No. __-___

IN THE

Supreme Court of the United States

MASAHIDE KANAYAMA,

Applicant,

v.

SCOTT KOWAL, CHIEF OF U.S. PRE-TRIAL SERVICES SDNY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

EMERGENCY APPLICATION FOR A STAY OF EXTRADITION PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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November 26, 2025

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

This application arises from the United States Court of Appeals for the Second Circuit. Applicant is Dr. Masahide Kanayama, a lawful permanent resident of the United States of America and citizen of Japan. Respondent is Scott Kowal in his official capacity as the Chief of United States Pretrial Services for the Southern District of New York.

RELATED PROCEEDINGS

United States Court of Appeals (2nd Cir.):

Kanayama v. Kowal, No. 24-1340

United States District Court (S.D.N.Y.):

Kanayama v. Kowal, No. 23 CV 03469 (CM)

In re Extradition of Kanayama,

No. 17 Crim. Misc. 1 Page 003 (ER)

TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to this Court's Rules 22 and 23, the All Writs Act, 28 U.S.C. § 1651, and 28 U.S.C. § 2101(f), Dr. Masahide Kanayama respectfully applies for an emergency stay of his extradition and surrender to Japan pending the filing and disposition of a petition for a writ of certiorari made to this Court, asserting that his extradition to Japan violates United States law. Counsel for the United States has represented to counsel for petitioner that it will not surrender him to Japanese authorities before the Court acts on the instant application.

INTRODUCTION

Dr. Masahide Kanayama seeks an emergency order of this Court staying his extradition from the United States to Japan pending the filing and disposition of a petition for a writ of certiorari following the November 18, 2025 denial by the Second Circuit of his appeal from the April 2024 denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. See Kanayama v. Kowal, No. 24-1340 (2d Cir.);[1]

[1] The November 18, 2025 Order of the Second Circuit affirming the district court's denial of Dr. Kanayama's habeas petition is attached as Exhibit A.

Kanayama v. Kowal, No. 23 CV 03469 (CM) (S.D.N.Y.).[2] Petitioner Kanayama had filed that habeas petition to seek relief from an earlier order of the Southern District of New York dated January 26, 2023,[3] which granted the government's application to certify his extradition at the request of Japanese authorities. See In re Extradition of Kanayama, No. 17 Crim. Misc. 1 Page 003 (ER).[4]

According to the government of Japan, Dr. Kanayama allegedly committed two acts of vandalism in 2015 by dabbing or sprinkling small amounts of clear vegetable oil on wooden structures at the Narita Buddhist temple and on lacquered surfaces at the Katori Shinto shrine. No repairs were undertaken at either facility and neither suffered monetary damages, instead, the minor stains dissipated naturally without human intervention. In support of the aforementioned probable cause "obliterat[ing]" assertions (c.f., Rana v. Jenkins, 113

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[2] The district court decision and order denying Dr. Kanayama's habeas petition is available at: Kanyama v. Kowal, 23 CV 3469 (CM), 2024 WL 1587489 (S.D.N.Y. April 11, 2024).

[3] The January 26, 2023 Decision and Order is attached as Exhibit B.

[4] Petitioner could not proceed to the Second Circuit following the 2023 certification of his extradition by the Southern District of New York prior to his filing a habeas petition because "extradition targets do not have the benefit of a direct appeal." Arias Leiva v. Warden, 928 F.3d 1281, 1285 (11th Cir. 2019).

F.4th 1058, 1069 (9th Cir. 1058)), Dr. Kanayama provided the district court at his extradition hearing with high definition photographic and video evidence establishing the disappearance of the stains at issue. Additionally "obliterat[ing]" probably cause (id.), Dr. Kanayama also presented scientific evidence which was uncontroverted by the government that the alleged vegetable oil could not possibly have caused any permanent damage to the woodwork in question.

Further, as to the critical issue of dual criminality, the district court improperly based its decision to certify extradition on the theoretical possibility that Dr. Kanayama's purported conduct in Japan might have been charged as a felony in New York, however, this is simply not the case. Indeed, the government has not been able to cite a single case in which felony charges have been brought in New York against anyone for spraying an innocuous liquid like vegetable oil on an inanimate object – and without establishing dual criminality, the extradition cannot be legally permitted according to the terms of the treaty.[5]

[5] In its summary order, the Second Circuit indicates that at oral argument, prior counsel for Dr. Kanayama conceded dual criminality by acknowledging that he

Finally, the request for a stay has now reached urgent status as the State Department issued a directive on October 16, 2025 authorizing Dr. Kanayama's extradition to Japan. See October 16, 2025 Letter of Tom Heinemann, attached as Exhibit C. As such, petitioner faces potentially immediate extradition – without the requested stay he could be returned to Japan before he has an opportunity to receive a decision on his forthcoming petition for a writ of certiorari from the Court. More ominously, Dr. Kanayama suffers from medical conditions which require daily medication to prevent them from becoming potentially fatal – and Japanese law enforcement authorities have a demonstrable history of denying critical medications to prisoners in their care.

Without the issuance of the requested stay, petitioner could suffer irreparable harm, potentially even death. Conversely, granting such a stay would not compromise the government in any way.

"could have been charged" in New York. Ex. A at p. 5. This attorney misspoke – Dr. Kanayama does not accede that he could have been charged with a crime in New York under this particular set of facts, that is, the anointing of objects with a substance that naturally disappeared over time. As discussed, infra, there was simply no damage as required by the relevant domestic penal code, and accordingly, dual criminality cannot be established.

STATEMENT OF THE CASE

A. Procedural History

On April 4, 2015, police in Narita, Japan obtained an arrest warrant for Dr. Masahide Kanayama as part of its investigation into two purported incidents of vandalism: one at a Buddhist temple in Narita, and the other at a Shinto shrine in Katori, with both allegedly occurring on March 25, 2015. On December 12, 2016, the Japanese government sent the United States a diplomatic note requesting the extradition of Dr. Kanayama related to its investigation of these incidents.

On May 30, 2017, the Department of Justice, through the United States Attorney for the Southern District of New York, filed an application for the certification of Dr. Kanayama's extradition to Japan to face charges related to these allegations. On December 6, 2022, the Hon. Edgardo Ramos of the Southern District of New York heard oral argument on the parties' filings concerning the extradition, and thereafter, granted the government's request for certification of the

petitioner's extradition on January 26, 2023 by written opinion and order. See January 26, 2023 Opinion and Order, Ex. B.

On April 28, 2023, Dr. Kanayama filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 with the United States District Court for the Southern District of New York seeking review of Judge Ramos's order certifying extradition in this matter. On April 11, 2024, the Hon. Colleen McMahon denied that petition without a hearing or argument. See Kanayama v. Kowal, 23 CV 3469 (CM), 2024 WL 1587489, at *15 (S.D.N.Y. April 11, 2024). On May 8, 2024, Dr. Kanayama filed a timely notice to appeal Judge McMahon's denial of his habeas petition to the United States Court of Appeals for the Second Circuit. Oral argument on petitioner's appeal was held on October 23, 2025 and his appeal was denied on November 18, 2025.[6] Ex. A.

[6] As noted, on October 16, 2025, the State Department issued a directive authorizing Kanayama's extradition to Japan. See Ex. C.

B. The Alleged Defacement of the Narita Temple and Katori Shrine

On March 25, 2015, an individual allegedly touched certain pillars at the Narita-san Shinjoji Temple, a Buddhist facility and tourist attraction in Narita, Japan, with a small amount of vegetable-based oil on his fingertip. Later that same day, a purportedly similar looking individual allegedly touched pillars, stairs, and an offering box at the Katori Jingu Shrine, a Shinto facility and tourist attraction, also with a small amount of vegetable-based oil on his fingertip. That individual also made a motion with his hand that seemed to be consistent with drizzling some object with a liquid. Based on grainy black-and-white video, law enforcement in Japan concluded that the perpetrator of both events was the same: Dr. Masahide Kanayama, a Japanese citizen and world renowned endometriosis expert residing in the United States.

Even though the directors of both the Narita Temple and the Katori Shrine had already determined that no repairs were needed to the affected areas at their respective institutions, the police instructed them to obtain repair estimates for the supposed damage to their structures. The total monetary amount of those two repair estimates

was $21,290, however, as the alleged stains on the wooden objects at those structures never resulted in any loss of function or use – and because those stains were temporary and dissipated naturally over time,[7] after obtaining those estimates, the directors of both the temple and the shrine effectuated no repairs.

