Nos. 25A897 & 25-6754

In the Supreme Court of the United States

KENDRICK SIMPSON,

Petitioner/Applicant,

v.

CHRISTE QUICK, Warden, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit and Application for Stay of Execution

COMBINED BRIEF IN OPPOSITION TO KENDRICK SIMPSON'S PETITION FOR CERTIORARI AND RESPONSE TO SIMPSON'S APPLICATION FOR STAY OF EXECUTION

*****RULING REQUESTED BY 10 A.M. CST THURSDAY, FEBRUARY 12, 2026*****

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CAPITAL CASE
EXECUTION SET: FEBRUARY 12, 2026, AT 10:00 A.M. CST
Nos. 25A897 & 25-6754

QUESTION PRESENTED

Kendrick Simpson is a self-proclaimed "monster," *Simpson v. Carpenter*, 912 F.3d 542, 574 (10th Cir. 2018), who was sentenced to death by a jury of his Oklahoma peers for murdering two men. After numerous failed attempts to challenge his convictions, sentences, and the way in which Oklahoma carries out the death penalty, he recently sought to delay his execution by challenging Oklahoma's method-of-execution statute. This time, Simpson claimed in state court that Oklahoma offended the State's non-delegation doctrine by permitting executive officials to select alternative methods of execution when the primary (and required) method is held unconstitutional or is unavailable. The Oklahoma Court of Criminal Appeals ("OCCA") unanimously rejected this claim as unripe, however, because no alternative method will be used for Simpson's execution on February 12, 2026. Simpson will instead undergo a lethal injection, which is the same method he now admits is constitutional after his previous unsuccessful challenge in federal court.

Next, Simpson brought the present lawsuit in the Western District of Oklahoma, alleging that the OCCA's lack-of-ripeness holding violated procedural due process, his right to judicial access, and the Equal Protection Clause. The court below granted Oklahoma's motion to dismiss, holding that the *Rooker-Feldman* doctrine bars Simpson's claims because he is challenging the OCCA's ripeness ruling, as does the Eleventh Amendment because he has sued executive officials who did not issue

the ripeness ruling. The Tenth Circuit affirmed, echoing the district court on *Rooker-Feldman* and the Eleventh Amendment.

Thus, the question presented is as follows:

> Whether this Court should issue a last-minute stay of execution to scrutinize the Tenth Circuit's determination that Simpson's federal lawsuit attacking a lack-of-ripeness finding by the OCCA is barred by the *Rooker-Feldman* doctrine and Eleventh Amendment immunity, when his lawsuit obviously fails on the merits, as well.

PARTIES TO THE PROCEEDING

Applicant is KENDRICK SIMPSON. Applicant is Plaintiff in the U.S. District Court for the Western District of Oklahoma and Appellant in the U.S. Court of Appeals for the Tenth Circuit. Applicant is scheduled to be executed on February 12, 2026, at 10 a.m., having been convicted of murder by a jury of his peers.

Respondents are CHRISTE QUICK, in her official capacity as Warden of the Oklahoma State Penitentiary; JUSTIN FARRIS, in his official capacity as interim Director of the Oklahoma Department of Corrections; and GENTNER DRUMMOND, in his official capacity as Attorney General of Oklahoma. Respondents are the Defendants in the U.S. District Court for the Western District of Oklahoma and Appellees in the U.S. Court of Appeals for the Tenth Circuit.

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The order and judgment of the U.S. Court of Appeals for the Tenth Circuit, originally dated February 4, 2026, is attached to the Petition as Appendix B ("App.B") at 17a.[1] The published order of the Tenth Circuit denying Simpson's petition for en banc rehearing, dated February 6, 2026, is attached to the Petition as Appendix A ("App.A") at 1a. The order of the U.S. District Court for the Western District of Oklahoma, dated December 19, 2025, granting the State of Oklahoma's motion to dismiss, is attached to the Petition as Appendix D ("App.D") at 34a. The docket number in the Western District of Oklahoma is No. 5:25-CV-1221-D, and the docket number in the Tenth Circuit is No. 26-6008.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

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

> No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[1] On February 6, 2026, the Tenth Circuit replaced its February 4th order and judgment to correct an error in a statutory reference. Simpson's Appendix contains the uncorrected order and judgment, which seemingly remains complete and accurate in all other respects. Given the time constraints, Defendants will cite to the uncorrected Tenth Circuit order included in the Appendix.

INTRODUCTION

This case is simple. Finally facing execution for his heinous crimes, Kendrick Simpson has manufactured yet another meritless lawsuit. This time, he claims that the OCCA violated his rights by finding, accurately, that his latest challenge to Oklahoma's execution statute—a non-delegation lawsuit—was unripe because he will be put to death by lethal injection and not some alternative method.

The district court and Tenth Circuit were correct that Simpson's federal claims are barred under the *Rooker-Feldman* doctrine, which prohibits federal attacks on state court decisions. They were also correct that Eleventh Amendment immunity applies, in no small part because the named Defendants here are not the judicial entities responsible for Simpson's alleged harm. And regardless, Simpson's claims obviously fail on the merits. A state appellate court's well-grounded ripeness decision did not violate procedural due process, or any other conceivable right of Simpson's.

In the end, Simpson admits that lethal injections are constitutional, he concedes that Oklahoma will lethally inject him, and he has not challenged his guilt, convictions, or sentences. There is therefore zero ground here for granting certiorari or any kind of stay or injunction. This Court should reject Simpson's attempt to supplant the OCCA's judgment and frustrate the timely enforcement of his sentence through a manufactured nothingburger. *See Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) ("Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." (citation omitted)). Twenty years have passed since Simpson mowed down two men in a hail of gunfire. Enough is enough.

STATEMENT OF THE CASE

I. SIMPSON MURDERED TWO MEN BY SPRAYING THEIR CAR WITH BULLETS.

In January 2006, Kendrick Simpson fired "about twenty rapid gun shots" from an "assault rifle" at Anthony Jones, Glen Palmer, and London Johnson as they were driving their Chevy Caprice in Oklahoma City. *Simpson v. State*, 230 P.3d 888, 893–94 (Okla. Crim. App. 2010). Having stalked them for miles in a separate car, Simpson shot Jones in the side of his head and torso, and Palmer in the chest, killing them both. *Id.* at 894. Afterward, Simpson "shouted, 'I'm a monster. I'm a motherfucking monster. Bitches don't want to play with me,'" while fleeing the scene. *Simpson*, 912 F.3d at 574. The State of Oklahoma charged Simpson with the first-degree murders of Palmer and Jones. *Id.* at 558–59. Following a 2007 trial, a jury of Simpson's peers found him guilty and sentenced him to death. *Id.* at 561.

II. SIMPSON HAS UNSUCCESSFULLY CHALLENGED HIS CONVICTIONS AND SENTENCES MULTIPLE TIMES, DIRECTLY AND INDIRECTLY.

Simpson directly appealed to the OCCA, which in 2010 affirmed his convictions and death sentences. *Simpson*, 230 P.3d at 907; *see also Simpson v. State,* 239 P.3d 155 (Okla. Crim. App. 2010) (granting limited rehearing but denying recall of the mandate and affirming Simpson's convictions and sentences). Simpson then sought post-conviction federal habeas relief, which the Western District of Oklahoma denied in 2016. *See Simpson v. Duckworth*, No. CIV-11-96-M, 2016 WL 3029966, at *1 (W.D. Okla. May 25, 2016). The Tenth Circuit affirmed. *Simpson*, 912 F.3d at 604. Simpson exhausted all challenges on October 15, 2019, when this Court denied his petition for certiorari. *See Simpson v. Carpenter*, 140 S. Ct. 390, 391 (2019).

For much of this time, Simpson—along with other inmates—also pursued a lawsuit alleging that Oklahoma's lethal injection protocol violated the Eighth Amendment's prohibition on cruel and unusual punishment, as well as the First, Fifth, and Ninth Amendments, and the Religious Freedom Restoration Act. The Western District of Oklahoma dismissed most of these claims pre-trial. *See Glossip v. Chandler*, No. CIV-14-665-F, 2022 WL 1997194, at *2 (W.D. Okla. June 6, 2022) (listing the claims). And after a full bench trial, it roundly rejected the remaining Eighth Amendment claim. *See id.* at *21 ("The plaintiff inmates have fallen well short of clearing the bar set by the Supreme Court. Consequently, the Eighth Amendment … does not stand in the way of execution of these Oklahoma inmates ….").

Simpson and his fellow inmates did not appeal that Eighth Amendment loss to the Tenth Circuit, effectively conceding defeat on that point. *See Coddington v. Crow*, No. 22-6100, 2022 WL 10860283, at *1 (10th Cir. Oct. 19, 2022) (per curiam). Instead, Simpson appealed only the pre-trial dismissal of the claim of a denial of access to counsel and the courts, and the claim of an intentional deprivation of the right to counsel. *Id.* On October 19, 2022, the Tenth Circuit rejected Simpson's arguments on these two claims and affirmed the district court's dismissal. *Id.* Simpson did not petition this Court for review of the Tenth Circuit's ruling.

This years-long lawsuit involving statutory and constitutional challenges to Oklahoma's execution protocol—that culminated in a week-long federal trial and a definitive ruling against Simpson—demonstrates that Simpson's repeated contention here that he is being denied "a meaningful opportunity to challenge the lawfulness of

his execution" is complete and utter nonsense, bordering on the obscene. *See* Simpson Petition ("Pet.") at 23 (citation omitted). Simpson has received an *overwhelming* number of opportunities over the past twenty years to challenge anything and everything related to his murders and execution, and he has failed, time and again, to convince courts to allow him to escape justice for his crimes.

III. OKLAHOMA'S APPELLATE COURTS DECLINED TO ISSUE SIMPSON AN ADVISORY OPINION ABOUT ALTERNATIVE METHODS OF EXECUTION.

In July 2024, four Oklahoma death-row inmates—Kevin Underwood, Wendell Grissom, Tremane Wood, and Simpson—filed an original action in the Oklahoma Supreme Court, challenging the constitutionality of Oklahoma's method-of-execution statute, OKLA. STAT. tit. 22, § 1014 ("Section 1014"), under Oklahoma's non-delegation doctrine. *See Underwood v. Harpe*, No. 122,401 (Okla. July 31, 2024).

