No. _____

Capital Case

Simpson's Execution is set for FEBRUARY 12, 2026, at 10:00AM

IN THE SUPREME COURT OF THE UNITED STATES

KENDRICK SIMPSON,

Petitioner,

v.

CHRISTE QUICK, IN HER OFFICIAL CAPACITY AS WARDEN OF THE OKLAHOMA STATE PENITENTIARY; JUSTIN FARRIS, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE OKLAHOMA DEPARTMENT OF CORRECTIONS; GENTNER DRUMMOND, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF OKLAHOMA,

Respondents.

On petition for a writ of certiorari to
the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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February 9, 2026

CAPITAL CASE

QUESTION PRESENTED

In state court, Kendrick Simpson raised a single claim based purely on state law. He argued Oklahoma's execution statute violates the state constitution's nondelegation doctrine. The state court ruled that his claim was unripe. Under 42 U.S.C. § 1983, Simpson challenged the state procedural process in federal court. The decision below concluded that the court lacked jurisdiction under *Rooker-Feldman* and the Eleventh Amendment.

Three times in the last three years, this Court has granted certiorari to consider jurisdictional issues stemming from § 1983 challenges to state procedural processes.[1] In each case, the Court reversed or vacated a decision from the Fifth Circuit that held jurisdiction was lacking. Despite this Court's unidirectional movement toward a narrower and potentially nonexistent[2] *Rooker-Feldman*, the decision below invoked a 2021 Fifth Circuit case[3] to employ an expansive view of the doctrine. It concluded Simpson is harmed solely by the state court judgment—not by the prison executing him.

The decision then folded that faulty causal reasoning into its *Ex parte Young* analysis. It concluded that the Defendants (the officials executing him) have no connection to Simpson's injury because they are not responsible for the state judgment. Contrary to the supremacy of federal law, the decision below expands *Rooker-Feldman*, narrows *Ex parte Young*, and immunizes state officials from federal civil rights suits.

The question presented is: Whether *Rooker-Feldman* and the Eleventh Amendment jurisdictionally bar a § 1983 challenge to a state procedural rule announced in a state court decision that did not reach the merits of a claim purely based on state law.

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[1] *See Reed v. Goertz*, 598 U.S. 230, 234-35 (2023); *Gutierrez v. Saenz*, 606 U.S. 305, 309 (2025); *Wood v. Patton*, 145 S. Ct. 2839 (June 30, 2025) (GVR in light of *Gutierrez*).
[2] *See* Brief for Petitioner at § II, *T.M. v. Univ. of Md. Med. Sys. Corp.*, No. 25-197.
[3] *Rhoades v. Martinez*, No. 21-70007, 2021 WL 4434711 (5th Cir. 2021). The reasoning of the unpublished decision garnered two votes. One judge concurred in the judgment only. *Id.* at n*.

STATEMENT OF RELATED CASES

- *Underwood v. Harpe*, PR-122401 (Okla. Aug. 19, 2024) (Oklahoma Supreme Court transferring state case to the Oklahoma Court of Criminal Appeals)

- *Underwood v. Harpe*, PR-2024-637 (Okla. Crim. App. Sept. 17, 2024) (Oklahoma Court of Criminal Appeals holding that the state case was unripe)

- *Underwood v. Harpe*, PR-122536 (Okla. Oct. 21, 2024) (Oklahoma Supreme Court refusing to reconsider the state claim)

- *Simpson v. Quick, et al.*, No. CIV-25-1221-D, 2025 WL 3689156 (W.D. Okla. Dec. 19, 2025) (federal district court dismissing case)

- *Simpson v. Quick, et al.*, No. CIV-25-1221-D, 2026 WL 66966 (W.D. Okla. Jan. 8, 2026) (federal district court denying a request to enjoin Simpson's execution pending appeal)

- *Simpson v. Quick, et al.*, No. 26-6008, 2026 WL 323320 (10th Cir. Feb. 4, 2026) (federal appeals court affirming district court and dismissing injunction request as moot)

- *Simpson v. Quick*, *et al.*, No. 26-6008, 2026 WL 323320 (10th Cir. Feb. 6, 2026) (federal appeals court denying rehearing en banc)

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INTRODUCTION

The decision below provides the latest example of a federal court construing *Rooker-Feldman*[4] "to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 287 (2005). In federal court, Simpson raised a procedural challenge to the state process he received when challenging the Oklahoma execution statute in state court. But the decision below concluded that Simpson is not harmed by his execution. Rather, he is harmed solely by the state court judgment, so his federal action is challenging that judgment. Having found that causal connection, the court's *Ex parte Young* analysis was brief. Since the state judgment caused Simpson's injury, the court reasoned, *Ex parte Young* does not apply because Defendants are not connected to the state judgment and thus did not cause the injury.

Without this Court's intervention, *Rooker-Feldman* will continue "to wreak havoc across the country." *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 405 (6th Cir. 2020) (Sutton, J., concurring). Worse still, the

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[4] *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

doctrine is starting to wreak havoc on other doctrines, such as *Ex parte Young*. If the Court does not abandon *Rooker-Feldman* altogether, it should provide the federal courts with much-needed guidance. Here are two possibilities. The Court could restrict the *Rooker-Feldman* analysis to align more with its statutory basis. Or the Court could adopt casual reasoning from *Ex parte Young* or the standing analysis.

Under *Rooker-Feldman*, all "that's at issue is the meaning of a jurisdictional provision—a matter of statutory interpretation, not a free-flowing exercise in identifying new explanations for diminishing federal jurisdiction." *VanderKodde*, 951 F.3d at 408 (Sutton, J.). This keeps with the purpose of *Rooker-Feldman*, which is to effectuate 28 U.S.C. § 1257. Section 1257 requires a federal question and "vests authority to review a state court's judgment solely in this Court." *Skinner v. Switzer*, 562 U.S. 521, 531-32 (2011) (quoting *Exxon*, 544 U.S. at 292). "District Courts lacked subject-matter jurisdiction over such claims." *Id*. Their jurisdiction is invoked under 28 U.S.C. § 1331. *Rooker-Feldman* "merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002).

Consider how Simpson got here. In state court, he raised one claim based purely on state law. But under the state procedural process, imminent death under an unlawful statute is not a cognizable harm. Order at 3, *Underwood v. Harpe*, PR-2024-637 (Okla. Crim. App. Sept. 17, 2024). Simpson challenged the state process in federal court, arguing it violated his constitutional rights to due process, judicial access, and equal protection. He invoked the district court's original jurisdiction, under 28 U.S.C. § 1331, to raise his federal claims for the first time. Under 28 U.S.C. § 1257, Simpson could not have presented his federal claims to this Court. He did not raise his federal claims in state court, so there was no federal issue. 28 U.S.C. § 1257; *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (noting this Court is a "a court of review, not of first view"). Simpson's case is not barred by *Rooker-Feldman* because his federal claims could not have been raised in this Court under 28 U.S.C. § 1257.

