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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: Appendix

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UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

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MASAHIDE KANAYAMA,

Case No.:

Petitioner,

v.

SCOTT KOWAL, Chief of U.S.
Pre-Trial Services SDNY,

Respondent.

-----X

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION
2241**

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION
2241**

INTRODUCTION

I, Michael Zigismund, Esq., am associated with the Law Offices of Robert Tsigler and am licensed in the Southern District of New York. I submit the following on behalf of Petitioner Dr. Masahide Kanayama (“Dr. Kanayama” or “Petitioner”) on the basis of knowledge, information, or belief, and a review of the file available to my office and conversations with the parties.

1. Petitioner Dr. Masahide Kanayama is a medical doctor and surgeon who resides in New York City as a legal permanent resident of the United States. He is a Japanese citizen who has applied for U.S. citizenship and affirmatively applied for asylum and relief from removal under the Convention Against Torture (CAT). Exhibit A, annexed hereto (I-589 Receipt).
2. Dr. Kanayama is a world-renowned endometriosis expert and one of the few surgeons in the world equipped to treat deep endometriosis and adenomyosis, conditions which cause severe pain and infertility in millions of women. Dr. Kanayama invented “haptic excision,” a treatment method which has given countless women the ability to start families and regain their lives without constant pain. Dr. Kanayama works on the frontlines of the fight against endometriosis and the advancement of women’s health and research.
3. The Petitioner has no criminal history.
4. The Japanese government sought extradition of the Petitioner to investigate the alleged vandalism of two shrines in Japan. Exhibit B, annexed hereto, at 11 (Government Reply Motion).

5. On October 16, 2025, the State Department authorized Dr. Kanayama's extradition to Japan. Exhibit C, annexed hereto (U.S. Department of State Determination).
6. Dr. Kanayama's extradition to Japan raises the specter of persecution based on religion, political opinion, and given his Korean ethnicity. On December 29, 2025, Dr. Kanayama submitted an application for asylum and relief under the CAT before the United States Citizenship and Immigration Services (USCIS). Ex. A.
7. On January 20, 2026, the Supreme Court of the United States denied Petitioner's application for a stay of extradition.
8. The only judicial review available is this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

PROCEDURAL HISTORY

9. On April 28, 2015 and December 8, 2015, the Japanese police obtained arrest warrants for Dr. Kanayama as part of its investigation into two alleged incidents of vandalism dating from March 25, 2015. Ex. B at 1. The arrest warrants have since been renewed. *Id.* at 11. The alleged vandalism targeted a Shinto shrine near Katori and a Buddhist temple in Narita. *Id.* at 1.
10. On December 12, 2016, the Japanese government sent the State Department a Diplomatic Note requesting the extradition of Dr. Kanayama. The State Department later referred the matter to the Department of Justice (DOJ).
11. On May 30, 2017, the DOJ filed an extradition complaint against Dr. Kanayama in the Southern District of New York, case number 17-Misc-1. *Id.* at 13.
12. On June 2, 2017, the United States Marshals Service arrested the Petitioner in New York City. *Id.*

13. Several days later, a federal magistrate judge ordered the Petitioner's release from custody on certain conditions, pending the resolution of the extradition complaint. *Id.*
14. On August 22, 2017, the government filed its memorandum in support of Japan's extradition request. Exhibit D, annexed hereto, at ¶ 14 (Petitioner's 2023 Habeas Petition).
15. On October 20, 2017, Dr. Kanayama filed formal opposition to that request. *Id.* at ¶ 15.
16. On November 17, 2017, the government filed its reply to that opposition. *Id.*
17. On January 12, 2018, the Petitioner filed a sur-reply to the government's response. Ex. B at 13.
18. On December 6, 2022, the district court, with Judge Edgar Ramos presiding, held a formal extradition hearing. Exhibit E, annexed hereto, at 6 (District Court Order).
19. On January 26, 2023, the district court issued a written order certifying the Petitioner for extradition. Ex. E.
20. On January 20, 2026 and after years of intervening litigation, the Supreme Court of the United States denied Petitioner's application to stay extradition.
21. Dr. Kanayama now files this Petition, naming Scott Kowal, Chief of Pre-Trial Services for the Southern District of New York as the respondent. The naming of this respondent is based upon research conducted by the Petitioner, but the available authority on the issue of who should be the proper respondent in this matter is limited. Therefore, the Petitioner has reserved the right to name other appropriate respondents.

STATUS OF PETITIONER

22. The Petitioner remains subject to conditions of supervised release, modified since his release on bond. He is not permitted to travel internationally, and his passport is in the

possession of the United States Pre-Trial Office for the Southern District of New York.

Ex. E at ¶ 21.