Through Section 1014, the Oklahoma Legislature has designated methods of execution in order of priority, with lethal injection being the primary and required method. *See* OKLA. STAT. tit. 22, § 1014(A) ("The punishment of death *shall* be carried out by the administration of a lethal quantity of a drug or drugs …." (emphasis added)). The second listed method of execution—nitrogen hypoxia—may be used only if lethal injection "is held unconstitutional by an appellate court of competent jurisdiction or is otherwise unavailable." *Id.* § 1014(B). Similarly, the third (electrocution) and fourth (firing squad) methods are to be used only if all preceding methods are deemed "unconstitutional by an appellate court of competent jurisdiction or [are] otherwise unavailable." *Id.* § 1014(C) & (D).

Simpson and his cohorts claimed that Section 1014 violates the Oklahoma Constitution's non-delegation doctrine by improperly granting executive officials "near total discretion to select a method of execution," which they "can change … at any moment and without notice." App.F at 116a–117a. Section 1014, they complained, "does not define 'unavailable,' 'available,' or any other term. It does not provide any policy or standards for selecting a method. And it does not even identify who decides whether a method is unavailable." *Id.* at 121a–122a. Per Simpson, "states that are most protective of legislative power authorize only one method of execution." *Id.* at 122a. "Indeed, most death penalty jurisdictions in the country use one-method statutes that authorize lethal injection as the sole method." *Id.* Thus, Simpson's "[o]verall" problem was that "Oklahoma has the most delegatory method-of-execution statute in the country" because it "gives DOC unfettered discretion to choose between four methods of execution." *Id.* at 124a.

After receiving briefing, the Oklahoma Supreme Court unanimously transferred the case (and the briefing) to the OCCA. App.E at 84.10a. With briefing in hand, *contra* Pet. at 12, the OCCA denied relief for lack of ripeness on September 17, 2024, stating that "[u]nless and until lethal injection is held unconstitutional by a court or is otherwise unavailable, there has been no harm to any of these Petitioners and their claim thus fails the basic test of ripeness." App.F at 87a; *see also id.* ("Accordingly, their attack on … § 1014, however couched or construed, is not ripe for judicial adjudication."). The OCCA also dismissed Simpson's motion to transfer the case *back* to the Oklahoma Supreme Court as "patently frivolous." *Id.*

Soon after, Manuel Littlejohn—whose execution was set for September 26, 2024—filed an emergency motion for stay with the Oklahoma Supreme Court. *See* App.E at 84.11a.[2] As Simpson admits, Littlejohn "raised an identical claim" to that raised by Simpson and his co-inmates. Pet. at 10 n.5. The Oklahoma Supreme Court promptly transferred this matter to the OCCA, as well, noting that, "[t]o the extent [Littlejohn] raises claims identical to those claims set forth in Case No. 122,401, *Kevin Ray Underwood, et al. v. Steven Harpe, et al.*, those claims rest within the exclusive jurisdiction of the [OCCA]." App.E at 84.11a. In doing so, the Supreme Court added: "The suggestion that the [OCCA] 'rejected the transfer' of the *Underwood* case is not an accurate characterization of the record. The [OCCA] accepted the transfer, evaluated the argument, and exercising their exclusive jurisdiction found that the claim was not ripe." *Id.* The OCCA then denied relief to Littlejohn, much as it had with Simpson's identical claim. It explained:

> We recently addressed this same claim in an action brought by four other death row inmates who are next in line after Littlejohn to receive execution dates and found the claim was not ripe. … Under Section 1014, lethal injection is the default method of execution. Unless and until lethal injection is held unconstitutional by a court (which it has not) or is otherwise unavailable, the executive branch officials have no choice but to utilize that method of execution to execute Littlejohn. Littlejohn provides no proof that Respondents lack the approved drugs to carry out his execution by lethal injection. His concern Respondents may, at the eleventh hour, select one of the other methods is nothing but conjecture. Hence, we continue to find this claim fails the prudential ripeness doctrine.

[2] At the same time, undeterred by the earlier transfer and dismissal, Simpson (along with Underwood, Grissom, and Wood) refiled their case, raising the same claim and seeking the same relief, in the Oklahoma Supreme Court. *See Underwood v. Harpe*, No. 122,536 (Okla. Sept. 24, 2024). The Supreme Court dismissed this action outright on October 21, 2024, and understandably did not re-transfer this repeat and already-decided case to the OCCA.

Id. at 84.11a–84.12a.

Neither Littlejohn nor any other inmate, including Simpson, appealed the OCCA's ripeness decision to this Court. Rather, following the OCCA's decision, Littlejohn filed suit in the Western District of Oklahoma, requesting an emergency stay of execution and "alleg[ing] a violation of his federal procedural due process rights under 42 U.S.C. § 1983." *Littlejohn v. Quick*, No. CIV-24-996, 2024 WL 4314973, at *1 (W.D. Okla. Sept. 25, 2024). Like Simpson below, Littlejohn argued that "the OCCA's 'lawless ripeness holding deprived Littlejohn of access to the courts and his right to procedural due process under the federal constitution.'" *Id.* at *2 (citation omitted). The district court quickly dismissed Littlejohn's complaint for lack of jurisdiction, primarily on *Rooker-Feldman* grounds, holding that "Littlejohn's action is solely an invitation to exercise appellate jurisdiction over the final judgment of the OCCA, which the Court cannot do." *Id.* at *3.

Littlejohn then appealed to the Tenth Circuit and filed an emergency motion for a stay of execution. *See* Doc. 2, Appellant's Emerg. Mot. for Stay of Execution, *Littlejohn v. Quick*, No. 24-6203 (10th Cir. Sept. 25, 2024). In this motion, he attacked the "Oklahoma Supreme Court's and the Oklahoma Court of Criminal Appeals' (OCCA) failure to provide … adequate process to litigate Mr. Littlejohn's state-law nondelegation claim." *Id.* at 1. The Tenth Circuit ruled the next day, on September 26, 2024. Doc. 4, Order, *Littlejohn*, No. 24-6203 (10th Cir. Sept. 26, 2024). The Tenth Circuit observed that "Mr. Littlejohn's complaint fundamentally seeks to appeal the final decision that the Oklahoma Court of Criminal Appeals rendered in *Littlejohn v.*

Harpe, No. PR-2024-740 (Okla. Crim. App. Sept. 25, 2024)." *Id.* at 2. The Tenth Circuit then denied the motion because "Mr. Littlejohn has not addressed the jurisdictional basis for the district court's ruling or established that he is likely to succeed on appeal in arguing that the ruling was incorrect under the *Rooker-Feldman* doctrine or as to Eleventh Amendment immunity." *Id.* at 3. Littlejohn was executed by lethal injection, without complication, that same day.

IV. SIMPSON BELATEDLY SUED, ATTACKING OKLAHOMA'S APPELLATE COURTS.

Inexplicably, yet unsurprisingly, Simpson let an entire year pass before filing the present lawsuit in the Western District of Oklahoma. *Compare* App.E at 47a (Complaint filed October 16, 2025), *with* App.F at 87a–88a (OCCA dismissal on September 17, 2024). In his Complaint, just like Littlejohn, he assailed the OCCA's September 2024 rejection of his non-delegation claim as unripe. Specifically, Simpson alleged that the OCCA's reliance on ripeness violated procedural due process, his right to judicial access, and the Equal Protection Clause. "[T]he ripeness burden," he alleged, "was flatly at odds with basic principles of justiciability." App.E at 49a. By relying on ripeness, the OCCA allegedly subjected him to a process that "was arbitrary, irrational, and fundamentally unfair." App.E at 50a.

Despite the entire point of his lawsuit being the alleged unfairness of an OCCA ruling, Simpson named as Defendants three members of Oklahoma's executive branch: Christe Quick, the Warden of the Oklahoma State Penitentiary; Justin Farris, the Executive Director of the Oklahoma Department of Corrections; and Gentner Drummond, the Oklahoma Attorney General. On appeal, he confusingly

refers to these Defendants as "the prison" in some places, *e.g.*, Pet. at 9, 11–12, while he simultaneously refers to the state judiciary as the "state process," *e.g.*, *id.* at 16, apparently to avoid being seen as directly attacking the judiciary.

On November 10, 2025, the Defendants moved for dismissal, arguing that all of Simpson's claims were jurisdictionally barred by *Rooker-Feldman*, that the Defendants were protected under the Eleventh Amendment, and that his three theories of recovery have no basis in law. Nine days later, on November 19, 2025, the OCCA set Simpson's execution for February 12, 2026. Order, *Simpson v. State*, No. D-2007-1055 (Okla. Crim. App. Nov. 19, 2025).

