No. 24A1219
CAPITAL CASE

In the

SUPREME COURT OF THE UNITED STATES

JOHN FITZGERALD HANSON, *Petitioner*,

-vs-

STATE OF OKLAHOMA, *Respondent.*

To the Honorable Neil Gorsuch,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the United States Court of Appeals for the Tenth Circuit

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RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION PENDING FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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Execution Scheduled for June 12th, 2025 at 10:00 a.m. CT

INTRODUCTION

On August 31, 1999, Applicant John Fitzgerald Hanson ("Petitioner") murdered Mary Bowles and Jerald Thurman with his accomplice Victor Miller ("Miller"). *Hanson v. State*, 206 P.3d 1020 (Okla. Crim. App. 2009). An Oklahoma jury convicted Petitioner of two counts of first-degree murder[1] and sentenced him to death (for Ms. Bowles's murder) in 2001. *Id.* After a resentencing trial that again resulted in an Oklahoma jury imposing a death sentence, Petitioner exhausted all state and federal appeals and is now scheduled for execution on June 12, 2025, over a quarter century after murdering Ms. Bowles and Mr. Thurman.

Now, at the last minute, Petitioner seeks a stay of his execution pending the filing and disposition in this Court of a petition for certiorari review of the decision by the Oklahoma Court of Criminal Appeals ("OCCA") finding his claimed *Brady*[2] and *Napue*[3] violations procedurally barred pursuant to Oklahoma law. Petitioner's application for a stay should be denied.

STATEMENT OF THE FACTS

The Oklahoma Court of Criminal Appeals ("OCCA") found the following facts on direct appeal:

> [Petitioner], and Miller, kidnapped [Ms. Bowles] from the Promenade Mall in Tulsa in the late afternoon of August

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[1] Petitioner was convicted of First-Degree Felony Murder for Mr. Thurman's Murder, and First-Degree Malice Aforethought Murder for Ms. Bowles's death.

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

[3] *Napue v. Illinois*, 360 U.S. 264 (1959).

31, 1999. They drove her in her car to an isolated area around a dirt pit near Owasso[, Oklahoma]. [Mr. Thurman], the pit's owner, was there loading a dump truck for a delivery. Thurman was talking to his nephew on a cell phone when he saw the car circling through the pit. Moments later, with [Petitioner] and [Ms. Bowles] still in the car, Miller shot Thurman four times with a .38 revolver. Miller moved the car a short distance from the shooting, stopped, and told [Petitioner] he knew what he had to do. Thereupon, [Petitioner] took Bowles out of the car and, as she lay in a roadside ditch, shot her multiple times with his 9 mm semiautomatic pistol. The two men covered her body with branches and fled. Neighbors across the street from the dirt pit heard gunshots and saw an unfamiliar car leaving the pit area. Investigating, they found [Mr.] Thurman lying near his dump truck at the roadway entrance to the pit. He was taken to the hospital, but died two weeks later without regaining consciousness. [Ms.] Bowles's decomposed body was found in the roadside ditch on September 7.

[Petitioner] and Miller abandoned [Ms.] Bowles's car at the Oasis motel a few miles away. The car was not discovered there until September 9. Police lifted [Petitioner]'s and Miller's fingerprints from the seatbelt buckles and discovered that [Petitioner] had rented a room there shortly after the murders. The motel clerk did not see [Petitioner] or his companion after [Petitioner] filled out the registration card on August 31st.

On September 3, 1999, [Petitioner] and Miller robbed the Dreamland Video Store. [Petitioner] tied up a customer in a backroom, put a gun to his head and took his wallet.[5] On September 8, the pair robbed the Tulsa Federal Employee's Credit Union.

> [5] Prior to the murders, [Petitioner] and Miller robbed the Apache Liquor Store, taking money and the .38 revolver Miller later used to kill Thurman. During the robbery, they ordered the clerk and a customer to go to a bathroom, but both women refused. [Petitioner] and Miller threatened to kill the women and fled.