Or the Court's *Rooker-Feldman* jurisprudence could adopt the causal reasoning found in *Ex parte Young* or the standing analysis. Under *Ex parte Young*, when suing a state official, "it is plain that such officer must have some connection with the enforcement of the act." 209 U.S. at 157. The state official "need not have a special connection to the allegedly unconstitutional statute; rather, he need only have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty." *Chamber of Commerce*

v. Edmondson, 594 F.3d 742, 760 (10th Cir.2010) (quotation marks omitted).

Relatedly, some circuit courts already use the causal reasoning from standing to inform their *Ex parte Young* analysis. *See*, *e.g.*, *Cressman v. Thompson*, 719 F.3d 1139, 1146 n.8 (10th Cir. 2013); *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 919 (9th Cir.2004). For instance, the Tenth Circuit has recognized that "there is a common thread between Article III standing analysis and *Ex parte Young* analysis." *Cressman*, 719 F.3d at 1146 n.8. That is because the "some connection" language in *Ex parte Young* overlaps with the standing consideration of whether the plaintiff's injury is "fairly traceable to the challenged conduct of the defendant." *Spokeo v. Robins*, 578 U.S. 330, 338 (2016). Or as the Ninth Circuit explained, "[w]hether these officials are, in their official capacities, proper defendants in the suit is really the common denominator of two separate inquiries." *Wasden*, 376 F.3d at 919. With standing, the court considers "whether there is the requisite causal connection between [the state officials'] responsibilities and any injury that the plaintiffs might suffer, such that relief against the defendants would provide redress." *Id*. And under *Ex parte Young*, the court considers whether there is "'some connection' between a named state officer and enforcement of a challenged state law." *Id*. The analysis in standing, *Ex parte Young,* and *Rooker-Feldman* can all inform one another.

As this Court's grant of certiorari in *T.M.* already revealed, the federal courts are struggling to properly apply *Rooker-Feldman*. No. 25-197. And as the decision below revealed, the confusion surrounding *Rooker-Feldman* is starting to influence the application of other doctrines. This Court's *Rooker-Feldman* jurisprudence has said little about the causal connection between the state judgment and the plaintiff's injury. Guidance there will help the federal courts, and it will stop the courts from turning other disciplines, like *Ex parte Young*, into the "docket-clearing workhorse" that *Rooker-Feldman* has become. *VanderKodde*, 951 F.3d at 406 (Sutton, J.) (quoting Susan Bandes, *The* Rooker-Feldman Doctrine: *Evaluating Its Jurisdictional Status*, 74 Notre Dame L. Rev. 1175, 1175 (1999)).

OPINIONS BELOW

The district court dismissed Simpson's federal case for lack of jurisdiction under Rooker-Feldman and the Eleventh Amendment. App-D. It also denied Simpson's request to enjoin his execution pending appeal. App-C. The Tenth Circuit affirmed the district court's jurisdiction decisions, and it denied Simpson's request for an injunction pending appeal. App-B The Tenth Circuit denied Simpson's request for rehearing en banc. App-A.

JURISDICTION

The court of appeals entered its judgment on February 4, 2026. App-B. Kendrick Simpson timely filed a petition for rehearing en banc on February 5, 2026, which the Tenth Circuit denied on February 6, 2026. App-A. The judgment took effect on February 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1257(a) of Title 28 of the United States Code provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Section 1331 of Title 28 of the United States Code provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The Eleventh Amendment to the Constitution of the United States provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States provides:

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

STATEMENT

In the district court, Simpson claimed the state process violates his constitutional rights to due process, judicial access, and equal protection. App-E. The prison moved to dismiss the case, arguing the court lacked jurisdiction and the claims were meritless. *Simpson v. Quick, et al.*, No. CIV-25-1221-D, 2025 WL 3689156 (W.D. Okla. Dec. 19, 2025). Three days later, the attorney general asked the state court to set Simpson's execution date. Notice Regarding Death Warrant, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 13, 2025). The court scheduled his execution for February 12, 2026. Order Setting Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 19, 2025). A month later, on Friday, December 19, the district court granted the prison's motion and dismissed the case for lack of jurisdiction under *Rooker-Feldman* and the Eleventh Amendment. App-D. The court did not comment on the merits. The following Monday, Simpson asked the district court for an injunction pending appeal, which was denied on January 8, 2026. App-C. Simpson appealed the next day, and the Tenth Circuit affirmed. App-B. It held that Simpson's case was barred by *Rooker-Feldman* and the Eleventh Amendment. That judgment took effect last Friday, February 6, 2026. App-A.

Simpson challenges Oklahoma's execution statute under the state constitution's nondelegation doctrine.

In state court, Simpson alleged Oklahoma's execution statute lacks sufficient guidance for designing execution protocols and selecting execution methods, so he (and four[5] co-plaintiffs) raised a facial challenge to the statute under the state's nondelegation doctrine. Petitioners' State Application, *Underwood v. Harpe*, PR-122401 (Okla. July 31, 2024). App-F. When the Oklahoma "Legislature allows an agency, or other entity, to make rules without sufficient legislative guidelines by setting binding policy on the agency, the Legislature has unconstitutionally delegated its authority to determine Oklahoma policy." *Oklahoma Coalition for Reproductive Justice v. Cline*, 368 P.3d 1278, 1286 (Okla. 2016). Oklahoma's nondelegation doctrine is among the strictest in the country.[6] "While the constitutional doctrine of

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[5] Simpson's named co-plaintiffs were Kevin Underwood, Wendell Grissom, and Tremane Wood. Manuel Littlejohn raised an identical claim but in a separate action. Littlejohn's Application, *Littlejohn v. Harpe*, PR-2024-740 (Okla. Sept. 24, 2024). For simplicity, Simpson describes Littlejohn as one of the four co-plaintiffs.

[6] *See also* Rachel Scholz-Bright, Note, *Walking the Tightrope: Finding Balance Between Strict Nondelegation and the Administrative State through an Examination of State Experiences,* 20 Geo. J. L. & Pub. Pol'y 427, 437-441 (2022) (describing Oklahoma as one of the few states with a strict nondelegation doctrine); Joseph Postell & Randolph May, *The Myth of the State Nondelegation Doctrines,* 74 Admin. L. Rev. 263, 291 (2022) (same).

nondelegation has been somewhat relaxed in several jurisdictions," the Oklahoma Supreme Court declared, "its force in this state remains undiminished." *Democratic Party of Oklahoma v. Estep*, 652 P.2d 271, 277 (Okla. 1982).

Simpson challenged all of the prison's actions authorized by the statute, including its use of lethal injection. App-121a. With a nondelegation challenge, "the constitutional question is whether the statute has delegated legislative power to the agency." *Whitman v. American Trucking Associations*, 531 U.S. 457, 472 (2001). An agency cannot "cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute." *Id.* "The idea that an agency can cure an unconstitutionally standardless delegation of power by declining to exercise some of that power seems to [this Court] internally contradictory." *Id.* at 473. Indeed, the "very choice of which portion of the power to exercise—that is to say, the prescription of the standard that Congress had omitted—would *itself* be an exercise of the forbidden legislative authority." *Id.* (emphasis in original).

For context, Oklahoma's execution statute authorizes four possible methods: lethal injection, nitrogen hypoxia, electrocution, and the firing squad. Okla. Stat. Ann. tit. 22, § 1014. Absent hanging, the prison chooses among the entire history of American execution methods. *Baze v. Rees*, 553 U.S. 35, 41-44

(2008). Lethal injection is the first method, but it and other methods can be bypassed if held unconstitutional by an appellate court or deemed "unavailable," presumably by the prison. Okla. Stat. Ann. tit. 22, § 1014. The statute does not define "unavailable," "available," or any other term. It does not provide a standard or criteria for selecting an execution method or finding one unavailable, and it says nothing of designing execution protocols. Simply by deeming a method unavailable, the prison can change the execution method at any moment and without notice. App-121a, 124a. The prison can also change execution protocols at any moment and without notice. *Id*. Likewise, no matter the risk of botching an execution, the prison can use a method regardless of its true availability, such as performing an execution by lethal injection with the wrong drugs. *Id*. at 125a-128a.

Simpson first filed in the Oklahoma Supreme Court's original jurisdiction. App-98a. Under the state's declaratory judgment act, he sought declaratory relief finding the statute unconstitutional and injunctive relief barring his execution under it. App-128a. Without commenting on the merits, the court characterized the case as criminal and transferred it to the Oklahoma Court of Criminal Appeals (OCCA). Order, *Underwood v. Harpe*, PR-122401 (Okla. Aug. 19, 2024). A month later, without argument or any additional briefing, OCCA dismissed the case as unripe. App-87a. OCCA reasoned that

"[u]nless and until lethal injection is held unconstitutional by a court or is otherwise unavailable, there has been no harm to [Simpson] and [his] claim thus fails the basic test of ripeness." *Id*.

Out of necessity, Simpson returned to the Oklahoma Supreme Court. Petitioners' Application, *Underwood v. Harpe*, PR-122536 (Okla. Sept. 23, 2024). App-135a. He cited *Lockett*, a similar case where both the Oklahoma Supreme Court and OCCA had held that they lacked jurisdiction to entertain a stay of execution. *Id*. at 135a; *Lockett v. Evans*, 356 P.3d 58, 60 (Okla. 2014). In that unique situation, the Oklahoma Supreme Court decided the issue, with the justices writing, "we refuse to violate our oaths of office and to leave the appellants with no access to the courts, their constitutionally guaranteed measure." *Id*. Simpson was in the same situation. But the Oklahoma Supreme Court dismissed Simpson's case because OCCA "has exclusive jurisdiction in criminal cases." Order, *Underwood v. Harpe*, PR-122536 (Okla. Oct. 21, 2024). App-133a.

Simpson's complaint alleges that the state procedural process is arbitrary, irrational, and fundamentally unfair.

In his complaint, Simpson described the procedural process he encountered in state court. In a nutshell, the procedural rule he challenged was the state court's ripeness determination: "Unless and until lethal injection

is held unconstitutional by a court or is otherwise unavailable, there has been no harm to [Simpson] and [his] claim thus fails the basic test of ripeness." App-87a. Simpson explained how this rule insulates the execution statute from legal scrutiny under state law. To argue the process was unlawful, he juxtaposed ordinary state and federal procedures with the arbitrary and irrational procedures he encountered.

In state court, Simpson invoked the state declaratory judgment act. It provides an explicit cause of action for challenging the constitutionality of state statutes. Okla. Stat. Ann. tit. 12, §§ 1651, 1653(C). "One of the controversies cognizable under the declaratory judgment act is that 'a statute or regulation is alleged to be unconstitutional.'" *Lockett*, 330 P.3d at 489 (quoting Okla. Stat. Ann. tit. 12, § 1653(C)). "The declaratory judgment act must be liberally construed to obtain its objective, which is to expedite and simplify the ascertainment of uncertain rights." *Oklahoma Board of Examiners in Optometry v. Lawton*, 523 P.2d 1064, 1066 (Okla. 1974). Using the act's pre-enforcement procedures, Simpson sued under the threat of execution. Okla. Stat. Ann. tit. 12, § 1651.

He and his co-plaintiffs argued the execution statute "violates the nondelegation doctrine regardless of how the agency implements the statute." App-121a. Despite facing imminent executions, the state court dismissed their

claim as unripe because they will be executed by lethal injection, which is constitutional. App-87a. In the time since, the prison has executed three of the five state plaintiffs. *Execution Database*, Death Penalty Information Center, https://deathpenaltyinfo.org/facts-and-research/data/ executions. One was granted executive clemency. *Id*. And the remaining plaintiff, Simpson, is scheduled to be executed this coming Thursday at 10:00AM. The executions were and will be carried out under the same statute they challenged in state court. Still, under the state procedural rule, Simpson and his co-plaintiffs have suffered no harm.

To be sure, a statute prohibiting the retail neighboring of optometrists and optical salesmen is challengeable in Oklahoma court—without genuine risk of enforcement—so long as the neighbors "could be subjected to criminal prosecution" in the future. *Lawton*, 523 P.2d at 1066. Similarly, statutory procedures for evaluating whether new car dealerships can move in next to old dealerships, absent good cause, are challengeable if the new dealership must "submit to the procedure through which that permission may or may not be obtained." *Chrysler Corp. v. Clark*, 737 P.2d 109, 110-12 (Okla. 1987). But when the statute dictates how Oklahomans are executed, that statute is challengeable in state court only after lethal injection—the method used to execute them—is proven to be unconstitutional or unavailable. In other words,

challenging the execution statute is viable only after encumbering what is currently and has long been Oklahoma's only implemented execution method.

So executions must be stopped before they can be challenged, and so long as they are not stopped, they cannot be challenged. That process makes no sense. It makes no sense that car dealerships, optical salesmen, and optometrists enjoy greater procedural protections than men condemned to die. Generally, the greater the individual interest, the greater the procedural protection. *M.L.B. v. S.L.J.*, 519 U.S. 102, 120-21 (1996). But in Oklahoma, exactly the opposite is true. And that topsy-turvy process has yet to be justified, and there has been no explanation for why the process is limited to people challenging the execution statute. Intuitively, the process violates basic principles of fairness. Looking closer, four independent and compounding features exemplify the procedural inadequacies in the state process.