V. THE DISTRICT COURT PROPERLY DISMISSED SIMPSON'S CLAIMS, AND THE TENTH CIRCUIT AFFIRMED.

The district court granted Oklahoma's motion to dismiss on December 19, 2025. The court first found that the *Rooker-Feldman* doctrine applied because "Plaintiff's claims require this Court to review the OCCA's judgment." App.D at 37a. Simpson, that is, "does not allege any constitutional violations other than the OCCA's conclusion that Plaintiff's claim was not ripe." *Id.* Thus, "[p]roviding the relief Plaintiff requests requires wading into the facts and legal analysis performed by the OCCA to determine if the OCCA reached an improper result as to ripeness in Plaintiff's case based on a faulty application of the law." *Id.* In sum: "This is the type of appellate review barred by *Rooker-Feldman*." *Id.*

Moreover, the district court explained, Simpson's "requested relief would overturn the OCCA's judgment." *Id.* This is because the "only relief" the court "could grant would place Plaintiff in the same position he occupied prior to the OCCA's

decisions," which "amounts to reversing the OCCA's judgment." *Id.* at 38a. In other words, "the state court judgment is what caused Plaintiff's alleged harm; sans allegations regarding the OCCA's ripeness ruling, Plaintiff's Complaint is devoid of any specific state action for this Court's review." *Id.*

The district court rejected Simpson's reliance on "three cases allowing Texas prisoners to challenge Texas' postconviction DNA statute: *Gutierrez v. Saenz*, 606 U.S. 305 (2025); *Reed v. Goertz*, 598 U.S. 230 (2023); *Skinner v. Switzer*, 562 U.S. 521 (2011)." App.D at 38a. Those cases were distinguishable: "In *Skinner* and *Reed*, the prisoner did not challenge the decision reached by the state court in applying the statute to his motion but instead challenged the constitutionality of the statute as construed by the state courts. … In *Gutierrez*, the prisoner also challenged 'the Texas courts['] interpretat[ion] of Article 64.'" App.D at 38a. (quoting *Gutierrez*, 606 U.S. at 312). "In each of the cases the prisoner asserted that the Texas statute was constitutionally inadequate as to any prisoner who failed to seek DNA testing before trial." *Id.* Simpson, in contrast, "does not allege that the Court wrongly interpreted an independent statute making the statute unconstitutional." *Id.* Instead, he challenges "the OCCA's ripeness decision in his specific claim." *Id.* "This amounts to a challenge of the adverse OCCA decision rather than an independent constitutional challenge to a statute …." *Id.*

The district court also held that dismissal was warranted under the Eleventh Amendment. Plainly, Simpson's sought-after injunction "is not linked to the state action Plaintiff challenges." *Id.* at 39a. Rather than challenge "the method-of-

execution statute" in federal court, Simpson "is challenging the constitutionality of the OCCA's ripeness determination." *Id.* at 39a–40a. The problem with that is that "the officials he sued are not connected to the allegedly unconstitutional ripeness determination by the OCCA." *Id.* at 40a. Thus, the "*Ex parte Young* exception does not apply to Plaintiff's claims," and Oklahoma is protected by the Eleventh Amendment from further prosecution in this suit. *Id.*

On December 22, 2025, Simpson filed a motion for a preliminary injunction, repeating the arguments the district court had just dismissed. App.E at 84.24a. The court denied that motion on January 8, 2026, citing the "same jurisdictional concerns" discussed in its dismissal. App.C at 31a. Simpson then appealed to the Tenth Circuit.

The Tenth Circuit affirmed. Relying on this Court's decision in *Exxon-Mobil v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), the panel unanimously found that *Rooker-Feldman* applied and that Simpson's claims were prohibited by the Eleventh Amendment. As to *Rooker-Feldman*, the Tenth Circuit observed that "[t]here is no question that Mr. Simpson is a state-court loser, within the meaning of *Exxon Mobil*, and that the OCCA issued its decision before he filed his § 1983 action." App.B at 21a. Moreover, "[t]he complaint makes clear that 'the procedural process' that caused Mr. Simpson's injury is, in fact, the OCCA's ruling in *Underwood*." *Id.* at 22a. That is to say, "the source of Mr. Simpson's injury is clearly the OCCA's holding that the *Underwood* petitioners' claim 'fail[ed] the basic test of ripeness.'" *Id.* And "[t]he allegations of the complaint also establish that Mr. Simpson's § 1983 lawsuit 'invit[es] district court review and rejection' of the OCCA's holding." *Id.* (quoting *Exxon-Mobil*,

544 U.S. at 284). In conclusion, "[t]he 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." *Id.* at 23a. Thus, *Rooker-Feldman* prohibited the claims.

Like the district court, the Tenth Circuit rejected Simpson's reliance on this Court's decisions involving challenges to Texas's DNA-testing statute (*Gutierrez*, *Reed*, and *Skinner*). *Skinner* and *Reed*, for instance, are "distinguishable" in part because this Court clearly "explained that the plaintiff had not 'challenge[d] the adverse [state-court] decisions themselves.'" *Id.* at 23a–24a (quoting *Skinner*, 562 U.S. at 532). Whereas Simpson "is challenging the OCCA's ripeness holding and asks the federal district court to reverse it." *Id.* at 24a. Citing a Fifth Circuit decision, the Tenth Circuit deemed Simpson's "attempts to characterize the OCCA's ripeness determination as a 'state process'" as mere "word play." *Id.* at 25a (quoting *Rhoades v. Martinez*, No. 21-70007, 2021 WL 4434711 (5th Cir. 2021)). In the end, a state court's declining "to rule for want of jurisdiction cannot be reframed as a denial of due process rooted in the state law rule." *Id.* (quoting *Rhoades*, 2021 WL 4434711 at *2).

The Tenth Circuit also explained that the "district court correctly held that Mr. Simpson's claims are barred by Eleventh Amendment immunity." *Id.* at 26a. Here, Simpson was done in by his own admissions that the "constitutionality of lethal injection is settled law" and that there is "no indication that lethal injection in Oklahoma is or will become unavailable." *Id.* (citations omitted). In the end, *Ex parte Young* requires "some connection" with the challenged state action, *id.* (quoting *Ex*

parte Young, 209 U.S. at 157), and Simpson's alleged "harm derives not from the defendants' actions, but from the OCCA's holding in *Underwood*," *id.*

The Tenth Circuit panel (Chief Judge Holmes, Judge McHugh, and Judge Eid) was unanimous in its affirmance of the district court. A different Tenth Circuit judge, however, *sua sponte* called for en banc review. Simpson then filed an en banc petition, which the Tenth Circuit swiftly denied by a 10 to 2 vote. Judges Rossman and Federico each filed a dissent, both focusing on *Rooker-Feldman*. Judge Rossman, joined by Judge Federico, argued that this Court should analyze a question Simpson had not raised: whether *Rooker-Feldman* "can be triggered by a state-court decision that is not 'on the merits.'" App.A at 3a. Judge Federico argued, in a lengthier solo filing, that "[t]here is no reason, in jurisprudence or common sense, that federal courts must abstain from hearing [Simpson's] due process challenge to the state court's jurisdictional rule." *Id.* at 5a. In other words, even Judge Federico admitted that Simpson was not attacking some nebulous state "process," but rather directly challenging the decision of the "state court" (the OCCA) that Simpson's non-delegation claim lacked ripeness.

* * *

Simpson is scheduled to be executed on February 12, 2026, over twenty years after the brutal murders he committed. On Wednesday, January 14, 2026, the Oklahoma Pardon and Parole Board denied Simpson the possibility of clemency after a hearing that included a powerful plea from Johnson—the backseat passenger who survived Simpson's hail of bullets—in opposition to any relief for Simpson, as well as

opposition to clemency from the murder victims' family members. *See, e.g.,* Nolan Clay*, Death row inmate Kendrick Simpson denied clemency in 3-2 vote*, THE OKLAHOMAN (Jan. 14, 2026) ("'A part of me died in that car as well. Those were my best friends, my brothers,' Johnson said.").[3] For the following reasons, as well as those articulated by the OCCA and the federal courts below, Simpson has presented nothing in this lawsuit or any other that should delay justice from finally being done.

STANDARDS OF REVIEW

Outside the execution context, a stay pending appeal is only appropriate in narrow circumstances: when an applicant faces irreparable harm, is likely to succeed on the merits of his claim, and the public interest would not be harmed. *See Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam) (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)); *see also Does 1-3 v. Mills*, 142 S. Ct. 17, at *18 (2021) (Barrett, J., concurring). Put differently, this Court may issue a stay only when the legal rights are "indisputably clear" and when injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010) (Roberts, C.J., in chambers); *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citation omitted; alterations adopted).

Further, an inmate seeking a stay of execution must: (1) make a "strong showing" that he is likely to succeed on the merits of his claim, (2) show he is likely to suffer irreparable injury, (3) show that the threatened injury outweighs the State's injury from the stay, and (4) show that the stay is not adverse to the public interest.

[3] *Available at* https://www.oklahoman.com/story/news/2026/01/14/hurricane-katrina-evacuee-kendrick-simpson-to-be-executed-after-clemency-was-denied/88167535007/.

Nken v. Holder, 556 U.S. 418, 426 (2009); *Hill v. McDonough*, 547 U.S. 573, 584 (2006). The decision whether to grant a stay "must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill*, 547 U.S. at 584. Thus, for executions "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew*, 587 U.S. at 150; *see also Dunn v. Price*, 587 U.S. 929, 929 (2019). For executions, a stay is truly "an extraordinary and drastic remedy," *Warner v. Gross*, 776 F.3d 721, 727–28 & n.5 (10th Cir. 2015) (citation and internal marks omitted).

REASONS FOR DENYING THE APPLICATION AND PETITION[4]

Simpson has not come close to presenting an important issue worthy of this Court's review, much less has he met the extremely high burden necessary for a stay of execution. As the Tenth Circuit and district court held, Simpson's manufactured claims are an attack on a definitive jurisdictional holding and judgment by Oklahoma's highest criminal court, which is inappropriate under the *Rooker-Feldman* doctrine. And the alleged circuit split involves a separate question that Simpson never mentioned below; it only arose in this case through *sua sponte* introduction by two judges who were not on the Tenth Circuit panel analyzing his case. For that reason and more, this case would be an incredibly poor vehicle for analyzing the issue.

Regardless, even if *Rooker-Feldman* did not exist, Simpson's claims are prohibited by the Eleventh Amendment, and they obviously fail on the merits. It is truly absurd to postulate, as Simpson does, that a state supreme court's well-grounded

[4] Due to the intense time considerations, the Defendants have combined their response to Simpson's application for an emergency stay and petition for certiorari into one brief. Defendants reserve the right to request further briefing to respond more fully, should the need arise.

ripeness decision in the face of a purely hypothetical question is a violation of federal due process or equal protection rights. To entertain such a claim would produce immense and negative repercussions in our federalist system.

I. THE TENTH CIRCUIT AND DISTRICT COURT CORRECTLY FOUND THAT SIMPSON'S CLAIMS ARE PROCEDURALLY BARRED.

This Court should deny Simpson's motion and deny certiorari for three basic reasons. *First*, the *Rooker-Feldman* doctrine prevents Simpson from relitigating the OCCA's ripeness decision in a federal forum. *Second*, Simpson's claims are barred by Eleventh Amendment immunity, and the *Ex parte Young* exception does not apply. *Third*, Simpson's procedural due process, judicial access, and equal protection claims all fail on the merits, as a clear matter of law.

