No.

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL RAUL SANTIAGO VASQUEZ,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

James L. Hankins, Okla. Bar. Assoc. 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, Oklahoma 73034
Phone: 405.753.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

****CAPITAL CASE****

During the sentencing proceeding before a jury in this Oklahoma capital case, the indigent Petitioner sought funds from the trial court to transport several mitigation witnesses from out of state. The trial court denied this request based upon a district court rule allowing for video-conferencing as "a more reliable, safe and cost-effective way to procure the witnesses' testimony."

Of the sixteen witnesses in mitigation called by the Petitioner, seven testified via video-conference which was replete with technical difficulties such as video/audio lag, audio/video freeze-ups, video out of sync with audio, muted audio, and limited field of view by the witness who could not see the accused; and including one witness who was at his loud workplace and literally had to leave and finish his testimony from his pickup truck in the parking lot.

The questions presented are:

1. Does the Eighth Amendment allow the State to prevent live mitigation testimony in favor of a capital defendant based upon financial reasons alone (this was *not* a COVID case)?

2. If so, does *Lockett v. Ohio*, 438 U.S. 586 (1978) mandate the *meaningful* presentation of mitigation testimony by the defense; and, if so, does video testimony subject to extensive technical difficulties that blunted the impact of the testimony deprive the defendant of his right to meaningfully present mitigation evidence?

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

REASONS FOR GRANTING THE WRIT 13

CONCLUSION 15

APPENDIX:

A. *Vasquez v. State*, 2025 OK CR 1 (filed January 30, 2025).

B. Order denying Rehearing (filed March 26, 2025).

TABLE OF AUTHORITIES

Brewer v. Quarterman,
550 U.S. 286 (2007) 14

Crawford v. Washington,
541 U.S. 36 (2004) 7

Furman v. Georgia,
408 U.S. 238 (1972) 13

Gardner v. Florida,
430 U.S. 349 (1977) 13

Lockett v. Ohio,
438 U.S. 586 (1978) 6, 13

Penry v. Lynaugh,
492 U.S. 302 (1989) 14

Wiggins v. Smith,
539 U.S. 510 (2003) 6

Zant v. Stephens,
462 U.S. 862 (1983) 13

In the

SUPREME COURT OF THE UNITED STATES

DANIEL RAUL SANTIAGO VASQUEZ,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Daniel Raul Santiago Vasquez petitions respectfully for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals.

OPINION BELOW

The Oklahoma Court of Criminal Appeals decided this case by published opinion filed January 30, 2025. *See* attached Appendix "A."

JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered January 30, 2025. Rehearing was denied on March 26, 2025. *See* attached Appendix "B." On June 18, 2025, Justice Gorsuch granted an extension of time to file a Petition on or before July 24, 2025 (No. 24A1253). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment to the United States Constitution provides, in part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

The 8th Amendment to the United States Constitution provides, in part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

On May 14, 2018, the State of Oklahoma filed a felony Information in the district court of McClain County, alleging five criminal counts against Vasquez: 1) Murder in the First Degree; 2) Murder in the First Degree; 3) Conspiracy; 4) Unlawful Removal of Dead Body; and 5) Pattern of Criminal Offenses. O.R. 9.

On August 13, 2018, the State filed a Bill of Particulars alleging that the murder counts carried the aggravating circumstances of: 1) the Defendant knowingly created a great risk of death to more than one person; 2) the murders were especially heinous, atrocious, or cruel; and 3) there exists a probability that the Defendant will commit criminal acts of violence that would constitute a continuing threat to society. O.R. 39.

Preliminary examination was had on July 30, 2019, before the Hon. Leland Shilling. The examination continued on September 13, 2019, and concluded on September 18, 2019. Vasquez was bound over for trial. P.H. Tr 09/18/2019 at 159-60. The State moved to dismiss Count 3, and that was so ordered. *Id.* 160. A Bindover Information was filed on October 1, 2019, alleging: 1) Murder in the First Degree; 2) Murder in the First Degree; 3) Unlawful Removal of Dead Body; and 4) Pattern of Criminal Offenses. O.R. 116.