C. The History and Background of Dr. Masahide Kanayama

Dr. Masahide Kanayama, born on September 8, 1962 in Japan, has built a tremendously successful career as a gynecological endometriosis and adenomyosis surgeon in New York, where he owns and operates the New York Endometriosis Center. His medical innovations have established him as arguably the world's leading specialist in surgical excision of advanced stage endometriosis. Beyond his professional achievements, Dr. Kanayama's life story is marked by a profound dedication to his Christian faith.

His development of a unique laparoscopic haptic surgical technique allows for the successful removal of endometriosis tissue to

[7] High quality photographic and video evidence taken by counsel – who traveled to the impacted sites – supports this "obliterat[ing]" assertion and was presented to the district court. Ex. A at p. 7.

its hidden root, which has led to successful outcomes in even the most severe cases. Women from across the United States and throughout the world travel to New York for surgery from Dr. Kanayama. In addition, Dr. Kanayama pioneered and invented his own novel technique to save the uterus from diffuse adenomyosis.

In 2013, Dr. Kanayama founded the International Marketplace Ministry (IMM) in Japan, an organization that encourages Christians to integrate their faith with their professional lives. Dr. Kanayama's faith is not only a personal commitment but also an integral part of his professional ethos, because he views his medical practice as a ministry of divine healing guided by the Holy Spirit in prayer.

REASONS FOR GRANTING THE APPLICATION

Under the Court's Rules and the All Writs Act, 28 U.S.C. § 1651, a single Justice or the Court may grant an application for a stay. In deciding whether to issue such a stay, the Court or a Circuit Justice considers whether four Justices are likely to vote to grant certiorari; whether five Justices would then likely conclude that the case was erroneously decided below; and whether, on balancing the equities, the

injury asserted by the applicant outweighs the harm to the other parties or the public. See San Diegans for the Mt. Soledad Nat'l War Mem'l v. Paulson, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers).

Put another way, in determining whether to grant an emergency stay, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding," and finally, "(4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 426 (2009). These factors are addressed below.

A. Petitioner Is Likely to Succeed on the Merits

"To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor." Momenta Pharm., Inc. v. Amphastar Pharm., Inc., 834 F. Supp. 2d 29, 30 (D. Mass. 2011) (quoting EonNet,

L.P. v. Flagstar Bancorp, Inc., 222 Fed. Appx. 970, 971–72 (Fed. Cir. 2007). The first two factors – likelihood of success and irreparable harm – are "the most critical" (Nken, 556 U.S. at 434), but they operate on a sliding scale such that a strong showing on one may offset a lesser showing on the other. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 19 (1st Cir. 1996) ("the predicted harm and the likelihood of success on the merits must be juxtaposed and weighed in tandem").

As the Court has recognized, the factors "contemplate individualized judgments in each case, [and] the formula cannot be reduced to a set of rigid rules." Hilton v. Braunskill, 481 U.S. 770, 777 (1987). Showing a strong likelihood of success does not require an applicant to show that success is more likely than not, and varying formulations have been employed. "Regardless of how one expresses the requirement, the idea is that in order to justify a stay, a petitioner must show, at a minimum, that [he] has a substantial case for relief on the merits." Leiva–Perez v. Holder, 640 F.3d 962, 968 (9th Cir. 2011).

To certify the extradition request in this matter, the district court had to answer three questions in the affirmative. First, whether a valid extradition treaty existed between Japan and the United States.[8] Second, whether the events alleged in the Japanese extradition request met the requirement of dual criminality, i.e., whether the facts alleged by the foreign police would, if proved, constitute a felony offense both under Japanese law and an applicable criminal statute domestically. And third, that there was probable cause, as set forth under U.S. law, to find that such felony offense had been committed and that the extradition defendant was the culprit. While the district court ruled against Dr. Kanayama on all three questions (see, generally, Ex. B), with this motion, Petitioner demonstrates that, regardless of the previous holdings, there is a "substantial possibility" that he will prevail on the merits of his petition for a writ of certiorari. See Mohammed v. Reno, 309 F.3d 95, 101-02 (2d Cir. 2002).

[8] Petitioner does not contest the existence and validity of the treaty at issue between the United States and Japan.

1. The District Court Improperly Relied on a Hypothetical Calculation of Damages to Establish Dual Criminality

Petitioner is accused of violating Article 260 of the Japanese penal code, damage to structures – a vandalism statute. To establish the element of dual criminality, the U.S. government chose Criminal Mischief in the Second and Third Degrees – violations of New York Penal Law ("PL") §§ 145.05 and 145.10 – as the American laws most comparable to the Japanese statute.

Pursuant to PL § 145.05, a

> person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she ...
> 2. damages property of another person in an amount exceeding two hundred fifty dollars.

Similarly, a person is guilty of Criminal Mischief in the Second Degree when, "with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding one thousand five hundred dollars." PL § 145.10.

Aside from the amount of damages to sustain a conviction, the elements of the two crimes are shared: "(1) intent to damage ... property; (2) actual damage to tangible property of another person; (3) no reasonable ground for belief of a right to damage the property; and (4) damage to the property in excess of $1,500 [or $250, depending on the charge]." People v. Simpson, 132 A.D.2d 894, 895, 518 N.Y.S.2d 453 (3rd Dept. 1987). Therefore, in order to secure a felony conviction in New York for a violation of either PL §§ 145.05 or 145.10, there must have been some "actual damage" in the statutorily proscribed amounts. Simpson, 132 A.D.2d at 895, 518 N.Y.S.2d 453.

Damage pursuant to New York's criminal mischief statutes is "generally established by the reasonable cost of repairing the property," and "[w]here the property is not repairable ... the replacement cost is an appropriate measure of the damage." People v. Shannon, 57 A.D.3d 1016, 1016, 868 N.Y.S.2d 377 (3rd Dept. 2008). A conviction pursuant to these statutes is contingent upon proof that the statutory damage threshold has been met. See, e.g., People v. Smeraldo, 242 A.D.2d 886, 886, 662 N.Y.S.2d 883 (4th Dept. 1997) (expert testimony deemed

sufficient to support conviction). And where proof of the alleged loss amount has been deemed insufficient, New York courts have modified convictions accordingly, including reducing them to misdemeanors. See, e.g., People v. Jackson, 168 A.D.2d 633, 633, 563 N.Y.S.2d 468 (2nd Dept. 1990) (reducing conviction for Criminal Mischief in the Second Degree to Criminal Mischief in the Fourth Degree – a misdemeanor – due to insufficient evidence concerning the "reasonable cost of ... repairs"); People v. Williams, 89 A.D.2d 834, 835, 454 N.Y.S.2d 2 (1st Dept. 1982) (reducing third degree conviction to fourth degree).

While no statutory definition of "damages" is provided by relevant state statute, New York courts have generally recognized that the term contemplates "injury or harm to property that lowers its value or involves loss of efficiency ...." People v. Collins, 288 A.D.2d 756, 758 (2001). Importantly, where no repair or replacement is necessary – as here – it is impossible to demonstrate that damage exists, and no conviction may occur. People v. Hills, 95 N.Y.2d 947, 948 (2000) ("In order for a defendant to be found guilty of criminal mischief ... the

People must prove that defendant intentionally damaged the property of another person . ... some amount of damage is required"). Notably, in Hills, which involved a property dispute between neighbors, the defendant picked up a property stake and threw it several feet back onto another's land – and the New York Court of Appeals determined that because there was no evidence that the stake or the property it landed on was damaged, a conviction for criminal mischief could not stand. Id.

As with the defendant in Hills, given the lack of any quantifiable damage, or indeed, any injury that "lowered the value" or caused some other financial hardship to the Katori Shrine or Narita Temple, Dr. Kanayama could not be convicted of Criminal Mischief in either the Second or Third Degrees as a matter of New York law. 95 N.Y.2d at 948. In this manner, the holding of In re H is particularly instructive. See 32 A.D.2d at 932, 303 N.Y.S.2d 823. There, New York's Appellate Division found that a defendant's use of chalk to write obscenities on the victim's driveway did not cause "actual damage" within the meaning of the criminal mischief statutes. Id.

