

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MASAHIDE KANAYAMA,

Petitioner,

vs.

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

Emergency Motion for Stay of Extradition

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QUESTIONS PRESENTED

- (1) Whether the U.S. Department of State's determination on the extradition of Dr. Masahide Kanayama complies with the Foreign Affairs Reform and Restructuring Act and the Convention Against Torture.
- (2) Whether Dr. Masahide Kanayama's pending application for asylum entitles him to relief, if temporary, from extradition.

PARTIES TO THE PROCEEDING

This motion arises from the United States Court of Appeals for the Second Circuit. Petitioner 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

This motion arises from the decision of the United States Court of Appeals for the Second Circuit in *Kanayama v. Kowal*, No. 26-455 (2d Cir. March 2, 2026). The unreported decision of the Second Circuit denied the emergency motion for an administrative stay of extradition pending appeal of the emergency motion to stay extradition before the District Court. App. 41.

This motion is also related to the following proceedings in the United States District Court for the Southern District of New York:

1. *Kanayama v. Kowal*, No. 1:26-cv-01402 (S.D.N.Y. February 26, 2026). The unreported decision of the Hon. J. Paul Oetken of the Southern District of New York denied the emergency motion to stay extradition, but the underlying petition remains pending. App. 26.

2. *In re Extradition of Kanayama*, No. 17 Crim. Misc. 1 Page 003 (ER).

In an unreported decision, the Hon. Edgardo Ramos certified Dr. Kanayama's case for extradition on January 26, 2023. App. 14.

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MOTION FOR EMERGENCY STAY OF EXTRADITION

Dr. Masahide Kanayama moves this Court for an emergency stay of extradition pending resolution of his habeas proceedings.

OPINIONS BELOW

The Court of Appeals' opinion is unreported. App. 41. The order of the Southern District of New York denying Dr. Kanayama's emergency motion for a stay is unreported is unreported. App. 26. The order of the Southern District of New York certifying Dr. Kanayama's case for extradition is unreported. App. 14.

JURISDICTION

The decision of the Court of Appeals was issued on March 2, 2026. App. 41. This Court has jurisdiction pursuant to 28 U.S.C. § 1651(a) and 28 U.S.C. § 1254(1).

INTRODUCTION

I, Walter Roesch, Esq., am associated with the Law Offices of Robert Tsigler and am admitted before the United States Supreme Court. I submit this motion on behalf of Petitioner Dr. Masahide Kanayama (“Petitioner” or “Dr. Kanayama”) based on knowledge, information, and belief, a review of the file available to my office, and conversations with the parties.

Dr. Kanayama respectfully moves this Court for (1) an emergency administrative stay of his extradition and (2) for an emergency stay of his extradition pending the disposition of his interlocutory appeal of the District Court’s denial of his emergency motion for a stay of extradition. He asserts that (1) the U.S. Department of State (“State Department”) may not effectuate his extradition without first determining that he is not more likely than not to face torture in Japan; and (2) he may not, or alternatively should not, be extradited while his application for asylum remains pending. Granting this emergency stay is necessary to preserve this Court’s jurisdiction and prevent irreparable harm while the legal claims raised by Dr. Kanayama are under review.

Dr. Kanayama respectfully moves this Court for an emergency stay of extradition pending disposition of his habeas corpus petition.

STATEMENTS OF THE CASE

On January 26, 2023, the Southern District of New York certified Petitioner for extradition to Japan. App. 14. On February 19, 2026, Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging the extradition for failure to comply with the Foreign Affairs Reform and Restructuring Act (FARRA) and the Immigration and Nationality Act (INA) and U.S. asylum law. App. 1. Concurrently, Petitioner filed an emergency motion to stay extradition, which the District Court denied on February 26, 2026. App. 26. On February 27, 2026, Petitioner

timely filed a Notice of Appeal to the U.S. Court of Appeals for the Second Circuit under 28 U.S.C. § 1292(a)(1), challenging the denial of the stay. Concurrently, Petitioner filed with the District Court an emergency motion to stay extradition pending appeal, which was denied the same day. App. 35. Petitioner surrendered on March 2, 2026 at 9 a.m. The Second Circuit denied Petitioner’s motion to administratively stay extradition on March 2, 2026. App. 41. Petitioner is due to be extradited on March 3, 2026.

Because extradition is imminent, the Court of Appeals’ denial of an administrative stay presents an immediately reviewable order. This Court has long recognized that orders denying injunctive relief that carry “serious, perhaps irreparable consequence” are subject to immediate review. *Carson v. American Brands, Inc.*, 450 U.S. 79, 84 (1981). The denial of a stay of extradition, where surrender will moot further judicial review, satisfies that standard. *See Nken v. Holder*, 556 U.S. 418, 434–35 (2009) (recognizing that removal prior to completion of judicial review may constitute irreparable harm). Absent intervention by this Court, Petitioner will be surrendered to a foreign sovereign before the legality of that surrender can be adjudicated, effectively nullifying appellate review. Therefore, this Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651(a).

Immediate review is warranted because the denial of a stay renders the underlying issues effectively unreviewable after extradition. Without this Court’s intervention, the case will become moot.

REASONS TO GRANT THE MOTION

Motions to stay pending appeal are governed by the traditional equitable factors, namely (1) the likelihood of success on the merits; (2) the risk of irreparable harm; (3) the risk of substantial injury to the other interested parties; and (4) public interest. *Nken v. Holder*, 556 U.S.