23. Petitioner must submit any domestic travel plans to the supervising officer before his trips take place. *Id.*
24. Petitioner must report to that officer once a week online.
25. Petitioner has posted a secured bond, which includes \$1,000,000 cash and two properties he owns in Manhattan, with the district court. *Id.*

BRIEF SUMMARY OF FACTUAL HISTORY

26. On March 25, 2015, a man allegedly touched wooden pillars at the Narita-san Shinjoji Temple, a Buddhist temple in Narita, with a small amount of vegetable oil. Later that same day, a man allegedly touched pillars, stairs, and an offering box at the Katori Jingu Shrine, a Shinto shrine and tourist attraction, again using vegetable oil. Ex. B at 1.
27. The Narita police instructed Temple and Shrine staff to repair the affected structures, with repairs estimated at slightly above 20,000 USD. *Id.* at 17.
28. Nevertheless, the Japanese police proceeded with arrest warrants for alleged violations of Article 260 of the Japanese penal code, which penalizes “damage or destruction of structure (vandalism).” Ex. D at 9.
29. Petitioner founded International Marketplace Ministry (IMM), which focuses on personal relationships with God through prayer in daily life and in work life.
30. On December 29, 2025, Dr. Kanayama applied for asylum and relief under the CAT before USCIS. Ex. A. Dr. Kanayama’s asylum application is based on the Japanese government’s ongoing attempt to imprison him because of his political opinions and religious and ethnic background.

31. On February 17, 2026, Petitioner attended his asylum interview at the USCIS Newark Asylum Office – Manhattan Branch. Exhibit F, annexed hereto (I-589 interview notice and USCIS Decision Regarding Your Application for Asylum).

APPLICABLE LAW

32. There is no dispute as to the validity of the extradition treaty between the United States and Japan.

33. However, the State Department failed to meet its statutory obligations under the Foreign Affairs Reform and Restructuring Act (FARRA). Section 2242 of FARRA states the non-refoulement “policy of the United States not to expel, extradite or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.” This language fulfills the United States’s treaty obligations under the CAT and is codified as a policy note to 8 U.S.C. § 1231 and implemented in the regulations by way of 22 C.F.R. §§ 95.1-95.4.¹

34. Because the State Department failed to determine that Dr. Kanayama is not more likely than not to face torture upon extradition to Japan, habeas jurisdiction vests to ensure compliance with the FARRA and the CAT. *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 970–72 (9th Cir. 2012).

35. Second, the ongoing restriction on Dr. Kanayama’s liberty violates his substantive statutory right to the adjudication of his December 29, 2025 application for asylum and

¹ The government may not remove or return an individual to a country where their “life or freedom would be threatened.” 8 U.S.C. § 1231(b)(3). As Dr. Kanayama consistently demonstrated, the Japanese investigation targeting him for prosecution is decidedly political. Therefore, the exception to non-refoulement where there are “serious reasons to believe that the alien committed a serious *nonpolitical* crime outside the United States before the alien arrived in the United States” does not apply. 8 U.S.C. § 1231(b)(3)(B)(iii) (emphasis added).

relief under the CAT. The asylum law affords “[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). Because pending extradition is not a bar to the application for asylum relief, the competent federal authorities may not unlawfully extradite Dr. Kanayama. *Zadvydas v. Davis*, 533 U.S. 678, 688–99 (2001); *INS v. St. Cyr*, 533 U.S. 289, 301–05 (2001); *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Kiyemba v. Obama*, 561 F.3d 509, 512–13 (2nd Cir. 2009).

36. The district court certified the government’s extradition request pursuant to 18 U.S.C. § 3184 and committed Dr. Kanayama to custody of the United States Marshals “to await further determination by the Secretary regarding his surrender to the requesting state... This Order constitutes the written findings of fact and conclusions of law as to the extraditability of Kanayama.” Ex. E at 8.

I. The Secretary of State’s CAT/FARRA Determination Was Procedurally Defective and Therefore Cannot Lawfully Support Custody Pending Imminent Extradition

37. The Secretary of State’s CAT determination was procedurally defective and does not satisfy FARRA or its implementing regulations. Federal law prohibits extradition unless and until the Secretary of State determines, pursuant to 22 C.F.R. § 95.2, that extradition is not barred. The implementing regulations require that “the competent authorities shall take into account *all relevant considerations* including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.” 22 C.F.R. § 95.2(a)(2) (emphasis added). In addition, “the Department considers the question of whether a person facing extradition from the U.S. is more likely than not

to be tortured in the State requesting extradition when appropriate in making this determination.” 22 C.F.R. § 95.2(b) (internal quotations omitted).

38. Here, the State Department authorized extradition to Japan on October 16, 2025, invoking 18 U.S.C. § 3186 and the Extradition Treaty between the U.S. and Japan. The State Department’s determination is conclusory in nature: “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.” Ex. C (emphasis added). The possibility, or lack thereof, of torture does not appear in the text of the determination. It is not clear whether the State Department considers an individualized determination necessary at all, given the generalized language describing their posture in *any* decision. The State Department attested to the Japanese government’s commitment to meet Dr. Kanayama’s medical needs “both in transit from the United States to Japan, and during any period of detention in Japan.” *Id.* But oblique references to “medical needs” do not satisfy the State Department’s obligation to “consider[] the question of whether a person facing extradition “is more likely than not” to be tortured in the State requesting extradition when appropriate in making this determination.” 22 C.F.R. § 95.2(b). Beyond the generic assurance of the Japanese government, the State Department apparently failed to consider the pattern of abusive treatment of detainees in the Japanese prison system. In addition, the State Department neglected to consider the Japanese government’s evident animus against Petitioner. Finally, the State Department could not have considered, in its earlier-drafted determination, Dr. Kanayama’s application for asylum and withholding of

removal, which includes reams of additional evidence documenting Japan’s violations of the CAT.