> The crime spree came to an end when, on September 9, Miller's wife made an anonymous phone call telling police that [Petitioner] and Miller, the credit union robbers, were at the Muskogee EconoLodge. Law enforcement officials from various jurisdictions coordinated this information and arrested Miller and [Petitioner] there. Miller came out immediately; [Petitioner] stayed in the room until driven out by tear gas. While alone in the room [Petitioner] hid the murder weapons in the toilet tank.
>
> [Petitioner]'s former co-worker, Rashad Barnes, testified that [Petitioner] had stopped by his home a few days before that arrest in Muskogee and confessed that he and Miller "carjacked" an old lady and that he ([Petitioner]) had killed her.[6]
>
> [6] Barnes died before [Petitioner]'s resentencing trial and his testimony from [Petitioner]'s original trial was read into the record.

Hanson, 206 P.3d at 1025 (paragraph markers omitted).

STATEMENT OF THE CASE

Petitioner was convicted of the murders of Ms. Bowles (for which he was sentenced to death) and Mr. Thurman (for which he was sentenced to life without the possibility of parole) in 2001. *Hanson v. State*, 72 P.3d 40 (Okla. Crim. App. 2003); *see also Hanson v. State*, No. PCD-2002-228 (Okl. Cr. June 17, 2003) (unpublished). On direct appeal, the OCCA affirmed Petitioner's convictions and his sentence for Mr. Thurman's murder but reversed his death sentence. *Id.* Petitioner was again sentenced to death at the end of a resentencing trial in 2006. *Hanson*, 206 P.3d 1020. The OCCA affirmed his death sentence and this Court denied his petition for a writ of certiorari. *Id.*, *cert. denied*, *Hanson v. Oklahoma*, 558 U.S. 1081 (2009).

Over the course of the next eleven years, Petitioner repeatedly—and unsuccessfully—challenged his convictions and sentences. *See Hanson v. State*, No. PCD-2006-614 (Okl. Cr. June 2, 2009) (unpublished); *Hanson v. State*, No. PCD-2011-58 (Okl. Cr. Mar. 22, 2011) (unpublished); *Hanson v. Sherrod*, No. 10-CV-0113-CVE-TLW, 2013 WL 3307111 (N.D. Okla. July 1, 2013) (unpublished), *aff'd, Hanson v. Sherrod*, 797 F.3d 810 (10th Cir. 2015), *cert. denied, Hanson v. Sherrod*, 578 U.S. 979 (2016); *Hanson v. State*, No. PCD-2020-611 (Okl. Cr. Sept. 9, 2021) (unpublished), *cert. denied, Hanson v. Oklahoma*, 142 S. Ct. 1137 (2022).

As of May 16, 2016, Hanson had exhausted all challenges—aside from successive post-conviction applications—to his convictions and sentences. However, in light of ongoing investigation and litigation regarding the State's lethal injection protocol, and the State's inability (at the time) to locate execution drugs, it was not yet appropriate to set an execution date. But on July 1, 2022, after the U.S. District Court for the Western District of Oklahoma issued an order affirming the constitutionality of Oklahoma's execution protocol, *Glossip v. Chandler*, No. CIV-2014-665-F, 2022 WL 1997194 (W.D. Okla. June 6, 2022) (unpublished), the OCCA set Petitioner's execution for December 15, 2022.

At that time, Petitioner was incarcerated in a federal prison for numerous federal charges for which he received sentences of life plus 984 months imprisonment in the U.S. District Court for the Northern District of Oklahoma, Case No. 99-CR-125-002-C. In 2022, the federal government refused the State's request to transfer Petitioner to state custody for his clemency hearing and execution. *See Oklahoma v.*

Tellez, No. 7:22-CV-108-O, 2022 WL 17686579, at *1 (N.D. Tex. Dec. 13, 2022) (unpublished).