Similarly, the United States District Court for the Northern District of New York came to an identical conclusion in United States v. Murtari, where the defendant was charged with defacing a federal plaza with chalk. 7 CR 387, 2007 WL 3046746, at *4-5 (N.D.N.Y. Oct. 16, 2007). While the court in Murtari found the proof the defendant's acts "overwhelming," it likewise was constrained to find that, "[b]ased on a comparison to New York Law," the defendant did not "damage[] the property, even though ... [it] was defaced by the use of chalk." Id. at *5 (internal quotation marks omitted); see also People v. Stockwell, 18 Misc.3d 1145(A), 859 N.Y.S.2d 898 (table), at *5 (City Court, Watertown, New York 2008) (painting neighbor's fence did not constitute damage to property as a matter of New York law); cf. Collins, 288 A.D.2d at 758, 733 N.Y.S.2d 289 (defendant's spraying of chicken excrement on the Court of Appeals building, which "required extensive cleaning and destroyed the Court's commemorative banner," constituted damage).

Here, the law-enforcement agency responsible for prosecuting this case in Japan, the Narita police, instructed the Narita Temple and the

Katori Shrine to obtain repair estimates for the objects affected by the touching and sprinkling events in question. Those estimates totaled $1,008 for the temple and $20,282 for the shrine. Nevertheless, as mentioned previously, because the staining generated by the vegetable oil application was minor and dissipated on its own after some time, neither the Narita nor the Katori facilities conducted any repairs. Additionally, neither facility suffered any loss of function or use. The monetary damages to both structures as a consequence of the Petitioner's alleged conduct was therefore zero – and the alleged incidents could not have been charged under New York law. Cf. Ex. A, at p. 5.

Despite the uncontradicted fact that petitioner's purported dabbing and spraying of oil generated no monetary loss to either building at issue, the district court, in certifying the extradition, determined that it could rely on the Japanese repair estimates of an aggregate $21,290 to support its decision that Dr. Kanayama's alleged activities in Japan had caused at least $250 in damages. But this figure was purely hypothetical and speculative, it was in no way

connected with any actual repairs undertaken or even plausibly necessary. To put it another way, in certifying the extradition, the district court erred by finding that a hypothetical, speculative calculation of damages was sufficient to warrant extradition when there was absolutely no monetary loss. Correction of this error would have left the district court without the ability to establish dual criminality.

2. Criminal Mischief is a Specific Intent Crime and there is Nothing in the District Court Record to Support a Finding that Petitioner Specifically Intended to Cause Damage

As applied to both Criminal Mischief statutes, "intentionally" (PL § 15.05(1)) under New York law requires that the defendant's conscious objective with regard to his own conduct must be to cause damage to the property of another person. See People v. Summer, 64 A.D.2d 658, 659, 407 N.Y.S.2d 53 (2nd Dept. 1978) (analyzing substantially similar crime of Criminal Mischief in the Fourth Degree). This is a necessary element – and the failure of a prosecutor to demonstrate the willfulness of the destruction of property will lead to the dismissal of the charge. See, e.g., People v. Callahan, 19 A.D.2d 889, 890, 244 N.Y.S.2d 766 (2nd

Dept. 1963) ("mischief conviction could not stand in absence of evidence that injury to property was wilful").

Here, the record before the court that certified the extradition is devoid of evidence that Dr. Kanayama, if he actually performed the alleged conduct at the temple and the shrine, did so with the intent to damage either property. To the contrary, the Japanese assertion that the perpetrator used a fingertip, and in one instance a drizzling motion with his hand, to place a vegetable-based oil on some objects at Narita and Katori provides strong circumstantial evidence that he had no desire to damage such property in any way. Indeed, as part of its effort to prove that Dr. Kanayama was in fact the perpetrator despite never being identified by an eyewitness, the government's memorandum in support of certifying petitioner's extradition quotes him from his 2012 YouTube videos as admitting that he had previously poured oil onto various shrines for religious purposes. See Ex. A at p. 6. This is the only reference in the documentation provided by Japan addressing his intent – and pouring oil or dabbing oil with a fingertip for religious

purposes demonstrates an objective exactly the opposite of an intent to destroy. Id.

Moreover, pouring oil for religious purposes was the Japanese government's translation of the English word anointment. Consequently, if the appellant, who is a Christian missionary, did actually effect the oil placement at Narita and Katori, he would have done so, according to the Japanese government, for the purpose of healing or setting apart (in a religious manner) portions of those properties, as opposed to damaging them. For this additional reason, Petitioner's supposed behavior at the temple and the shrine would not have violated New York law due to the specific intent requirement of the statutes at issue.

Accordingly, as our forthcoming petition for a writ of certiorari will establish, because Dr. Kanayama's alleged conduct at the temple and shrine could not have violated New York law, the government has failed to set forth dual criminality as required by the American-Japanese extradition treaty. The shrine and temple suffered

no monetary damage and there was no proof that he intended to damage anything connected to those structures.

B. Petitioner Will Suffer Irreparable Harm if a Stay Is Not Granted

If a stay is not granted, petitioner faces surrender, prosecution and associated loss of liberty while at the same time losing his ability to pursue his claim that his extradition is unlawful. Such consequences constitute irreparable harm. Liuksila v. Turner, No. 16-cv-00229 (APM), 2018 WL 6621339, at *1 (D.D.C. Dec. 18, 2018); Nezirovic v. Holt, No. 7:13CV428, 2014 WL 3058571, at *2 (W.D. Va. July 7, 2014); Zhenli Ye Gon v. Holt, No. 7:11-cv-00575, 2014 WL 202112 at *1(W.D. Va. Jan. 17, 2014).

Here, petitioner's removal to a Japanese jail may have extremely detrimental – and potentially dire – consequences due to his preexisting health conditions. Specifically, Dr. Kanayama suffers from a variety of medical conditions, including malignant hypertension, which is defined as an extremely high blood pressure that elevates above 180/120 and can quickly cause damage to his internal organs.

This life-threatening condition necessitates the use of three medications at their maximum dosages daily.

Petitioner's cardiologist, Dr. Michael Ghalchi, emphasized the gravity of his health issues in his June 2024 Letter to the U.S. Department of State, writing, "Dr. Kanayama's most significant medical condition is malignant hypertension, a severe and potentially life-threatening form of high blood pressure. ... This persistent elevation places him at substantial risk for acute and potentially fatal cardiovascular events." June 13, 2024 Letter of Dr. Michael Ghalchi, attached as Exhibit D, at pp. 1-2. In addition to his heart issues, Dr. Kanayama suffers from diabetes, a condition that further complicates his health landscape. His life critically depends on uninterrupted access to his medications.

Accordingly, reflecting on the possible extradition of his patient, Dr. Ghalchi expresses significant concerns in his letter, writing: "The prospect of Dr. Kanayama facing extradition and subsequent detention in a high-stress environment without guaranteed immediate access to his medications is profoundly alarming considering his medical

conditions. ... Even a single missed dose of his blood pressure medication could precipitate a life-threatening hypertensive crisis." Id. (emphasis supplied).

Japanese law enforcement authorities, however, are notorious in the human rights community for their physical and psychological abuse of prisoners, including their intentional or grossly negligent withholding of critical medications from incarcerated individuals. For example, in December of 2022 in Okazaki, Aichi Prefecture, a diabetic detainee was arrested and placed in restraints for more than 100 hours without his medication. See Man who died in Japan police detention cell went 5 days without food, The Mainichi, December 16, 2022, available at: https://mainichi.jp/english/articles/20221216/p2a/00m/0na/005000c (last viewed November 11, 2025). He tragically died from kidney failure due to abuse and the lack of medical care. Id. Similarly, Ratnayake Liyanage Wishma Sandamali, a Sri Lankan national, died in custody on March 6, 2021, after being mistreated by the Nagoya Regional Immigration Services Bureau, with a postmortem probe in August 2021

confirming that mistreatment. See Nicholas Yong, Wishma Sandamali: The siblings suing Japan over their sister's death, BBC News, July 18, 2023, available at: https://www.bbc.com/news/world-asia-65692546 (last viewed November 11, 2025). Another tragic example involved Arjun Bahadur Singh, who died in police custody on March 13, 2017, due to complications from excessive physical restraint. See Worker's widow sues Japan government, Nepali Times, July 28, 2018, available at: https://nepalitimes.com/news/worker-s-widow-sues-japan-government (last viewed November 11, 2025).

If the government is permitted to extradite Dr. Kanayama prior to filing and receiving a disposition regarding his forthcoming petition for a writ of certiorari, he could very well die in Japanese custody without the benefit of this Court's review of his case.