39. Courts have recognized that habeas jurisdiction exists to prevent extradition that would moot or defeat mandatory CAT procedures, even though courts may not decide CAT merits. *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 970–72 (9th Cir. 2012). Specifically, the Ninth Circuit held as insufficient “a generic declaration outlining the basics of how extradition operates at the Department and acknowledging the Department’s obligations under the aforementioned treaty, statute and regulations, but the Department gives no indication that it actually complied with those obligations in this case.” *Id.* at 957.
40. There is a circuit split on this issue, with the Second Circuit recently finding that 8 U.S.C. § 1252(a)(4) “bars courts from exercising habeas jurisdiction over CAT claims raised by individuals facing extradition.” *Kapoor v. DeMarco*, 132 F.4th 595, 614 (2nd Cir. 2025).
41. However, the decision in *Kapoor* is distinguishable on its own terms. In *Kapoor*, the petitioner argued “she would likely be tortured if returned to India and that *the Secretary erred by finding the contrary*.” *Id.* at 604 (emphasis added). In the instant case, Petitioner argues not that *the Secretary erred in its findings*, but rather that *the Secretary erred in not even making any of the requisite findings*. The State Department’s determination makes no reference to the possibility of torture whatsoever. Instead, the State Department issued a two-paragraph determination reaching only the question of Dr. Kanayama’s medical care. This determination does not satisfy the procedural requirements of the FARRA.

42. The Petitioner may not be extradited if the State Department concludes that he is more likely than not to be tortured upon transfer, an inquiry which remains not yet adjudicated. As the Second Circuit acknowledges, the Supreme Court has “reserved judgment on a hypothetical case in which the Executive has determined that a detainee [in custody] is likely to be tortured but decides to transfer him anyway.” *Id.* at 611, n. 16 (internal quotations omitted). The Second Circuit did not reach this issue in *Kapoor* because of its finding that the “Department of State has acknowledged that the Convention obligated the United States not to extradite a person to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture” and that the Department did “confirm[] on three separate occasions that the decision to surrender Kapoor ‘complies with the United States’ obligations under the Convention.’” *Id.* As aforementioned, it is unknown whether the State Department considers torture more likely than not upon extradition of the Petitioner.

43. The State Department’s failure to make the necessary determination is an independent violation of the FARRA and not a “cause or claim under the United Nations Convention Against Torture.” 8 U.S.C. § 1252(a)(4). The Second Circuit explicitly refrained from ruling on “[w]hether an extraditee could nonetheless bring a CAT claim under FARRA pursuant to its policy statement or directive to the Secretary.” *Kapoor* at 610, n. 14. A claim under FARRA, however, is not a “CAT claim,” but rather a FARRA claim emanating from a statutorily created substantive right. Because of this FARRA-created right, a habeas petition no longer presents any “serious concern” that “in the present context...is to be addressed by the political branches.” *Munaf v. Green*, 553 U.S. 674, 700 (2008). Rather, the present habeas petition is the only viable means to vindicate

Petitioner's rights under the FARRA and its implementation in the Code of Federal Regulations. Otherwise, Petitioner will continue to be restrained "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

44. Because the Secretary's determination did not comply with procedures required by federal statute, extradition would violate federal law. It is unlawful for Petitioner's custody, in anticipation of imminent extradition, to continue under these ambiguous auspices.

II. Extradition Is Unlawful Because the Pending Asylum and CAT Application Triggers Statutory Obligations That Have Not Been Satisfied

45. Alternatively, extradition may not be executed while Petitioner's asylum application remains pending. U.S. asylum law establishes Petitioner's right to the adjudication of his application. That right may not be extinguished by extradition before the adjudication is complete. Thus, Petitioner's ongoing custody is unlawful because "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

46. The United States Congress codified a substantive right to seek asylum by way of the Immigration and Nationality Act (INA). 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 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) (opportunity to present testimony and evidence on behalf of the applicant); 8 C.F.R. § 1208.3 (presuming testimony); 8 C.F.R. § 1208.13(a) (presuming

testimony will be given); 8 C.F.R. § 1240.11(c)(3) (application to be adjudicated by an immigration judge “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)).

47. Extradition of Dr. Kanayama while his asylum application remains pending would vitiate his right to adjudication of the asylum petition. Any contrary approach would render the statutory protections meaningless by permitting indirect refoulement through extradition.
48. Allowing extradition to proceed while an asylum application is pending would deprive Petitioner of a full and fair adjudication of his statutory rights and would irreparably undermine the asylum process.