On January 23, 2025, the State again requested that Petitioner be transferred to Oklahoma for execution of his death sentence. Petitioner unsuccessfully attempted to prevent his transfer. *See Hanson v. Drummond*, No. 25-CV-102, 2025 WL 636319 (W.D. La. 2025) (unpublished). He arrived at Oklahoma State Penitentiary on March 1, 2025. On April 1, 2025, the OCCA set Petitioner's execution for June 12, 2025. On May 7, 2025, the Oklahoma Pardon and Parole Board voted 3-2 to deny clemency.

In the meantime, on March 14, 2025, Petitioner filed a 28 U.S.C. § 2241 habeas petition in the U.S. District Court for the Eastern District of Oklahoma. He waited several more weeks, until April 28, 2025, to file for a stay of execution. This action was dismissed on May 27, 2025. *Hanson v. Quick*, No. CIV-25-81-RAW-JAR, 2025 WL 1505427, at *3 (E.D. Okla. May 27, 2025) (unpublished). Petitioner then unsuccessfully applied for a Certificate of Appealability with the Tenth Circuit Court of Appeals. *Hanson v. Quick*, No. 25-7044, *Order Denying Certificate of Appealability* (10th Cir. June 6, 2025).

As mentioned *supra*, the Pardon and Parole Board denied clemency on May 7 by a 3-2 vote. One of the members who voted against clemency is Sean Malloy. Mr. Malloy served as an Assistant District Attorney in Tulsa County at the time of Petitioner's resentencing trial, but he was not involved in any way with Petitioner's case. Petitioner has nonetheless accused Mr. Malloy of bias and filed a lawsuit in Oklahoma County District Court Case No. CV-2025-1266 seeking to enjoin his

execution and receive another clemency hearing. On June 9, 2025, the Oklahoma County District Judge entered a temporary stay of execution pending a decision on Petitioner's claims. The State's petition for writ of prohibition, asking the OCCA to vacate the stay of execution, was granted on June 11, 2025. There is no longer a stay in effect.

In the midst of the aforementioned lawsuits, Petitioner filed, on June 6, a fifth application for post-conviction relief. As mentioned in the factual summary, Rashad Barnes was a friend to whom Petitioner confessed that he killed "an old lady." Mr. Barnes died after testifying at Petitioner's trial, before his resentencing trial. Pet. App'x B, at 11a, 22a-23a.

The Office of the Federal Public Defender for the Western District of Oklahoma first became involved in Petitioner's case in 2009. Petitioner filed his habeas petition on February 24, 2010. Petitioner's first execution date was December 15, 2022. In advance of that date, Petitioner presented the Pardon and Parole Board with a brief in support of his request for clemency.

Petitioner's case was, at a minimum, investigated before trial, resentencing, his habeas petition, and his first-scheduled clemency hearing. Nonetheless, on April 9, 2025, less than one month before his clemency hearing, and purportedly "in the course of the routine investigation undertaken prior to capital clemency proceedings and a scheduled execution," Pet. App'x B, at 33a., Petitioner searched the arrest history of Mr. Barnes's friend Michael Cole. Petitioner's post-conviction application did not explain why this search was made, whether a similar search had ever been

done in the past, or, if not, why a reasonably diligent investigation would not have included this search.

On May 30, 2025, two weeks before his scheduled execution and well after his clemency hearing, Petitioner procured an affidavit from Mr. Cole in which Mr. Cole claimed that, at Mr. Barnes's request, the Tulsa County District Attorney declined to file charges following Mr. Cole's arrest for possessing drugs on March 26, 2002—**more than one year *after* Mr. Barnes testified against Petitioner**. Pet. App'x C, at 218a. According to Mr. Cole, this agreement was in exchange for Mr. Barnes's testimony against Petitioner. Pet. App'x C, at 218a.