A. *Rooker-Feldman* precludes Simpson's claims.

"The *Rooker-Feldman* doctrine prohibits federal suits that amount to appeals of state-court judgments." *Bolden v. City of Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006).[5] As this Court has explained, in no uncertain terms, *Rooker-Feldman* applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). *Exxon Mobil* said nothing about the state-court judgment having to be on the merits; rather, it embraced all judgments.

[5] The doctrine is named after *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). It is based on 28 U.S.C. § 1257, which indicates that only this Court may review "[f]inal judgments or decrees rendered by the highest court of a State."

Below, Simpson asked the courts to review—and undo—the ripeness decision the OCCA issued well over a year ago. For this reason, his claims fell squarely within *Rooker-Feldman*'s jurisdictional prohibition and were properly dismissed. Simpson's state-court challenge to the alleged discretion in Oklahoma's method-of-execution statute (Section 1014) was adjudicated in the OCCA's September 2024 decision in *Underwood v. Harpe*. "Unless and until lethal injection is held unconstitutional by a court or is otherwise unavailable," the OCCA held, "there has been no harm to any of these Petitioners and their claim thus fails the basic test of ripeness." App.F at 87a. That court's judgment, commonsensically finding a lack of ripeness, is final, as Simpson and his counterparts did not appeal it to this Court. *See Guttman v. Khalsa*, 446 F.3d 1027, 1032 (10th Cir. 2006) ("*Rooker–Feldman* applies only to suits filed after state proceedings are final").

This was not a one-off decision by the OCCA, either. Rather, the OCCA relied on the same grounds in dismissing the identical state-court *Littlejohn* litigation. *See* App.E at 84.11a–84.12a, 84.15a ("We recently addressed this same claim in an action brought by four other death row inmates [including Simpson] ...."). And there, as below, Littlejohn filed a lawsuit in the Western District of Oklahoma attacking the OCCA's ripeness ruling on due process grounds. The Western District, in turn, evaluated Littlejohn's federal due process claims by observing that the Tenth Circuit has "specifically foreclosed challenges to final state court judgments on the grounds that the state court proceedings deprived the individual who lost of due process." *Littlejohn*, 2024 WL 4314973, at *2–3 (citing *Bolden*, 441 F.3d at 1145); *see also Tso v.*

Murray, 849 F. App'x 715, 717 (10th Cir. 2021) (unpublished) ("Mr. Tso also argues that the *Rooker-Feldman* doctrine does not cover claims involving denial of procedural due process. We rejected this argument in *Bolden*.").

The district court in *Littlejohn* deemed dismissal required under *Rooker-Feldman*. 2024 WL 4314973, at *3. In short, Littlejohn's action was "solely an invitation to exercise appellate jurisdiction over the final judgment of the OCCA, which the Court cannot do." *Id.* Both the district court below and the Tenth Circuit on appeal applied those same principles to Simpson's claims, leading to the dismissal and a unanimous panel affirmance of that dismissal. The courts were obviously correct in doing so. Simpson can protest all he wants that he "does not challenge the state court decision," Stay Application ("Stay App.") at 6, but it is crystal clear that this is exactly what he is doing. Indeed, even one of the two dissenting judges at the Tenth Circuit practically conceded that point, characterizing Simpson's lawsuit as a "due process challenge *to the state court's jurisdictional rule*." App.A at 5a (Federico, J., dissenting from denial of rehearing en banc) (emphasis added).

Nevertheless, Simpson argues that the district court's jurisdictional rulings contradict this Court's holdings in *Skinner*, *Reed,* and *Gutierrez*. But the district court and the Tenth Circuit expressly and correctly distinguished those three cases. App.B at 23a-25a; App.D at 38a. As these refutations demonstrate, closer inspection of those three decisions does not yield promising results for Simpson in countering the applicability of *Rooker-Feldman* to his lawsuit.

To begin, Simpson admits that the plaintiff in each of those cases "all challenged

the same [Texas] statute" and were "seeking postconviction DNA testing" relating to innocence claims. Pet. at 28. This case presents nothing resembling innocence claims or DNA testing regulated by a state statute. Rather, Simpson admitted at his clemency hearing that he committed the murders. *See* Clay, *supra* p.15 & n.5. Moreover, as the Tenth Circuit observed, *Skinner* (and *Reed*) expressly affirmed in multiple ways that "***a state-court decision is not reviewable by lower federal courts***," even though "a statute or rule governing the decision may be challenged in a federal action." *Skinner*, 562 U.S. at 532 (emphasis added); *see also* App.B at 24a ("In *Skinner*, the Court explained that the plaintiff had not 'challenge[d] the adverse [state-court] decisions themselves; instead, he targets as unconstitutional the Texas statute they authoritatively construed.' … The Court in *Reed* reiterated the same distinction." (quoting *Skinner*, 562 U.S. at 532)). Here, rather than mount any federal court challenge to Oklahoma's execution statute itself—presumably because he already lost multiple challenges to his method of execution years ago, in federal court—Simpson is only challenging the OCCA's ripeness decision, which "is not reviewable." *Skinner*, 562 U.S. at 532. That should be the end of the story.

Even ignoring this, *Skinner* turned on resolving a circuit split regarding whether "a convicted state prisoner seeking DNA testing of crime-scene evidence" could assert his claim "in a civil rights action under 42 U.S.C. § 1983, or … [could do so only] in a petition for a writ of habeas corpus under 28 U.S.C. § 2254." *Id.* at 524. This Court held for the former. *Id.* at 534. *Reed*, for its part, centered on a statute-of-limitations issue that had likewise divided the circuits. 598 U.S. at 232 ("If the

prisoner's request [to order post-conviction DNA testing of evidence] fails in the state courts and he then files a federal 42 U.S.C. § 1983 procedural due process suit challenging the constitutionality of the state process, when does the statute of limitations for that § 1983 suit begin to run?"). And *Gutierrez* arose "[w]hen the local prosecutor refused to test the [DNA] evidence in his custody." 606 U.S. at 308. There, this Court reversed the Fifth Circuit, which had held (wrongly) "that Gutierrez lacked standing to bring his § 1983 suit, reasoning that, even if a federal court declared Texas's procedures unconstitutional, the local prosecutor would be unlikely to turn over the physical evidence for DNA testing." *Id.* at 309. No circuit split was mentioned in Simpson's arguments below, nor is any DNA testing or innocence claim in play.

The courts below were correct: Simpson's trio of cases from this Court are distinguishable, and regardless, the legal holdings in them favor the State. In essence, what has happened here is that Simpson has attempted to manufacture a way to fit a square peg (his non-DNA/non-innocence suit) into a round hole (the Texas trio of DNA statute cases). *See* Pet. at 29 ("Simpson's case is patterned off these three cases.").

In any event, Simpson admits *Rooker-Feldman*'s bar applies when a "state court judgment caused the plaintiff's injuries." Pet. at 35 (quoting *Bruce v. City of Denver*, 57 F.4th 738, 746 (10th Cir. 2023)). But Simpson insists *Rooker-Feldman* does not apply here because the state court judgment did not cause his harm. Pet. at 37. Rather, he claims that the named Defendants have "caused [his] injury," *id.*, because they are the ones executing him. In other words, he repeatedly purports to "challenge[] the state procedural process," not "the state court judgment." *E.g.*, Pet. at i, 35.

This is facile, and even the Tenth Circuit dissenters did not embrace it. In 2024, the Western District of Oklahoma rejected Littlejohn's eleventh-hour federal due process claims by noting that the Tenth Circuit has "specifically foreclosed challenges to final state court judgments on the grounds that the state court proceedings deprived the individual who lost of due process." *Littlejohn*, 2024 WL 4314973, at *2–3 (citing *Bolden*, 441 F.3d at 1145); *see also Tso*, 849 F. App'x at 717. And the Tenth Circuit declined to stay that ruling, observing that "Littlejohn's complaint fundamentally seeks to appeal the final decision that the Oklahoma Court of Criminal Appeals rendered." Order, *Littlejohn*, No. 24-6203, at 2 (Sept. 26, 2024). Littlejohn did not establish "that he is likely to succeed on appeal in arguing that the [court's] ruling was incorrect under the *Rooker-Feldman* doctrine," *id.* at 3, and neither has Simpson.

Simpson's rebuttals to this eventually fall, as they must, into streams of consciousness, incoherence, and contradiction. For one thing, he cannot help but occasionally admit that he is indeed challenging the state court's decision. On Page 13 of his Petition, for instance, he states that "[i]n a nutshell, the procedural rule he challenged was the state court's ripeness determination." That determination, of course, was the entirety of the state court's decision—it's the whole ball game. But then Simpson turns around and claims that he "does not challenge the state court decision," Stay App. at 6, and he complains that the Tenth Circuit "isolated sentences from the complaint to argue that Simpson was challenging the state court judgment" and "mischaracterizes" his federal complaint, Pet. at 24, 32. The Tenth Circuit did not isolate or mischaracterize anything, nor did it "construe[] the complaint in the least

favorable light" to Simpson. Pet. at 34. Rather, it merely quoted Simpson's own pleadings and held him to those statements. This is obviously appropriate. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) ("Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.").

Simpson also criticizes the Tenth Circuit's reliance on the Fifth Circuit's decision in *Rhoades,* arguing that *Rhoades* is distinguishable because the plaintiff there "sued the judge as the named defendant." Pet. at 32. But for this Court (or the Tenth Circuit) to make a determination based on that distinction would allow plaintiffs to bypass *Rooker-Feldman* merely by avoiding suing the judiciary directly (like Simpson has done here), even when the underlying claims are obviously against the state judiciary and not the executive branch. Surely a doctrine as significant as this one cannot be subverted by a simple pleading trick.