EXHAUSTION OF OTHER REMEDIES

49. Federal law provides for no direct appeal of a district court’s certification of a governmental request for international extradition.
50. Therefore, the only avenue for judicial review of such certification is the filing of a petition for writ of habeas corpus.
51. This petition does not challenge the validity of a conviction or sentence.
52. This petition does not directly involve any immigration proceedings.
53. The undersigned counsel is unaware of any petition, appeal, motion, or other action filed under any jurisdiction to address the district court order.

CONCLUSION

WHEREFORE, this Court should grant this petition and set aside the original court’s certification of the government’s request for extradition in this matter. Undersigned counsel

concurrently filed an emergency motion to stay extradition, pending resolution of this habeas petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Zigismund".

Michael Zigismund, Esq.

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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

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 Bureau 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

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 cause. *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.").

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MASAHIDE KANAYAMA,
Petitioner,

-v-

SCOTT KOWAL,
Respondent.

26-CV-1402 (JPO)

OPINION AND ORDER

J. PAUL OETKEN, District Judge:

Before the Court is Petitioner Masahide Kanayama’s emergency motion to stay his extradition pending adjudication of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. For the reasons that follow, Kanayama’s emergency motion to stay is denied.

I. Factual and Procedural Background

On March 25, 2015, Petitioner Masahide Kanayama allegedly touched parts of a Shinto shrine near Katori, Japan and a Buddhist temple in Narita, Japan with vegetable oil. (ECF No. 1 (“Pet.”) ¶ 26.) Following this incident, the Japanese police issued arrest warrants for Kanayama for vandalism in violation of Article 260 of the Japanese penal code. (*Id.* ¶¶ 9, 28.) On December 12, 2016, the Japanese government contacted the U.S. State Department to request Kanayama’s extradition, and the State Department referred the matter to the Department of Justice (“DOJ”). (*Id.* ¶ 10.) After the DOJ filed an extradition complaint, Kanayama was arrested on June 2, 2017, and later released from custody on certain conditions pending the resolution of the extradition complaint. (*Id.* ¶¶ 11-13.)

On December 6, 2022, after receiving briefing from the parties on Japan’s extradition request, Judge Edgardo Ramos presided over a formal extradition hearing; he then issued a written order certifying Kanayama for extradition on January 26, 2023. (*Id.* ¶¶ 18-19.) On April

25, 2023, Kanayama filed a petition for a writ of habeas corpus contesting Judge Ramos's extradition certification, which was denied by Judge Colleen McMahon on April 11, 2024. *See Kanayama v. Kowal*, No. 23-CV-3469, 2024 WL 1587489, at *1 (S.D.N.Y. Apr. 11, 2024). Kanayama appealed, and the Second Circuit denied Kanayama's application for a stay and affirmed Judge McMahon's decision. *See Kanayama v. Kowal*, No. 24-1340, 2025 WL 3210986, at *2 (2d Cir. Nov. 18, 2025). In the following weeks, the Supreme Court denied Kanayama's multiple applications for a stay. *See Kanayama v. Kowal*, No. 25A633, 2025 WL 3619532, at *1 (U.S. Dec. 12, 2025); *Kanayama v. Kowal*, No. 25A633, 2026 WL 135702, at *1 (U.S. Jan. 20, 2026). On February 23, 2026, the Supreme Court also denied Kanayama's petition for a writ of certiorari. *Kanayama v. Kowal*, No. 25-715, 2026 WL 490775 (U.S. Feb. 23, 2026).

On October 16, 2025, the State Department authorized Kanayama's extradition to Japan. (Pet. ¶ 38.) In its letter, the State Department stated: "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." (ECF No. 1-1 at 41.) Kanayama is currently required to surrender on March 2, 2026, for extradition to Japan.

On December 29, 2025, Kanayama applied for asylum and relief under the Convention Against Torture ("CAT"), alleging that the Japanese government has attempted to imprison him due to his political opinions and religious and ethnic background. (Pet. ¶ 30.)

Kanayama filed a second petition for a writ of habeas corpus (Pet.), as well as an emergency motion to stay his extradition (ECF No. 2 ("Stay Mot.")), with this Court on February 19, 2026. The Government filed its response to Kanayama's emergency motion to stay on

February 24, 2026 (ECF No. 10 (“Opp.”)), and the Court held an in-person conference with the parties on February 25, 2026.

II. Legal Standard

When evaluating a motion to stay extradition, the Court considers four factors: “(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 (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quotation marks omitted). Of these factors, “[t]he first two . . . are the most critical.” *Id.* When the Government is an opposing party, the third and fourth factors merge. *Id.* at 435.