First, the state process arbitrarily and irrationally singled out the execution statute as the one Oklahoma statute that cannot be challenged through the state's ordinary and well-established pre-enforcement procedures. App-58a-62a. That is so despite it being "apparent from a reading of the statute that a prospective litigant need not hazard the breach of a particular statute as a condition precedent to the bringing of an action under the terms of the declaratory judgment statute." *Lawton*, 523 P.2d at 1066. Moreover, pre-

enforcement challenges to state statutes are expressly permitted under the state's declaratory judgment act. Okla. Stat. Ann. tit. 12, § 1651. Not only are pre-enforcement challenges available, but they are routinely entertained—sometimes before the challenged statute even takes effect. *See*, *e.g.*, Order, *White v. Stitt*, MA-123222 (Okla. July 15, 2025); *Oklahoma Coal. for Reprod. Just. v. Drummond*, 543 P.3d 110, 113 (Okla. 2024). And pre-enforcement challenges often lead to injunctions—again, sometimes before the challenged statute even takes effect. *Id*.

Simpson also explained pre-enforcement challenges under federal law. App-55a-56a.. When "the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). "If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Id*.

All in all, Simpson and his co-plaintiffs faced imminent executions. They were the direct object of the statute, and they challenged it as named plaintiffs. They relied on a cause of action expressly provided by Oklahoma law. And the

plain text of the cause of action, and the state supreme court's interpretation of it, permits pre-enforcement challenges. Still, their case was unripe. Incredibly, the one statute in Oklahoma that cannot be challenged through pre-enforcement procedures is the same statute executing any would-be challengers. So the statute insulates itself from judicial scrutiny because anyone harmed by it is soon executed. Before execution, the case is unripe. After execution, the case is moot. Justiciability is illusory.

Second, in place of the ordinary procedures, the state process introduced a ripeness burden that actively undermined the merits of the nondelegation claim. App.-62a-65a. To raise his claim, Simpson first had to show that lethal injection was unconstitutional or unavailable. But Simpson had already accepted the constitutionality of lethal injection and the three other methods authorized under state law. Because all four methods were constitutional, the prison could choose from four methods. App-124a. Under Oklahoma law, that discretion is evidence of the prison exercising legislative power because the statute lacks definite standards for the delegated decision making. *Estep*, 652 P.2d at 278. Nevertheless, the state process asked Simpson to undermine his claim by arguing that lethal injection is unconstitutional and thus the prison has fewer options and less decision-making power.

Similarly, the state process asked Simpson to undermine his claim by

showing that lethal injection was unavailable. Simpson pointed to Charles Warner's execution as an example of the prison being reluctant to find lethal injection available. App-127a-128a. Instead of finding lethal injection unavailable, the prison executed Warner with the wrong drugs. *Id*. at 13. Simpson emphasized Oklahoma's history of botching executions to show that the prison is reluctant to find lethal injection unavailable and therefore needs statutory guidance on evaluating the availability of execution methods. *Id*. But again, the state process asked him to undermine his claim by showing that lethal injection was unavailable and statutory guidance was not as necessary. Establishing ripeness is supposed to show that the claim is live and fit for adjudication. *H & L Operating Co. v. Marlin Oil Corp.*, 737 P.2d 565, 568 (Okla. 1987). But the state process engaged a self-defeating ripeness burden that undermined Simpson's only claim.

Third, in addition to being self-defeating, the ripeness burden was essentially insurmountable. App.65a-66a. The constitutionality of lethal injection is settled law. *See Barr v. Lee*, 591 U.S. 979, 981 (2020); *Bucklew v. Precythe*, 587 U.S. 119, 123 (2019); *Glossip v. Gross*, 576 U.S. 863, 867 (2015); *Malicoat v. Oklahoma*, 137 P.3d 1234, 1236 (Okla. Crim. App. 2006). To show otherwise, under the state or federal constitution, Simpson would have to prove that lethal injection is cruel and unusual punishment. *Payne v. Kerns*, 467 P.3d

659, 664 (Okla. 2020) (treating the state constitution's "cruel or unusual" punishment clause as coextensive with the federal constitutional ban on "cruel and unusual" punishment).

"The firing squad, hanging, the electric chair, and the gas chamber have each in turn given way to more humane methods, culminating in today's consensus on lethal injection." *Baze*, 553 U.S. at 62. As a result, lethal injection is the most prevalent execution method in the country, and the only method Oklahoma has used since reimplementing the death penalty in the 1970s. *Execution Database*, Death Penalty Information Center. It is well established that lethal injection is neither cruel nor unusual. Establishing ripeness by showing that lethal injection is unconstitutional would require upending decades of settled law and centuries of state practices developing more humane methods of execution.

Proving that lethal injection is unavailable is equally difficult. There has been no indication that lethal injection in Oklahoma is or will become unavailable. Plus, the federal government has guaranteed lethal injection drugs will remain available. Exec. Order No. 14,164, 90 Fed. Reg. 8463 (Jan. 30, 2025). In any event, Simpson has no way of investigating the availability of lethal injection because state law prohibits disclosing information about the execution team or the prison's procurement of lethal injection drugs. Okla.

Stat. Ann. tit. 22, § 1015(B). That law "shall be broadly construed" and extends to legal proceedings. *Id.* Effectively, investigating the availability of lethal injection to establish ripeness is prohibited by state law. Without drastic changes in settled law, Simpson had no chance of showing that lethal injection was unconstitutional or unavailable. The state process turned a simple showing of ripeness into an insurmountable burden.

Fourth and finally, the state process turned the ripeness inquiry on its head. App-67a-68a. Under state and federal law, ripeness is determined by considering two prongs: "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Marlin Oil*, 737 P.2d at 568 (citing *Blanchette v. Conn. General Insurance Corp.*, 419 U.S. 102 (1974); *In Re Grand Jury April*, 604 F.2d 69 (10th Cir. 1979)). Recall, Simpson sued under a threat of execution, and lethal injection is Oklahoma's only implemented execution method. Had he shown that lethal injection was unconstitutional or unavailable, the prison would have to implement a new method. In the meantime, Simpson would not be at risk of execution. The lawfulness of his execution would not be fit for adjudication, and his claim would be unripe. But the state process arbitrarily inflated the ripeness burden to ensure Simpson was executed and the execution statute remained unchallengeable. Ironically, instead of ripening the claim, establishing

ripeness under the state process was more likely to make the claim unripe.

In sum, Simpson's complaint argued that the state process is arbitrary, irrational, and fundamentally unfair. Oklahoma plans to execute Simpson. But at the same time, it precludes his ability to challenge the statute under which it will execute him. That process runs counter to a half-century of Supreme Court precedent emphasizing that death is different. "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). "Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Id*. Although Simpson did not challenge his death sentence, he did challenge the prison's statutory authority to execute him. But in Oklahoma, death is different still. Instead of ushering in procedural protections to engender reliability, at least in this context, it eliminates them.

The decision below held that Simpson's federal action is barred by Rooker-Feldman and the Eleventh Amendment.

Simpson filed a federal complaint based on a freestanding, federally cognizable cause of action that invoked the district court's original jurisdiction. In his request for relief, Simpson sought declaratory and injunctive relief. Both

requests are prospective. *Reed*, 598 U.S. at 234. He asked the district court to:

> A. Declare that Oklahoma's procedural process violated his rights to due process, judicial access, and equal protection.
>
> B. Enjoin the prison from executing Mr. Simpson until a lawful process is provided in which he can meaningfully challenge the lawfulness of Oklahoma's execution statute.

App-84a.

Simpson complained of an unconstitutional state process, and his "ultimate complaint [was] being executed without a meaningful opportunity to challenge the lawfulness of his execution." App-53a. He asked the court to declare the process unconstitutional and enjoin his execution. Or Simpson said the court could "declare the state process unconstitutional without enjoining the execution." App-53a. That would "order a change in legal status" and "eliminate" the prison's justification for using the statute to execute Simpson. *Id.*; *Reed*, 598 U.S. at 234; *Gutierrez*, 606 U.S. at 315.

The district court granted the prison's motion to dismiss under Rule 12(b)(1). Despite the complaint invoking 28 U.S.C. §§ 1331 and 1343, the district court engaged a presumption against jurisdiction and held that Simpson's case is barred by *Rooker-Feldman* and the Eleventh Amendment.[7]

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[7] Simpson's burden to establish jurisdiction was "relatively modest at this stage of the litigation." *Bennett v. Spear*, 520 U.S. 154, 171 (1997). "Regardless

The Tenth Circuit affirmed. It isolated sentences from the complaint to argue that Simpson was challenging the state court judgment. It also relied on a 2021 Fifth Circuit decision. *Rhoades*, 2021 WL 4434711. There, Rhoades sued a state court judge for failing to rule on a motion he had submitted. *Id*. at *2. The Fifth Circuit relied on the "inextricably intertwined" language from *Feldman* and reasoned that "a declination to rule for want of jurisdiction cannot be reframed as a denial of due process rooted in the state law rule." *Id*. Using the reasoning in *Rhoades*, the Tenth Circuit applied a rule against challenging "a judicial ruling." App-25a. When distinguishing Simpson's case from *Skinner*, *Reed*, and *Gutierrez*, the court claimed Simpson does "not challenge the constitutionality of the execution statute as construed by the OCCA; rather, as the allegations of his complaint illustrate, he is challenging the OCCA's ripeness holding and asks the federal district court to reverse it." App-24a.

The court's *Rooker-Feldman* analysis concluded that Simpson was

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of the character of the Rule 12(b)(1) motion, it is well-settled that the complaint will be construed broadly and liberally, in conformity with the general principle set forth in Rule 8(e)." 5B C. Wright, A. Miller, & A. Spencer, Federal Practice and Procedure § 1350 (4th ed. 2024). Nonetheless, the district court presumed "that a cause lies outside [its] limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." ROA at 120-21; *see also Kokkonen v. Guardian Life Insurance*, 511 U.S. 375, 377 (1994) (describing a presumption against jurisdiction where there is no statutory or constitutional support it).

challenging the state judgment. Using that reasoning, the court quickly dispensed with Simpson's *Ex parte Young* argument:

> Mr. Simpson insists that his alleged injury arises from the defendants' actions because they plan to execute him despite his inability to challenge the validity of the execution statute. But he also admits that "[t]he constitutionality of lethal injection is settled law" and there is "no indication that lethal injection in Oklahoma is or will become unavailable." Op. Br. at 14–15. Thus, Mr. Simpson's harm derives not from the defendants' actions, but from the OCCA's holding in *Underwood*.

App-26a. The court rejected that Simpson is harmed by his execution. Instead, the court concluded he is harmed only by the state court judgment, to which the Defendants have no connection.

Simpson sought en banc review, but the full court denied it. In a dissent from denial, two judges urged this Court to resolve a "question of exceptional importance." Namely:

> This capital case implicates a question that, in my view, is not settled by our circuit law or Supreme Court precedent: whether, after *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), the *Rooker-Feldman* doctrine can be triggered by a state-court decision that is not "on the merits." Mindful of the limited circumstances in which the *Rooker-Feldman* doctrine should apply but given the many cases in which it is actually applied, this court or the Supreme Court should resolve this question of exceptional importance.

App-3a (Rossman, J., joined by Federico, J., dissenting from denial of rehearing en banc). Judge Federico wrote a separate dissent explaining how the "court

expanded a doctrine that the Supreme Court will soon consider overruling." App-5a (citing Brief for Petitioner at § II, *T.M.*, No. 25-197). "To reach its holding, [the] court worked hard to distinguish three recent Supreme Court cases that all point the other direction, and then relied on an unpublished out-of-circuit case that cannot be squared with either our caselaw or that of the Supreme Court."[8] *Id.* "Given that [the] court has declined further review," Judge Federico noted, "I hope this case garners a hard look by the Supreme Court." *Id.* at 8a.

REASON FOR GRANTING CERTIORARI

The decision below conflicts with decisions from the Tenth Circuit itself; the Second, Third, and Eighth Circuits; and the Supreme Court. Despite this Court's unidirectional movement toward a narrower and potentially nonexistent *Rooker-Feldman*, the decision below invoked an expansive view of the doctrine. The reasoning behind that expansive view then informed the court's *Ex parte Young* analysis, resulting in an overly narrow application. With these interconnected issues, this case provides a good vehicle for the

[8] *See Skinner v. Switzer*, 562 U.S. 521, 531-32 (2011); *Reed*, 598 U.S. at 234-35; *Gutierrez*, 606 U.S. at 314-320; *Rhoades*, 2021 WL 4434711.

Court to offer much needed guidance before the confusion surrounding *Rooker-Feldman* starts corrupting other doctrines.

I. The decision below defies this Court's precedents and conflicts with decisions from other circuit courts.

Both jurisdictional rulings below are based on the idea that Simpson is harmed solely by the state court judgment—not by the prison executing him. From there, the court concluded that Simpson's case was barred by *Rooker-Feldman* and the Eleventh Amendment. *Rooker-Feldman* because Simpson was harmed solely by the state judgement, so he must have been asking the district court to reverse it. And the Eleventh Amendment because the state officials he sued are not responsible for the state judgment and therefore not responsible for his injury.

A. The decision below cannot be squared with this Court's decisions in *Skinner*, *Reed*, and *Gutierrez*.

"Since *Feldman*, [this] Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction." *Id*. In the last century, "the Supreme Court has enforced the *Rooker-Feldman* limit on the jurisdiction of the federal courts just twice." *In re Smith*, 349 F. App'x 12, 17 (6th Cir. 2009) (Sutton, J., concurring in part and dissenting in part). First in *Rooker*. Then in *Feldman*. And the "Court's most recent applications of the doctrine suggest that may be it—that, if the party's name is not Rooker or Feldman, or if the case does not

present a virtually identical challenge, it is unlikely that the doctrine strips the federal courts of jurisdiction to hear the claim." *Id.*

Among the Court's most recent applications of *Rooker-Feldman* are *Skinner*, *Reed*, and *Gutierrez*. In each case, the plaintiff challenged the Texas procedural process he encountered when seeking postconviction DNA testing. *Skinner*, 562 U.S. at 530; *Reed*, 598 U.S. at 235; *Gutierrez*, 606 U.S. at 312-13. They all challenged the same statute, but they raised different claims because they challenged the procedures as construed by the state courts in their particular case. *Id. Skinner* held that "a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." 562 U.S. at 532. *Reed* reaffirmed *Skinner* and held that a § 1983 action, like Simpson's, is not barred by *Rooker-Feldman* or sovereign immunity. 598 U.S. at 234-35. *Gutierrez* recognized *Reed* and *Skinner*, and it allowed a similar procedural challenge to proceed despite the state court holding that the underlying state claim lacked merit and despite the defendant refusing to provide relief regardless of the federal litigation. 606 U.S. at 317-18.

In federal court, Skinner challenged "Texas' postconviction DNA statute 'as construed' by the Texas courts." 562 U.S. at 530. He did not challenge any particular section of the state postconviction law (Article 64). *Id.*; Oral Arg. at

52-57. Rather, he argued the Texas court (CCA or TCCA) had unfairly "construed the statute to completely foreclose any prisoner who could have sought DNA testing prior to trial, but did not, from seeking testing postconviction." *Skinner*, 562 U.S. at 530 (brackets and quotation marks omitted). Likewise, Reed did "not challenge the adverse state-court decisions themselves, but rather target[ed] as unconstitutional the Texas statute they authoritatively construed." 598 U.S. at 235. Specifically, Reed argued the state procedures were unconstitutional because of "the extra-statutory conditions that the CCA imposed on Article 64, conditions which effectively preclude most post-conviction DNA testing absent State consent and eviscerate the relief that Article 64 was designed to provide." *Id*. at App. 14, ¶2. And Gutierrez claimed the process he received was unconstitutional because "Texas courts interpret Article 64 to impose a virtually insurmountable barrier to obtaining DNA testing," "it was unfair for the TCCA not to consider new evidence he had proffered since his trial," and "that, as interpreted by the TCCA, Article 64 violates the Due Process Clause…." 606 U.S. at 312-13.

Simpson's case is patterned off these three cases. He challenged Oklahoma's declaratory judgment procedures as construed by the state court. OCCA held that his nondelegation claim was unripe because the prison will execute him by lethal injection, which is a constitutional method of execution.

Simpson's federal claims challenged that procedural rule: "Unless and until lethal injection is held unconstitutional by a court or is otherwise unavailable, there has been no harm to [Simpson] and [his] claim thus fails the basic test of ripeness." App-87a. Instead of ordinary pre-enforcement procedures, Simpson argued, the state process introduced an overwhelming ripeness burden that was discordant with the underlying claim and basic principles of justiciability.

But the court below thought the federal action was barred under *Rooker-Feldman* because Simpson "challenged a judicial ruling." App-25a (quoting *Rhoades* at *2, 2021 WL 4434711. To reach this conclusion, the court isolated sentences from Simpson's complaint and read them in the least favorable way. *Id.* at 23a. For instance, the court said: "As Mr. Simpson himself declares in the opening brief: 'Simpson's nondelegation challenge in state court gave rise to his federal action.'" *Id.* It claimed this sentence is evidence that, absent OCCA's ruling, the "complaint is devoid of any specific state action for this [c]ourt's review." *Id.* (brackets and quotation marks omitted). The court reasoned that the "allegations of Mr. Simpson's complaint illustrate that his claims rest so fully on the OCCA's ripeness holding that his § 1983 claims simply would not exist absent that holding." App-23a. The decision below is flatly at odds with *Skinner*, *Reed*, and *Gutierrez*. The plaintiffs there challenged procedural rules as construed by the state courts. All of their "§

1983 claims simply would not exist absent [the state court] holding[s]." App-23a. Nevertheless, this Court held that all three plaintiffs had jurisdiction, with *Skinner* and *Reed* specifically rejecting *Rooker-Feldman*.

The court pointed to another sentence where Simpson said, "[w]ithholding adjudication because of the ripeness determination was tremendously harmful to Mr. Simpson and the other plaintiffs." 22a (citing App-68a, ¶ 61). There, Simpson is not complaining of an injury caused by OCCA. *Id*. Instead, he is describing how ripeness is traditionally evaluated under state and federal law to juxtapose the ordinary process with the process that he received. App-67a-68a. The heading of that section is: "The ripeness burden contradicted basic principles of justiciability." App-67a. Recall, Simpson sued under threat of execution, and lethal injection is Oklahoma's only implemented method. If lethal injection was unconstitutional or unavailable, Simpson's execution would be called off until the state implemented another method. "Ironically, instead of ripening the claim," Simpson argued, "the ripeness burden was more likely to make the claim unripe." App-67a, ¶ 60. Compared to traditional doctrine, the "state process turned the ripeness inquiry on its head." App-67a, ¶ 58.

The court declared Simpson's federal claims were word play. Quoting *Rhoades*, the court said, "a declination to rule for want of jurisdiction cannot

be reframed as a denial of due process rooted in the state law rule." *Rhoades* at *2, 2021 WL 4434711. The court concluded that Simpson "challenges the OCCA's ruling, and his attempts to characterize the OCCA's ripeness determination as a 'state process' do not bring his claims within the ambit of the *Skinner* line of cases." App-25a. But the court below does not mention what the Fifth Circuit called a "fundamental" difference between *Rhoade* and *Skinner*: Rhoade challenged the judge's finding that she lacked jurisdiction to rule on his motion, and he sued the judge as the named defendant. *Rhoades* at *2, 2021 WL 4434711. Rhoade challenged the judgment and sued the judge, and the Fifth Circuit's *Rooker-Feldman* reasoning still garnered only two votes. *Id*. at n*. One judge concurred in the judgment only. *Id*.

Instead of *Rhoade*, the court below should have relied on binding Supreme Court precedent. But the court distinguished *Skinner*, *Reed*, and *Gutierrez*. It described the three cases as procedural challenges to "Texas's postconviction DNA statute." *Id*. at 23a. The three cases were inapposite because Simpson's federal claims "do not challenge the constitutionality of the execution statute as construed by the OCCA; rather, as the allegations of his complaint illustrate, he is challenging the OCCA's ripeness holding and asks the federal district court to reverse it." *Id*. at 24a. The decision below mischaracterizes Simpson's federal complaint. OCCA construed the pre-

enforcement procedures of the state declaratory judgment act to exclude challenges to the execution statute. In place of the ordinary procedures, OCCA introduced a procedural rule: the execution statute cannot be challenged in state court unless the challenger shows that lethal injection is unconstitutional or unavailable. That procedural rule is not in the statute, but atextual rules are not inherently fairer than rules based on statutory text. It is just the opposite.

This Court has made clear that a "state-court decision is not reviewable by lower federal courts, but a statute *or rule* governing the decision may be challenged in a federal action." *Skinner*, 562 U.S. at 532 (emphasis added). *Skinner*, *Reed*, and *Gutierrez* all permitted challenges to state procedures as construed by state courts. Skinner challenged the state court's statutory interpretation that having been convicted before the postconviction law's passage does not exempt someone from the statute's procedural requirements. *Skinner*, 562 U.S. at 531. Reed challenged the state court's statutory interpretation that the statute's chain-of-custody requirements apply to evidence that was processed before the "rules governing the State's handling and storage of evidence were put in place." *Reed*, 598 U.S. at 233. And Gutierrez challenged the state court's statutory interpretation that the court could not consider new evidence and that DNA testing is unavailable if "the

record contains any evidence, no matter how minor, that he committed the crime." *Gutierrez*, 606 U.S. at 313. Gutierrez also challenged a rule he characterized as the statute "forbidding DNA testing when its sole purpose is to establish that a defendant is ineligible for the death penalty." *Id*. at 312-23.

By construing the complaint in the least favorable light, the decision below concluded that Simpson's injury was caused by the state judgment and so he is challenging that judgment rather than the state process. *But see Warth v. Seldin*, 422 U.S. 490, 501 (1975) (explaining that at the motion to dismiss stage, federal courts "must construe the complaint in favor of the complaining party"). Simpson challenged the state judgment alone, the court reasoned, so his case is barred by *Rooker-Feldman* and the Eleventh Amendment. The court's *Ex parte Young* reasoning is brief. It adopted the causal reasoning from the *Rooker-Feldman* analysis to conclude:

> Mr. Simpson insists that his alleged injury arises from the defendants' actions because they plan to execute him despite his inability to challenge the validity of the execution statute. But he also admits that "[t]he constitutionality of lethal injection is settled law" and there is "no indication that lethal injection in Oklahoma is or will become unavailable." Op. Br. at 14–15. Thus, Mr. Simpson's harm derives not from the defendants' actions, but from the OCCA's holding in *Underwood*.

App-26a. The court did not address Simpson's causal arguments under *Reed* and *Gutierrez*.

The standing analysis in *Reed* and *Gutierrez* establishes that Simpson was not harmed solely by the state judgment, and his claim is not barred by *Rooker-Feldman* or the Eleventh Amendment. Although standing was not raised, the standing analysis can overlap with and inform the analysis of *Rooker-Feldman* and Eleventh Amendment immunity. Standing considers whether (1) the plaintiff "suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo v. Robins*, 578 U.S. 330, 338 (2016). The second prong regarding traceability is most relevant here. It requires "a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (cleaned up).

Like standing, *Rooker-Feldman* considers whether "the state court judgment caused the plaintiff's injuries." *Bruce v. City & Cnty. of Denver*, 57 F.4th 738, 746 (10th Cir. 2023). If the injury was not caused by the state court judgment, *Rooker-Feldman* does not bar the claim. *Id.* And *Ex parte Young* considers whether the plaintiff sued state officials, alleged an ongoing violation of federal law, and sought prospective relief. *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012). The state officials "need not have a

special connection to the allegedly unconstitutional statute; rather, he need only have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty." *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 760 (10th Cir.2010) (quotation marks omitted). The individual analysis of each doctrine considers the causal connections between the plaintiff's injury and the state action.

In the district court, Simpson sued Warden Christe Quick, Director Justin Farris, and Attorney General Gentner Drummond, all in their official capacities. App-53a-55a. Under state law, Warden Quick and Director Farris are charged with executing Simpson. The designated location of his execution is the Oklahoma State Penitentiary, where Defendant Quick is the warden. Okla. Stat. Ann. tit. 22, § 1015(A). And the "judgment of execution shall take place under the authority" of Director Farris, and Warden Quick must be present. *Id.* at § 1015(B). Warden Quick is charged with staffing the execution team and informing designated witnesses. *Id.* at § 1015(B).

Defendant Gentner Drummond is the Attorney General of Oklahoma. Attorney General Drummond is the chief law enforcement officer of Oklahoma, and his duties include representing the state in its high courts and defending death sentences. Okla. Stat. Ann. tit. 74, § 18b. He defended the constitutionality of the execution statute against Simpson's nondelegation

challenge in state court. Respondents' Brief in Opposition, *Underwood v. Harpe*, PR-122401 (Okla. Aug. 19, 2024). Attorney General Drummond asked OCCA to set Simpson's execution date. Notice Regarding Death Warrant, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 13, 2025). The court did. Order Setting Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 19, 2025).

Reed and *Gutierrez* reveal that the Defendants—not the state court judgment—caused Simpson's injury. In *Reed*, the "state prosecutor, who is the named defendant, denied access to the evidence and thereby caused Reed's injury." 598 U.S. at 234. This is true despite Reed's postconviction DNA petition failing in state court, and therefore the prosecutor had no obligation to allow testing. *Id*. at 233; *Osborne*, 557 U.S. at 68 (explaining that the constitutional right to access evidence for DNA testing does not extend to testing requests made after conviction). Nevertheless, the Supreme Court held that the prosecutor "denied access to the evidence and thereby caused Reed's injury." *Reed*, 598 U.S. at 234. Reed's injury was the denial of testing. The defendant state prosecutor denied the testing. And a federal court declaring the state process unconstitutional is likely to convince the prosecutor to allow testing (thereby redressing Reed's injury) because "that court order would eliminate the state prosecutor's justification for denying DNA testing." *Id*. The

prosecutor, not the state judgment, caused Reed's injury.

Similarly, in *Gutierrez*, the state prosecutor caused Gutierrez's injury by denying him access to evidence for DNA testing. 606 U.S. at 315. Like in *Reed*, Gutierrez's postconviction DNA petition failed in state court. *Id.* at 310-12. So the prosecutor had no obligation under state law to allow DNA testing. *Osborne*, 557 U.S. at 68. Indeed, the prosecutor said he would deny testing even if the federal litigation was successful. *Gutierrez*, 606 U.S. at 315-16. Still, even without an obligation to test the evidence and with the stated intent to deny testing, the prosecutor caused Gutierrez's injury by denying him access to DNA testing. *Id.* at 320-21. Reed and Gutierrez challenged the procedural processes they encountered in state court, but the state prosecutors were still the correct defendants because they denied DNA testing and caused the injury.

Like the plaintiffs in *Skinner*, *Reed*, and *Gutierrez*, Simpson challenged state procedures. In state court, Simpson argued the Defendants' executing him was unlawful because the execution statute violated the state constitution's nondelegation doctrine. The execution statute was unlawful, and thus the Defendants' actions that were authorized and directed by the statute were also unlawful, including their executing Simpson. But the state process arbitrarily foreclosed Simpson's state nondelegation claim. Simpson is injured by the execution. The Defendants are executing him. And a federal court

declaring the state process unconstitutional is likely to convince Defendants not to execute Simpson (thereby redressing his injury) because "that court order would eliminate" Defendants' "justification" for executing Simpson. *Reed*, 598 U.S. at 234.

Reed and Gutierrez argued in state court they were entitled to testing, and they were injured in federal court by the prosecutors denying testing. Simpson argued in state court his execution is unlawful, and he is injured in federal court by the Defendants executing him. The only difference is that Oklahoma law directs Defendants to execute Simpson, while the prosecutors in *Reed* and *Gutierrez* had no obligation under state law to allow DNA testing. Still, the prosecutors caused the injuries, just as the prison causes Simpson's injury. The causal connection between Defendants' actions and Simpson's injury is far stronger than the causal connections in *Reed* and *Gutierrez*. Simpson's injury was caused by Defendants, not the state judgment. *Rooker-Feldman* does not apply, and *Ex parte Young* does.

The Tenth Circuit claimed Simpson failed to "explain how the federal district court could provide the relief he requests—particularly an injunction that would remain in force until the OCCA provides a process 'in which he can meaningfully challenge the lawfulness of Oklahoma's execution statute'—without reversing or otherwise invalidating the OCCA's ripeness holding."

App-22a. Simpson did explain this under *Reed* and *Gutierrez*. And the court does not consider that Simpson requested declaratory relief, and he pled that the district court could declare the state process unconstitutional without enjoining the execution. App-53a. That decision would "order a change in legal status" and "eliminate" the prison's justification for using the statute to execute Simpson. *Reed*, 598 U.S. at 234; *Gutierrez*, 606 U.S. at 315. Thus, the court "failed to consider the breadth of the relief that [Simpson] requested in his complaint." *Gutierrez*, 606 U.S. at 321 (Barrett, J., concurring). This Court can "reverse on that basis alone." *Id*.

B. The decision below conflicts with decisions from the Tenth Circuit itself, as well as the Second, Third, and Eighth Circuits.

The Tenth Circuit reasoned that Simpson's procedural challenge to the state process cannot be challenged in federal court because of *Rooker-Feldman*. Judge Rossman, joined with Judge Federico, dissented from the denial of rehearing en banc. App-3a-15a. Judge Rossman interpreted the panel decision as implicating "a question that, in my view, is not settled by our circuit law or Supreme Court precedent:"

> whether, after *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), the *Rooker-Feldman* doctrine can be triggered by a state-court decision that is not "on the merits."

App-3a. Judge Federico also wrote a dissent. He noted that the Tenth Circuit

"apparently [has] never applied *Rooker-Feldman* in an analogous case to bar review of a state court judgment that did not address the merits of the claim." App-10a.

The decision below created an intra-circuit split in the Tenth Circuit. Twenty years ago, the court "held that a dismissal not on the merits does not trigger application of the inextricably intertwined test." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1076 (10th Cir. 2004). The holding has been acknowledged and reaffirmed. *Worthington v. Anderson*, 386 F.3d 1314, 1318 (10th Cir. 2004). Simpson's state claim was dismissed as unripe, and the state judgment was not on the merits. Under the Tenth Circuit's precedent before last week, *Rooker-Feldman* would not bar Simpson's federal action because the state claim was not decided on the merits. *Id*. But last week, the Tenth Circuit split with its earlier caselaw. It held that Simpson's federal case was barred by *Rooker-Feldman*, even though the state court decision was not on the merits. *Id*.

The decision below also splits with at least three other circuits. In the Second Circuit, *Rooker-Feldman* is inapplicable where the claim in state court "was not dismissed on the merits." *Edwards v. McMillen Cap., LLC*, 952 F.3d 32, 36 (2d Cir. 2020). The Second Circuit cited the Tenth Circuit's earlier precedent holding that "*Rooker-Feldman* does not bar federal complaint where

state court decision 'did not pass on the merits of the case.'" *Id*. (citing *Nudell*, 363 F.3d at 1076). And the Third Circuit "has consistently held that where a state action does not reach the merits of a plaintiff's claims, then *Rooker-Feldman* does not deprive the federal court of jurisdiction." *Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir.1998). And in the Eighth Circuit, "the *Rooker-Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits." *Simes v. Huckabee*, 354 F.3d 823, 830 (8th Cir. 2004).

The timing and direction of the court's split is puzzling. This Court has repeatedly emphasized the "narrow ground" that *Rooker-Feldman* occupies. *Exxon*, 544 U.S. at 284; *Lance*, 546 U.S. **459** at 464; *Skinner*, 562 U.S. at 532. Three times in the last three years, the Court has reversed or vacated a circuit court's holding that § 1983 challenges to state procedures, like Simpson's, lack jurisdiction. *Reed*, 598 U.S. at 234-35 ; *Gutierrez*, 606 U.S. at 309; *Wood*, 145 S. Ct. at 2839. Right now, the Court is considering a case where the petitioner has suggested scrapping *Rooker-Feldman* altogether. *T.M.*, No. 25-197. Still, despite massive movement toward a narrow *Rooker-Feldman*, the Tenth Circuit reversed itself to engage an expansive view of the doctrine.

II. This case is a good vehicle.

The causal reasoning in *Rooker-Feldman*, *Ex parte Young*, and standing can inform one another. But there is no clear guidance from this Court on how they inform one another or whether they should inform one another. This case directly presents two of these three issues, *Rooker-Feldman* and *Ex parte Young*. Although the courts below disregarded it, Simpson used standing arguments to show that his injury is caused by the prison, not the state judgment. This case incorporates all three issues. At a minimum, this case provides the Court with opportunity to mitigate the "havoc" that *Rooker-Feldman* has been wreaking "across the country." *Vanderkodde*, 951 F.3d at 405 (Sutton, J.).

CONCLUSION

The Court should grant certiorari or GVR in light of *Gutierrez*. Or it should hold the case until *T.M.* is decided later this term.

Respectfully submitted,

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