418 (2009). Factors three and four “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435.

As to the first prong, Petitioner has a relatively low bar to clear when showing likelihood of success on appeal. *See Mohammed v. Reno*, 309 F.3d 95, 101-02 (2d Cir. 2002) (“[i]n the context of a stay of removal of an alien pending appeal of an adverse habeas decision, the gravity of the injury to the alien if a stay is denied... suggests that the degree of likelihood of success on appeal need not be set too high.”). This standard does not conflict with the government’s contention below that the chances of success must be “better than negligible.” *Nken*, 556 U.S. at 434. In any case, Petitioner is likely to succeed on the merits of his immediate appeal of the Second Circuit’s denial of his emergency motion to stay extradition.

The Second Circuit’s denial of the stay raises serious legal questions regarding jurisdiction and compliance with the Foreign Affairs Reform and Restructuring Act (FARRA) and the Immigration and Nationality Act (INA).

Specifically, Petitioner first contends that he may not be extradited to Japan without sufficient determination by the U.S. Department of State that he is not more likely than not to face torture upon return. In the only case directly on point, the State Department sufficiently and repeatedly certified that the person to be extradited was not more likely than not to face torture upon return to India. *Kapoor v. DeMarco*, 132 F.4th 595 (2d Cir. 2025). In the instant case, the State Department has made no such determination. The State Department’s recent statement that it “is not *independently aware* of any information suggesting that it is more likely than not that Dr. Kanayama would be tortured if extradited to Japan” does not include a determination that Dr. Kanayama is not more likely than not to be tortured upon return to Japan. App. 36-37 (emphasis added). Neither is the State Department’s recent *pro forma* statement that “the decision to

surrender Dr. Kanayama is fully consistent with the United States’ obligation under the Convention and its implementing statute and regulations.” *Id.* The State Department’s failure to decide the issue either way violates the policy note to 8 U.S.C. § 1231 and the provisions at 22 C.F.R. §§ 95.1-95.4. This omission raises a serious legal question that is distinct from the facts of *Kapoor* and represents a matter of first impression before the federal courts – namely, the scope for exceptions to the general bar to jurisdiction already noted in *Kapoor*. *See Kapoor v. DeMarco*, 132 F.4th at 610-11, nn. 14, 16.

Petitioner also contends that extradition may not and, in the alternative, should not be executed while Petitioner’s asylum application remains pending. The Second Circuit did not adequately address Petitioner’s right to the adjudication of his asylum petition. The asylum law provides that “[a]ny alien who is physically present in the United States or who arrives in the United States...irrespective of such alien’s status, may apply for asylum.” 8 U.S.C. § 1158(a). The INA and its implementing regulations presume an applicant’s right to be heard either in an interview or administrative hearing. *Matter of Fefe*, 20 I. & N. Dec. 116 (BIA 1989); 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1208.3; 8 C.F.R. § 1208.13(a); 8 C.F.R. § 1240.11(c)(3) (application to be adjudicated “after an evidentiary hearing to resolve factual issues in dispute” and the noncitizen “*shall* be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf” (emphasis added)). Extradition proceedings do not abrogate either competing treaty obligations or federal law. *U.S. v. Porumb*, 420 F. Supp. 3d 517, 527 (W.D. La. 2019). Alternatively, the First Circuit recognizes that “specific and compelling interests in favor of reaching the merits sooner rather than later” may justify resolving a pending asylum claim in advance of extradition proceedings. *Castañeda-Castillo v. Holder*, 638 F.3d 354, 362 (1st Cir. 2011).

Either of these live legal disputes before the Court counsel in favor of a stay. *See Hyuk Kee Yoo v. United States*, 2021 U.S. Dist. LEXIS 222067 (S.D.N.Y. 2021) (holding that “[b]ecause Petitioner’s appeal raises issues that the Second Circuit has not yet considered, upon which there are non-frivolous grounds for disagreement, in the circumstances this factor weighs in favor of a stay.”). App. 39. The urgent timeline and the unresolved legal questions weigh in favor of Petitioner on this most important prong for issuing a stay.

Second, if Petitioner is surrendered to Japan, U.S. courts lose jurisdiction over the habeas petition entirely. Irreparable harm occurs automatically upon transfer. *Demjanjuk v. Meese*, 784 F.2d 1114, 1118 (D.C. Cir. 1986); *Quintanilla v. United States*, 582 F. App’x 412, 414 (5th Cir. 2014); *Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023); *Hyuk Kee Yoo*, 2021 U.S. Dist. LEXIS 222067 at 4.

Finally, the harm to the government’s interest in extraditing Petitioner may be postponed only briefly pending appellate review and without prejudice, particularly because the appeal is expedited and limited to the denial of the stay pending adjudication of the habeas petition. Moreover, preserving the jurisdiction of the U.S. courts and ensuring compliance with extradition treaties and due process serves the public interest. Extradition is imminent and its temporary deferral does not substantially prejudice the public interest.

CONCLUSION

Petitioner therefore respectfully requests that this Court:

1. Enter an immediate administrative stay to prevent extradition until this motion is considered.
2. Issue a stay pending resolution of the interlocutory appeal of the District Court’s denial of the emergency motion to stay extradition.

WHEREFORE, Petitioner respectfully requests that this Court grant an emergency stay of extradition and maintain the status quo so that the federal courts may resolve the pending motion to stay extradition.

Dated: March 2, 2026

Respectfully submitted,

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