Petitioner relied on one other affidavit, from someone named Rodney Worley who claims to be Mr. Barnes's father. Pet. App'x C, at 210a-211a. Mr. Worley attested that, in exchange for Mr. Barnes's testimony against Petitioner, the District Attorney *dismissed a firearm* charge that was pending against Mr. Cole. Pet. App'x C, at 211a. The firearm charge was dismissed on March 29, 2000. Pet. App'x C, at 216a. Petitioner was tried in May of 2001.

Petitioner claimed this alleged agreement (for the drug charge, or the firearm charge, depending on which witness one believes) was not disclosed in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and that Mr. Barnes testified falsely when he failed to disclose the alleged agreement, which false testimony the District Attorney failed to correct in violation of *Napue v. Illinois*, 360 U.S. 264 (1959). Pet. App'x B, at 24a-38a. Petitioner also sought relief based on the accumulation of these alleged errors along with others he has raised in the past. Pet. App'x B, at 38a-40a.

The OCCA declined to consider Petitioner's claims, applying an adequate and independent state rule of procedural default. Pet. App'x A, at 1a-9a.

ARGUMENT

This Court will not grant a stay pending the filing and disposition of a certiorari petition unless the Petitioner establishes:

> (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the `applicant and to the respondent.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (*per curiam*); *see also Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers); *Evans v. Alabama*, 461 U.S. 1301, 1302 (1983) (Powell, J., in chambers); *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

"A stay is not a matter of right, even if irreparable injury might otherwise result," and is "instead an exercise of judicial discretion," "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation marks omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34. Moreover, in the execution context, the decision whether to grant a stay "must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also Murphy v. Collier*, 139 S. Ct. 1475, 1480 (2019) (Alito, J., dissenting). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Accordingly,

last-minute execution stays are especially disfavored. *See Dunn v. Price*, 587 U.S. 929, 929 (2019); *Bucklew v. Precythe*, 587 U.S. 119, 149-50 (2019); *Hill*, 547 U.S. at 584.

Here, Petitioner cannot show a reasonable probability that certiorari review will be granted, let alone a significant possibility of reversal, because this Court does not have jurisdiction. Specifically, Petitioner's claims were barred in state court on adequate and independent state law grounds.

PRELIMINARY MATTERS

Before addressing this Court's lack of jurisdiction, Respondent finds it necessary to discuss the dilatory nature of Petitioner's last-minute litigation. Indeed, Respondent respectfully asserts that the spate of last-minute litigation, in addition to his fifth post-conviction application, evince nothing more than an attempt to inundate the State and the courts with abusive litigation to delay Petitioner's lawful execution. *See Ramirez v. Collier*, 595 U.S. 411, 458 (2022) (Thomas, J., dissenting) ("last-minute litigation is but one of several types of abusive and manipulative litigation that death-row inmates employ to delay their executions").

For starters, there is Petitioner's litigation challenging his lawful transfer by the United States from federal custody back to Oklahoma to face his lawful death sentence. After first filing suit to enjoin his transfer, *Hanson*, No. 25-CV-102, at *1, Petitioner delayed two weeks after his transfer to file a 28 U.S.C. § 2241 habeas petition in the U.S. District Court for the Eastern District of Oklahoma. He then waited several more weeks, until April 28, 2025, to file for a stay of execution. In his

Report and Recommendation, the U.S. Magistrate Judge forcefully recommended the denial of both habeas relief and a stay, noting that "Petitioner has not been denied a single protection afforded by our Constitution," "[h]e has been given every process due," and "Petitioner has had his day in court, many days, in fact." *Hanson*, 2025 WL 1508450, at *10.

Second, Petitioner has also initiated last-minute litigation challenging his clemency hearing. On April 4, 2025, the Board scheduled Petitioner's clemency hearing for May 7, 2025. On April 22, 2025, Petitioner asked Board member Sean Malloy to recuse. The basis for the request was two-fold: (1) Mr. Malloy was an Assistant District Attorney in Tulsa County during Petitioner's 2006 resentencing trial in Tulsa County; and (2) Mr. Malloy tried at least one (unrelated) case in front of Judge Carolyn Wall, who presided over Petitioner's resentencing trial.