III. Discussion

A. Likelihood of Success on the Merits

1. Habeas Jurisdiction

“The statutes governing extradition create a multi-step procedure that divides responsibility for extradition between the Secretary of State and the courts.” *Kapoor v. DeMarco*, 132 F.4th 595, 599 (2d Cir. 2025), *cert. denied*, 146 S. Ct. 325 (2025). After a district court issues an order certifying extradition, as Judge Ramos did on January 26, 2023, “the Secretary of State must then decide whether to order the person extradited.” *Id.* at 601. By regulation, “[i]n each case where allegations relating to torture are made or the issue is otherwise brought to the [State] Department’s attention, appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant.” 22 C.F.R. § 95.3(a). Moreover, when determining whether an individual should be extradited, the Secretary of State (the “Secretary”) “considers the question of whether a person facing extradition from the U.S. is more likely than not to be

tortured in the State requesting extradition.” *Id.* § 95.2(b). These regulatory requirements, first codified at Section 2242 of the Foreign Affairs Reform and Restructuring Act (“FARRA”), implement the United States’ treaty obligations under CAT, which provides, in turn, that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” CAT, art. III, Dec. 10, 1984, 1465 U.N.T.S. 85 (1984).

Kanayama asserts that the State Department failed to meet its statutory obligations under Section 2242 of FARRA by neglecting to determine on the record whether Kanayama “is more likely than not to be tortured” upon extradition to Japan. (Pet. ¶ 33; Stay Mot. at 3-4.) The generalized language of the State Department’s letter authorizing extradition, Kanayama argues, makes no mention of the possibility of torture at all; nor does it consider “the pattern of abusive treatment of detainees in the Japanese prison system” or “the Japanese government’s evidence of animus against Petitioner.” (Pet. ¶ 38.) As a factual matter, however, the Government offered evidence—and Kanayama conceded at the conference before the Court—that Kanayama never argued in his submission to the State Department that he would be subject to torture under CAT if he were extradited to Japan. (*See* ECF No. 10-3.) The Court is also not persuaded by Kanayama’s contention that the State Department is required to consider the risk of torture in every extradition case, regardless of whether the issue is raised. To the contrary, the regulations suggest that State Department officials must evaluate materials about an extraditee’s risk of torture only in cases “where allegations relating to torture are made or the issue is otherwise brought to the Department’s attention.” 22 C.F.R. § 95.3(a). It is thus difficult to see how Kanayama can fault the State Department for failing to consider arguments that he did not explicitly surface in the first place.

The Court is also not persuaded, as a legal matter, that it has jurisdiction to adjudicate Kanayama's habeas claims. As Kanayama acknowledges, the Second Circuit recently held that 8 U.S.C. § 1252(a)(4), enacted through the REAL ID Act of 2005, "bars courts from exercising habeas jurisdiction over CAT claims raised by individuals facing extradition." *Kapoor*, 132 F.4th at 614. That statutory provision reads:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

8 U.S.C. § 1252(a)(4). Because Kanayama is pursuing a CAT claim by means of a habeas petition, *Kapoor* appears to squarely foreclose the Court's jurisdiction to hear this case.

Kanayama argues that his case is distinguishable because, unlike in *Kapoor*, where the petitioner took issue with the *substance* of the State Department's finding that she was unlikely to be tortured, here the State Department made no determination as to risk of torture at all. (Pet. ¶ 41.) As noted above, it is unlikely that any failure by the State Department to consider or address Kanayama's claims of torture under CAT could amount to a procedural error where Kanayama never presented those claims to the State Department in the first place. But in any event, the language of 8 U.S.C. § 1252(a)(4) is also not so circumscribed. It strips district courts of habeas jurisdiction over "*any* cause or claim" under CAT, rather than particular decisions or determinations. 8 U.S.C. § 1252(a)(4) (emphasis added). A plain reading of this language suggests that it encompasses "cause[s] or claim[s]" arguing the very thing that Kayanama presses here—namely, that the State Department erred by making no finding about whether Kanayama is likely to face torture upon his extradition.

Kanayama urges the Court to follow the Ninth Circuit’s decision in *Trinidad y Garcia v. Thomas*, which held that district courts have habeas jurisdiction to review claims of the kind that Kanayama presses here. 683 F.3d 952, 956-57 (9th Cir. 2012). (Pet. ¶ 39; Stay Mot. at 3.) But the Second Circuit firmly rejected *Trinidad y Garcia* in *Kapoor*. See 132 F.4th at 609-10 (“[W]e are unpersuaded by the Ninth Circuit’s interpretation of the REAL ID Act. We read the plain language of Section 1242(a)(4) to unequivocally bar any habeas review of CAT claims in extradition proceedings, and thus we (like the D.C. and Fourth Circuits) part ways with our sister Circuit.”). Given this Court’s duty to follow the dictates of the Second Circuit, it appears clear that jurisdiction is lacking.

Finally, Kanayama claims that “[t]he State Department’s failure to make the necessary determination is an independent violation of FARRA” and therefore does not qualify as a “cause or claim under the United Nations Convention Against Torture” under 8 U.S.C. § 1252(a)(4). (Pet. ¶ 43.) The Second Circuit, however, expressly declined to address whether, absent Congress’s bar of federal habeas review of extradition-based CAT claims, “an extraditee could nonetheless bring a CAT claim under FARRA.” *Kapoor*, 132 F.4th at 610 n.14. The court’s reasoning thus necessarily construed Section 1252(a)(4)’s jurisdictional bar as encompassing FARRA claims. Nor is it clear as a matter of law whether any daylight exists between FARRA and CAT for the purposes of Section 1252(a)(4), as FARRA simply codifies the United States’ existing treaty obligations under CAT. See *id.* at 601-02. Rejecting a similar argument, the D.C. Circuit held in *Omar v. McHugh* that “a claim under [FARRA] is a claim under the Convention Against Torture and is barred by the REAL ID Act.” 646 F.3d 13, 18 n.2 (D.C. Cir. 2013) (Kavanaugh, J.). Absent any case law or other authority suggesting that FARRA confers a substantive right on extraditees separate and apart from CAT for the purpose of federal habeas

jurisdiction, the Court cannot conclude that Kanayama has demonstrated a likelihood of success on this issue. *See Nken*, 556 U.S. at 434 (demonstrating a likelihood of success on the merits requires “more than a mere possibility of relief” (cleaned up)).