C. The Government and Public Interest Weigh in Favor of a Stay

The third and fourth factors – harm to the opposing party and the public interest – merge when the government is the opposing party. Nken, 556 U.S. at 435. "There is a public interest in ensuring that a

person is not wrongfully surrendered to face prosecution abroad." Liuksila, 2018 WL 6621339 at *2 (citing Nken, 556 U.S. at 436).

While the United States may have an interest in promptly fulfilling its legal obligations to its treaty partners, it still must comply with its own law in doing so. Staying extradition to allow a petitioner "to seek appellate review of his claims that the extradition is unlawful clearly is in the public interest." Martinez v. United States, No. 3: 14-CV-00174, 2014 WL 4446924, at *6 (M.D. Tenn. Sept. 9, 2014). As explained by one court:

> The court agrees that the United States' honoring of its treaty obligations is extremely important. But it does not agree that allowing an extraditee to obtain review of his legal claims interferes with the United States' ability to comply with its treaty obligations. This country prides itself on the legal process it affords those accused of crimes, even though that legal process takes time to complete.

Id. at *5. In this manner, it is contrary to the public interest to extradite petitioner before this Court has an opportunity to review his claims, especially in the face of such potentially disastrous harm to him.

Additionally, Dr. Kanayama's medical practice significantly benefits society through his innovative treatment of endometriosis, a debilitating condition affecting many women. His unique surgical techniques have reduced recurrence rates and improved the quality of life for numerous patients. Allowing Dr. Kanayama to continue his work during the pendency of his petition for certiorari also supports the public interest by ensuring that these vital medical services remain available.

CONCLUSION

The issues raised by Dr. Kanayama merit full and careful consideration, and the stakes for him are enormous. The very least our courts owe him is a full chance to litigate these issues, including a review by this Court of his forthcoming petition for a writ of certiorari. For all the reasons stated herein, Dr. Kanayama's application for an emergency stay should be granted.

Dated: New York, New York
November 26, 2025

Respectfully Submitted,

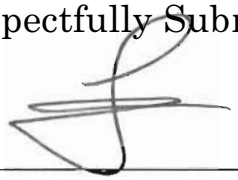

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EXHIBIT A

24-1340-pr
Kanayama v. Kowal

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of November, two thousand twenty-five.

Present:

GERARD E. LYNCH,
WILLIAM J. NARDINI,
STEVEN J. MENASHI,
Circuit Judges.

MASAHIDE KANAYAMA,

Petitioner-Appellant,

v.

24-1340-pr

SCOTT KOWAL, CHIEF OF U.S. PRE-TRIAL SERVICES SDNY, DOES 1-10,

Respondents-Appellees.

For Petitioner-Appellant: DAVID DUDLEY, Law Offices of David M. Dudley, Los Angeles, CA.

For Respondents-Appellees: MICHAEL D. MAIMIN (Tara M. La Morte, *on the brief*), Assistant United States Attorneys, *for* Jay Clayton, United States Attorney for the Southern District of New York, New York, NY.

Appeal from an order of the United States District Court for the Southern District of New York (Colleen McMahon, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Petitioner-Appellant Masahide Kanayama appeals from a judgment of the United States District Court for the Southern District of New York (Colleen McMahon, *District Judge*), entered on April 12, 2024, denying his petition for a writ of habeas corpus under 28 U.S.C. § 2241. On April 28 and December 8, 2015, Japan's Sakura Summary Court issued warrants for Kanayama's arrest for two separate counts of damage to a structure in violation of Article 260 of the Japanese Penal Code. The arrest warrants, which have subsequently been renewed, stem from the allegation that on March 25, 2015, Kanayama damaged two Japanese sites—the Narita-san Shinsho-ji Temple and the Katori Jingu Shrine—"with an oily liquid." On December 12, 2016, Japan formally requested Kanayama's extradition from the United States pursuant to the Treaty on Extradition Between the United States of America and Japan, U.S.-Japan, Mar. 3, 1978, T.I.A.S. No. 9,625, 31 U.S.T. 892 (the "Treaty"). On May 30, 2017, the Government filed a complaint seeking Kanayama's extradition to Japan under the Treaty and 18 U.S.C. § 3184. That same day, Magistrate Judge Barbara C. Moses issued a warrant for Kanayama's arrest. Kanayama was then arrested, presented before a magistrate judge, and released on bail pending extradition proceedings. On December 6, 2022, District Judge Edgardo Ramos conducted an extradition hearing. On January 26, 2023, he certified to the Secretary of State that Kanayama was extraditable under the Treaty and § 3184. Kanayama then filed a habeas petition challenging the extradition certification. In an order entered on April 11, 2024, Judge McMahon denied Kanayama's habeas petition. Judgment was entered the following day, and Kanayama filed a timely notice of appeal. We assume the parties' familiarity with the case.

In extradition certification proceedings, courts are permitted to consider only "whether a valid treaty exists; whether the crime charged is covered by the relevant treaty; and whether the evidence marshaled in support of the complaint for extradition is sufficient under the applicable standard of proof." *Cheung v. United States*, 213 F.3d 82, 88 (2d Cir. 2000); [1] 18 U.S.C. § 3184. In a habeas proceeding to review an extradition certification, the district court "can only inquire whether the [certifying court] had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir. 1976). When reviewing the denial of habeas relief in the context of extradition proceedings, this Court's scope of analysis is "narrow." *Murphy v. United States*, 199 F.3d 599, 601 (2d Cir. 1999).

Kanayama does not contest that Judge Ramos had jurisdiction over the extradition request. He argues only that (1) the offenses for which his extradition is requested are not encompassed by the Treaty, (2) there was insufficient evidence to support the determination that there was probable cause to believe he committed those offenses, and (3) Judge Ramos and Judge McMahon improperly excluded evidence relating to both issues.[2] We reject each challenge.

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[1] Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

[2] Kanayama also argues that he should not be extradited because extradition would place him in a "life-threatening" position "given the present state of his health." Appellant's Br. at 6. Because Kanayama raises this argument for the first time on appeal, we decline to consider it. *See Windward Bora LLC v. Sotomayor*, 113 F.4th 236, 245 (2d Cir. 2024). Although we have discretion to consider forfeited arguments to avoid "manifest injustice," *id.*, we discern no need to do so here. Even if Kanayama had properly raised this argument before Judge McMahon, "it is the function of the Secretary of State–*not* the courts–to determine whether extradition should be denied on humanitarian grounds." *Lalama Gomez v. United States*, 140 F.4th 49, 59 (2d Cir. 2025).

I. Extraditable Offense

Subject to a tightly circumscribed exception outlined in 18 U.S.C. § 3181(b), "[i]t is a fundamental requirement for international extradition that the crime for which extradition is sought be one provided for by the treaty between the requesting and the requested nation." *Lalama Gomez v. United States*, 140 F.4th 49, 55 (2d Cir. 2025). Here, Article II of the Treaty allows extradition for two categories of crimes: (1) those enumerated in a schedule annexed to the Treaty and "punishable by the laws of both Contracting Parties," and (2) "any other offense when such an offense is punishable by the federal laws of the United States and by the Laws of Japan." Treaty, Art. II. In either case, the conduct must be punishable under the laws of each country "by death, by life imprisonment, or by deprivation of liberty for a period of more than one year." *Id.* Kanayama's offenses clearly fall within the first category. The Treaty's list of extraditable offenses includes offenses "relating to the damage of property, documents, or facilities." Treaty, Schedule No. 19. In determining whether the offenses for which extradition is sought are "punishable by the laws of both Contracting Parties," *id.* Art. II, we look first to Japanese law, and then on the American side to either state or federal law. *See, e.g.*, *Hu Yau-Leung v. Soscia*, 649 F.2d 914, 918 (2d Cir. 1981) ("The phrase 'under the law of the United States of America' in an extradition treaty referring to American criminal law must be taken as including both state and federal law absent evidence that it was intended to the contrary."); *see also Wright v. Henkel*, 190 U.S. 40, 58–59, 61 (1903) (finding that U.S.-U.K. extradition treaty's requirement that offense be "made criminal by the laws of both countries" refers to both federal and state law for purposes of American law). Both the extradition court and the habeas court held that Kanayama's alleged conduct—applying oil to the Temple and Shrine—was punishable under Article 260 of the Japanese Penal Code, under which damaging the building of another person is punishable by up

to five years in prison.[3] Both courts likewise concluded that Kanayama's conduct would have been punishable under N.Y. Penal Law § 145.05, under which damaging another person's property constitutes criminal mischief in the third degree.[4] Before this Court, Kanayama argues that for various reasons, his alleged actions—if they had been committed in New York—would not in fact have led to prosecution under New York law. But the operative question under the Treaty is not whether such conduct *would have been punished* under the laws of both countries, but whether it was *punishable* under both. At oral argument before this Court, Kanayama's counsel conceded that Kanayama "could be charged" in New York. *See* Oral Argument at 6:40–6:52. That concession settles the dual criminality question. We therefore reject Kanayama's challenge to the district court's conclusion that he was charged with an extraditable offense under the Treaty.[5]

II. Probable Cause

Kanayama also argues that Judge McMahon erred by confirming Judge Ramos's determination that there was probable cause to believe that Kanayama committed the charged offenses. That challenge is similarly without merit.