The dissenters below put nearly all their eggs in the *Rooker-Feldman* basket, to no avail. In her short dissent, and joined by Judge Federico, Judge Rossman postulated that this case implicates an unsettled question: whether "the *Rooker-Feldman* doctrine can be triggered by a state-court decision that is not 'on the merits.'" App.A at 3a. She cited no circuit split on this point, though. Even more significant, ***Simpson did not raise or argue that question below***, at the district court or at the Tenth Circuit. Rather, Simpson focused on arguing that *Rooker-Feldman* should not apply because "the state court decision did not cause" his injury and because he "does not ask the Court to review or overturn the state court judgment." Simpson's

Resp. to Defs.' Mot. to Dismiss at 10, No. 5:25-CV-1221 (W.D. Okla. Dec. 1, 2025) (ECF No. 22). And Judge Federico admitted in dissent that Simpson "did not cite" the Tenth Circuit case that Judge Federico considered the most significant on the merits/non-merits question. App.A at 12a n.4. To be sure, Simpson has included this question in his Petition, creating a Frankenstein's monster of a brief where his original arguments and new arguments are awkwardly stitched together. Needless to say, though, this Court should not grant certiorari (or a stay) on a question that never appeared in the case until it was raised by the dissent from a denial of en banc appellate rehearing. *See Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam) ("The Fourth Circuit transgressed the party-presentation principle by granting relief on a claim that Sweeney never asserted and that the State never had the chance to address.").

In any event, it is not at all obvious why a state supreme court's definitive justiciability ruling and judgment should somehow be exposed to attack in lower federal courts when a "merits" decision is not. Nor, significantly, did Judge Rossman explain why her postulated question even matters here, in Simpson's case. For that question to truly matter in this particular moment, Simpson would have to be likely to *prevail* on the underlying merits. Even ignoring *Rooker-Feldman*, that is, he would still need to prove that the OCCA likely violated his due process rights by finding his state non-delegation claim unripe. Judge Rossman makes no attempt to move to the next step and argue that Simpson has achieved this extremely implausible showing. For reasons that will be explained below, he has not.

Judge Federico's opinion, though lengthier, suffers from similar flaws. He does not identify where Simpson actually made the merits/non-merits argument about *Rooker-Feldman* (because Simpson didn't make it), but rather (again) concedes that Simpson didn't even cite the case Judge Federico deemed most significant within the Tenth Circuit. App.A at 12a n.4. And he does not attempt to address the merits of Simpson's due process claim, either, even though that part of the equation is absolutely critical for an emergency ruling in Simpson's favor here.

Judge Federico also deemed it significant (as does Simpson in his petition) that this Court "will soon consider overruling" *Rooker-Feldman*. App.A at 5a (citing *T.M. v. Univ. of Md. Med. Sys.*, No. 25-197); *see also* Pet. at i (calling *Rooker-Feldman* "potentially non-existent" because of *T.M.*). This is a stretch, to say the least. Neither the petition nor the sole question presented in *T.M.* said anything about overruling the *Rooker-Feldman* doctrine. Rather, this Court granted certiorari solely to decide "Whether the *Rooker-Feldman* doctrine can be triggered by a state-court decision that remains subject to further review in state court." Petition, *T.M.* at (I), No. 25-197. The request for overruling only came more recently, in the Petitioner's merits brief, and even then it appeared only as an alternative argument. There is no indication, at least not externally, that *this Court* (as opposed to a hard-charging petitioner) is ready to abandon the doctrine. *See also Reed*, 598 U.S. at 244 (Thomas, J., dissenting) (*Rooker-Feldman* "is not so much a 'doctrine' as a basic fact of federal statutory law."). Regardless, Petitioner suggests that this Court "should hold the case until *T.M.* is decided later this term." Pet. at 43. It is difficult to see why. The actual question

presented in *T.M.* has little relevance here, as the OCCA's decision is not subject to further review in state court. And, yet again, *Rooker-Feldman* is just the starting point in this case. Even if *T.M.* wiped out *Rooker-Feldman*, Simpson still would be barred by the Eleventh Amendment and the merits of his due process claim from any relief.

Moving on, Judge Federico argued that "[h]ad OCCA decided the merits of Simpson's challenge, the district court, and now this court, could surely hear his case." App.A at 4a–5a. This is mistaken. Why, if the OCCA had decided that Oklahoma's non-delegation doctrine was not violated by the execution statute, would the district court and Tenth Circuit be allowed to hear an appeal from that under *Rooker-Feldman*? Judge Federico appears to believe that *Reed* and *Skinner* would allow it, but for reasons already explained *Skinner* (and *Reed*) expressly indicated that "a state-court decision is not reviewable by lower federal courts." *Skinner*, 562 U.S. at 532.

Judge Federico also puzzled over "why a state rule of justiciability should be any less amenable to review than the 'authoritative[] constru[ction]' of a statute," App.A at 13a (quoting *Skinner*, 562 U.S. at 532). But judicial rules are by their nature different than statutes, and it is obvious that allowing judicial "rule[s]" of justiciability or anything else (such as rules of statutory construction) to be challenged in federal court would eviscerate the holding that "a state-court decision is not reviewable by lower federal courts[.]" *Skinner*, 562 U.S. at 532; *see also* 28 U.S.C. § 1257 (only this Court may review "[f]inal judgments or decrees rendered by the highest court of a State"). This exception would swallow the rule, and *Rooker-Feldman* and Section 1257 would be a dead letter. Any time a party didn't like a state court decision, it would

have the green-light to sue the state so long as it took care to challenge a "rule" applied by the court in making its decision. Surely this is not what Congress intended.

Moreover, as Judge Federico acknowledges, *Skinner* stated that a federal complaint faces no *Rooker-Feldman* bar if, instead of challenging adverse judicial decisions, it "targets as unconstitutional" a statute. *Id.*; App.A at 10a. The problem for Judge Federico here is that ***Simpson is not targeting a state statute in his federal lawsuit***. He has not sued Oklahoma in federal court over the application of the non-delegation doctrine to Oklahoma's execution statute. Rather, his lawsuit is dedicated to three claims attacking the OCCA's decision holding that his case in state court was not ripe. Judge Federico's entire dissent appears to be written as if the Complaint below brought different claims from those Simpson actually named.

In a final effort to bolster his *Rooker-Feldman* opposition, Simpson now conjures a "split[] with at least three other circuits." Pet. at 41. This "split" went entirely unmentioned by Simpson below (much like the issue itself) and by the Tenth Circuit's two dissenting judges, and for good reason. Simpson claims the Second, Third, and Eighth Circuits have held that *Rooker-Feldman* does not apply in cases where the state court decision was not on the merits. Pet. at 41–42. As with the decision in *Merrill Lynch Business Financial Services v. Nudell*, 363 F.3d 1072 (10th Cir. 2004), that Judge Federico relied on, though, two of these cases predate *Exxon Mobil* and therefore offer only limited value in the present-day *Rooker-Feldman* landscape. (Indeed, Judge Federico can only bring himself to say that *Merrill Lynch* "may" be *partially* valid after *Exxon Mobil*. App.A at 12a–13a (emphasis added)).

A closer examination of all three cases reveals that Simpson's suggestion of a circuit split is shallow, if not altogether illusory. In *Whiteford v. Reed*, the Third Circuit relied on pre-*Exxon Mobil* authorities to find—in a single paragraph of analysis—that *Rooker-Feldman* did not "preclude" a plaintiff from seeking federal court review if he "could not obtain an adjudication of his constitutional claims in state court[.]" 155 F.3d 671, 674 (3d Cir. 1998). Since then, "the Supreme Court has made clear that the *Rooker-Feldman* doctrine and preclusion law are separate and distinct, each requiring independent analyses" that the Third Circuit did not undertake in *Woodford* nearly thirty years ago. *Trs. of Gen. Assembly of Lord Jesus Christ of Apostolic Faith, Inc. v. Patterson*, 527 F. Supp. 3d 722, 750 (E.D. Pa. 2021).

The Eighth Circuit's decision in *Simes v. Huckabee* involved federal plaintiffs' "reasonable opportunity to raise their federal claims in state court." 354 F.3d 823, 829 (8th Cir. 2004). But the issue in *Simes* was not that the state court did not reach the merits, but instead that the state court declined to address any of the federal claims and instead rested its holding solely on state law. *Id.* The Eighth Circuit has since gone on to affirm a *Rooker-Feldman* dismissal in a case where the plaintiff "contend[ed] that the state judgment is void because [plaintiff] was not properly served with a summons"—that is, where the state-court decision was decidedly not on the merits. *Skit Int'l, Ltd. v. DAC Techs. of Ark., Inc.*, 487 F.3d 1154, 1156 (8th Cir. 2007).

Finally, in *Edwards v. McMillen Capital, LLC*, the Second Circuit considered a case where the federal pro se plaintiff's "state court complaint was dismissed for failure to prosecute[.]" 952 F.3d 32, 36 (2d Cir. 2020) (per curiam). "Because, under

Connecticut law, his complaint was not dismissed on the merits, [plaintiff] could have refiled his complaint in state court. Instead he decided to pursue his claim in federal court." *Id.* The Second Circuit, in other words, rejected application of the *Rooker-Feldman* doctrine on a very narrow ground—in a pro se failure to prosecute case, because he did not actually "lose" the case. *Id.* at 34. This is not comparable to here, where the constitutionally required doctrine of ripeness was invoked (and Simpson lost), and it does not provide a compelling reason for certiorari.[6]

In sum, despite all of Simpson's pleas otherwise, his lawsuit "is solely an invitation to exercise appellate jurisdiction over the final judgment of the OCCA, which the Court cannot do." *Littlejohn*, 2024 WL 4314973, at *3. This is not some expansion of *Rooker-Feldman*; rather, it is a case that fits comfortably within the heart of the doctrine, even if one interprets that doctrine narrowly.