Because habeas jurisdiction over Kanayama’s CAT claim is barred by 8 U.S.C. § 1252(a)(4) under *Kapoor*, Kanayama is unlikely to succeed on that claim.

2. Kanayama’s Pending Asylum Application

In the alternative, Kanayama argues that he cannot be extradited while his asylum application remains pending because his extradition “would vitiate his right to adjudication of the asylum petition” under 8 U.S.C. § 1158(a). (Pet. ¶ 47; Stay Mot. at 4.) But Kanayama cites no case law indicating that a petitioner has an absolute right to remain in the United States while his asylum application is adjudicated. And while Section 1158(a) states that individuals physically present in the country “may *apply* for asylum,” 8 U.S.C. § 1158(a)(1) (emphasis added), neither that language nor the regulations outlining asylum procedures suggest that, in situations where a petitioner is to be extradited, he may delay those proceedings simply by filing an application for asylum.

Additionally, as the Government points out, other circuits have held that immigration proceedings have no collateral or preclusive effect on extradition proceedings. *See, e.g., Castaneda-Castillo v. Holder*, 638 F.3d 354, 360 (1st Cir. 2011) (“[A]sylum and extradition proceedings are separate and distinct, in the sense that the resolution of even a common issue in one proceeding is not binding in the other.” (quotation marks omitted)); *Aguasvivas v. Pompeo*, 984 F.3d 1047, 1053 (1st Cir. 2021) (holding that the BIA’s finding that the petitioner was likely to face torture in his home country did not collaterally estop the Secretary of State from making a contrary determination for the purposes of extradition proceedings); *see also Kapoor*, 132 F.4th

at 599 n.2 (“The extradition process should not be confused with the immigration removal process.”).

In light of this case law, as well as Kanayama’s failure to marshal authorities in support of his position, Kanayama has not demonstrated a likelihood of success on the merits of this claim.

B. Irreparable Injury

Kanayama contends that he will suffer irreparable harm absent a stay because “extradition will expose [him] to years of incarceration in Japan and lead to the lapse of his Legal Permanent Resident status.” (Stay Mot. at 5.) There is little doubt that denial of a stay would impose a serious burden on Kanayama, given the imminence of his extradition and the likely difficulty of undoing such a removal. *Cf. Nken*, 556 U.S. at 435 (stating that removal in the immigration context is “not categorically irreparable” since petitioners who are removed and later “prevail can be afforded effective relief by facilitation of their return”). Kanayama’s extradition, however, does not preordain a guilty verdict: It merely allows Japan to begin the process of adjudicating Kanayama’s guilt or innocence. Moreover, other courts have denied a stay, even assuming the existence of irreparable harm arising from extradition, where the petitioner has not demonstrated a likelihood of success on the merits of his claims. *See, e.g., Moshir v. Salina*, No. 17-CV-55, 2018 WL 1940259, at *2 (W.D.N.Y. Apr. 25, 2018) (“Even assuming that extradition pending appeal of the Court’s denial of habeas corpus relief would constitute irreparable harm, a stay of extradition pending appeal is unwarranted because Petitioner has not demonstrated a likelihood of success on the merits of his appeal.”); *Quintanilla v. United States*, 582 Fed. Appx. 412, 414 (5th Cir. 2014) (“Although we assume that extradition while an appeal of the denial of habeas corpus is pending would constitute irreparable harm, a stay is not warranted because [the petitioner] has not demonstrated a likelihood of success on the

merits of her appeal.”); *Demjanjuk v. Meese*, 784 F.2d 1114, 1118 (D.C. Cir. 1986) (“While the imminent extradition of petitioner to Israel may qualify as a threat of irreparable harm, petitioner, as shown above, fails to demonstrate a likelihood of success on the merits.”).

The same result obtains here. Although Kanayama has arguably shown irreparable harm absent a stay, he has not demonstrated a likelihood of success on the merits of any of his claims. This factor, without more, therefore does not warrant the imposition of a stay.

C. Remaining Factors

The two remaining factors—whether issuance of the stay will substantially injure the other parties interested in the proceeding and where the public interest lies—weigh in favor of denying the stay. This case has wended its way through all three levels of the federal court system, sometimes multiple times, for nearly a decade. It has received ample and thoughtful consideration from several judges. Staying Kanayama’s extradition at this juncture, on the eve of his long-pending removal to Japan, would certainly prejudice the Government. This is especially so given the United States’ “strong interest in having extradition requests submitted by our treaty partners . . . resolved without undue delay.” (Opp. at 21.)