Jury trial began on August 10, 2021, before the Hon. Leah Edwards. At the conclusion of the evidence, the jury returned verdicts of guilty on all counts. O.R. 1921 (Count 1); 1922 (Count 2); 1923 (Count 3); and 1924 (Count 4). The jury did not recommend punishment for the capital offenses, but recommended sentence of 5 years DOC/$5,000.00 fine on Count 3; and sentence of 2 years/$25,000.00 fine on Count 4.

On September 1, 2021, the case proceeded to a capital sentencing stage. At the conclusion of the evidence, the jury found the existence of all three alleged aggravating circumstances as to both capital counts. O.R. 1957 (Count 1); 1959 (Count 2). In light of the finding of all three aggravating circumstances as to both capital counts, the jury recommended a sentence of Death on counts one and two. O.R. 1958 (Count 1); 1960 (Count 2); *see also* O.R. 2011 (Judgment and Sentence).

Formal sentence was imposed by the district court on November 11, 2021, in accordance with the verdicts of the jury. Sent. Tr. 11/11/21 at 20.

The Oklahoma Court of Criminal Appeals affirmed in a published opinion filed January 30, 2025. *Vasquez v. State*, 2025 OK CR 1. Rehearing was denied March 26, 2025.

STATEMENT OF THE FACTS

Shaliyah Toombs was last seen alive by her mother, Twyla Taylor, on Saturday, April 28, 2018. Tr. 1622-30. Toombs already had two children and was 8-months pregnant, but she struggled with drug use, initially marijuana (which she admitted) and then meth (which she denied). *Id.*; Tr. 2386-94 (testimony of her physician that the gestational age of the fetus was 31 to 32 weeks). Her two children were actually living with Taylor because of the meth use. Tr. 1637-40; 1683-85.

On the morning of April 29, 2018, at 4:50 a.m., Taylor received a text from her daughter's phone which stated, "They're going to kill me, Mom. Help me." Tr. 1631-37. Taylor did not read

this text until around 11:00 a.m., and when she did she started calling her daughter's phone, but there was no answer; nor was she at her apartment. *Id.*

Taylor voiced her concerns to her sister, Tierni Taylor, who went over to the apartment on April 29, 2018, did not find Toombs there, and sensed that something was not right. It was Tierni who called the police and reported Shaliyah as a missing person. Tr. 1646-50.

Upon receiving the missing persons report, the police snooped around at Toombs' apartment, took some pictures, looked for signs of a struggle or physical altercation, but did not find anything Tr. 1651-60 (Officer Audrey Moon); Tr. 1678-83 (Officer Jay Braskett).

As outlined on direct appeal, it was actually *Vasquez* who reported to the police what had happened to her. This occurred on May 2, 2018, and concerned Captain Chad Hillis of the Chickasaw Nation Lighthorse Police Department, who was not working on the case of the missing Shaliyah Toombs at all. He was on duty that day and in uniform, en route to a SWAT competition, so he took the usual route on I-35 from Purcell and decided to take a pit stop at the Love's convenience store across from Riverwind Casino. Tr. 1686-91.

As he stood in line, he noticed a man enter the store–Vasquez as it turned out–and immediately felt that something was not right. *Id.* Vasquez fidgeted around the store for a few minutes before finally approaching Captain Hillis, looking right at him and saying, "I need to talk to you outside." *Id.*

Vasquez walked outside. Captain Hillis paid for his items and followed. Tr. 1691-95. It struck Captain Hillis that Vasquez had walked into the store with a purpose to talk to a police officer. Tr. 1702-05. Once outside, Vasquez told the tale, beginning with, "There is a blue Dodge pickup south of Love's on I-35, northbound shoulder, with a deceased female in it." *Id.* When asked if he

knew the female, Vasquez replied that it was Shaliyah Toombs, and that she had been dead since Monday. *Id.*

The jury found Vasquez guilty of both murder counts and the case proceeded to a sentencing hearing, which is the focus of this Petition.

The sentencing hearing proceeded with the State bearing the burden of proving three aggravating circumstances: 1) during the commission of the murder, the defendant knowingly created a risk of death to more than one person; 2) the murders were especially heinous, atrocious, and cruel; and 3) at the present time, there exists a probability that the defendant will commit criminal acts of violence that could constitute a continuing threat to society. Tr. 2993-94.

After incorporating the first-stage evidence into stage two (Tr. 2996-3001), the State first called case agent Gatlin to the stand to tell the jury about some jail phone calls made by Vasquez. State Exhibits 189, 190, and 191; Tr. 3001-05 (admitted over objection). These turned out to be little more than Vasquez being angry at being in jail, Vasquez did not actually do anything violent, and nothing happened as a result of the calls. Tr. 3007-08.

Similarly, Sgt. Colin Poole of the McClain County Jail relayed an incident where inmates in the pod were angry at being locked down and one of them lit a roll of toilet paper on fire and threw it out of the "bean hole." Tr. 3009-13. Poole did not know who threw it, but when Poole asked Vasquez why he did it, Vasquez replied that he did not "give a fuck." *Id.*; Tr. 3020-23.

Victim impact statements were read by Gerald Toombs (father of Shaliyah) and Twyla Taylor (mother of Shaliyah). Tr. 3022-23.

The State rested. Tr. 3023.

The defense called several witness in mitigation, including the father of Vasquez, Alfredo

Vasquez, Sr., who outlined the early years and childhood of Vasquez (Tr. 3040-66); and Vasquez's aunt, Raquel Livingston, who also testified as to family history and dynamics. Tr. 3083-98.

However, there were several defense witnesses who lived out of state and the defense had sought funds for their travel to testify at the sentencing phase, which was denied by the trial court; so, these witnesses (seven in total) were made to present testimony in favor of sparing the life of Vasquez via video-conference. O.R. 1380; Tr. 4-10; 2986-90; 2990-96 (court ruling).

Vasquez petitions this Court to take a look at this procedure by the state court because it turned out to be a technical and legal disaster because, as argued by defense counsel at the time, only *two* of the video streams of these witnesses went off without a hitch. Tr. 3547-49 (outlining issues with witnesses Matthew South, Tiffany McFarlane, Stanville Coleman, First Sgt. Scott Grimmer, and Aimee Feather).

Vasquez is from El Paso, Texas, and many members of his family still lived there (and also in Michigan and Arizona). It thus was on the radar of defense counsel prior to trial that if the proceedings went to a penalty phase, mitigation witnesses from Texas, Michigan, and Arizona would be needed. Since Vasquez was indigent, the defense needed money to get them to court, so defense counsel filed a motion on June 21, 2021, for funds to get the out-of-state witnesses to Oklahoma for trial. O.R. 1286.

In the motion, the defense outlined the places where the mitigation witnesses were from, the right of the accused under *Lockett v. Ohio*, 438 U.S. 586 (1978) to present witnesses in mitigation, and the duty of defense counsel under *Wiggins v. Smith*, 539 U.S. 510 (2003), and other cases, to investigate adequately the case and to ensure that available mitigating evidence is presented to the jury.

The defense also noted the financial daisy-chain of state governmental financial apportionment, and the fiscal reality that, in the end, it was actually the Oklahoma Indigent Defense System that would be obligated to reimburse the Court Fund for the expended monies. O.R. 1287-88 (citing 28 O.S. § 82(B)).

The defense argued that live, in-person witnesses is the only method of securing to Vasquez a fair penalty phase that comported with the Eighth and Fourteenth Amendments, and that alternate methods such as video-conferencing were unacceptable substitutes for the real thing. O.R. 1288.

The district court issued an order on June 25, 2021, denying the request for funds. O.R. 1380. The district court denied the request for funds based on a state statute that allows the use of video-conferencing testimony in criminal trials under 20 O.S. § 130, effectuated through the criteria set forth in Rule 34, *Rules for District Courts of Oklahoma*. O.R. 1380-85.

According to the district court, video-conference was within the discretion of the trial court, applying the listed criteria in Rule 34, and the district court concluded that "video-conferencing is a more reliable, safe and cost-effective way to procure the witnesses' testimony." O.R. 1385.

The defense sought reconsideration of this decision, and on July 9, 2021, the parties appeared in court to address it. Tr. 07/09/2021 at 14-15. The defense buttressed its legal arguments, characterizing the issue of having live witnesses at the penalty phase as akin to a Confrontation right under the Sixth Amendment, and especially *Crawford v. Washington*, 541 U.S. 36 (2004), and its strong preference from the Founders of live face-to-face testimony; as well as the unfairness to poor people who will constantly have to use video while the State spends government resources to get its witnesses into court. Tr. 07/09/2021 at 15-16.

Counsel also pointed out a study from Australia where video-conferencing was used

extensively and the conclusion was that judges gave harsher sentences when the accused and his witnesses were not physically present in court. The video aspect creates a distance–physical and emotional–that blunts the human element of physical interaction and makes the formal setting more casual, especially in the context of a capital sentencing proceeding. *Id.* 15-16.

Defense counsel also cited a longitudinal study by the Capital Jury Project of capital cases where death was not imposed. *Id.* 19. Most of the time, when the State seeks the death penalty, it gets it. This study tried to ascertain why it is that the jury does not impose death. The answer, or at least the most common criteria in the cases where death was not imposed, was in cases where the defense was able to show an obvious bond of love between family, college friends, between the accused and those who testified on his behalf. *Id.* 19-20.

The defense argued that this kind of human bonding cannot be conveyed in any meaningful way through video-conferencing, particularly in a capital case which involves the most dramatic and final penalty in the law.

The defense also made an important observation, and asked the trial judge if it was a concern about COVID, then the defense would request a continuance of the trial date. *Id.* 20.

The trial court denied the motion to reconsider. *Id.* 31-33.

The defense believed this issue so important that it gave notice of intent to seek a writ from the Oklahoma Supreme Court. *Id.* 34. The defense followed-up on this, initiating a petition in the Oklahoma Supreme Court on July 22, 2021, in case number 119,739. The matter was eventually transferred to the Oklahoma Court of Criminal Appeals, which issued an order on August 5, 2021, denying extraordinary relief on the basis that Vasquez had failed to demonstrate the inadequacy of other relief. *See Vasquez v. Hon. Leah Edwards*, No. MA-2021-795 (Okl.Cr., August 5, 2021).

With the writ resolved, the trial began. On the first day of trial, the defense announced "not ready" on the basis that the trial court had denied live witnesses for the penalty phase. Tr. 4-10. The trial court was again unswayed and stuck to its ruling. *Id.*

Defense counsel again objected to this format of video-conferencing at the penalty phase. Tr. 2986-90. The trial court again denied to change its ruling. Tr. 2990-96. Thus, the defense had exhausted its objections and conducted the sentencing phase.

The defense called 16 mitigation witnesses, 7 of whom testified via video.

The witnesses consisted of relatives (Tr. 3040: Alfredo Vasquez, father; Tr. 3083: Raquel Livingston, aunt; Tr. 3108: Hiram Navedo, uncle; Tr. 3100: Matthew South, son; Tr. 3165: Josue Soto, brother); friends from the past (Tr. 3136: Bruce Henson; Tr. 3207: Nathan Wheeler; Tr. 3217: Austin Mason; Tr. 3224: Eduardo Delgado; Tr. 3237: Misty Honeysuckle; Tr. 3462: Aimee Feather; and veteran Marines who had served in Iraq with Vasquez (Tr. 3272: Tiffany McFarlane; Tr. 3292: Stanville Coleman; Tr. 3314: Sgt. Scott Grimmer).

The jury also heard from polygrapher Agent Good who had administered a polygraph exam at the request of Agent Gatlin, and to the surprise of Agent Gatlin, Vasquez *passed* the polygraph, answering "No" to the question of whether he physically caused the death of Shaliyah Toombs, which the machine revealed that Vasquez showed no deception in giving that answer. Tr. 3364 (Agent Good who administered the polygraph exam that Vasquez passed).

The last defense witness was counselor Cathy Olberding, who testified extensively about the effects of PTSD on Vasquez from his service as a Marine in Iraq. Tr. 3467 *et seq*.

However, the video-conference aspect of the defense mitigation efforts were a complete disaster which deprived Vasquez of his right to a dignified, solemn, and fundamentally fair

sentencing hearing in a capital case. For example, Bruce Henson, a childhood friend of Vasquez, testified in the capital murder trial penalty phase via video-conference literally *from the parking lot in his pickup truck* because the noise was too loud at his work. Tr. 3136-40.

Defense counsel made a record of how disastrous it was, stating that seven witnesses appeared on video during the second stage and only *two* went off without a hitch of some sort. Tr. 3547-48.

The seven witnesses who testified via video-conference were: 1) Raquel Linvingston (aunt) at Tr. 3083; 2) Matthew South (son) at Tr. 3100; 3) Bruce Henson (friend) at Tr. 3136; 4) Tiffany McFarlane (Marine) at Tr. 3272; 5) Stanville Coleman (Marine) at Tr. 3292; 6) Sgt. Scott Grimmer (Marine) at Tr. 3314; and 7) Aimee Feather (friend) at Tr. 3462.