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[3] Article 260 of the Japanese Penal Code as translated in Japan's extradition request provides: "A person who damages a building or vessel of another shall be punished by imprisonment with work for not more than 5 years." App'x at 476–477.

[4] N.Y. Penal Law § 145.05 provides, in relevant part: "A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she: damages property of another person in an amount exceeding two hundred fifty dollars. Criminal mischief in the third degree is a class E felony." Under New York law, a class E felony is punishable by a term of imprisonment of no more than four years. N.Y. Penal Law § 70.00. Kanayama has not contested that a conviction under either Article 260 of the Japanese Penal Code or N.Y. Penal Law § 145.05 would be punishable by more than one year in prison.

[5] Both Judge Ramos and Judge McMahon concluded that Kanayama's conduct was extraditable under the second clause of Article II of the Treaty, which describes offenses "punishable by the federal laws of the United States and by the laws of Japan," because his conduct is punishable under N.Y. Penal Code § 145.05. Treaty, Art. II. **[SA. 16-20]** Because Kanayama's offenses fall cleanly within the scope of the first clause (which includes enumerated offenses punishable by the "laws" of both the United States and Japan), we have no occasion to consider whether they also fall within the scope of the second clause, which requires that the fugitive's offense be punishable under "federal laws of the United States." Treaty, Art. II.

This Court's review of the district court's probable cause finding is limited. "[H]abeas corpus is available only to inquire . . . whether there was *any* evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925) (emphasis added). Japan's evidence clears this low bar. Japan provided: (1) flight, car rental, tollgate, and hotel records that established Kanayama was in the vicinity of both sites on the dates and times they were damaged; (2) surveillance footage that captured a person resembling Kanayama touching the affected structures around the time they were damaged; (3) an expert identification report that assessed the similarities between the person captured in the surveillance footage and Kanayama as depicted in his passport photo; (4) YouTube videos of lectures in which Kanayama says that he has previously "anointed" shrines with oil for religious reasons; (5) independent repair estimates that detail damage to both sites' affected areas; (6) and police investigation reports that include measurements and descriptions of the damage.

Kanayama challenges several of those pieces of evidence. He argues that the expert who identified Kanayama in the surveillance footage was not sufficiently qualified; that the YouTube videos are not relevant because, among other things, they were published more than two years before the alleged offenses and he did not say in the videos that he planned to anoint any other things with oil in the future; and that toll booth records are not probative of Kanayama's presence at the Temple or Shrine because Kanayama needed to pass both tolls at issue not to visit those sites, but simply to take the "fastest route from the airport to [his hotel]." Appellant's Br. at 37. "[T]he credibility of witnesses and the weight to be accorded their testimony," however, "is solely within the province of the extraditing [] judge." *Lalama Gomez*, 140 F.4th at 57. Kanayama's evidentiary challenges may be considered during the adjudication of his guilt in Japan—not in an extradition proceeding limited to ensuring "there is sufficient evidence to justify extradition under

the appropriate treaty." *Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981). We therefore reject Kanayama's challenges to the district court's finding of probable cause.

III. Exclusion of Evidence

Kanayama further argues that the district court improperly excluded evidence that would have "obliterated" Japan's showing of both probable cause and an extraditable offense. Appellant's Br. at 30, 40. That challenge also fails. Kanayama's "right to introduce evidence is . . . limited to testimony which explains rather than contradicts the demanding country's proof." *Lalama Gomez,* 140 F.4th at 58. And "[t]he precise scope of such explanatory evidence is largely in the . . . discretion" of the judge considering the extradition request. *Id.* The evidence that Kanayama argues was wrongfully excluded was offered to contradict Japan's proof, not to explain it. *See, e.g.*, Appellant's Br. at 27 (describing excluded "testimony from [a] wood-work expert . . . who opined, in contradiction to the unsupported claims of Japan and findings of the district court, that vegetable oil could not have possibl[y] penetrated the lacquered surfaces of the wooden objects at Katori"); *id.* at 39 (describing excluded testimony from defense expert on facial recognition that Japan's expert identification report was "fundamentally flawed" and "biased towards its conclusions"). Both judges, therefore, acted within their discretion when they declined to consider Kanayama's evidence.

* * *

Accordingly, we **AFFIRM** the order of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

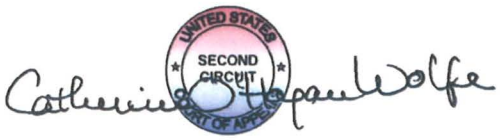

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE EXTRADITION OF MASAHIDE KANAYAMA	**ORDER** 17 Crim. Misc. 1 Page 003 (ER)

Ramos, D.J.:

The Government of Japan formally requested the extradition of Masahide Kanayama, a Japanese national living in New York, on December 12, 2016, through a diplomatic note (the "Extradition Request") in connection to two incidents of vandalism at two historic and culturally significant sites in Japan: the Narita-san Shinsho-ji Temple and Katori Jingu Shrine. GX-2 at 21–29.[1] Before the Court is the motion of the United States Government for certification of the Extradition Request.[2] For the reasons set forth below, the Government's request is GRANTED.

I. THE EXTRADITION REQUEST

On April 9, 2015, Japanese police officials commenced an investigation into two reported instances of vandalism that occurred on March 25, 2015 at the Narita-san Shinsho-ji Temple in Narita City (the "Temple") and the Katori Jingu Shrine in Katori City (the "Shrine"). Both the Temple and the Shrine bear significant historical, religious, and cultural value. Founded in 940, the Temple is a Buddhist place of worship that attracts approximately 10 million visitors each year. Supp. at Ex. 3. The Shrine was founded during the reign of Japan's first emperor and is

[1] Citations to "GX" documents refer to the government exhibits filed with the Court in advance of the December 6, 2022 extradition hearing. Citations to "Gov. Supp." refer to the supplemental exhibits filed with the Court in response to Kanayama's opposition memorandum.

[2] In accordance with Article XIV of the March 3, 1978 Treaty on Extradition between Japan and the United States (the "Treaty"), the United States provides Japan legal representation in U.S. courts in Japan's extradition requests. *See* GX-1 at 15.

one of the few remaining Shinto places of worship connected with the Japanese Imperial Family; it attracts approximately two million worshippers per year. *Id.* at Ex. 4.

On March 25, 2015, at approximately 4:06 p.m., surveillance cameras installed at the Temple filmed a man suspiciously roaming the premises and touching three wooden poles on the east side of the *So-mon* (the "Main Gate"). *Id.* at 52, 62. The man had black, thinning hair and wore the following: a gray jacket; black, hooded, long-sleeved windbreaker; white, collared undershirt; dark blue jeans; and black shoes. *Id.* Security footage did not show any other persons touching the wooden poles in this timeframe. *Id.* Photographs taken of the Main Gate by a tourist at approximately 2:24 p.m. showed the cite free of oil stains; another taken by an employee of the Temple at 4:07 p.m. showed poles on the east side of the Main Gate defaced with an oily substance.[3] *Id.* at 62–64.

That same day—at 4:57 p.m., approximately 51 minutes later—surveillance cameras installed at the Shrine filmed a man dressed in the same clothes, with similar physical characteristics, touching the right and left wooden poles of the *Hoden* (the "Main Hall") and splashing liquid on an offertory box, the wooden stairs in front of it, and adjacent poles.[4] *Id.* at 26–27, 52. Japanese officials reviewed the security footage from both locations and concluded that the same person appeared to have committed both acts of vandalism. *Id.* at 52.

After conducting simulation tests for three different routes from the Temple to the Shrine, which are located approximately 17 miles apart, the police investigators concluded that it was possible for the same person to commit the offenses at both locations during the 51-minute

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[3] In 2017, a restoration company specializing in the restoration of temples and shrines, estimated that the cost to restore the Temple would total 120,500 yen. 120,500 yen converts to approximately $932 U.S. currency. GX-3 at 299–304.

[4] In 2017, a restoration company specializing in the restoration of temples and shrines, estimated that the cost to restore the Shrine would total 2,423,248 yen. 2,423,248 yen converts to approximately $18,747 U.S. currency. *Id.* at 305–310.

timeframe using a car. *Id.* at 53. Based on the characteristics of the suspect captured by the security cameras at the Temple and Shrine, investigators reviewed footage recorded by a security camera installed at the Sawara-Katori Tollgate—an expressway tollgate near the Shrine. *Id.* The investigation revealed that a man resembling the suspect, who drove a gray Toyota Prius, paid the toll on March 25, 2015 at 4:41 p.m., approximately 35 minutes after the Temple was defaced, and 15 minutes before the Shrine was defaced. *Id.* At that point, the investigators did not know the license plate number of the car. *Id.*

The authorities thereafter obtained and examined 36 expressway tickets collected at the Sawara-Katori Tollgate around 4:41 p.m. *Id.* Their review of the expressway ticket issued to the gray Prius revealed that the vehicle had a license plate number ending in "14" and that the driver first collected the ticket when passing through the Narita Tollgate—an expressway tollgate located near the Temple—at 4:30 p.m,. approximately twenty minutes after the Temple was defaced. *Id.* The officials then examined images captured by a security camera at the Narita Tollgate and identified a person resembling the suspect driving a gray Prius through the gate at 4:30 p.m. *Id.* at 53–54.

In furtherance of their investigation into the gray Prius, the investigators made inquiries with car rental companies in the vicinity of the Narita International Airport and ultimately identified a gray Prius with the license plate number "Narita300Wa414." *Id.* at 54. Upon reviewing the records of the rental company, the police learned that an individual named Masahide Kanayama rented the vehicle from 2:30 p.m. on March 25 to 9:30 a.m. on March 26, 2015. *Id.* at 54. To obtain the rental car, Kanayama provided the agency a copy of his Japanese passport. *Id.* at 54–55. The investigators determined that the man in the passport photo resembled the suspect shown in the surveillance footage at the Temple and Shrine. *Id.* at 55.

To pay for the rental car, Kanayama used an American Express card. *Id.* at 57. After contacting the credit card company and obtaining the billing records, the investigators further found that from March 21 to April 7, 2015, Kanayama made 24 purchases across seven Japanese prefectures, including the prefectures where the Temple and Shrine are located. *Id.*

The Japanese officials thereafter contacted hotels located near the Shrine to see if Kanayama stayed at one overnight on March 25, 2015. A register of the Spa & Resort Inubosaki Taiyonosato, revealed that Kanayama checked into the hotel on March 25, 2015 at 6:47 p.m. *Id.* Security cameras at the hotel also captured video of a man checking into the hotel at 6:47 p.m. who looked similar to the suspect recorded at the Temple and Shrine. *Id.* The hotel's employees further confirmed that Kanayama's car was a gray Toyota Prius. *Id.*

The Japanese authorities, working with the Customer Service Department of the Narita International Airport, also procured Kanayama's flight records for the relevant period. *Id.* at 56. The records showed that Kanayama departed John F. Kennedy International Airport in New York on March 20, 2016 and entered Japan via the Narita International Airport on March 21, 2015. *Id.* at 56. On April 1, 2015, Kanayama departed Japan through Narita Airport and arrived in Delhi, India that same day. *Id.* He departed India on April 7, 2015, had a brief layover at the Narita Airport, and then returned to the United States. *Id.*

The investigators further retained Professor Masatsugu Hashimoto of Tokyo Dental College to perform a facial comparison between Kanayama's passport photo and the suspect's images taken by the security cameras at the Temple and Shrine. *Id.* at 233–253. Examining, among other things, facial and morphologic features, Hashimoto concluded in an April 25, 2015 report that there was a "very high possibility" that the individual depicted in the footage obtained from the Narita Temple and Katori Shrine and in Kanayama's passport were the same person.

Id. Hashimoto also observed that the colors of the suspect's jacket, shirt, pants, and shoes in the Narita Temple footage were identical to those captured in the video surveillance from the Katori Shrine. *See id.*

Online investigation into Kanayama showed that he lived in New York, where he worked as a board-certified obstetrician-gynecologist, but that he was permanently domiciled in Tokyo, Japan. *Id.* at 55–56. Kanayama regularly traveled from the United States to Japan and other countries, giving lectures and engaging in missionary activities through the Christian non-profit organization that he founded, the International Marketplace Ministry ("IMM"). *Id.* at 28, 55–56. Two YouTube videos posted on IMMs website feature Kanayama presenting lectures on November 3 and December 31, 2012, wherein he admits to having "anointed" other Japanese shrines with oil for religious purposes. *See id.* at Exs. 17–19.

In connection with the March 25, 2015 acts of vandalism, on April 28, 2015 and December 8, 2015, the Sakura Summary Court issued arrest warrants for Kanayama for two counts of damage of a structure in violation of Article 260 of the Japanese Penal Code, an offense punishable by more than one year in prison. The warrants have since been renewed on a yearly basis. *Id.* at 26; *see also* 2022 Warrant Renewals.

According to the General Affairs Section Chief of the Temple, as of October 18, 2017, the oil on the three east poles of the Main Gate of the Temple has been absorbed by the unvarnished wood. The stains, however, remain visible but are less prominent than at the time the vandalism occurred. *See* Supp. at Ex. 3. Similarly, as of November 17, 2017, the oil stains on the poles, stairs, and offertory box of the Shrine have faded but can still be seen at close range. *See id.* at Exs. 4, 6, 8.

II. PROCEDURAL HISTORY

On December 12, 2016, the Government of Japan formally requested the extradition of Masahide Kanayama. *See* GX-2 at 21–29. On May 30, 2017, the United States filed a complaint for the extradition of Kanayama at the request of the Government of Japan pursuant to the Treaty on Extradition Between the United States and Japan, U.S.-Japan, Mar. 26, 1980, 31 U.S.T. 892 (the "Treaty"). On June 2, 2017, U.S. authorities arrested Kanayama in New York City. He is currently released with bail conditions. *See* Memo in Support at 6, n. 2. On August 17, 2022, the Government filed notice of its intention to move to certify the extraditability of Kanayama, pursuant to 18 U.S.C. § 3184, which is currently before the Court. On December 6, 2022, the Court held an extradition hearing.

III. GENERAL PRINCIPLES OF EXTRADITION

Upon the filing of a formal complaint, the federal extradition statute allows an extradition officer—who can be any judge of the United States—to hear and consider the "evidence of criminality" of an accused individual. 18 U.S.C. § 3184; *see Skaftouros v. United States*, 667 F.3d 144, 154 (2d Cir. 2011). The presiding Court must also hold personal jurisdiction over the accused person. *Pettit v.* Walshe, 194 U.S. 205, 219 (1904). The role of the judicial officer is limited to determining whether to certify to the U.S. Secretary of State that the accused person is extraditable. 18 U.S.C. § 3184. The judicial officer must certify extraditability if he finds the following to be true: (1) a valid treaty exists; (2) the crime charged is covered by the relevant treaty; and (3) the evidence marshaled in support of the complaint for extradition is sufficient to sustain the charge. *Id.*; *see Skaftouros*, 667 F.3d at 154–55 (citing *Cheung v. United States*, 213 F.3d 82, 88 (2d Cir. 2000)). This analysis is exceedingly narrow; the court does not decide guilt or innocence, as that question is reserved for the foreign court. *See In re Extradition of Ernst*, No. 97 Crim. Misc. 1, 1998 WL 395267, at *4 (S.D.N.Y. July 14, 1998).

As to the second element, in deciding whether a treaty covers the crime charged, the presiding court should liberally construe the treaty. *See Factor v. Laubenheimer*, 290 U.S. 276, 298 (1933) (An extradition treaty "should be construed more liberally than a criminal statute or the technical requirements of criminal procedure."). Moreover, the court should award "great weight" to "the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement." *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 184–85 (1982).