Accordingly, the Court concludes that the remaining *Nken* factors counsel against issuing a stay.

IV. Conclusion

For the foregoing reasons, Kanayama’s emergency motion to stay his extradition to Japan is DENIED.

The Clerk of Court is directed to close the motion at Docket Number 2.

SO ORDERED.

Dated: February 26, 2026
New York, New York



J. PAUL OETKEN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MASAHIDE KANAYAMA,
Petitioner,

-v-

SCOTT KOWAL,
Respondent.

26-CV-1402 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

Petitioner Masahide Kanayama moves for a stay of extradition pending interlocutory appeal to the Second Circuit of this Court's prior opinion and order denying Kayanama's emergency motion to stay extradition. (ECF No. 13.) For the reasons stated in the Court's opinion at Docket Number 11, Kanayama's motion for a stay of extradition pending interlocutory appeal is DENIED.

The Clerk of Court is directed to close the motion at Docket Number 13.

SO ORDERED.

Dated: February 27, 2026
New York, New York


J. PAUL OETKEN
United States District Judge

DECLARATION OF TOM HEINEMANN

I, Tom Heinemann, do hereby state as follows:

1. I am an Attorney-Adviser in the Office of the Legal Adviser, Department of State, Washington, D.C. This office has responsibility for extradition requests for the Department of State, and I am charged with the extradition case of Dr. Masahide Kanayama. I make the following statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. As a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention"), the United States has an obligation not to extradite a person to a country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pursuant to the implementing regulations found at 22 C.F.R. part 95, this obligation involves consideration of "whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition when appropriate" in making the determination whether to extradite a fugitive to a foreign country.

3. In making surrender decisions in extradition cases, the Department takes seriously and carefully evaluates all humanitarian considerations, including both those that make a claim under the Convention and those that do not come within the scope of the Convention, based on the information presented or otherwise available to it.

4. Dr. Kanayama filed a submission with the Department of State on June 17, 2024. This submission made a number of arguments against extradition but did not claim that his extradition to Japan would violate the Convention, nor any statute or regulation implementing the Convention. Dr. Kanayama has not made any further submissions to the Department since June

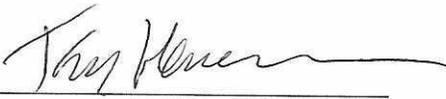
17, 2024, including since he filed his application for protection under the Convention with USCIS on December 29, 2025.

5. The Department 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.

6. I confirm that the decision to surrender Dr. Kanayama is fully consistent with the United States' obligations under the Convention and its implementing statute and regulations.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Santa Fe, New Mexico on February 24, 2026.

A handwritten signature in cursive script, appearing to read "Tom Heinemann", is written above a horizontal line.

Tom Heinemann

Attorney-Adviser

Law Enforcement and Intelligence

[Hyuk Kee Yoo v. United States](#)

United States District Court for the Southern District of New York

November 16, 2021, Decided; November 16, 2021, Filed

No. 21-CV-6184 (CS)

Reporter

2021 U.S. Dist. LEXIS 222067 *

HYUK KEE YOO, a/k/a "KEITH YOO," Petitioner, - against-UNITED STATES OF AMERICA, Respondent.

Prior History: [Hyuk Kee Yoo v. United States, 2021 U.S. Dist. LEXIS 210586 \(S.D.N.Y., Nov. 1, 2021\)](#)

Counsel: [*1] For Petitioner: Paul Shechtman, Bracewell LLP, New York, New York, Shawn Naunton, Zuckerman Spaeder LLP, New York, New York,.

For Respondent: Derek Wikstrom, Assistant United States Attorney, Southern District of New York, White Plains, New York.

Judges: CATHY SEIBEL, United States District Judge.

Opinion by: CATHY SEIBEL

Opinion

OPINION & ORDER

Seibel, J.

Before the Court is Petitioner's motion to stay extradition pending his appeal of this Court's November 1, 2021 Order denying his petition for a writ of *habeas corpus*. For the reasons stated below, the motion is GRANTED.

I. BACKGROUND

The Court sets forth here only the factual and procedural background relevant to this motion.

On May 8, 2014, after Petitioner was charged with seven counts of embezzlement, a judge of the Incheon District Court in the Republic of Korea ("Korea") issued a warrant for his arrest. (ECF No. 15 ("Nov. 1 Order") at 2.) On May 28, 2014, Korea sent the first of a series of diplomatic notes to the United States Government seeking Petitioner's extradition to Korea under the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Korea, K.-U.S., June 9, 1998, T.I.A.S. No. 12,962 (the "Treaty"). [*2] (*Id.*) It was not until February 27, 2020, that the Government filed a complaint commencing extradition proceedings. (*Id.*)

On July 2, 2021, Magistrate Judge Judith C. McCarthy issued an Order certifying Petitioner as extraditable to Korea. [In re Extradition of Hyuk Kee Yoo, No. 20-MJ-2252, 2021 U.S. Dist. LEXIS 124402, 2021 WL 2784836 \(S.D.N.Y. July 2, 2021\)](#). Petitioner subsequently sought a writ of *habeas corpus*, (ECF No. 1), and on November 1, 2021, this Court denied his petition, (Nov. 1 Order; ECF No. 16). On the same day, Petitioner filed a Notice of Appeal. (ECF No. 17.) On November 10, 2021, Petitioner moved for an Order staying his extradition to Korea pending his appeal. (ECF No. 18.)