B. Simpson's claims are barred by the Eleventh Amendment.

Eleventh Amendment immunity "concerns the subject matter jurisdiction of the district court[.]" *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). Simpson named three Defendants in this lawsuit, all in their official capacities: the Warden of the Oklahoma State Penitentiary; the Executive Director of the Oklahoma Department of Corrections; and the Attorney General of Oklahoma. "[A] suit against a state official in his or her official capacity," like these three officials, "is no different than a suit against the State itself." *Muscogee (Creek) Nation v. Okla. Tax Comm'n*,

[6] It is also noteworthy that the Second Circuit relied on the Tenth Circuit's decision in *Merrill Lynch. Edwards*, 952 F.3d at 36. As the present case demonstrates, the Tenth Circuit does not view *Merrill Lynch* as requiring a ruling in favor of Simpson. *See also* App.A at 12a–13a (Federico, J., dissenting) (explaining that *Merrill Lynch* "may" only be partially valid after *Exxon Mobil*).

611 F.3d 1222, 1227 (10th Cir. 2010) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)). And "Oklahoma has not waived its Eleventh Amendment immunity." *Ramirez v. Okla. Dep't of Mental Health*, 41 F.3d 584, 589 (10th Cir. 1994).

In *Littlejohn*, the Western District of Oklahoma stated that "[a] claim against Defendants in their official capacities is essentially a claim against the State of Oklahoma and therefore, the [Eleventh] Amendment's proscription applies to them." 2024 WL 4314973, at *4. "Defendants, therefore, are immune from suit in their official capacities," and the "*Ex parte Young* exception does not apply." *Id.* This was because Littlejohn's procedural due process challenge was based on "the OCCA's conduct in rendering its 'ripeness' ruling." *Id.* That is, "the OCCA is responsible for the challenged action, not the named Defendants." *Id.* at *4 n.4.

The district court below applied the same logic, and it was correct to do so. "To determine whether *Ex parte Young* applies, we 'need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012) (citation omitted). The only actions challenged in Simpson's Complaint revolve around the "state procedural process" by which his "case was dismissed as unripe" by the OCCA. App.E at 47a, 50a. Thus, the Tenth Circuit held, "Simpson's harm derives not from the defendants' actions, but from the OCCA's holding in *Underwood*." App.B at 26a. The Tenth Circuit therefore affirmed the dismissal of Simpson's claims under the Eleventh Amendment.

Simpson disagrees, asserting that his alleged injury is caused by the Defendants' actions. Elaborating, he indicates that he is harmed "by the prison executing him," which rests on an "unlawful statute." Pet. at i, 3. The "prison," that is, "plans to execute Simpson" despite his "[in]ability to challenge the statute under which it will execute him." Pet. at 22. But there is no constitutionally impermissible "plan" orchestrated on the part of Defendants. There is a jury's finding of guilt and accompanying sentences of death for the two murders Simpson committed, as affirmed by the OCCA on direct appeal. And there is the Tenth Circuit's subsequent denial of post-conviction habeas relief, and this Court's denial of certiorari. Finally, there is the OCCA's most recent denial of relief to Simpson, on ripeness grounds. Each of these cases represents a court's judgment—and, most recently and relevantly, a state-court judgment by the OCCA. The "harm" that has inured to Simpson as a result of these judgments does not come from the named Defendants, and it is nothing more than the judicial denial of relief to which he is not entitled.

As for the Tenth Circuit dissenters, Judge Rossman ignored the Eleventh Amendment, and Judge Federico only mentioned it in a passing footnote. App.A at 4a n.1. In short, Judge Federico claimed that "[p]roperly framed, this case falls into the *Ex parte Young* exception" because Defendants are going to execute him pursuant to a statute that he alleged is unlawful. *Id.* One obvious problem with this theory, among several, is that Simpson is not actually challenging the lawfulness of the execution statute here in federal court—rather, he is challenging the OCCA's ripeness decision. He has not, that is, re-filed his non-delegation challenge in federal district court, even

as an alternative argument. Rather, he has brought an entirely different type of lawsuit, claiming that a state court's ripeness decision violated his due process rights. On what ground, then, could a federal court enjoin state executive officials relating to an execution statute that Simpson is not challenging here? It is Judge Federico's framing that is off-kilter, not the Tenth Circuit's. Simpson has made strategic litigation decisions here, and those decisions have removed any possibility of the *Ex parte Young* exception to Eleventh Amendment immunity. It is not "narrow[ing]" *Ex parte Young*, Pet. at i, to point out the obvious mismatch in this case.

In the end, "the OCCA is responsible for the challenged action," and not these Defendants. *Littlejohn*, 2024 WL 4314973, at *4 n.4. This Court should affirm the district court's dismissal of Simpson's claims on Eleventh Amendment immunity.

II. SIMPSON'S CLAIMS FAIL ON THE MERITS.

Like the courts below, this Court need not reach or address the merits. Nevertheless, should it decide to do so, Simpson has not even come close to stating plausibly that the OCCA violated his due process rights, nor any other right, simply by finding that his claims attacking Section 1014 are unripe. Indeed, Simpson did not even list the merits as a separate issue in his Petition. Pet. at i. This Court could thus easily reject this case on the ground of Simpson's merits arguments being frivolous.

A. Simpson has not put forth a plausible violation of due process.

Simpson's lawsuit centers on his claim that Defendants have somehow violated his procedural due process rights. In assessing procedural due process cases, a court first asks whether Defendants' actions have "deprived [Plaintiff] of a constitutionally

protected property interest." *M.A.K. Inv. Grp., LLC v. City of Glendale*, 897 F.3d 1303, 1308 (10th Cir. 2018) (quotation omitted). If so, the court "then consider[s] whether [Plaintiff was] afforded the appropriate level of process." *Id.* at 1309 (quotation omitted). States have "more flexibility in deciding what procedures are needed in the context of postconviction relief." *Dist. Atty's Off. v. Osborne*, 557 U.S. 52, 69 (2009). To violate due process in the postconviction context, "the State's procedures for postconviction relief [must] offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, or transgress[] any recognized principle of fundamental fairness in operation." *Id.* (citation modified). Nothing of the sort has occurred here regarding Simpson.

To begin, the three named executive-branch Defendants have not deprived Simpson of anything—it is the OCCA that took the actions Simpson opposes. Simpson is barking up the wrong tree, as just discussed. But even ignoring that, Simpson asks this Court to believe that his facial challenge to Section 1014 in state court was unsuccessful due to a defective and unfair judicial process—rather than his own failure to present a justiciable claim. This is simply untrue. Simpson's core claim was not and is not justiciable because it was not and is not ripe for adjudication.

Again, Oklahoma has designated methods of execution in order of priority, with lethal injection being the default method that the DOC *must* ("shall") use. *See* OKLA. STAT. tit. 22, § 1014(A). The second, third, and fourth methods may be used only if lethal injection is deemed unconstitutional or is unavailable. *Id.* § 1014(B)–(D). "Words used in any statute are to be understood in their ordinary sense." OKLA.

STAT. tit. 25, § 1. And here, "'shall' means 'shall,'" *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024), and "unavailable" means "not available: such as not possible to get or use." *Unavailable*, MERRIAM-WEBSTER.[7] These are not confusing or ambiguous terms. Oklahoma officials *must* use lethal injection if it is at all possible to do so.

The alternative options are simply irrelevant because neither here nor below, nor in state court, has Simpson alleged—much less plausibly—that *any* method other than lethal injection will be used in Oklahoma for his execution. His entire case was built on speculation and hypotheticals. *Cf.* Sept. 25, 2024 Order at 4, *Littlejohn*, No. PR-2024-740 (OCCA: Littlejohn's "concern [that] Respondents may, at the eleventh hour, select one of the other methods is nothing but conjecture."). Back in reality, the Oklahoma Legislature has designated lethal injection as the mandatory and primary method of carrying out the death penalty, Oklahoma's method of lethal injection has been declared constitutional in federal court, and it is undeniably ***available***. Indeed, Oklahoma has now carried out 17 consecutive executions since restarting the process in 2021—all of them by lethal injection.[8]

Incredibly, Simpson admits this in his Complaint. *See* App.E at 65a–66a ("The constitutionality of lethal injection is settled law. … Lethal injection is plainly

[7] *Available at* https://www.merriam-webster.com/dictionary/unavailable.

[8] Simpson irrelevantly "emphasize[s] Oklahoma's history of botching executions." Pet. at 19. Tellingly, however, he does not claim a single one of the 17 most recent executions after Oklahoma reformed its protocol has been botched. He does not even cite the 2021 execution of John Grant, which has been widely (albeit incorrectly) reported in the media as being botched. This is presumably because, when Simpson and his co-inmates had the chance to prove to a federal court that Grant's execution went awry, they utterly failed. *See Glossip*, 2022 WL 1997194, at *5–7, *18 (relying on "credible" evidence and eyewitness testimony to find it "highly probable" that Grant's lethal injection drugs "worked as intended" and he "felt no physical pain" aside from a basic IV insertion).

constitutional. It is also available. State officials have never suggested lethal injection is or would become unavailable. And the federal government has committed to ensuring that lethal injection drugs will be available to death penalty states like Oklahoma.") (citing Exec. Order No. 14,164, 90 Fed. Reg. 8463 (Jan. 30, 2025)). And he has conceded the same points here on appeal. *See, e.g.*, Pet. at 19 ("The constitutionality of lethal injection is settled law."); *id.* at 20 ("[L]ethal injection is … the only method Oklahoma has used since reimplementing the death penalty in the 1970s."); *id.* ("There has been no indication that lethal injection in Oklahoma is or will become unavailable."). Indeed, at one point he admits that *all four* of Oklahoma's methods of execution are constitutional. Pet. at 18. What, then, is the purpose of this lawsuit and appeal? If lethal injection is indisputably available and constitutional, on what ground could a court *possibly* enjoin its use against an undeniably guilty murderer who has been appropriately convicted and sentenced? Simpson's entire case here is an attempt to manufacture something out of nothing.