The request was denied on May 7 when Board Chairman Miller announced the absence of evidence that "Mr. Malloy has any personal history or connection with Petitioner's case" or that "Mr. Malloy's participation would be affected by any bias, prejudice or personal interest." Chairman Miller found Petitioner's request to be based on "such tenuous grounds [that recusal] would create an untenable precedent for this Board." At the conclusion of the hearing, the Board voted 3-2 to deny clemency, with Mr. Malloy providing one of the "no" votes.

On May 22, *more than two weeks later*, Petitioner filed a lawsuit against the Board and Department of Corrections ("DOC") in Oklahoma County Case Number CV-2025-1266 seeking to enjoin his execution. The undersigned's office only learned

of the lawsuit from a press release issued by Petitioner's counsel and then immediately notified the Board and DOC via email. DOC was served notice of the lawsuit on May 27 or May 28 (there is a discrepancy on the summons). The Board was served notice on May 29.

On June 6, Oklahoma County District Court Judge Richard Ogden held a conference with the parties and informed them that he had not received notice of the lawsuit until June 5 because Petitioner failed to deliver copies to his office as required by local court rules. Judge Ogden set the matter for hearing on Monday, June 9. When Judge Ogden entered a temporary stay of execution pending resolution of that lawsuit, Respondent was forced to file a Petition for Writ of Prohibition with the OCCA seeking to vacate that stay. That writ was granted on June 11.

The State brings this information to this Court's attention because it further demonstrates Petitioner's dilatory approach in recent litigation. Petitioner's counsel could have, but did not, email a courtesy copy to the Defendants so that they could begin preparing a response before formal service. Courtesy copies are common practice between the State and the Western District Federal Public Defender's Office. The frivolity of Petitioner's claim of bias adds to the suggestion of dilatoriness, as does his failure to comply with an Oklahoma County District Court rule that required him to have his motion set for a hearing, *see* Rule 11(A), *Official Court Rules of the Seventh Judicial and Twenty-Sixth Administrative Districts*, as well as his inexplicable delay in service on the Defendants. Finally, the utter lack of prejudice shown by Petitioner—he would still have failed to secure a majority vote in favor of

clemency even if Mr. Malloy had not participated—suggests that his lawsuit is for no other purpose than delay. In any event, for the reasons discussed below, Petitioner is not entitled to a stay because this Court does not have jurisdiction to decide his claims.

I. Petitioner fails to meet his burden of showing he is entitled to a stay of Execution.

Because this Court does not have jurisdiction, Petitioner has not shown a reasonable probability that four members of this Court will be of the opinion that the issues are sufficiently meritorious to warrant a grant of certiorari, let alone a significant possibility of reversal of the Tenth Circuit's decision. *Hollingsworth*, 558 U.S. at 190.

A. A stay is unwarranted because this Court lacks jurisdiction to decide petitioner's case.

Petitioner seeks a stay of execution so that this Court may consider the OCCA's denial of his *Brady* and *Napue* claims. But a stay is unwarranted because this Court has no jurisdiction to review his claims that the OCCA barred on an adequate and independent State law basis.

With limited exception, the OCCA does not consider claims raised in a successive post-conviction application which could have been raised in earlier proceedings. OKLA. STAT. tit. 22, § 1089(D)(8) (the OCCA "may not" grant relief for claims raised in successive post-conviction applications unless: 1) the legal or factual basis therefore was previously unavailable and 2) "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish

by clear and convincing evidence that, but for the alleged error, no reasonable fact finder would have found the applicant guilty of the underlying offense or would have rendered the penalty of death"). The Tenth Circuit has repeatedly found § 1089(D)(8) to be independent (and adequate). *See, e.g., Pavatt v. Carpenter*, 928 F.3d 906, 929-30 (2019) (en banc); *Cuesta-Rodriguez v. Carpenter*, 916 F.3d 885, 900-03 (10th Cir. 2019); *Simpson v. Carpenter*, 912 F.3d 542, 570-71 (10th Cir. 2018); *Fairchild v. Trammell*, 784 F.3d 702, 719 (10th Cir. 2015); *Williams v. Trammell*, 782 F.3d 1184, 1212-14 (10th Cir. 2015). It is also a matter that is long-settled. *See, e.g., Medlock v. Ward*, 200 F.3d 1314, 1323 (10th Cir. 2000); *Clayton v. Gibson*, 199 F.3d 1162, 1174 (10th Cir. 1999); *Smallwood v. Gibson*, 191 F.3d 1257, 1268-69 (10th Cir. 1999).

(1) The OCCA's decision was independent of federal law.

The question of "independence" is one for this Court to determine. *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). In *Long*, this Court adopted the following standards for determining independence:

> when . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, [the state law ground is independent so long the court] make[s] clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.

Id. at 1040-41. Thus, a state ground is dependent when "it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law." *Id*. at 1042.

Here, the OCCA adhered to state law, clearly and expressly applying § 1089(D)(8) to Petitioner's claims. Pet. App'x A, at 3a-9a. In doing so, the OCCA considered, and rejected, Petitioner's arguments that the factual bases for his claims could not have been discovered previously. In addressing Petitioner's claims, the OCCA explained that "nothing suggests Mr. Worley or Cole were unknown or missing and could not have been interviewed before now and their claims made the subject of one of Hanson's previous appeals" instead of his fifth post-conviction application filed six days before his execution. Pet. App'x A, at 5a. Further, in a footnote the Court explained that the alleged deal was made roughly a year before Petitioner's trial, "making the factual predicate of this claim available for decades." Pet. App'x A, at 6a n.3. Additionally, in reaching its conclusion that the factual predicate was available decades ago, the OCCA relied entirely on Oklahoma law. Pet. App'x A, at 8a (citing OKLA. STAT. tit. 22, § 1089(D)(8)(b)(1)-(2)).

Petitioner does not challenge the independence of the OCCA's bar, much less mention it in his Application for Stay. Pet. App. for Stay, at 1-10. In the Petition for Certiorari, Petitioner addresses this Court's jurisdiction, but makes no mention of the independence of the OCCA's bar in this case. Petition for Certiorari, at 23. Nevertheless, in so doing he claims that the OCCA's "decision on materiality

standards" does not foreclose this Court's jurisdiction. Pet. Petition for Certiorari, at 23. But as explained further in Respondent's Brief in Opposition, the OCCA did not address materiality. The court only applied state law.

B. The remaining factors weigh against granting a stay.

Further, Petitioner has not shown a likelihood of irreparable harm if he is not granted a stay, nor has he shown that the balance of equities and harms weighs in his favor. *Hollingsworth*, 558 U.S. at 190.

(1) Petitioner fails to show irreparable harm.

Petitioner argues he will be irreparably harmed if a stay is denied simply because he will be executed. Pet. App. for Stay, at 6. But an inmate cannot show irreparable harm simply from the fact he will be executed where he fails to also show that his claims have merit. *See Hill*, 547 U.S. at 584. "[I]n the eyes of the law, [Petitioner] does not come before th[is] [C]ourt as one who is innocent, but on the contrary, as one who has been convicted by due process of law of [a] brutal murder[]." *Herrera v. Collins*, 506 U.S. 390, 399-400 (1993).

For starters, the proffered affidavits—which he also submits to this court—provided entirely contradictory accounts of the alleged *quid pro quo* arrangement Petitioner claimed existed. The first, and perhaps most suspicious contradiction was that Mr. Worley and Mr. Cole contradicted which specific offense Mr. Harris promised to dismiss against Mr. Cole. Mr. Worley claimed Mr. Harris "told Rashad he would **drop** the **gun** charge on Mike Cole if Rashad testified against John Hanson and Victor Miller." Pet. App'x C, at 210a-211a, (emphasis added). But Mr. Cole claimed

that "Rashad . . . called the district attorney, Tim Harris[,] and told him that if (sic) he would testify in John Hanson and Victor Miller's cases **if they did not charge me** with **possession of CDS**. Mr. Harris agreed." Pet. App'x C, at 217a-218a (emphasis added). Further, despite mentioning his August 1999 gun charge, Mr. Cole never mentioned the disposition of that case, nor did he connect it to Mr. Barnes's testimony. Pet. App'x C, at 217a-218a.

More importantly, neither Mr. Worley nor Mr. Cole ever disavowed Mr. Barnes's trial testimony. At trial, Mr. Barnes offered extremely specific and vivid testimony regarding Petitioner's confession, as the OCCA discussed (1 Tr. 1156-65, 1167, 1173, 1175). Mr. Worley and Mr. Cole do not now claim that this confession never happened or that Mr. Barnes was not truthful in his testimony regarding the details of the confession. Pet. App'x C, at 210a-211a, 217a-218a. In fact, Mr. Worley *admits* that Petitioner confessed to Mr. Barnes: "My son Rashad got wrapped up in the case involving the murder of Ms. Bowles and Mr. Thurman **because John told him what happened**." Pet. App'x C, at 210a (emphasis added). Thus, while Petitioner's evidence (if true) calls into question the motive for Mr. Barnes's decision to testify, it does *not* (even by his affiants' accounts) suggest that Mr. Barnes lied in recounting Petitioner's confession. *See, e.g.*, Pet. App'x B, at 26a (referring to the alleged secret deal as simply an "incentive for Barnes' cooperation").

Thus, Petitioner has not shown he will suffer irreparably harm, particularly where he has not presented meritorious claims.

> (*2) A balancing of the equities and harms weighs against Petitioner.*

Moreover, Petitioner fails to show that a balancing of the equities and harms weighs in his favor. This Court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. The loved ones of Ms. Bowles and Mr. Thurman have waited nearly three decades for justice. Further, the interests of the State and the victims' families would certainly be harmed by a stay. Ms. Bowles was an upstanding Oklahoma citizen kidnapped and brutally murdered mere hours after she volunteered in a Neonatal Intensive Care Unit, and Petitioner has evaded justice for this crime for over a quarter century. To grant a stay for such meritless claims is precisely the type of harm federal courts are loathe to impose on the State and the victims' families in death penalty cases. *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) ("For our system of justice to function effectively, litigation in cases such as this . . . must cease when there is no reasonable ground for questioning either the guilt of the defendant or the constitutional sufficiency of the procedures employed to convict him.").

Additionally, a stay is not in the public interest. Petitioner argues the public interest is not served by executing someone "before they have had a full and fair opportunity to avail themselves of legal process." Pet. App. for Stay, at 7. This argument fails because Petitioner's convictions and sentences have been affirmed over decades of judicial review. *See Hill*, 547 U.S. at 584. He has fully availed himself of legal process over the last twenty-four years. Further, to stay Petitioner's lawful execution based on these meritless claims—particularly where neither Mr. Worley

nor Mr. Cole disavows Mr. Barnes's testimony that Petitioner confessed—would certainly be against the public interest. *Hill*, 547 U.S. at 584. The people of Oklahoma and the families of the victims of Petitioner's crimes "deserve better." *Bucklew*, 587 U.S. at 150. As such, Petitioner wholly fails to meet his burden of showing that the balance of the equities weighs in his favor.

Therefore, the remaining stay factors weigh against granting Petitioner a stay.

CONCLUSION

This Court should deny Petitioner's stay application.

Respectfully submitted,

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