II. LEGAL STANDARD

Courts consider four factors when deciding whether to issue a stay pending appeal:

- (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 (4) where the public interest lies.

In re World Trade Ctr. Disaster Site Litig., 503 F.3d 167, 170 (2d Cir. 2007) (cleaned up). The likelihood of success on the merits and irreparable injury are the most critical factors, *Nken v. Holder*, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009), and "the degree to which a factor must be present varies with the strength of the other factors, [*3] meaning that more of one factor excuses less of the other," *In re World Trade Ctr.*, 503 F.3d at 170 (cleaned up). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433-34.

III. DISCUSSION

Petitioner argues that the issues of who (between the judiciary and the executive branches) may or must consider the timeliness of charges under the Treaty, and how the statute of limitations should be analyzed, are "serious and difficult questions of law in an area where the law is somewhat unclear." (ECF No. 19 ("Pet. Br.") at 3) (quoting *In re Extradition of Hilton*, No. 13-MJ-7043, 2013 U.S. Dist. LEXIS 89692, 2013 WL 3282864, at *2 (D. Mass. June 26, 2013)). The Government responds that the handful of courts to address the first issue have uniformly ruled, as this Court did, that the statute-of-limitations question is discretionary under the Treaty and thus committed to the executive branch. (ECF No. 21 ("Gov. Opp.") at 2.) While the Court naturally believes that its resolution of this issue is correct, in this context Petitioner need only show "a substantial possibility, although less than a likelihood, of success" - that is, "something less than 50 percent." *Mohammed v. Reno*, 309 F.3d 95, 101-02 (2d Cir. 2002) (cleaned up). Because Petitioner's appeal raises issues that the Second Circuit has not yet considered, upon which there are non-frivolous [*4] grounds for disagreement, in the circumstances this factor weighs in favor of a stay.

The Government concedes that the second factor, irreparable harm, weighs in Petitioner's favor because absent a stay Petitioner would likely be removed from the United States before his appeal is decided. (Gov. Opp. at 2.) Removal from the United States would unquestionably cause irreparable injury by mooted Petitioner's appeal before it can be heard, and this factor weighs strongly in favor of a stay. See *Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986) ("The possibility of irreparable injury to [Petitioner] if we deny his motion is evident: his appeal will become moot and will be dismissed since the extradition will have been carried out.").

Because the Government is the opposing party, the third and fourth factors (harm to the opposing party and the public interest) merge. *Nken*, 556 U.S. at 435. In the context of extradition proceedings these factors often weigh in the Government's favor. See *id.* at 436 ("There is always a public interest in prompt execution of removal orders"); *Artukovic*, 784 F.2d at 1356 (compliance with valid extradition applications advances the public interest by strengthening international relations). But here, the Korean government made its first request for extradition [*5] on May 28, 2014, and the United States did not commence the extradition case until February 27, 2020, after a series of supplemental submissions. (See Nov. 1 Order at 2.) Given this delay, the public interest in prompt execution of removal orders and international relations is largely neutralized, and in any case is not so urgent that it should outweigh Petitioner's interest in having a "full [and] fair opportunity to litigate his claim." *Noriega v. Pastrana*, No. 07-CV-22816, 2008 U.S. Dist. LEXIS 7203, 2008 WL 331394, at *3 (S.D. Fla. Jan. 31, 2008).¹

IV. CONCLUSION

¹ Petitioner has committed to litigating his appeal as expeditiously as possible. (See Pet. Br. at 2; Gov. Opp. at 2 n.1.)

For the foregoing reasons, Petitioner's motion for a stay of extradition pending his appeal of this Court's November 1, 2021 Order denying his petition for a writ of *habeas corpus* is GRANTED. The Clerk of Court is respectfully directed to terminate the pending motion, (ECF No. 18).

SO ORDERED.

Dated: November 16, 2021

White Plains, New York

/s/ Cathy Seibel

CATHY SEIBEL, U.S.D.J.

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**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

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 2nd day of March, two thousand twenty-six.

Before: Sarah A. L. Merriam,
Circuit Judge.

Masahide Kanayama,

Petitioner - Appellant,

v.

Scott Kowal, Chief of U.S. Pre-Trial Services
SDNY,

Respondent - Appellee.

ORDER

Docket No. 26-455

Appellant moves for a stay of extradition and for bail pending appeal.

IT IS HEREBY ORDERED that, to the extent that Appellant requests an administrative stay of extradition and his immediate release, the motions are DENIED. The motions are REFERRED to a three-Judge motions panel.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit