extracts from the Indian Penal Code of relevant sections are enclosed.

3. Further, family members, attorneys of a person extradited to India as well as the Human Rights Commissions have access to them. Officials of the country extraditing a fugitive may also have access on reciprocal basis.

UNCLASSIFIED

e13

Cogan, Jacob K

From: Ellis, Jeffrey E
Sent: Wednesday, June 07, 2006 9:37 AM
To: Cogan, Jacob K
Subject: From New Delhi, re: Barapind

RELEASED IN PART
B1, 1.4(B)

Mr. Cogan,
Below is what the New Delhi staff sent today with regards to the case of Barapind.

-Jeff Ellis

(SBU) Barapind Assurances: In the event that Barapind is extradited back to India, Post has solid contacts with a number of human rights NGO's that could act as intermediaries and forward details of the conditions of his incarceration. Post's Human Rights officer (Greg Drazek until August 3, and Heather Rodgers thereafter) will be the point of contact for the Barapind case. Howard Madnick and his replacement Kaia Schwartz will also monitor Barapind's status.

(SBU) Abu Salem's Lawyers Allege Breach of Assurances; Outcome Relevant to Barapind

Extradition:

[Redacted]

All the major

Indian dailies today reported that Salem's lawyers are claiming the CBI has launched new investigations into Salem's dealings, and prosecutors have filed additional charges beyond those stipulated in Portugal's agreement to extradite the Mumbai-based gangster. Both these allegations, if proven true, could violate the assurances the GOI provided to the GOP.

[Redacted]

(SBU) As to Barapind, the Rule of Speciality (an extradited prisoner may only be tried for the offenses for which the requesting state sought extradition and presented evidence in support of its contentions to the sending state) is contained within the US-India Extradition Treaty, whereas India does not have an extradition treaty with Portugal that would normally stipulate Speciality. Also, per MEA Diplomatic Note T-413/11/2004 dated March 29, 2006 (which we reported in NEW DELHI 2171): "Once Mr. Barapind is extradited to India, the US Government will be informed about the status of the criminal trial against him for the alleged offenses in accordance with the provisions of the Indo-US Extradition Treaty." We provide news of the Abu Salem case to the Desk as background in case it begins to factor into Barapind's lawyers pleadings.

UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, L. HEDGBETH, DAS, A/ISS
REVIEW AUTHORITY: THEODORE SELLIN
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(B)
DECLASSIFY AFTER: 7 JUN 2016
DATE/CASE ID: 21 JUL 2008 200603431

1
UNCLASSIFIED

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e14

Guilani, Michel K

From: Cogan, Jacob K
Sent: Tuesday, June 13, 2006 12:21 PM
To: Guilani, Michel K
Subject: FW: Barapind draft press guidance

RELEASED IN PART
B6

-----Original Message-----

From: Bill and Tina Bartlett
Sent: Tuesday, June 13, 2006 12:04 PM
To: Sim, Cheryl J; Cogan, Jacob K; Madnick, Howard J; Pomper, Stephen E; Reichelderfer, Thomas; Messick, Scott; Bartlett, William M; Keshap, Atul; Drazek, Gregory; ''; Lambert, George
Cc: Keshap, Atul; Vu, Trung M; Placanica, AnnaMaria; Anderson, Michael H; Haughton, Maurice; WMS, WMSAgent(CA/CST/DO); Kennedy, David; Reichelderfer, Thomas; ''; ''; ''; ''
'; Messick, Scott; Chew, Roberta L (SCA/INS); Ellis, Jeffrey E (SCA/INS); Howard, Jeremiah H; SCA-INDIA-ONLY-DL
Subject: RE: Barapind draft press guidance

Fine - I will be on a flight over the Atlantic myself on Friday, so will need to hand this off to RSO or Legat to follow up after Thursday, our time. I will try to get more specific detail from MEA tomorrow morning. It has been fun. Extradition has got to be easier, if not as interesting at my next post. cheers, Bill

-----Original Message-----

From: Sim, Cheryl J [mailto:SimCJ@state.gov]
Sent: Tuesday, June 13, 2006 9:12 PM
To: Cogan, Jacob K; Madnick, Howard J; Pomper, Stephen E; Reichelderfer, Thomas; Messick, Scott; Bartlett, William M; Keshap, Atul; Drazek, Gregory; ''; Lambert, George; Bartlett, Tina (New Delhi Internet)
Cc: Keshap, Atul; Vu, Trung M; Placanica, AnnaMaria; Anderson, Michael H; Haughton, Maurice; WMS, WMSAgent(CA/CST/DO); Kennedy, David; Reichelderfer, Thomas; ''; ''; ''; ''
'; Messick, Scott; Chew, Roberta L (SCA/INS); Ellis, Jeffrey E (SCA/INS); Howard, Jeremiah H; SCA-INDIA-ONLY-DL
Subject: RE: Barapind draft press guidance

The Indian Embassy just called to relay the following, which they said was also shared with our folks in New Delhi:

The Indian police escorts will now arrive on FRIDAY June 16 at Newark. The handover will take place then (apparently they had difficulty booking tickets to arrive/depart here)

Travel document will be issued to Barapind.

Cheryl

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From: Cogan, Jacob K
Sent: Tuesday, June 13, 2006 11:32 AM
To: Madnick, Howard J; Pomper, Stephen E; Reichelderfer, Thomas; Messick, Scott; Bartlett, William M; Keshap, Atul; Drazek, Gregory; ; Lambert, George; Bartlett, Tina (New Delhi Internet)
Cc: Keshap, Atul; Vu, Trung M; Placanica, AnnaMaria; Anderson, Michael H; Haughton, Maurice; WMS, WMSAgent(CA/CST/DO); Kennedy, David; Reichelderfer, Thomas; ; ; ; ; Messick, Scott; Chew, Roberta L (SCA/INS); Ellis, Jeffrey E (SCA/INS); Howard, Jeremiah H; SCA-INDIA-ONLY-DL
Subject: RE: Barapind draft press guidance

L/LEI will be transmitting the surrender warrant (under cover of a dipnote) to the Indian Embassy today.

We will have comments on the draft press guidance later today.

From: Madnick, Howard J (NEW DELHI)
Sent: Tuesday, June 13, 2006 10:29 AM
To: Pomper, Stephen E; Reichelderfer, Thomas; Messick, Scott; Bartlett, William M; Keshap, Atul; Drazek, Gregory; Dave.Cottrill@usdoj.gov; Lambert, George; Bartlett, Tina (New Delhi Internet)
Cc: Keshap, Atul; Vu, Trung M; Placanica, AnnaMaria; Anderson, Michael H; Haughton, Maurice; Madnick, Howard J; WMS, WMSAgent(CA/CST/DO); Kennedy, David; Reichelderfer, Thomas; Warlow, Molly; Ivanova, Anna; Cogan, Jacob K; Cottrill, Dave; Price, Dale (USMS); Fahey, Sean; Messick, Scott; Chew, Roberta L (SCA/INS); Ellis, Jeffrey E (SCA/INS); Howard, Jeremiah H; SCA-INDIA-ONLY-DL
Subject: RE: Barapind draft press guidance

this is pure strawman, please pull it apart to your hearts' content, I welcome your inputs. also, I tried to pull together the most comprehensive e-mail list for Washington & Delhi, I apologize if this is going to uninterested parties but if we expect Barapind back in India soon, I'd rather err on the side of inclusion vice exclusion.

"The US on (fill in date) extradited Mr. Kulvir Singh Barapind to India under the terms of our Extradition Treaty. He is wanted for serious crimes in India, and the US government has turned him over to the Indian government so he can stand trial for the crimes of which he is accused. This extradition is just the most recent example of US-India law enforcement cooperation."

(if asked whether we believe Barapind will be tortured in custody -- I have no doubt some NGOs will be tipped off, and they may in turn tip off reporters): "The Indian government has provided us with assurances that Mr. Barapind's treatment while in custody will be consistent with the rights he enjoys under the Indian Constitution and laws, including protection against being tortured. After a considered review of these assurances, the US government agreed that Mr. Barapind's rights

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as a citizen under the Indian Constitution will be protected."

(if asked about any specific aspects of Barapind's case, the charges filed against him, etc): "Mr. Barapind is sought by the Indian government for crimes committed in India. You will have to ask the Indian government for comment."

note: we at Post also welcome your input on how to use this guidance. we plan to see the Indian A/S equivalent for US to ask him his druthers between press release and if-asked guidance, we are tentatively leaning toward the latter, but your thoughts are welcome

Howard Madnick
Political Section
US Embassy, New Delhi
Tel: 2419-8657

-----Original Message-----

From: Pomper, Stephen E
Sent: Tuesday, June 13, 2006 7:04 PM
To: Reichelderfer, Thomas; Messick, Scott; Bartlett, William M; Keshap, Atul; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; Harry Marshall; Beckmeyer, Charles R; Haughton, Maurice; Kennedy, David; Cogan, Jacob K; Howard, Jeremiah H
Subject: RE: Barapind

Folks-

Thanks for all of your attention to this matter. We'll be happy to review press guidance. I gather that a draft will originate at post?

Also, I am just getting back up to speed on this matter: Have we worked out the kinks concerning travel?

Steve

From: Reichelderfer, Thomas (NEW DELHI)
Sent: Tuesday, June 13, 2006 5:12 AM
To: Messick, Scott; Bartlett, William M; Keshap, Atul; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; Harry Marshall; Pomper, Stephen E; Beckmeyer, Charles R; Haughton, Maurice; Kennedy, David
Subject: RE: Barapind

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As discussed, PA looks forward to getting clear and approved guidance on what to say about this if we are asked. Thanks.

-----Original Message-----

From: Messick, Scott
Sent: Tuesday, June 13, 2006 12:53 PM
To: Bartlett, William M; Keshap, Atul; Kennedy, David; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Reichelderfer, Thomas; Anderson, Michael H; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; 'Harry Marshall'; Pomper, Stephen E; Beckmeyer, Charles R; Haughton, Maurice
Subject: RE: Barapind

Bill,

I was out of the office for the past few days and just wanted to confirm that GOI officials will travel to the U.S. to pick up Barapind. Is this correct? We had a request to assist the USMS in this extradition from our DS/USMS liaison office in DC and I just wanted to close the loop. I will confirm with DS and the USMS as well. Thanks.

Scott

[REDACTED]
U.S. Dept. of State
Bureau of Diplomatic Security
U.S. Embassy, New Delhi
Phone: 91-11-2419-8000, ext. 8089
Fax: 91-11-2419-8433

-----Original Message-----

From: Bartlett, William M
Sent: Tuesday, June 13, 2006 11:41 AM
To: Keshap, Atul; Kennedy, David; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Reichelderfer, Thomas; Anderson, Michael H; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; Messick, Scott; 'Harry Marshall'; Pomper, Stephen E
Subject: RE: Barapind

I see this as more Pol and PD's call, but I am assuming they will treat him well and documenting that could be useful in the future. Bill

-----Original Message-----

From: Keshap, Atul
Sent: Tuesday, June 13, 2006 11:11 AM
To: Bartlett, William M; Kennedy, David; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Reichelderfer, Thomas; Anderson, Michael H; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; Messick, Scott; 'Harry Marshall'; Pomper, Stephen E
Subject: RE: Barapind

if we are leaning toward press coverage, i'll check with jaishankar if he thinks it would be appropriate/helpful or if it raises other issues/problems. tx

-----Original Message-----

From: Bartlett, William M

4
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POC. Bill

-----Original Message-----

From: Madnick, Howard J
Sent: Tuesday, June 13, 2006 9:40 AM
To: Bartlett, William M; Keshap, Atul; Drazek, Gregory
Cc: Sherman, Richard M; Kennedy, David; Reichelderfer, Thomas; Anderson, Michael H; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P; Messick, Scott
Subject: RE: Barapind

Does anyone know who from the Emb greeted Cheema @ the airport (per Jacob's e-mail)?

Would the GOI balk if we take photos of Barapind on arrival, to send back to his attorneys?

Bill - Thank you for so much here.

Who is/are the GOI point(s) of contact for Barapind's movements once he arrives in Delhi? We need to assume that, even if it is unintentional, at some point we will be left out of the loop on something, and we'll need to know how we re-insert ourselves to comply with what Barapind's lawyers want. If this one gets bumpy it could impact future extraditions.

Do you have the ranks of the policemen? I think Man Singh might be the DIG who's called me before. Maybe Trung or George can tell us their relative seniority based on their ranks?

David - Let's recycle as much as we can out of Cheema -- can you fwd us what was used then? I agree that less is more.

Howard Madnick
Political Section
US Embassy, New Delhi
Tel: 2419-8657

-----Original Message-----

From: Bartlett, William M
Sent: Tuesday, June 13, 2006 8:59 AM
To: Keshap, Atul; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M; Kennedy, David; Reichelderfer, Thomas; Anderson, Michael H; Lambert, George; Vu, Trung M; Galoski, Joseph (@dhs.gov); Galoski, Joseph P
Subject: RE: Barapind

RSO and Legat. ICE really hasn't been involved, but I try to keep them in the loop. I will leave this one to Pol, but we really should have press guidance ready if we are going to be at the airport and hearing. David was involved in the Cheema return and may have something from that. I would expect we wouldn't want to say a lot, but will need to have something ready. Escorts will be from Punjab police. Bill

-----Original Message-----

From: Keshap, Atul
Sent: Tuesday, June 13, 2006 8:45 AM

6
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To: Bartlett, William M; Madnick, Howard J; Drazek, Gregory
Cc: Sherman, Richard M
Subject: RE: Barapind

Thanks. We'll be sure to do the needful. Which others are Embassy stake-holders? RSO? ICE? tx.

-----Original Message-----

From: Bartlett, William M
Sent: Tuesday, June 13, 2006 8:44 AM
To: Cogan, Jacob K; Madnick, Howard J; Drazek, Gregory
Cc: Pomper, Stephen E; Pyatt, Geoffrey R; Keshap, Atul; Sherman, Richard M; Howard, Jeremiah H; Guilani, Michel K
Subject: RE: Barapind

Howard, Atul - This Pol's bailiwick. I will tell MEA JS Dash when I talk to him today that we will want to be at the airport and at the charging. Likely to arrive on the Continental flight Friday, evening, but I will confirm. Then it is over to you. I leave Friday night. Bill

-----Original Message-----

From: Cogan, Jacob K
Sent: Monday, June 12, 2006 8:24 PM
To: Madnick, Howard J; Drazek, Gregory
Cc: Pomper, Stephen E; Pyatt, Geoffrey R; Keshap, Atul; Bartlett, William M; Sherman, Richard M; Howard, Jeremiah H; Guilani, Michel K
Subject: FW: Barapind

Howard, Greg:

As you may have heard, the Deputy Secretary of State has approved the extradition of Barapind to India, and Barapind has decided not to contest that decision in court. In accordance with our standard practice, L will deliver the surrender warrant to the Indian Embassy today under cover of a diplomatic note. (We will give copies to the USMS.)

Barapind's U.S. counsel, with whom we've been working these past many months, emailed me a number of suggestions regarding monitoring of Barapind's detention (see below). I would ask that the Embassy give them serious consideration. In particular, I agree (point #1) that it would be advisable that Embassy personnel be present upon Barapind's arrival in India and at his initial booking. I understand that something similar was done upon Cheema's return a couple of months ago. I also agree (point #3) that we should get copies of the charging documents, as this goes to India's compliance with the rule of specialty (which limits their bringing charges to those for which Barapind was found extraditable). Please forward them to L/LEI. With regard to their request for a POC (point #4), per a recent communication from the Embassy, I have given them Greg's name and contact information.

Thanks to all at the Embassy for their tremendous efforts in this case.

Jacob

P.S. I will be leaving the Department next week to take a law teaching job. Steve Pomper will handle this case (again) once I depart.

7
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From: Jagdip Sekhon [REDACTED]
Sent: Friday, June 09, 2006 9:13 PM
To: Cogan, Jacob K
Cc: [REDACTED] Sukhman Dhami; Jaskaran Kaur
Subject: Barapind

Dear Jacob:

Sorry for the delayed communication. My schedule did not allow for me to transmit the herein promised letter before the end of the work day.

Jacob, there are three areas where I feel monitoring can be most helpful. You and your colleagues may have already reached the same conclusion. I nevertheless thank you for considering the suggestions set forth below.

1. Mr. Barapind's Surrender & Detention Upon Arrival in India

Establishing from the outset of Mr. Barapind's surrender the United States government's intent to zealously monitor Mr. Barapind is necessary. If it is not possible for United States officials to accompany Mr. Barapind to India, it is critical that they are present at his arrival in New Delhi and at his initial detention and interrogation.

Additionally, because Mr. Barapind's chances of being ill-treated in contravention of the Convention Against Torture will only increase when he is transferred from New Delhi to Punjab, we urge that United States officials accompany him when this takes place.

In so doing, the United States government will not only assure that Mr. Barapind is not mistreated during the initial stages of his detention, but will also place the Indian central government officials as well as the Punjab State government officials on notice from the outset the seriousness of the U.S.'s intent to monitor.

2. Mr. Barapind's Detention in India

During his detention, unannounced visits to Mr. Barapind by United States government officials will be a valuable deterrent against Indian and Punjab state officials mistreating him. Such visits should always be made any time there is a change in his custody status, and intermittently thereafter.

Additionally, in Punjab, almost all torture occurs when a detainee is in what is termed "police remand," which can only be accomplished by judicial order, from either a magistrate or judge. Safeguarding Mr. Barapind from torture will require opposing any order authorizing "police remand." Thus, if the United States Embassy officials ever receive information that Indian or Punjab government officials are requesting police remand, the United States government officials should express their opposition.

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These preventive measures will greatly assist the United States Embassy in fulfilling its monitoring responsibilities.

3. Documentation

Documenting Mr. Barapind's detention status will also prove to be an effective preventive measure, as it will serve to record where Mr. Barapind is detained and in whose custody.

We respectfully ask that following Mr. Barapind's surrender: 1) the United States Department of Justice official forward us documentation evincing that Mr. Barapind has been surrendered; and, that 2) upon his arrival in New Delhi, the United States government official present secure evidence of the "registering" of Mr. Barapind by Indian government officials and any related documents such as charging documents, and that these documents also be forwarded us.

Thereafter, we will work with Mr. Barapind's attorneys to secure similar documentation from wherever he is detained and forward it to the appropriate United States government officials here and in India.

4. Point of Contact

Finally, as discussed earlier Jacob, we would ask that you provide us of the appropriate point of contact at the Embassy and here in the United States.

I have already advised that on behalf of Mr. Barapind, hereafter, the appropriate contact in the United States will be Sukhman Dhani (sdhani@ensaaf.org) and Jaskaran Kaur (jkaur@ensaaf.org) of Ensaaf. I have provided you their electronic mail addresses. Sukhman's telephone number is (415) 259-7214; and his facsimile number is (270) 916-7074.

Additionally, I will soon provide you the contact information of Mr. Barapind's legal representatives in India.

Of course, if you ever feel the need, you are always welcome to contact me.

Again, thank you Jacob for your earnest dealings with us through this arduous but very important process.

Sincerely,

9
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Jagdip Sekhon

¹⁰
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1. Mr. Barapind's Surrender & Detention Upon Arrival in India

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their electronic mail addresses. Sukhman's telephone number is [redacted] and his facsimile number is [redacted]

Additionally, I will soon provide you the contact information of Mr. Barapind's legal representatives in India.

Of course, if you ever feel the need, you are always welcome to contact me.

Again, thank you Jacob for your earnest dealings with us through this arduous but very important process.

Sincerely,

Jagdip Sekhon

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United States Department of State

Washington, D.C. 20520


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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.

UNITED STATES DEPARTMENT OF STATE
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REVIEW AUTHORITY: THEODORE SELLIN
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)

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-2-

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 not 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:

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-3-

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

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-4-

Drafted:

L/LEI:Michel Guilan^u / Jacob Cogan^u
x79500 x79771
04/04/06 Doc No. 21109-3a

Clearances:

L:SBiniaz (ok) *jk*
L/LEI:KPropp (ok) *wp*
L/LEI:SPomper (ok)
L/HRR:EAmory (ok)
L/ESA:SProsser (ok)
NEA/INS:JHoward (ok)
DRL:JFarrar (info)
DRL/PHD:SGhori (ok)
DRL/CRA:LPotts (info)
D:AJost (ok)
P:AManuel (ok)
DOJ/OIA: HMarshall (subs) (ok) *jk*

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RELEASED IN PART United States Department of State
B1, 1.4(D)

Washington, D.C. 20520

ei 100

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 ~~personal~~ 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

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-6-

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 89~~ 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

¹ Article 6 of the applicable extradition treaty bars extradition for offenses "of a political character."

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-7-

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*

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-8-

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:

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-9-

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

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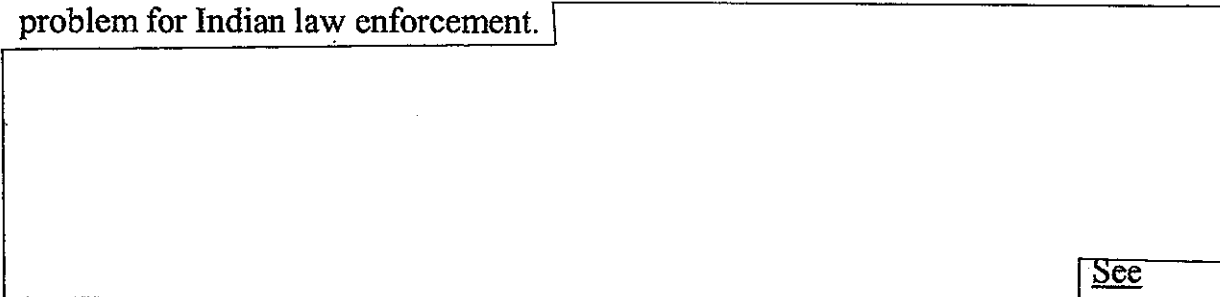
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associates" (Tab 10). Embassy New Delhi also has been "unable to authoritatively confirm or refute Barapind's specific claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment," though one 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).²

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



See

also 2005 Country Report for Human Rights for India (Tab 14).

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 accused of having directed his torture), have not been tried for their reported offenses (Tab 9). While

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.

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-11-

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 “now 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

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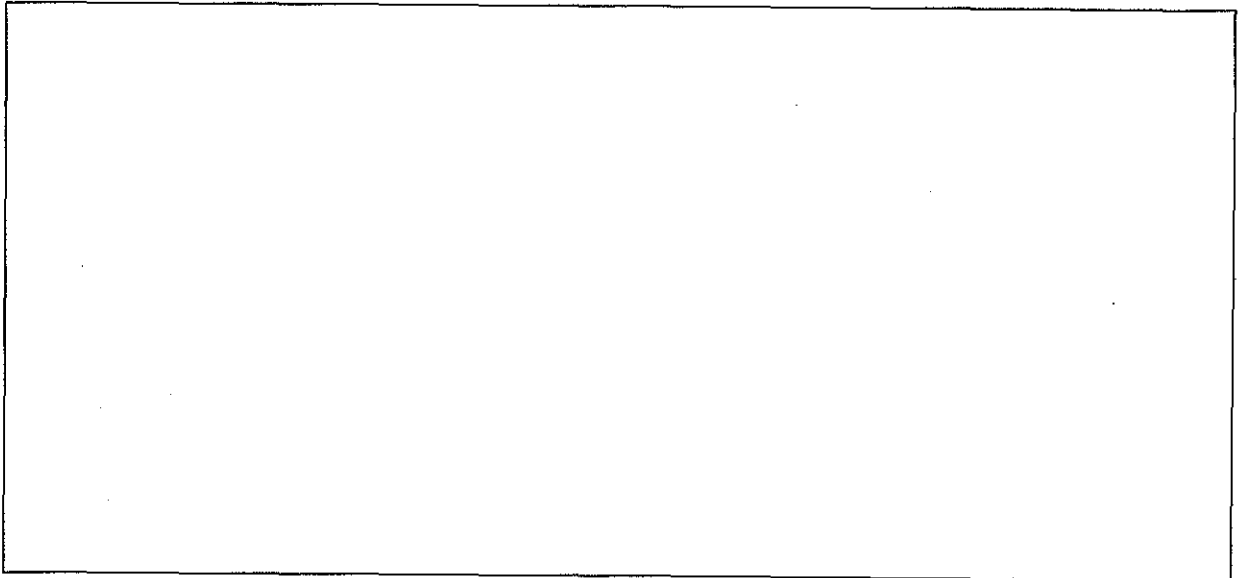
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Delhi and deepened divisions between India and Pakistan. Today, Punjab is one of the richest states in India, with a progressive, pro-agriculture government whose Chief Minister (a Sikh) is working to promote harmonious relations among Sikhs and between 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.]

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-13-

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.³

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.

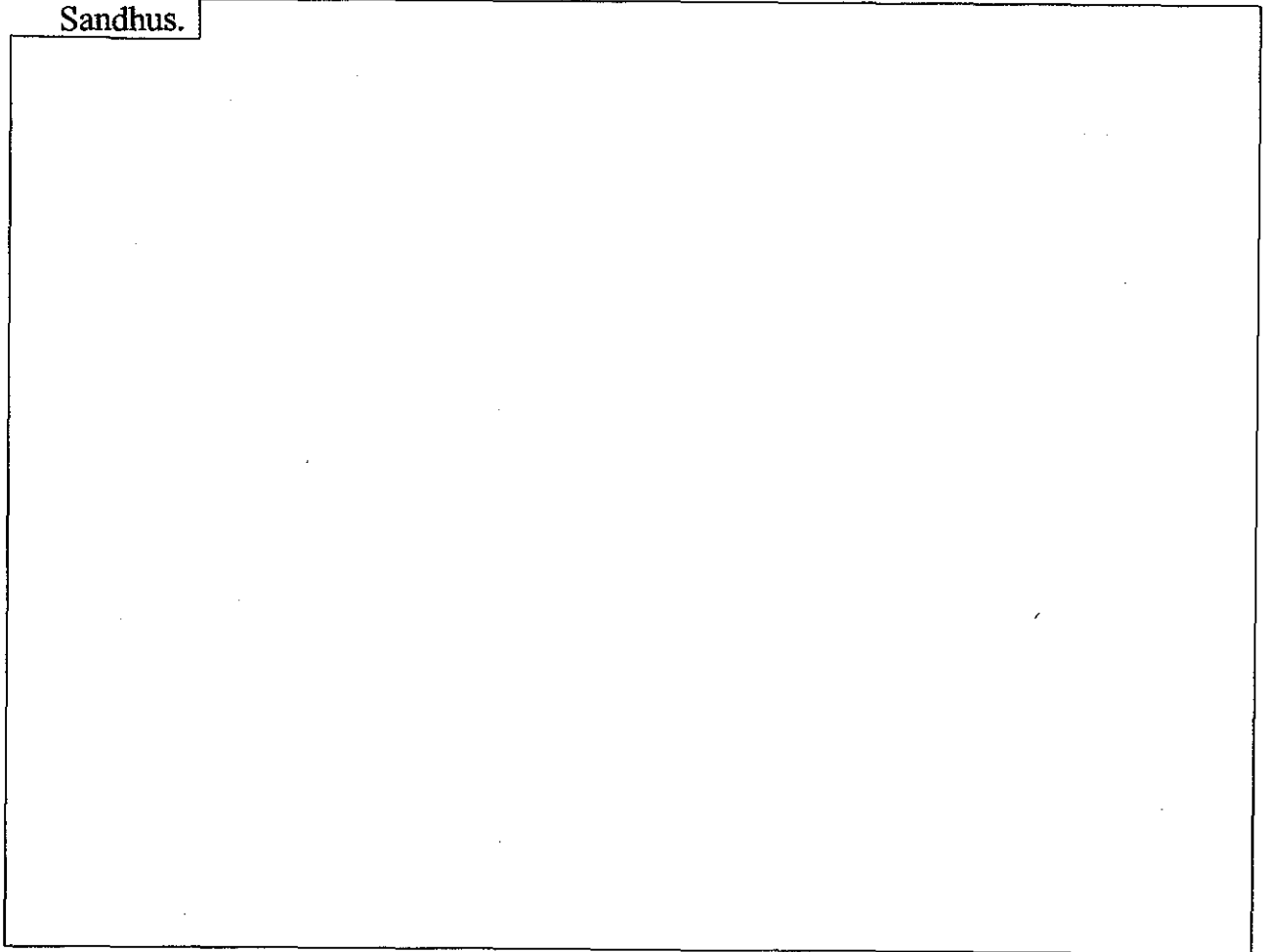
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reciprocal basis), as described, are accurate, and it is likely the Government of India will in practice comply with them" (Tab 10). The Embassy continues: "India's relationship with the United States and the rest of the world is . . . dramatically 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."

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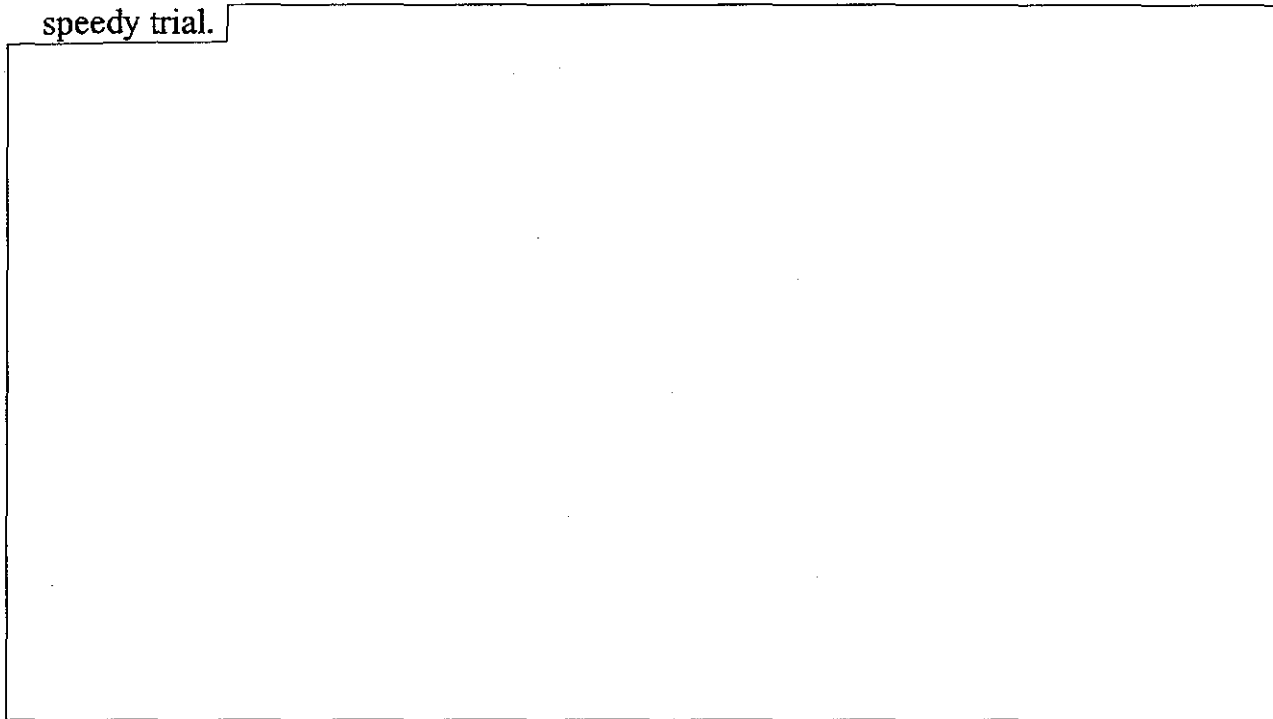
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accountability in place in the form of Indian human rights organizations (including the National Human Rights Commission) and media, the assurances provided by the Government of India, the guaranteed monitoring,⁵ the prospect of U.S. cooperation on 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.



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.

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-16-

Refugee Convention

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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-17-

the extradition request.⁶ 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),⁷ 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,

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.

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-18-

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.

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Ref: A. 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION B. 12/06/05 POMPER EMAIL TO POST ATTACHING
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ENCLOSING LINKS TO 22 CFR 95 D. 12/09/05 POMPER EMAIL
TO POST ATTACHING SANDHU POST-EXTRADITION REPORTING
CABLE

1. (U) Sensitive but unclassified. Law enforcement sensitive. Please protect accordingly. This is an action request (see paragraphs 3-7).

2. (SBU) Summary. After many years of litigation, a federal district court in California has entered an order finding that Kulbir Singh Barapind is extraditable to India to face murder and attempted murder charges arising out of three incidents in the Punjab region. Under U.S. law, USG authorities have two calendar months from the date on which a prisoner is committed for extradition to physically transfer that person out of the U.S., after which the prisoner may petition for release. In this case, the two-month period will expire on January 9, 2006. Since the entry of the certification, Barapind's lawyers have requested that the Secretary not sign a warrant for his surrender to the Indian authorities because, they allege that he will be tortured upon his return. Their submission is based on legal arguments and accompanied by supporting documentation.

Pursuant to federal regulations, relevant legal and policy offices must review and analyze the information that has been presented prior to making a recommendation to the Secretary or Deputy Secretary about whether to sign Barapind's surrender warrant. (22 CFR 95.3(a)). In order to implement the requirements imposed by the U.S. obligations under the Convention Against Torture with respect to extraditions, it is necessary to consider whether a person is "more likely than not" to be tortured if surrendered to the requesting state. (22 CFR 95.2).

To help the Department fulfill its obligations in the present matter, post's assistance is requested in assessing claims raised by Barapind's counsel, which are summarized in paragraph 5 below. One particularly important set of questions concerns allegations made by Barapind's lawyers that two individuals extradited to India in 1997 (Kamaljit Kaur Sandhu and Daya Singh Sandhu) were tortured upon their return notwithstanding Indian Government assurances given to the USG at the time and reported in 96 New Delhi 14669. End Summary.

ACTION REQUEST

3. (U) Background and Procedural History

Kulbir Singh Barapind is a native and citizen of India and former leader of the All India Sikh Student Federation (ASSF),

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an organization dedicated to establishing a sovereign Sikh nation ("Khalistan") in the Punjab. Barapind joined the organization in 1985 and served as junior district president for the District of Jalandhar for a period in spring 1988 and beginning again in fall 1990. He became Joint Secretary of the SSF in March 1991. 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.

In April 1993, Barapind was arrested at the Los Angeles International for attempting to enter the U.S. using a false passport. He was immediately detained and was placed into the custody of the INS.

[REDACTED] These proceedings were held in abeyance after India submitted, in November 1994, a request for Barapind's extradition on charges in connection with 11 separate violent incidents. [REDACTED]

Barapind vigorously challenged the GoI's extradition at both the district and appellate court levels in the U.S. Ninth Circuit. During the course of that litigation, the courts found that Barapind was not extraditable on charges relating to eight out of the 11 incidents cited in the GoI's extradition request. (In three cases this was because of a failure to establish probable cause, and in five cases it was because the offenses were deemed "political offenses" and therefore not acceptable bases for extradition under applicable treaty law.) In an October 24, 2005 opinion, the District Court for the Eastern District of California resolved an open issue with respect to one of the three remaining incidents, and on November 9 that Court entered an order finding Barapind to be extraditable with respect to all three incidents. Specifically, Barapind has been found to be extraditable in connection with:

- i/ the murders of Kulwant Singh, Aman Nath Kanigo, Soda Ram, and Jasbir Ram as described in the GoI's First Information Report (FIR) 34;
- ii/ the murder of Kulwant Kaur as described in FIR 89; and
- iii/ the murder of Sahib Singh (aka Sahbi) and the attempted murder of Makhan Ram as described in FIR 100.

Under U.S. law, USG authorities have two calendar months from the date on which a fugitive is committed for extradition to transfer him out of the U.S. before the fugitive can petition for release under procedures prescribed by statute. DOJ has arranged with Barapind's lawyers that the two-calendar period will be measured from November 9, 2005, which is the date upon which the order of extraditability was entered. On November 28, Department received a submission from Barapind's lawyers requesting that the Secretary not sign a warrant for his surrender to the Indian authorities because, they allege, he will be tortured upon his return. The claims made in this submission will need to be reviewed in accordance with federal regulations.

4. (U) Legal Requirements/Summary of Regulations

According to applicable regulations, once a judge has found a person extraditable, the relevant legal and policy offices develop a recommendation to the appropriate Department principal on whether she or he should sign a warrant for the fugitive's surrender. If allegations are made that the fugitive is likely to be tortured upon surrender, these legal and policy offices must review and analyze the relevant information in preparing their recommendation to either the

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Secretary or Deputy Secretary (22 CFR 95.1(d), 95.3(a)). Consistent with the USG's obligations with respect to the Convention Against Torture, this review will assess whether the it is "more likely than not" the fugitive will be tortured upon return (22 CFR 95.2). The regulations set forth a detailed explanation of what constitutes "torture" for these purposes (22 CFR 95.1).

We are requesting post's assistance in assessing claims and addressing issues raised by Barapind's submission and described in paragraph 5 below. To assist post, we have separately provided copies of Barapind's submission (Ref A), certain exhibits thereto (Ref B), and the regulations referred to above (22 CFR 95.1-4) (Ref C).

5. (SBU) Claims and Issues Raised by Submission

(a) Barapind's submission claims that he was detained and tortured by Indian officials in June 1988 and July 1989 (see Ref A pages 11-14 and 15-16). It claims that he was tortured in 1988 first by the Nadokar and then by the Goraya police. It also claims that he was tortured 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. Department requests any information that post can gather that would help to assess the veracity of these claims.

(b) Barapind's submission claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment, including as follows:

i/ security forces severely tortured Barapind's father, brother (Balwand Singh) and brother-in-law (Balraj Singh), and illegally detained the rest of his family (Ref A pages 15-16 and 41-43 of 11/23 submission);

ii/ security forces illegally detained and tortured Barapind's SSF associate, Gurtej Singh, because of his association with Barapind (Ref A page 15); and

iii/ the government caused the extrajudicial execution of his alleged accomplices -- including Ranjit Singh Rana in 1991, Haminder Singh in early 1992, Gurdip Singh Deepa in December 1992, Majinder Singh in December 1992, and Manjit Singh Billa in 1992 (Ref A page 45).

Department requests any information that post can gather that would help to assess the veracity of these claims.

(c) Barapind's submission claims that any diplomatic assurances that the USG obtains from India cannot protect Mr. Barapind from torture. In making this argument, it states that on at least two prior occasions, India failed to honor diplomatic assurances that it would not torture Sikhs extradited to India by United States. In particular, the submission cites the cases of Daya Singh Sandhu and Kamaljit Kaur Sandhu, both of whom were extradited to India in 1997 after the USG had procured assurances from the GoI that they would be afforded 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 Indian Human Rights Commission visit them while in custody. (In addition, the GoI provided a nonpaper suggesting that the Sandhus would be held almost immediately upon return in judicial remand, a situation in which custodial abuse was understood to be particularly rare.)

Barapind's submission claims that, in spite of the GoI 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. In order to assess Barapind's claims, Department requests post's input on the following

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items:

i/ The credibility/truthfulness of the Sandhus' claims with respect to their physical treatment upon being returned to India (Ref A pages 21-24);

ii/ The accuracy of the claim that the Sandhus were denied access to counsel or were provided limited/perfunctory access to counsel (Ref A pages 51-53); and

iii/ The accuracy of the more general claim that Sandhus did not receive a fair trial because of violations of the rule of specialty and prolonged pretrial detentions in addition of lack of access to counsel (Ref A pages 50-58).

Department would also be grateful if post could share any information about reporting/monitoring that may have come to its attention with respect to the Sandhus, post-extradition situation (in addition to what is contained in Ref D) that might shed light on Barapind's claims.

(d) Under federal regulations, the Department's review of Barapind's submission must take into account, among other relevant considerations, whether India shows a consistent pattern of gross, flagrant or mass violations of human rights (22 CFR 95.2(a)(2)). Barapind's submission claims that there continues to be a widespread practice of torture and custodial deaths in Punjab and India--citing among other things a recent State Department report (Ref A pages 30-33). Department would appreciate post's assistance in evaluating this claim--including an assessment of whether incidences of custodial abuse are on the rise or fall in India, in Punjab, and with respect to Sikhs held in custody.

(e) In the same vein, Department would be grateful for post's assessment of the statements that "(t)he Indian government believes that militancy is being revived in Punjab, and is torturing suspected Sikhs and their supporters" (Ref A pages 33-36).

(f) There are several places where Barapind's submission suggests that systemic problems skew the likelihood that Barapind will be tortured upon return. In particular, the submission suggests that "(1) torture is imbedded and accepted in the culture and investigative methodology of India's law enforcement officials ... (2) security forces will have exclusive control over Mr. Barapind during police remand ... without any possibility of oversight ... (3) Mr. Barapind has no right to counsel during interrogations ... and (4) (assuming he is tortured, Barapind) will have no judicial remedy to redress or prevent further torture" (Ref A pages 24-26). The submission also suggests that India's laws do not adequately protect against torture, and, in fact, encourage torture during interrogations (Ref A pages 48-50). Department requests post's views on the accuracy of these claims.

(g) Department requests post's views on the extent to which any risk of post-extradition torture that might be identified could be addressed by a combination of assurances (the specific contents of which will need to be considered), access, and monitoring. Department is particularly interested in post's assessment of the following:

i/ Whether, as a general matter, the GoI is likely to be willing to provide assurances in this case and how long it is likely to take (Days? Weeks?) to procure these assurances.

ii/ Which entity within the GoI (and at what level) could most credibly give assurances;

iii/ To the extent that incomplete coordination between national and state or local officials may increase the risk of non-compliance with assurances, whether this might be addressed by including in the requested assurances a stipulation that they have been coordinated appropriately at

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the regional/local level, or by any other mechanism;

iv/ Whether the GOI would be willing to assure the USG or another reliable interlocutor (for example, a designated NGO) access to Barapind once he is taken into GOI custody.

In discussing which assurances might be given (and who might give them), Department requests that post include an assessment of the credibility/reliability of those assurances.

Please note that in considering these questions it may be helpful to look at the assurances that GoI provided both in the Sandhu's case of 1996/7 (see 96 New Delhi 14669) and in the Sandhu/Gill case of 2000. Department will provide materials relating to those assurances under separate cover.

(h) Department also requests post's assistance in reviewing the assertions contained in Barapind's submission that (a) Barapind will not be able to relocate to avoid torture (even if released from custody because of dangers presented by Indian security forces--see Ref A page 44) and (b) one of the policemen allegedly responsible for Barapind's torture in 1988 has been promoted to the senior ranks of the Punjab police force (Ref A page 47).

6. (SBU) Additional Considerations

This matter has particular sensitivity because of India's status as an extradition and mutual legal assistance treaty partner and a valued partner in the war on terror. It will therefore be critical both to review and analyze Mr. Barapind's claims thoroughly and to develop a considered assessment of whether relevant risks that may be identified can be appropriately addressed through some combination of assurances, access, and monitoring.

7. (U) Timing

With apologies for the tight timeframe, Department seeks post's input on the above items by reply cable as quickly as possible, and no later than OOB Friday, December 16 in light of the January 9 deadline. Input by that date is essential, as: (1) post's reply will contribute to any decision to seek assurances; (2) post's reply will be incorporated into a decision memo that will need to be widely cleared; and (3) if a decision is made to surrender Barapind, it will be necessary to make surrender arrangements with Indian authorities. Department will be in contact with post in the interim to offer whatever assistance it can in investigating and evaluating the claims made and, if necessary, in developing a strategy for approaching the GoI for assurances.

Department greatly appreciates post's assistance on this critical and sensitive law enforcement matter.

RICE

Additional Addressees:

None

cc:

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TO AMEMBASSY NEW DELHI IMMEDIATE
INFO DEPT OF JUSTICE WASHINGTON DC PRIORITY

UNCLAS STATE 222735

SENSITIVE - FOR POL AND CON

E.O. 12958: N/A
TAGS: CJAN, CVIS, PTER, PREL, KCRM, IN
SUBJECT: EXTRADITION: INDIA: KULBIR SINGH BARAPIND

REF: A. 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION
B. 12/06/05 POMPER EMAIL TO POST ATTACHING SANDHU
AFFIDAVITS
C. 12/08/05 POMPER EMAIL TO POST ENCLOSING LINKS TO
22 CFR 95
D. 12/09/05 POMPER EMAIL TO POST ATTACHING SANDHU
POST-EXTRADITION REPORTING CABLE

End Cable Text

Michel K Guilani 04/04/2006 01:40:20 PM From DB/inbox: Search Results

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B1, 1.4(D)

Michel K Guillani 05/05/2006 06:13:06 PM From DB/Inbox: Search Results

Cable Text:

UNCLASSIFIED
TELEGRAM

January 13, 2006

UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, L. HEDGBETH, DAS, A/ISS

To: AMEMBASSY NEW DELHI - IMMEDIATE

REVIEW AUTHORITY: THEODORE SELLIN

Origin: L

CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)

From: SECSTATE WASHDC (STATE 6905 - IMMEDIATE)

DECLASSIFY AFTER: 13 JAN 2016

TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN

DATE/CASE ID: 21 JUL 2008 200603431

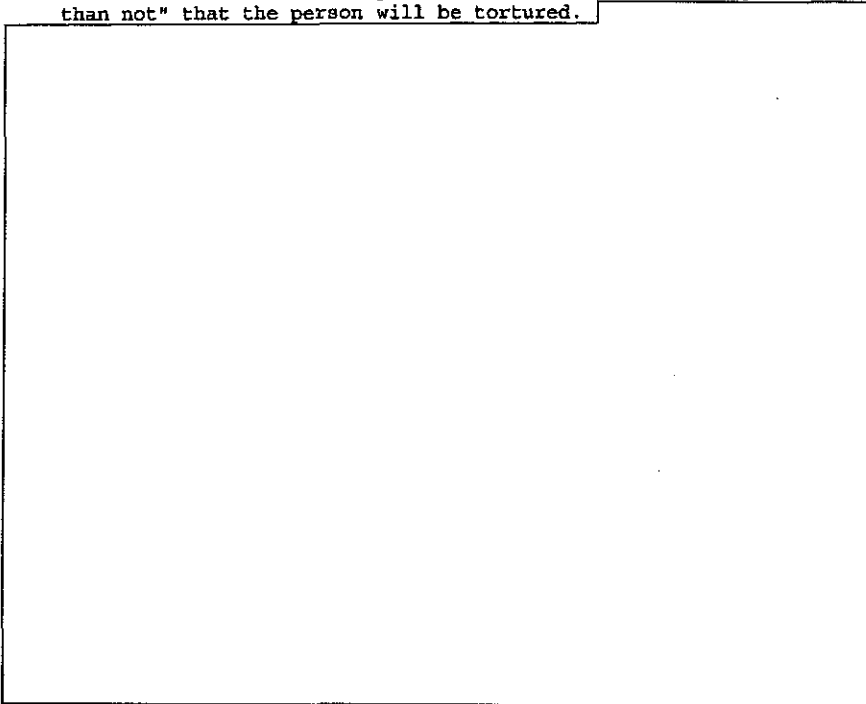
Captions: SENSITIVE

Subject: EXTRADITION: INDIA: KULBIR SINGH BARAPIND: REQUEST FOR ASSURANCES

Ref: A. 2005 NEW DELHI 9513 B. 2005 STATE 222735 C. MADNICK-POMPER EMAIL OF 12/23/05

1. (U) This is an action request. See paras. 4-5.

2. (SBU) Department appreciates Post's reply (ref A) to Department's queries regarding the potential extradition of Kulbir Singh Barapind to India. As noted in ref B, citing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention), Barapind has challenged his possible extradition, claiming, among other things, that he has been and is likely to be tortured in India. Under Article 3 of the Torture Convention, 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 Torture Convention and the State Department regulations implementing the Convention, 22 CFR part 95, this means that extradition is precluded if it is "more likely than not" that the person will be tortured.



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5. (SBU) ACTION REQUEST (CONTINUED). In accordance with standard practice in Torture Convention extradition cases, Department also requests that the Ambassador assess the merit of Barapind's claim that he is more likely than not to be tortured if surrendered to the Indian authorities, in light of any assurances and information the Government of India (including the Ministry of Home Affairs) provides. The same assessment will be made by the Legal Adviser, the Assistant Secretary for South Asian Affairs, and the Assistant Secretary for Democracy, Human Rights and Labor. These assessments will be incorporated into the decision memo on Barapind's surrender.

6. (U) Please report developments to L/LEI (attn. Stephen Pomper, Michel Guilani, and Jacob Cogan) and L/HRR (attn. Sarah Frosser). Embassy's assistance is greatly appreciated.
RICE

Additional Addressees:
None

cc:
DEPT OF JUSTICE WASHINGTON DC

Distribution:

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ORIGIN L-00

INFO	LOG-00	AID-00	CA-00	CIAE-00	CPR-00	INL-00	DODE-00
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SOURCE: CBLEXCLS.001601
DRAFTED BY: L/LEI:SPOMPER/JCOGAN -- 01/13/2006 202-647-9500
APPROVED BY: SA:DCAMP
L/LEI:LJACOBSON
L/LEI:SPOMPER
L/HRR:RKHARRIS
L:JBELLINGER
SA/INS:JHOWARD
DRL/PHD:SGHORI
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E.O. 12958: N/A
TAGS: CJAN, CVIS, PTER, PREL, PHUM, PGOV, KCRM, IN
SUBJECT: EXTRADITION: INDIA: KULBIR SINGH BARAPIND:
REQUEST FOR ASSURANCES

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REF: A. 2005 NEW DELHI 9513
B. 2005 STATE 222735
C. MADNICK-POMPER EMAIL OF 12/23/05

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Michel K Guillani 04/04/2006 01:39:28 PM From DB/Inbox: Search Results

Cable Text:

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TELEGRAM

UNITED STATES DEPARTMENT OF STATE
~~CLASSIFIED BY~~ DEPT. OF STATE, L. HEDGBETH, DAS, A/ISS
REVIEW AUTHORITY: THEODORE SELLIN
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)
DECLASSIFY AFTER: 1 MAR 2016
DATE/CASE ID: 21 JUL 2008 200603431

To: AMEMBASSY NEW DELHI - IMMEDIATE

Origin: L

From: SECSTATE WASHDC (STATE 33728 - IMMEDIATE)

TAGS: CJAN, CVIS, KCRM, PREL, IN

Captions: None

Subject: EXTRADITION: INDIA: KULBIR SINGH BARAPIND

Ref: A. 05 STATE 222735 B. 05 NEW DELHI 9513 C. STATE 6905
D. NEW DELHI 994 E. PYATT EMAIL TO POMPER DATED FEB 21
2006

1. This is an action request. See paragraphs 4 and 5.



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6. Department also appreciates post's agreement in Ref E to designate a point of contact for Mr. Barapind's representatives in the event Mr. Barapind is extradited to India. Mr. Barapind's attorneys requested that post appoint this point of contact so that they will know where to direct relevant queries and /or information if serious issues relating to Mr. Barapind's treatment arise after his return to India.
RICE

Additional Addressees:
None

cc:
DEPT OF JUSTICE WASHINGTON DC

Distribution:

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ORIGIN L-00

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APPROVED BY: L/LEI:SPOMPER
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DOJ/OIA:HRMARSHALL
SA/INS:JHOWARD
DRL/BA:KCBROKENSHERE
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E.O. 12958: N/A
TAGS: CJAN, CVIS, PREL, KCRM, IN
SUBJECT: EXTRADITION: INDIA: KULBIR SINGH BARAPIND

REF: A. 05 STATE 222735
B. 05 NEW DELHI 9513
C. STATE 6905
D. NEW DELHI 994
E. PYATT EMAIL TO POMPER DATED FEB 21 2006

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Michel K Guilani 12/27/2005 02:55:14 PM From DB/Inbox: Michel K Guilani

Cable Text:

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TELEGRAM

December 19, 2005

UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, L. HEDGBETH, DAS,
REVIEW AUTHORITY: THEODORE SELLIN
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)
DECLASSIFY AFTER: 19 DEC 2015
DATE/CASE ID: 03 SEP 2008 200603431

To: SECSTATE WASHDC - PRIORITY

Action: L

From: AMEMBASSY NEW DELHI (NEW DELHI 9513 - PRIORITY)

TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN

Captions: None

Subject: EXTRADITION: INDIA: KULBIR SINGH BARAPIND: POST
RESPONSE

Ref: A. STATE 222735 B. 12/01/05 POMPER EMAIL TO POST
ATTACHING CAT SUBMISSION C. NEW DELHI 6311 D. 00 NEW
DELHI 2852 E. 98 NEW DELHI 5439 F. 96 NEW DELHI 14669

1. (SBU) Summary: This message will address as many of the Ref A questions as Post is able to answer. Confirming or refuting specific allegations of torture is extremely difficult by the very nature of the usual secrecy surrounding torture. Barapind's claims of torture include a litany of many of the forms of torture the police in India are known to use on criminal and terrorist suspects. At the time of Barapind's arrest, police routinely tortured and/or killed terrorists' families and associates. Today, however, India has numerous activist human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. The free press is also sensitive to human rights, and a leading HR activist opined "no one will touch" Barapind given his prominence. The GOI will probably be willing to give the USG assurances of Barapind's treatment, as they did when Portugal in November extradited to India notorious terrorist suspect Abu Salem. That said, India's judiciary is independent; in the Salem case, the presiding judge stated that he might not be bound by assurances the GOI made to Portugal that he would not face the death penalty. Presumably, however, the government could and would appeal any such judicial finding that was in contravention of diplomatic assurances. End Summary.

2. (SBU) The Punjab of today is dramatically 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. Sikh terrorists even assassinated the serving PM of India, Indira Gandhi. Today, the Punjab remains 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. India also remains a robust democracy, and the Indian government and people are proud of their traditions of rule of law and protection of human rights. India's free press, including in Punjab, actively pursues and exposes government excesses of all varieties, including torture and corruption. The end of the Punjab insurgency in the 1990s ushered in a dramatic decline in custodial deaths and torture allegations. Nor do Sikhs face specific hardships; they are notably prosperous as a people and fully integrated in Indian civil society. For example, the current Indian Prime Minister and Army Chief are Sikhs. Sikhs also enjoy personal income above the rest of India, assets out of proportion to their demographic numbers, and presence in the Armed Forces, police, and bureaucracy well out of proportion to their numbers vis a vis the rest of the population of India. Finally, Sikhs overwhelmingly oppose the efforts of Khalistani (pro-insurgency) Sikhs, and

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the intensive police and security force anti-insurgency efforts of the 1980s and 1990s are largely a thing of the past.

3. (SBU) In addition to Post's own research and knowledge of the legal/law enforcement environment in the state of Punjab, PolFSN interviewed three Indian citizens we believe to be credible sources who are intimately familiar with the subject -- they all opposed Sikh terrorism and the Khalistan movement, but are also outspoken against police abuses:

-- [redacted] Sikh terrorists killed several of his relatives during the 1980s-90s.

-- [redacted] and have been Embassy contacts for more than 15

-- [redacted]

Responses to Reftel Questions

4. (SBU) [redacted]

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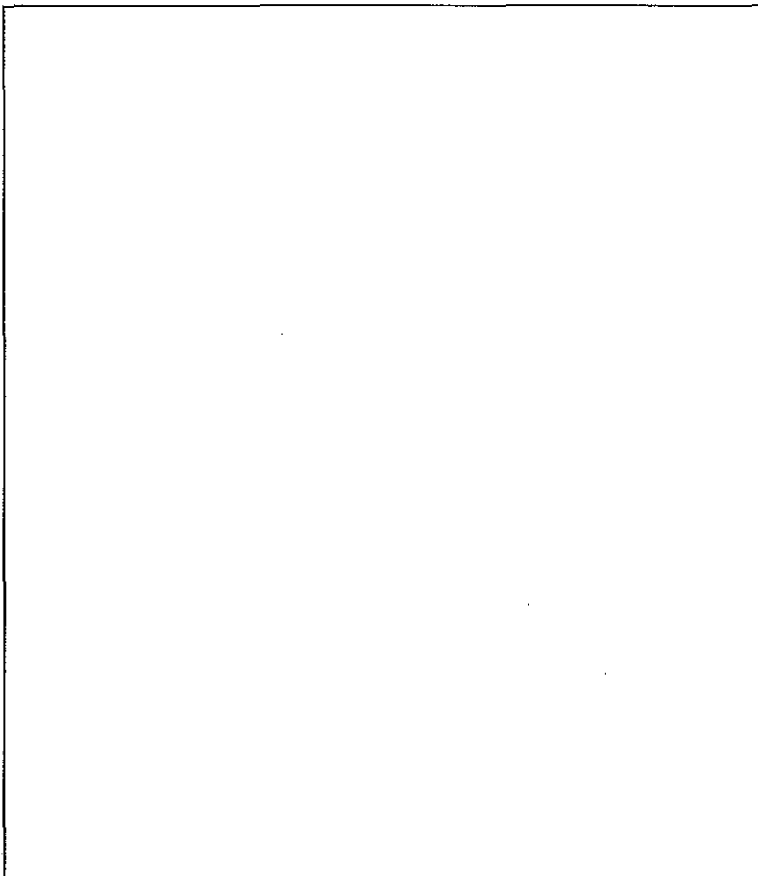
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Additional Addressees:
None

cc:
DEPT OF JUSTICE WASHDC

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E.O. 12958: N/A
TAGS: CJAN, CVIS, PTER, PREL, KCRM, PHUM, PGOV, IN
SUBJECT: EXTRADITION: INDIA: KULBIR SINGH BARAPIND: POST
RESPONSE

REF: A. STATE 222735
B. 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION
C. NEW DELHI 6311
D. 00 NEW DELHI 2852
E. 98 NEW DELHI 5439
F. 96 NEW DELHI 14669

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Michel K Guilani 12/27/2005 02:55:14 PM From DB/Inbox: Michel K Guilani

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Michel K Guilani 04/04/2006 01:39:24 PM From DB/Inbox: Search Results

Cable Text:

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TELEGRAM

March 30, 2006

To: SECSTATE WASHDC - PRIORITY

Action: SCA

From: AMEMBASSY NEW DELHI (NEW DELHI 2171 - PRIORITY)

TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN

Captions: SIPDIS, SENSITIVE

Subject: FOLLOW-UP ON BARAPIND EXTRADITION ASSURANCES

Ref: A. STATE 33728 B. NEW DELHI 994 C. STATE 6905 D. 05 NEW
DELHI 9513 E. 12/01/05 POMPER EMAIL TO POST ATTACHING
CAT SUBMISSION F. 05 NEW DELHI 4449

1. (SBU) Summary: On March 29, 2006, Post received MEA Diplomatic Note T-413/11/2004 answering questions posed in USG Diplomatic Note 06/254/POL, dated March 7, 2006, regarding the extradition to India of Kulbir Singh Barapind. The full text of the GOI response is included below, as well as the name and contact information for Embassy POC for any post-extradition follow-up (per Ref A). We include here additional context regarding the significant positive changes since 1997 (i.e. post-Sandhu extradition) in the Indian political landscape regarding the treatment of Sikhs that should also be taken under careful consideration as this issue moves forward. End Summary.

GOI Response to Ref A Follow-Up Questions

2. (U) With reference to the requested extradition of Kulbir Singh Barapind (referred to in the Indian note as Kulbir Singh Kulbeera aka Barapind) and USG obligation under the Convention Against Torture, the MEA has provided the following diplomatic note:

Begin text of MEA Diplomatic Note T-413/11/2004, dated 28 March 2006:

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to their Note Verbale No. 06/254/Pol dated 7th March 2006 regarding Mr. Kulbir Singh Kulbeera aka Barapind, has the honour to reiterate, as conveyed in this Ministry's note dated 6th February 2006, that Mr. Kulbir Singh Kulbeera aka Barapind on extradition to India, will be dealt with in accordance with the law. He 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.

As we conveyed in the Note Verbale dated 6th February 2006, 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.

Once Mr. Barapind is extradited to India, the US Government will be informed about the status of the criminal trial against him for the alleged offenses in accordance with the

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provisions of the Indo-US Extradition Treaty. Article 21 of the Treaty provides for consultation in connection with the processing of individual cases and improving procedures for the implementation of the Treaty.

As for information concerning the old cases of Daya Singh Sandhu and Kamaljit Kaur Sandhu, this Ministry would obtain the requisite details from the concerned Indian authorities and convey to the esteemed Embassy in due course.

As regards access on a reciprocal basis, it is clarified that the US officials on request shall have access to the person extradited during trial in India, and on extradition of a person from India to USA, the Indian officials on request shall be provided access to the person extradited during his trial in the United States of America, irrespective of his or her nationality.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurances of its highest consideration.

End Text.

(NOTE: The GOI reference to USG Note Verbale No. 06/254/Pol dated 7th March 2006 corresponds with Ref C. End Note.)

Initial Assessment of GOI Response

3. (SBU) The GOI response appears to Post to answer most of the questions posed in Ref A. We note that the GOI response does not explicitly mention coordination with Punjab authorities to ensure Barapind's humane treatment, except to reiterate in the first two paragraphs that Indian law provides for his humane treatment and that persons violating this law are subject to prosecution and imprisonment. The GOI response for the first time notes that mental suffering falls under this rubric.

4. (SBU) The Indian response also did not specifically answer whether Barapind would be held in judicial remand upon his return to India, whether his trial would be held in Punjab, whether he would be held in Punjab prior to and during his trial, or where he would be incarcerated if convicted. The response does note in the third paragraph that the USG "will be informed about the status of the criminal trial against him," however.

5. (SBU) We also note the GOI indicated in its response that it would obtain and convey to us information regarding the post-extradition treatment of the Sandhus.

Embassy POC

6. (U) Per Ref A Para 6, Embassy POC will be Poloff Howard Madnick. Poloff will be with the Embassy until July, at which time a replacement POC will be selected. Contact information:

-- e-mail: [redacted]
-- work phone: 91-11-2419-8657
-- mobile phone: [redacted]

Sandhu Case Not Necessarily a Barometer for Barapind

7. (SBU) The most glaring difference that distinguishes the 1997 Sandhu extradition from the Barapind extradition request is the changed political climate in Punjab. The insurgency that spawned police-excesses was dying out in the mid-1990s; as of 2006 "the Punjab militancy" is a historical event, and the passage of time has reduced the intense operating environment. Many new human rights cases today are filed by the alleged victims of long-past abuses. Although the courts

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have been slow in clearing the historical case load, reports of truly new abuse cases are a small fraction compared to those lodged during the height of the insurgency. Moreover, Indian society's treatment of Sikhs has returned to the harmony and respect of the past, with Sikhs occupying senior positions throughout government and society.

8. (SBU) Another important difference to consider is that the Sandhu case proceeded relatively swiftly; the Indian government requested extradition in 1996 and it was executed in 1997 (Ref E). The Barapind extradition process has proceeded more deliberately, having begun with the Indian government request for extradition in September 1997. Mission believes the time and effort the Indian government has invested in retrieving Barapind -- and the prospect of US cooperation on future extraditions -- will also help protect Barapind's human rights.

Improved Conditions for Sikhs

9. (SBU) Conditions for Sikhs began to improve in the mid-1990s and progress has been rapid during the past five years. In order to answer Department of Homeland Security questions regarding the current treatment of Sikhs in India, Embassy New Delhi investigators have worked in Punjab and other Indian states for years to determine the validity of Sikh asylum applications; to date, we have been unable to substantiate a single such claim. Conditions since the mid-1990s have improved so dramatically that there have been no legitimate grounds for such asylum seekers since that period. Many legitimate asylum seekers who applied before that period and had already been settled in the US and other countries have since returned to India and reassimilated into Indian society. Indeed, recent press announcements have highlighted the cases of "wanted terrorists" who have since assumed leading positions in the Punjab business community.

Signatory to Convention Against Torture

10. (U) India signed the UN Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment (Convention Against Torture or CAT) in October 1997, less than a year after the Sandhus were extradited, and nearly 10 years ago. Although not yet ratified, the Indian government recognizes that "as a signatory, India has good-faith obligation not to act against the objectives and purposes of the Convention" (Ref E).

High Profile, High Visibility, High-Accountability

11. (SBU) Mission is keenly aware of the culture of torture and extrajudicial punishment in Indian jails, as we have outlined in successive Human Rights Reports; furthermore, Mission has been unable authoritatively to confirm whether the Sandhus were tortured by Indian police officials after their extradition. However, [redacted]

[redacted] who lost several relatives to Sikh terrorists in the 1980s-90s -- told us "no one will touch (Barapind)" because his case is considered high profile (in part because of the extradition) and also because of the strength of human rights activists in Punjab (Ref D). Mission understands this will be the first extradition to India from the US since 2000. Mission also notes 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. If Barapind is extradited, particularly after the Abu Salem extradition and the recent (and extensively media covered) historic visit of President Bush, Mission expects extensive and long-running media coverage will contribute to guaranteeing good behavior on the part of Barapind's jailers.

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12. (SBU) We are similarly encouraged by the most recent terrorism case involving Sikh suspects, the May 2005 Delhi, cinema bombings (Ref F). Mission believes the high visibility of the case helped ensure that police officers in Delhi, Haryana, and Punjab maintained professional standards. The investigation into the cinema bombings was marked only by arrests, not by extrajudicial killings or other police excesses.

National Human Rights Commission Maturing

13. (SBU) India's National Human Rights Commission -- the entity created in 1993 and tasked by law "for better protection of human rights" -- was a nascent organization when the Sandhus were extradited in 1997, but now 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," according to the Protection of Human Rights Act (1993). GOI assurances aside, the NHRC is legally empowered to visit prisoners "in any jail or any other institution under the control of the State Government" for this purpose. Their senior officers are empowered to "enter any building where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document." The NHRC is an active organization that operates independently of the government and has loudly criticized some government institutions and actions.

Changed India-US Macro Dynamic

14. (SBU) Finally, the contours of the India-US relationship have dramatically improved over those in 1997. From a narrow and emerging relationship, we now have a broad-based and deep-rooted bilateral agenda on a range of issues, including counter-terrorism, which was lacking in 1997. Furthermore, the Barapind extradition -- if it is to transpire -- will do so after not one but two US Presidential visits since the Sandhus were extradited. The GOI would be interested in maintaining and furthering these relations, including for future extraditions, and would be more vigilant about not allowing any missteps that could lead to a reversal of relations either on extraditions specifically or on the India-US relationship more broadly.

15. (U) Visit New Delhi's Classified Website:
<http://www.state.sgov.gov/p/sa/newdelhi>
MULFORD

Additional Addressees:
None

cc:
AMCONSUL CALCUTTA
AMCONSUL CHENNAI
AMCONSUL MUMBAI
DEPT OF JUSTICE WASHDC
NSC WASHDC

Distribution:

TED8908
ACTION SCA-00

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DEPT OF JUSTICE WASHDC
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UNCLAS NEW DELHI 002171

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DRL FOR CCAMPOVO

E.O. 12958: N/A
TAGS: CJAN, CVIS, PTER, PREL, KCRM, PHUM, PGOV, IN
SUBJECT: FOLLOW-UP ON BARAPIND EXTRADITION ASSURANCES

REF: A. STATE 33728
B. NEW DELHI 994
C. STATE 6905
D. 05 NEW DELHI 9513
E. 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION
F. 05 NEW DELHI 4449

End Cable Text

Michel K Guilani 04/04/2006 01:39:24 PM From DB/Inbox: Search Results

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Michel K Guilani 05/05/2006 05:27:25 PM From DB/Inbox: Michel K Guilani

Cable Text:

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TELEGRAM

April 28, 2006

To: SECSTATE WASHDC - IMMEDIATE
Action: SCA
From: AMEMBASSY NEW DELHI (NEW DELHI 2911 - IMMEDIATE)
TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN
Captions: SIPDIS, SENSITIVE
Subject: FOLLOW-UP ON BARAPIND EXTRADITION ASSURANCES: GOI
RESPONSE TO QUESTION REGARDING SANDHUS
Ref: A. NEW DELHI 2171 B. STATE 33728

1. (SBU) Summary: On April 27, 2006; Post received MEA Diplomatic Note T-413/11/2004 answering questions regarding the 1997 extraditions of Daya Singh Sandhu and Kamaljit Kaur Sandhu, posed in USG Diplomatic Note 06/254/POL, dated March 7, 2006 (Ref A). The full text of the GOI response is included below. We also include the name and contact information for Embassy POC for any post-extradition follow-up (per Ref B). End Summary.

GOI Response to Ref A Follow-Up Question

2. (U) With reference to the outstanding question relating to the GOI's treatment of Daya Singh Sandhu and Kamaljit Kaur Sandhu following their 1997 extradition from the US, as it relates to the requested extradition of Kulbir Singh Barapind (referred to in the Indian note as Kulbir Singh Kulbeera aka Barapind) and USG obligation under the Convention Against Torture, the MEA has provided the following diplomatic note:

Begin text of MEA Diplomatic Note T-413/11/2004, dated April 27, 2006:

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to the case concerning Mr. Kulbir Singh Kulbeera aka Barapind, has the honour to state the following:

Mr. Dayasingh Sandhu and his wife Ms. Kanwaljit Kaur were handed over to the officers of the Rajasthan police on 18th January 1997 at JFK Airport, New York. After their arrival in India, they were produced before the designated Court at Jaipur and Police Custody remand was granted upto 1st March 1997. They remained in judicial custody from 24th January 1997 to 1st March 1997. During the period, they were regularly produced before the Court and before the Medical Jurist for medical examination as per Indian legal provisions. The Police did not torture them during this period either physically or mentally. The accused willingly volunteered information relating to crime, which led to recovery of important clues to these crimes. Rajasthan Police ensured that the interrogation of suspects and criminals related to the case took place upholding their human rights.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurances of its highest consideration.

End Text.

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Embassy POC

3. (U) Per Ref B Para 6, Embassy POC will be Poloff Jon Dorschner. Mr. Dorschner heads the section's internal reporting unit and supervises the human rights officer. Poloff will be with the Embassy until June 2007, at which time a replacement POC will be selected. Contact information:

-- e-mail: [redacted]

-- work phone: 91-11-2419-8140

-- mobile phone: [redacted]

4. (U) Visit New Delhi's Classified Website:
(http://www.state.sgov.gov/p/sa/newdelhi/)
BLAKE

Additional Addressees:
None

CC:
AMCONSUL CALCUTTA
AMCONSUL CHENNAI
AMCONSUL MUMBAI
DEPT OF JUSTICE WASHDC
NSC WASHDC

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SIPDIS
SENSITIVE

L FOR JCOGAN, SPOMPER, MGUILIANI
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E.O. 12958: N/A
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