Defense counsel observed that during the testimony of Matthew South there was a lot of lag time during the video, it went in and out of sync, and there were times when the jury could not hear him–and this was a biological son of Vasquez asking the jury to spare the life of his father. Tr. 3548. Defense counsel stated that the impact of the testimony was definitely lost on the jury and was distracting. *Id.*

Regarding Tiffany McFarlane, the screen froze up several times, the audio was not in sync and lagged, sometimes the video froze but the audio kept going, and the entire process made it distracting for the jury to follow the testimony of a Marine who had served with Vasquez. *Id.*

When another Marine testified for Vasquez, Stanville Coleman, the witness could not see Vasquez through the monitor, and again there was the continual problem of the video freezing up during the testimony. *Id.*

It was even worse with witness Sgt. Scott Grimmer. There were "significant audio problems

later when the State stood up to cross-examine him, the jury had a difficult time hearing his testimony necessitating him having to repeat himself several times, and he had to break up his sentences which artificially thwarted the flow of the testimony. *Id.* He had to talk slower than normal so that there was no echo through the video feed. *Id.*

The central problem, yet again, was that the impact of the information that he was trying to convey to the jury–that Vasquez was a good Marine and an honorable man with an honorable discharge from the service–was lost in the "annoying" and "distracting" manner that it was conveyed via video. Tr. 3548-49.

Witness Aimee Feather had to testify out of order "because the Zoom was not set up properly, and for some reason her microphone was off." Tr. 3549. This was yet another disruption, in a string of disruptions during the defense presentation of its mitigation witnesses. *Id.*

Finally, the video testimony of Bruce Henson illustrates the problem with video-conferencing mitigation witnesses during a death penalty case. The technical part of the video transmission went off without any problems; but, his work place was so loud that he had to go sit in his pick-up truck to give his testimony. Tr. 3136-40. This is not a dignified and solemn judicial process for the State of Oklahoma to determine whether the accused lives or dies.

The prosecutor did not disagree with the major points of any of this, and chimed in only to criticize the defense for using Zoom rather the State's preferred Google Meet. Tr. 3552. The defense responded that was nonsense because the software/platform did not matter; it was the poor quality of the courthouse internet connection–and internet connection of some of the witnesses–that caused the lag and the other problems. *Id.*

Defense counsel also observed the jurors getting frustrated during the testimony "because it

was hard for them to pay attention when you're asking a question and then you're having to cut yourself off and say, 'Oh, I'm sorry. Oh, I'm sorry. No, you go. No, I'll go. No, you'll go.'" Tr. 3552.

In light of all of this, the district court did not dispute the characterization by defense counsel of what has occurred, but nevertheless came to the amazing conclusion that "the videoconferencing testimony utilized by both the State and the Defendant was effective." Tr. 3553.

Vasquez asserts that this process violated the Eight Amendment.

No witnesses for either the State or the defense were made to testify via video-conference during the first stage. As Vasquez argued below, what happened here is that the district court simply wanted to save the State a buck from the Court Fund rather than pay defense witnesses to come to court in person to try save the life of their loved one and friend.

The Oklahoma Court of Criminal Appeals denied relief on a technical ground and a general legal ground. First, the court held that Vasquez was not limited in the presentation of mitigation evidence. *See* Appendix "A" at ¶ 76. While this is technically true–the district court did not preclude any defense witnesses from presenting testimony in mitigation–it does not address the central concern of Vasquez which is that video-conference process impugned the quality of the testimony of his mitigation witnesses.

As to this contention, the OCCA simply accepted the comments of the trial judge to the effect that any technical problems (neither the State nor the trial judge denied that there were technical problems as described by defense counsel) did not affect the ability of the jury to consider the evidence. *Id.*

REASONS FOR GRANTING THE WRIT

Vasquez petitions this Court to consider the question whether a State can preclude a defendant in a capital case from presenting his mitigation witnesses live in court based on saving the State money. In other words, does the impersonal quality of video-conference testimony diminish the presentation of mitigation evidence in this context.

We have all experienced the irritations of modern electronic communications: lagging video/audio, frozen screen, out of sync audio/video, limited field of view on-screen, *etc.* These things take us out of the experience and depersonalizes the witness who appears only as a pixilated image on a screen. We tolerate these things in the course of everyday life and business, but is it tolerable in the setting of a death penalty mitigation proceeding where, for example, Vasquez's son Matthew South is asking the jury to spare the life of his father and his words and image lag, go out of sync, and go mute on occasion.

The Court has told us that death is different. In *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977), this Court observed that death is not only different from the point of view of the accused in terms of severity and finality, it is also different from the point of view of society, "the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action." *See also Furman v. Georgia*, 408 U.S. 238 (1972) (Brennan, J., concurring) ("death is different").

How different is it?

Quite a bit as it turns out. There is a heightened need for reliability in death penalty cases. *Zant v. Stephens*, 462 U.S. 862, 884 (1983). There are relaxed restrictions on the nature of mitigation evidence that a capital defendant may present to the jury to argue in favor of life. *Locket*

v. Ohio, 438 U.S. 586, 604 (1978). The type of individualized sentencing proceeding in a capital case envisioned by the Supreme Court in *Penry v. Lynaugh*, 492 U.S. 302 (1989), and *Brewer v. Quarterman*, 550 U.S. 286 (2007) would seem to demand that a state adjudicatory process in a death penalty case be something more than a witness testifying in the parking lot out of his pick-up truck because the noise was too loud at his place of work, constant freezing of video screens, dysfunction with audio-visual sync, annoying lag, lack of audible sound, and limited point of view of the witness to the courtroom that in at least one instance prevented the testifying witness from seeing Vasquez in open court.

This Court in *Lockett* held that the Eighth and Fourteenth Amendments require the sentencer, in all but the rarest kind of capital case, not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.

Does this mean, as the Oklahoma Court of Criminal Appeals suggested, that as long as the trial judge does not preclude a witness from testifying, the Constitution is satisfied even if the quality of that testimony is impersonal on a screen and subject to irritating technological glitches? Vasquez would argue that the Constitution requires more, and that the "death is different" jurisprudential trajectory of the cases of this Court counsel that forcing the accused to present witnesses in mitigation via video-conferencing should be limited to the most extreme of circumstances.

Whatever such circumstances could be, the State trying to save money cannot be among them. We know intuitively, as empathetic humans, that live testimony coming from a person in our presence is more powerful than listening to someone on a television screen. Here, defense counsel for Vasquez backed that up with a study out of Australia where video-conferencing was used

extensively and the conclusion was that judges dished out much harsher sentences when the accused and his witnesses were not physically present in court.

We know intuitively that this is true, and the mechanism by which that is true has Eighth Amendment implications in a case like that of Vasquez: video creates distance from the witness, both physical and emotional, that blunts the human element of physical interaction and makes the formal setting more casual.

In addition to the Australian data, defense counsel cited a longitudinal study by the Capital Jury Project of capital cases where death was *not* imposed. The reality is that most of the time that the State seeks the death penalty, it gets it. The study tried to ascertain what separates those cases where death is not imposed. The common criteria in capital prosecutions where the death penalty was not imposed was the ability of the accused to show an obvious bond of love between family and friends testifying for the accused.

As the defense argued for Vasquez, this type of empathetic bonding simply cannot be conveyed in any meaningful way through the video-conferencing process, and especially when that process is faulty as was the case here.

Finally, it must be understood that this was not a COVID concern. Defense counsel thought of that and offered to continue the trial if the trial judge thought that COVID was the reason for the video-conference decision. It was not COVID. It was government finances.

CONCLUSION

For the reasons stated above, the Petitioner prays respectfully that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals.

DATED this 24th day of July, 2025.

Respectfully submitted,

James L. Hankins, Okla. Bar No. 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, Oklahoma 73034
Telephone: 405.751.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

COUNSEL FOR PETITIONER

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL RAUL SANTIAGO VASQUEZ,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

CERTIFICATE OF SERVICE

I, James L. Hankins, certify that I have this 24th of July, 2025, served a copy of Petitioner's *Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals* via United States Postal Service, first-class postage pre-paid thereon, to:

Christina A. Burns
ASSISTANT ATTORNEY GENERAL
313 NE 21st St.
Oklahoma City, OK 73105
Telephone: 405.521.3921

All parties required to be served have been served.

James L. Hankins, OBA# 15506