As to the third element, evidence in support of extradition is "sufficient" so long as the court finds probable cause. *Illinois v. Gates*, 462 U.S. 213, 235 (1983) (A § 3184 motion to extradite must establish "only the probability, and not a prima facie showing, of criminal activity."); *see also Lo Duca v. United States*, 93 F.3d 1100, 1102–04 (2d Cir. 1996). In determining probable cause, courts primarily rely on the extradition request. *Ahmad v. Wigen*, 726 F. Supp. 389, 399–400 (E.D.N.Y. 1989) (citation omitted), *aff'd*, 910 F.2d 1063 (2d Cir. 1990). A court must further "accept as true all of the statements and offers of proof by the demanding state[.]" *In re Extradition of Marzook*, 924 F. Supp. 565, 592 (S.D.N.Y. 1996); *see also In re Extradition of Atta*, 706 F. Supp. 1032, 1050–51 (E.D.N.Y. 1989) ("The primary source of evidence for the probable cause determination is the extradition request, and any evidence submitted in it is deemed truthful for the purposes of this determination."). And the Government may rely upon hearsay evidence. 18 U.S.C. § 3184.

At an extradition hearing, the accused individual is not entitled to the rights available to a defendant at criminal trial pursuant to the Federal Rules of Criminal Procedure or Federal Rules of Evidence. *See* Fed. R. Crim. P. 1(a)(5); Fed. R. Evid. 1101(d)(3). Additionally, the accused person has no right to discovery, to cross-examine witnesses, or to speedy trial. *Messina v.*

United States, 728 F.2d 77, 80 (2d Cir. 1984). "Evidence that explains away or completely obliterates probable cause is the only evidence admissible at an extradition hearing[.]" *United States v. Amabile*, No. 14 M 1043 (VMS), 2015 WL 4478466, at *8 (E.D.N.Y. July 16, 2015). Evidence that merely raises doubts about the reliability of the government's proof is insufficient to defeat an extradition request." *United States v. Pena-Bencosme*, 2006 U.S. Dist. LEXIS 82579, *35 (E.D.N.Y. Oct. 30, 2007).

If a judicial officer certifies that an accused person is extraditable, he must commit the individual to the custody of the United States Marshal to await further determination by the Secretary regarding his surrender to the requesting state. *Cheung*, 213 F.3d at 88 (citing 18 U.S.C. § 3184). This Order constitutes the written findings of fact and conclusions of law as to the extraditability of Kanayama.

IV. DISCUSSION

This Case is Properly Before This Court.

As a preliminary matter, the extradition statute authorizes this Court to preside over this matter as a court of the United States. 18 U.S.C. § 3184. Furthermore, this Court has jurisdiction over Kanayama, as he was located and arrested in the Southern District of New York.

A Treaty in Effect Encompasses the Alleged Crimes.

Section 3184 provides for extradition when a treaty is in force between the requesting state and the United States. *Id.* Courts generally defer to the executive branch on whether a treaty is in force. *See NY Chinese TV Programs, Inc. v. U.E. Enterprises Inc.*, 954 F.2 847, 852 (2d Cir. 1992). Here, the Government has submitted the declaration of Elizabeth M. M.

O'Connor, an attorney in the Office of the Legal Advisor for the Department of State, attesting to the fact the Treaty between Japan and the United States is in full force and effect. GX-1 at 2.

The Treaty allows extradition for offenses relating to the damage of property, so long as the offense would constitute a crime in both Japan and the United States, and is a felony, *i.e.*, punishable by more than one year of imprisonment. *See id.* at 8, Art. II ¶ 1; 17, App'x Sched. 19. Kanayama has been charged in Japan with two counts of damage or destruction of structure (vandalism) in violation of Article 260 of the Japanese Penal Code. *See* GX-1 at Ex. 20, Testimony of Director of the Criminal Affairs Burau of the Ministry of Justice of Japan. Under Japanese law, violating Article 260 is an offense relating to the damage of property punishable by more than one year in prison. *Id.* Accordingly, with respect to Japanese law, the alleged crimes fall within the scope of the Treaty.[5]

The next question is whether the alleged conduct would constitute a felony in the United States or New York. *See Hu Yau-Leung v. Soscia*, 649 F.2d 914, 918 n.4 (2d Cir. 1981) (noting that dual criminality is established if the conduct underlying the foreign offense would be criminal under federal law, the law of the state in which the extradition hearing is held, or the

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[5] Kanayama claims that the Government has failed to demonstrate that the acts of vandalism occurred to a *structure* as defined by Japanese law, since merely poles, stairs, and an offertory box were damaged. With respect to the Temple, the Government of Japan asserts that poles of the Main Gate constitute buildings within the meaning of Article 260 since they are part of a grounded two-story building and create interior space enforced by walls into which individuals can enter and exit. *See* Supp. Ex. 1. With respect to the Katori Shrine, the Government of Japan similarly contends that the damaged stairs and offertory box qualify as objects under Article 260 because they are part of the structure with a roof, supported by walls and poles, fixed to the ground, and with an interior space into which individuals can enter and exit. *See* Supp. Ex. 2. The Court defers to the Japanese Government's interpretation of Article 260. *See Skaftouros*, 667 F.3d at 156 ("[I]t has long been recognized that an extradition judge should avoid making determinations regarding foreign law."); *see also Marzook v. Christopher*, No. 96 Civ. 4107 (KMW), 1996 WL 583378, at *5 n. 4 (S.D.N.Y. Oct. 10, 1996) ("In the context of extradition proceedings, it would be inappropriate for a court to review the demanding state's analysis of its own law.").

Kanayama also claims that no "damage" occurred as a matter of Japanese law. Again, the Government of Japan has explained that total damage or destruction to a building is not required in order to satisfy the damages element of Article 260. Partial damage, like that perpetrated on March 25, 2015 against the Temple and Shrine, suffices. *See* Supp. Exs. 1, 2. The Court, again, defers to the Japanese Government's interpretation of Japanese law for purposes of the instant proceedings.

law of a preponderance of the states). The alleged conduct, if committed here, would violate New York Penal law § 145.05, a felony. Section 145.05 criminalizes intentionally damaging the property of another person in an amount exceeding $250 as criminal mischief in the third degree. N.Y. Pen. Law § 145.05. The total damages caused by the alleged vandalism amount to approximately $20,000. And the video surveillance footage—which shows an individual touching and gesturing towards the affected sites—would enable a reasonable trier of fact to determine that the damage was done not by mistake, but with intent. Hence, the element of dual criminality is satisfied.[6]

Probable Cause is Established.

As noted, the standard of proof to find evidence "sufficient to sustain the charge" pursuant to § 3184 is probable cause. *See, e.g.*, *Ahmad v. Wigen*, 399–400. There is probable cause to extradite if a person ordinarily prudence and caution can conscientiously entertain a reasonable belief that the accused is guilty. *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975). Here, the evidence set forth by the Government that Katayama has committed the charged offense is substantial.

The Government has produced video evidence obtained at both the Temple and Shrine, showing the same man, bearing similar physical attributes as Kanayama, touching or throwing

[6] Kanayama argues that the stains to both the Temple and the Shrine are no longer visible, and hence that no punishable felony occurred. *See* Sur-Reply at 2–3; *United States v. Murtari*, No. 7 Cr. 387, 2007 WL 3046746, at *4–5 (N.D.N.Y. Oct. 16, 2017) (finding that defacement by use of chalk does not constitute damage to property because it eventually goes away). Kanayama bases this claim on photo evidence obtained from the Temple and Shrine in December 2017, along with the testimony of his counsel, who took the photos. This evidence may call into question the conclusions reached by the Japanese authorities who revisited the Temple and Shrine in October 2017 and determined that the stains were still visible. However, "the existence of evidence contradicting or calling into question the requesting state's primary evidence ordinarily has no import as it does not vitiate or obliterate probable cause, but rather merely poses a conflict of credibility that generally should properly await trial" in the requesting country. *United States v. Pena-Bencosme*, No. 08-1990-pr, 2009 WL 2030129, at *1 (2d Cir. July 9, 2009) (internal quotation marks and citations omitted). Accordingly, Kanayama remains extraditable despite this possibility.

liquid towards the vandalized areas of the sites. The Government has also proffered car rental records, video footage, and expressway toll tickets, which show that Kanayama entered an expressway near the Temple approximately twenty minutes *after* the first act of vandalism occurred and exited the expressway through a toll near the Shrine approximately fifteen minutes *before* the second act of vandalism occurred. Working with Narita Airport, the Japanese authorities were also able to determine the dates that Kanayama entered and left Japan, which are consistent with the date the offenses occurred. Additionally, the Government has provided video and documentary evidence that Kanayama checked into a hotel near the Shrine shortly after the Shrine was defaced. A report by Professor Masatsugu Hashimoto of Tokyo Dental College moreover supports the conclusion that the suspect depicted in the video footage at the Temple and Shrine is indeed Kanayama. Japanese officials, furthermore, have identified YouTube videos from 2012, in which Kanayama discusses having "anointed" Japanese Shrines with oil in connection with his Christian non-profit work. Reports from as recent as fall 2017 show that the damage to the Temple and Shrine is still visible and would cost approximately $20,000 to repair.