The OCCA was entirely correct to find that Simpson's non-delegation arguments against Section 1014—centered on the unavailability language, which will not affect his actual execution—were unripe. *See* App.F at 87a ("Unless and until lethal injection is held unconstitutional by a court or is otherwise unavailable, there has been no harm to any of these Petitioners and their claim thus fails the basic test of ripeness."); *see also Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003) ("Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract

disagreements …'" (citation omitted)); *United States v. J.D.V.*, 153 F.4th 1038, 1051 (10th Cir. 2025) (finding a criminal defendant's constitutional argument "unripe" because it relied upon "contingent future events that … may not occur at all" (citation omitted)). "The purpose of the ripeness doctrine is to prevent the premature adjudication of abstract claims." *Tex. Brine Co. v. Occidental Chem. Corp.*, 879 F.3d 1224, 1229 (10th Cir. 2018) (citing *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995)); *see also Dutton v. City of Midwest City*, 353 P.3d 532, 547 n.69 (Okla. 2015) (a "controversy must be ripe for judicial determination" (citing *Chrysler Corp. v. Clark*, 737 P.2d 109, 110 (Okla. 1987)). And that is exactly what the OCCA faced: an abstract claim.

If Simpson's claim was unripe, or even arguably unripe, then the OCCA's denial cannot have violated his due process rights in any way. Ripeness itself "reflects constitutional considerations that implicate 'Article III limitations on judicial power,' as well as 'prudential reasons for refusing to exercise jurisdiction.'" *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010) (quoting *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)); *see also United States v. Cabral*, 926 F.3d 687, 693 (10th Cir. 2019) ("The ripeness doctrine involves both constitutional requirements and prudential concerns."). Logically then, one cannot have a constitutionally protected interest or "right" in an unripe claim.

Simpson simply disagrees with the concept of ripeness. "[T]he ripeness burden," his Complaint alleged, "was flatly at odds with basic principles of justiciability." App.E at 49a. To this Court, he insinuates that a ripeness ruling is an

"unconstitutional state process," and an "overwhelming … burden" that is "discordant with … basic principles of justiciability." Pet. at 23, 30. Simpson is entitled to this belief, but that in no way undermines the binding decisions indicating that ripeness is a real doctrine required by constitutional law. Courts—including this Court—regularly decline to decide merits issues because of jurisdictional or justiciability concerns. That is because "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)); *see also Littlejohn*, 2024 WL 4314973, at *4 ("[A] litigant does not have a constitutionally protected property right in having his claim decided *on its substantive merits*, as opposed to on some other procedural ground."). By citing obvious ripeness concerns, the OCCA did *not* subject Simpson to a process that "was arbitrary, irrational, and fundamentally unfair." Pet. at 13.

Simpson retorts that Oklahoma law "provides an explicit cause of action for challenging the constitutionality of state statutes." Pet. at 14 (citing OKLA. STAT. tit. 12, §§ 1651, 1653(C)). But Oklahoma law does not eliminate the ripeness doctrine or give Simpson unfettered access to merits review. Rather, the very first statute he cites—Section 1651 of Title 12—states that "District courts may, ***in cases of actual controversy***, determine rights, status, or other legal relations." This language cuts against Simpson in multiple ways. "[M]ay" telegraphs discretion, for instance, and requiring an "actual controversy" incorporates jurisdictional doctrines such as ripeness. *See, e.g.*, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 n.7 (2007)

(requiring "an actual, ripe controversy"). Moreover, the statute says that courts may "determine rights"—*i.e.*, whether they exist or not. Simpson's attempt to scrounge together some sort of statutory entitlement founders upon the very statute he cites.

Simpson's case citations are similarly unhelpful to him. At the Tenth Circuit he relied heavily on *Osborne*, 557 U.S. 52, but that case indicated only that a "state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." *Id.* at 68 (citation omitted). Again, Oklahoma has not created a "right" to avoid a ripeness finding or to have unfettered access to a merits review of a state statute. In any event, after hedging ("some circumstances"), *Osborne* then immediately criticized the Ninth Circuit for going "too far" in concluding that due process required "familiar pre[-]conviction trial rights" post-conviction. *Id.* "A criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man," this Court emphasized. *Id.* "The State accordingly has more flexibility in deciding what procedures are needed in the context of postconviction relief," and "due process does not 'dictat[e] the exact form such assistance must assume.'" *Id.* at 69 (citation omitted). The key question, therefore, is—in language the State has already cited above—"whether consideration of" an inmate's "claim within the framework of the State's procedures for postconviction relief 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgresses any recognized principle of fairness in operation.'" *Id.* (citations omitted).

Nothing in the OCCA's ripeness decision or procedures could be described as transgressing these standards. Rather, the OCCA ruled against Simpson on reasonable ripeness grounds after reviewing his written arguments. *Contra* Pet. at 12 (insinuating that the OCCA ruled without briefing). The Oklahoma Supreme Court emphasized this very point: "The suggestion that the [OCCA] 'rejected the transfer' of the *Underwood* case is not an accurate characterization of the record. The [OCCA] accepted the transfer, evaluated the argument, and exercising their exclusive jurisdiction found that the claim was not ripe." App.E at 84.11a. Thus, much as with Littlejohn before him, Simpson's lawsuit is an unwarranted attack on Oklahoma's highest courts. *See Littlejohn,* 2024 WL 4314973, at *5 ("Though Littlejohn disagrees with the OCCA's decision to issue a ruling on ripeness grounds, he has not identified any constitutional flaw in the procedures leading up to that decision.").

Put differently, due process is not violated when an individual receives all the process he is due under state law. *See Ross v. Oklahoma*, 487 U.S. 81, 89 (1988). Thus, whatever civil process may have been given to "car dealerships, optical salesmen, and optometrists," Pet. at 16, Simpson has not shown that he—as a criminally convicted inmate—was deprived of any due process because an appellate court found his claims unripe. Civil cases like the ones he cites are inapplicable here. And, quite frankly, the amount of process and court access afforded to death-row inmates *dwarfs* that which is given to regular civil litigants. Simpson's own history demonstrates that point.

Simpson also occasionally attempts, on appeal, to twist his claims to fit the circumstances. Here and there, he insinuates that application of the ripeness doctrine

was inappropriate because his allegations pertain to Oklahoma's use of *any* method of execution—lethal injection or otherwise. *See, e.g.*, Pet. at 11–12. But that's not the tune he was singing in state court. There, Simpson and his co-inmates made it clear that the heart of their "[o]verall" Complaint to the OCCA was that—by failing to define "unavailable"—Section 1014 improperly delegates "near total discretion to select a method of execution" that can change "at any moment and without notice." *Supra* p.6. To hammer this point home, Simpson contrasted Oklahoma with other states that "use one-method statutes that authorize lethal injection." *Supra* p.6. The OCCA thus reasonably held that, because Oklahoma was only going to use the method that Simpson approved—just like those other states that he cited favorably—the case was not ripe. *See* App.F at 87a ("Unless and until lethal injection is held unconstitutional by a court or is otherwise unavailable, there has been no harm to any of these Petitioners and their claim thus fails the basic test of ripeness.").

Simpson cannot escape his own words focusing on availability and discretion by claiming they have not been construed favorably, especially when he repeats similar sentiments here. *See, e.g.*, Pet. at 12 ("The statute … does not provide a standard or criteria for selecting an execution method or finding one unavailable. … Simply by deeming a method unavailable, the prison can change the execution method at any moment and without notice."). Indeed, that is how Judge Federico characterized his claims, as well. App.A at 4a (Federico: "Simpson claims the Oklahoma execution statute is unlawful because it provides prison officials 'near-total discretion' in deciding the method of execution.").

Another problem for Simpson on this point is that, to the extent that he could be construed as arguing that Oklahoma's lethal injection protocol by itself is an unconstitutional delegation, without any reference to other methods of execution in Section 1014, that argument would be both extremely dilatory and precluded. As explained above, Simpson and other inmates spent *years* in *Glossip* arguing that Oklahoma's protocol on lethal injection violated the Constitution and statutory law in a variety of ways. *See supra* p.4. All those claims were rejected by the federal courts, *e.g.*, *Glossip*, 2022 WL 1997194, and Simpson has offered no explanation for why, years later, he should be allowed to raise yet another argument against Oklahoma's injection protocol that he neglected to raise earlier. *See, e.g.*, *Gomez v. N. Dist. of Cal.*, 503 U.S. 653, 653–54 (1992) (per curiam) ("Harris claims that execution by lethal gas is cruel and unusual in violation of the Eighth Amendment. … This claim could have been brought more than a decade ago."); *Patton v. Jones*, 193 F. App'x 785, 788 (10th Cir. 2006) (unpublished) ("Patton has failed to act in a timely manner to challenge the constitutionality of Oklahoma's lethal injection protocol.").

Again, this prior litigation exposes as false Simpson's oft-repeated claim that, because of the ripeness determination, he "had no chance of showing that lethal injection was unconstitutional or unavailable." Pet. at 21.[9] Simpson had numerous chances, throughout the earlier lawsuit, and he failed. He cannot escape his own

[9] Unfortunately, Judge Federico joined this chorus, as well. *See* App.A at 5a ("Simpson faces execution without an opportunity to vindicate his claims alleging violations of his constitutional rights."). Judge Federico did not acknowledge Simpson's prior federal lawsuit challenging Oklahoma's execution process, however, much less explain why Simpson's current claims could not have been brought then. If those claims are truly ripe, as Simpson emphasizes, then waiting a decade is incomprehensible.

failures. And to the extent he is more narrowly claiming that the ripeness determination prevents someone from challenging the statute *on non-delegation grounds*, well, that may be correct given that Oklahoma has and will continue to follow the mandatory statutory language requiring lethal injections. No one is guaranteed access to a state or federal court merits decisions in every circumstance and on every claim. "The truth is … those seeking to challenge the constitutionality of state laws are not always able to pick and choose the timing and preferred forum for their arguments." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 49 (2021).