Kanayama has not set forth any evidence that "obliterates" or "explains away" a finding of probable clause. *Amabile*, 2015 WL 4478466, at *8. Kanayama challenges the qualifications of Professor Hashimoto to conclude that the person captured on the surveillance footage is indeed Kanayama. However, even assuming that Kanayama raises some doubt as to the conclusions of Professor Hashimoto, the evidence proffered by the Government, taken in its entirety, nonetheless permits a person of ordinary prudence to entertain a reasonable belief that Kanayama is guilty of the charged offenses.[7] Absent any other "reasonably clear-cut proof" to

[7] At trial, the Court did not permit Kanayama to introduce his own expert testimony to rebut the testimony offered by the Government by Professor Masatsugu Hashimoto. *See Kapoor v. Dunne*, No. 14 1699-pr, 606 Fed. Appx. 11, at *13 (2d Cir. June 2, 2015); *See also Gill v. Imundi*, 747 F. Supp. 1028, 1040–41 (S.D.N.Y. 1990) (The accused individual introducing his own handwriting expert would not serve to "explain" or "obliterate" the government's

negate the evidence offered by the Government, the Court concludes that there is probable cause to extradite Kanayama for the vandalism charges.[8] *In re Extradition of Sindona*, 450 F. Supp. 672, 685 (S.D.N.Y. 1978) (emphasis added), *aff'd*, 619 F.2d 167 (2d Cir. 1980).

V. CONCLUSION

Pursuant to the foregoing and in accordance with 18 U.S.C § 3184, the Court hereby certifies the extradition of Masahide Kanayama on the offenses for which the Extradition Request was made. A warrant may issue for the surrender of Kanayama to the proper authorities of Japan in accordance with the Treaty. The Clerk of Court is respectfully directed to forward a certified copy of this Certification and Committal for Extradition, together with a copy of the evidence presented in this case, including the formal extradition documents received in evidence and any testimony received in this case, to the Secretary of State.

It is SO ORDERED.

Dated: January 26, 2023
New York, New York

Edgardo Ramos, U.S.D.J

evidence, so much as to pose a conflict in the testimony of two handwriting experts by discrediting the methodology of the expert who had identified the accused person's authorship).

[8] As a final matter, the Court notes that the claim that Kanayama will suffer persecution due to anti-Christian bias if he is returned to Japan is not subject to judicial review. *See Ahmad*, 910 F.2d at 1067 ("It is the function of the Secretary of State to determine whether extradition should be denied on humanitarian grounds."); *see also Jhirad v. Ferrandina*, 536 F.2d 478, 484–85 (2d Cir. 1976) ("It is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation. Such an assumption would directly conflict with the principle of comity upon which extradition is based.").

EXHIBIT C

United States Department of State

Washington, D.C. 20520

October 16, 2025

VIA ELECTRONIC MAIL

David M. Dudley
Law Offices of David M. Dudley
3415 S. Sepulveda Blvd.
Suite 1100
Los Angeles, California 90034-1509
E-mail: fedcrimlaw@hotmail.com

Re: Extradition of Masahide Kanayama

Dear Mr. Dudley,

I am writing in relation to the Secretary of State's determination on whether to extradite Masahide Kanayama to Japan. Following a review of all pertinent information, including the materials submitted directly to the Department of State, as well as the materials and filings submitted to the U.S. District Court for the Southern District of New York on behalf of Mr. Kanayama, the Under Secretary of State for Political Affairs decided to authorize Mr. Kanayama's surrender to Japan, pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between the United States and Japan.

In reaching a decision in any extradition case, the Department carefully and thoroughly considers all claims submitted and takes appropriate steps, which may include obtaining information or commitments from the requesting government, to address the identified concerns. We have shared information about Mr. Kanayama's medical conditions with Japanese authorities, who confirmed that his medical needs will be met both in transit from the United States to Japan, and during any period of detention in Japan.

Sincerely,

Tom Heinemann
Attorney Adviser
Law Enforcement and Intelligence

EXHIBIT D

Manhattan Cardiovascular

873 Broadway, New York, NY 10003 P: 212.686.0066 F: 917.677.4838

Michael Ghalchi, MD FACC

Cardiologist and Medical Director

Manhattan Cardiovascular Associates

873 Broadway, New York, NY 10003

6/13/2024

Office of the Legal Advisor for Law Enforcement and Intelligence

U.S. Department of State

2201 C Street NW

Washington, D.C. 20520

RE: Kanayama, Masahide

DOB: 9/8/1962

Dear Legal Advisor,

I am writing to you as the primary cardiologist for Dr. Masahide Kanayama, aged 61, whom I have had the privilege of treating for almost 5 years. I am aware of his current legal circumstances, including the potential extradition to Japan, and I am compelled to share my professional medical assessment regarding his health.

Malignant Hypertension, Diabetes

Dr. Kanayama's most significant medical condition is malignant hypertension, a severe and potentially life-threatening form of high blood pressure. This condition is characterized by extremely high blood pressure readings, often exceeding 180/120 mmHg, and is accompanied by evidence of acute organ damage. Malignant hypertension requires immediate medical intervention to prevent permanent organ damage and other serious complications such as stroke, heart failure, and kidney failure.

Despite being on three different medications at maximum dosages to manage his hypertension, Dr. Kanayama's blood pressure is at times dangerously high, typically in the range of 140/105 mmHg,

depending on his life circumstances. This persistent elevation places him at substantial risk for acute and potentially fatal cardiovascular events.

Furthermore, Dr. Kanayama is diabetic, requiring regular medication to manage his blood sugar levels. His condition necessitates consistent treatment to prevent severe complications. He also has high cholesterol, controlled with medication, which is another risk factor for cardiovascular events.

These conditions may be significantly impacted were he to be in a prolonged highly stressful situation, have poor sleep, not have access to medication regularly, and not have access to regular meals. These circumstances, given his cardiac conditions, could lead to severe health complications and potentially death.

The 2015 Medical Emergency

My concern expressed above reflects a prior event which demonstrates the precarious nature of Dr. Kanayama's health status. Per report, in 2015 Dr. Kanayama was detained by US authorities. During the first day of his detention, his blood pressure escalated to a critical level of 193/120 mmHg.t He was taken by ambulance from the detention center to hospital, where urgent treatment succeeded in bringing his blood pressure down. He remained hospitalized for several days. This episode is indicative of how quickly his health can deteriorate under stress without access to necessary medications.

Conclusion

The prospect of Dr. Kanayama facing extradition and subsequent detention in a high-stress environment without guaranteed immediate access to his medications is profoundly alarming considering his medical conditions. Even a single missed dose of his blood pressure medication could precipitate a life-threatening hypertensive crisis. Prolonged stress, even with medication, poses a severe threat to his overall health and well-being.

Given these factors, I have grave concerns about the risks associated with Dr. Kanayama's potential extradition and the severe health implications it could entail. It is my medical opinion that subjecting him to such conditions would be inadvisable and potentially life-threatening.

Thank you for considering this critical aspect of Dr. Kanayama's situation. I am available to provide further details or discuss his condition with appropriate officials at your convenience.

Sincerely,

Dr. Michael Ghalchi

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STATE OF NEW YORK)
COUNTY OF NEW YORK) SS

James Pacheco, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 11/26/2025 deponent caused to be served 1 copy(s) of the within

Application for a Stay of Extradition

upon the attorneys at the address below, and by the following method:

By Overnight Delivery

D. John Sauer
Solicitor General
United States Department of Justice
Attorneys to Respondent
950 Pennsylvania Avenue, NW
Washington, DC 20530, US
Phone : 202-514-2217

By Overnight Delivery

Scott Kowal
Pretrial Services Office SDNY
Respondent
500 Pearl St, Rm 550
New York, NY 10007-1316
Phone : 212-805-4366

Sworn to me this
Wednesday, November 26, 2025

KEVIN AYALA
Notary Public, State of New York
No. 01AY6207038
Qualified in New York County
Commission Expires 7/13/2029

Case Name: Masahide Kanayama v. Scott Kowal, Chief of U.S. Pre-Trial Services SDNY

Docket/Case No:

Index: 24-1340