Finally, it is significant that had the Legislature simply chosen not to designate execution methods and alternatives, the DOC could nevertheless carry out Simpson's execution via lethal injection because that method has been found constitutional. Again, Simpson's challenge to the constitutionality of the State's protocol was rejected by the Western District of Oklahoma. *Glossip*, 2022 WL 1997194, at *2 n.5, *21. And the Oklahoma Constitution allows the State to proceed with Simpson's execution using a method that has not been "prohibited by the United States Constitution." OKLA. CONST. art. II, § 9A. Even if Simpson has somehow been wronged by the OCCA's ripeness decision, the remedy would not be to stop the State from executing him by lethal injection. That would just create a *tabula rasa* situation in which Simpson's own admissions of constitutionality (among other things) would mean his execution would proceed forthwith. Put differently, this Court's deeming the OCCA's ripeness decision unconstitutional would in no way "eliminate[] Defendants' 'justification' for executing Simpson." *Contra* Pet. at 39 (quoting *Reed*,

598 U.S. at 234). How could it? His convictions and sentences would still stand, as would an undisputedly constitutional method of carrying out those sentences.

B. Simpson has not been denied judicial access.

Simpson has also offered a nebulous claim based on the alleged deprivation of judicial access. In reality, this claim simply repackages his procedural due process claim and thus fails for the same reasons. When entertaining claims for denial of access to judicial processes, courts must weigh whether "any denial or delay of access to the court prejudiced [Plaintiff] in pursuing litigation." *Treff v. Galetka*, 74 F.3d 191, 194 (10th Cir. 1996). The typical case involves a situation where a litigant has been outright barred from seeking redress. *See, e.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102, 106 (1996) (mother prevented from appealing termination rights due to inability to pay for record on appeal). Nothing of the sort has happened here. No court has ever denied Simpson the opportunity to present his claims and have them heard; his only quarrel is with the outcome—as courts have ruled against his direct and indirect claims time and again, over the course of many years. This claim goes nowhere.

C. Simpson has not been denied equal protection of the laws.

Finally, Simpson has alleged that "the procedural process he received in state court violated his federal constitutional right to equal protection." App.E at 82a. Although the Equal Protection Clause generally directs that "all persons similarly situated should be treated alike," *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), it "doesn't guarantee equal results for all, or suggest that the law may never draw distinctions between persons in meaningfully dissimilar situations."

SECSYS, LLC v. Vigil, 666 F.3d 678, 684 (10th Cir. 2012). The Equal Protection Clause "does not forbid classifications," nor does it create substantive rights. *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 54 (10th Cir. 2013) (citation omitted).

Here, Simpson raises a so-called "class of one" theory. App.E at 82a. The "[c]lass of one doctrine focuses on discrimination not between classes or groups of persons, as 'traditional' equal protection doctrine does, but on discrimination against a specific individual." *SECSYS*, 666 F.3d at 688. Nevertheless, "the familiar principles and procedures associated with equal protection class discrimination doctrine apply." *Id.* "First, the class of one plaintiff must show he or she (as opposed to a class in which he is a member) was 'intentionally treated differently from others similarly situated.'" *Id.* (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). And "[s]econd, when intentional discrimination is shown to exist the plaintiff must prove there is no 'rational basis' for it." *Id.*

Simpson's equal protection claim necessarily falters at the first step. In order to sufficiently state an equal protection claim in this context, the alleged government discrimination must be "intentional," "irrational," and "wholly arbitrary." *Vill. of Willowbrook*, 528 U.S. at 564–65. Simpson cannot make this showing. He and his attorneys filed multiple cases while receiving the benefit of substantial briefing—all at Oklahoma's two highest courts for civil and criminal matters. The OCCA's dismissal does not equate to intentional discrimination, any more than would this Court's appropriate dismissal of Simpson's meritless petition. Ironically, it is Simpson who demands that he be treated differently from Littlejohn, whereas the

appropriate path was for Oklahoma's appellate courts and the relevant federal courts to treat Simpson's claims exactly as they did Littlejohn's claims earlier. Dismissal, in short, was plainly warranted. Neither Littlejohn nor Simpson stated a plausible claim, and both had their suits dismissed.

Moreover, Simpson's repeated claims of unique treatment are simply mistaken. *See, e.g.*, Pet. at 15–17. The OCCA has applied the ripeness doctrine in other circumstances. *See, e.g.*, *Walters v. State*, 848 P.2d 20, 25 (Okla. Crim. App. 1993) ("Excessiveness due to the appellant's current financial status, or present inability to pay the Victims Compensation assessment is not ripe for the Court's consideration until the time payment is due. This issue is well settled."); *Honeycutt v. State*, 834 P.2d 993, 1000 (Okla. Crim. App. 1992) ("[T]he restitution is not due until appellant is released from custody …. Thus, we will not address this issue at this time."); *White v. State ex rel. Hopper*, 821 P.2d 378, 380 (Okla. Crim. App. 1991) (rejecting double-jeopardy claim based on evidence of other crimes because "[c]learly we have no ripe issues regarding the use of this [other-crimes] evidence before us at this time"); *Haynes v. State*, 760 P.2d 829, 832 (Okla. Crim. App. 1988) ("Whether the court may imprison appellant for violation of the conditions of her suspended sentence for failure to pay restitution and costs is not ripe for review because appellant has not been deprived of her liberty."). And again, the OCCA applied the ripeness doctrine in an identical circumstance to Littlejohn. Simpson is not being singled out by the mere application of a well-known and oft-used doctrine.

Simpson's citations regarding unfair treatment are not only distinguishable, but they also come from the Oklahoma Supreme Court. *See, e.g.*, Pet. at 17 (citing *OCRJ v. Drummond*, 543 P.3d 110 (Okla. 2024)). In Oklahoma, it is the OCCA that decides criminal matters definitively, whereas the Oklahoma Supreme Court has the final say on civil issues and any jurisdictional dispute between the two. *See* OKLA. CONST. art. VII, § 4; *Meyer v. Engle*, 369 P.3d 37, 38–39 (Okla. Crim. App. 2016) ("The Oklahoma Constitution provides for a bifurcated civil-criminal system of justice."). Thus, citing Oklahoma Supreme Court decisions regarding jurisdiction, ripeness, or the ability to adjudicate a case are simply inapposite. It's apples and oranges. Neither the OCCA nor the Supreme Court controls the other court within their spheres, and as a result their jurisprudence can differ, in the same way that the federal Ninth Circuit and Fifth Circuit can differ. Simpson cannot possibly prove unfairness by attacking the OCCA with Oklahoma Supreme Court cases. This is especially so when those cases have nothing to do with ripeness. *See, e.g.*, *OCRJ*, 543 P.3d 110.[10]

Even ignoring all this, again, Oklahoma law ***cited by Simpson*** expressly states that an "actual controversy" is required, OKLA. STAT. tit. 12, § 1651, and the Oklahoma Supreme Court has long explained that "[t]he ripeness doctrine is a part of judicial policy militating against the decision of abstract or hypothetical questions." *French Petroleum Corp. v. Okla. Corp. Comm'n*, 805 P.2d 650, 652–53 (Okla. 1991).

[10] Oddly, Simpson appears to believe that the ripeness doctrine is antithetical to pre-enforcement challenges, and he therefore hints that if a pre-enforcement challenge is ever allowed, then the ripeness doctrine cannot ever be enforced. *E.g.,* Pet. at 16–17. This is obviously incorrect, as plenty of pre-enforcement challenges are based on concrete harms that will immediately materialize if a statute is enforced. Concerns about Oklahoma using alternative methods, to the contrary, are pure conjecture.

"The conclusion that an issue is not ripe for adjudication emphasizes a prospective examination of the controversy indicating that future events may affect its structure in ways that determine its present justiciability." *Id.* at 653. Simpson cannot prevail in this bizarre line of attack, whichever way he turns.

III. THE STATE AND VICTIMS' FAMILIES WILL BE GRIEVOUSLY HARMED BY A STAY.

The decision whether to grant a stay here "must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill*, 547 U.S. at 584. With respect to executions, that is, a stay is "an extraordinary and drastic remedy." *Warner*, 776 F.3d at 728 (citation modified). And "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 587 U.S. at 149 (quoting *Hill*, 547 U.S. at 584).

This Court should deny Simpson a stay. It is incredibly unlikely that he could somehow prevail here. To avoid execution, Simpson must essentially show that he is likely to succeed on at least *four* independent subjects or levels. First, he must demonstrate that he is likely to succeed in showing that neither *Rooker-Feldman* nor the Eleventh Amendment bars his current federal lawsuit. Second, he must then show that the OCCA likely violated his due process (or similar) rights merely by finding his non-delegation claims unripe—a high hurdle, to say the least. Third, he would then need to demonstrate that Section 1014 likely violates non-delegation principles as a *facial* matter, which is itself a highly unlikely proposition. *See, e.g.*, *Moody v. NetChoice, LLC,* 603 U.S. 707, 723 (2024) (facial challenges are "hard to win" because they prevent "duly enacted laws from being implemented in

constitutional ways"). Fourth, he would then need to show that in a *tabula rasa* situation the State would still be prohibited in executing him by lethal injection, when he himself concedes that lethal injection is constitutional and can be used. The idea that Simpson has cleared all these hurdles is fantastical.

Moreover, Simpson has not shown that the equities lie in his favor, as a stay of execution will grievously harm the State, the survivor of his killings (Johnson), and the victims' families—as well as the public.

To begin, Simpson has not shown a likelihood of irreparable harm. *Nken*, 556 U.S. at 426. Again, Simpson will be executed by a method of execution that has been found constitutional in a lawsuit *brought by Simpson*. *See Glossip*, 2022 WL 1997194, at *21. Absent some indication that his execution will be unlawful, Simpson has not shown a likelihood of irreparable harm. Moreover, Simpson fails to show that a balancing of the equities and harms weighs in his favor. Importantly, the interests of the sovereign State, the public, the survivor, and the victims' families must be considered. *See, e.g.*, OKLA. STAT. tit. 21, § 142A-2(F) (Oklahoma Victim's Rights Act); *see also* OKLA. CONST. art. II, § 34 (Victims' Bill of Rights). And these interests are undeniably harmed by undue delay in executions. *See, e.g.*, *Hill*, 547 U.S. at 584. "The people of [Oklahoma], the surviving victims of Mr. [Simpson]'s crimes, and others like them deserve better," *Bucklew*, 587 U.S. at 149, especially when Simpson's justifications for a stay of execution are without merit.

Simpson has exhaustively challenged his convictions and sentences, as well as the State's execution protocol, and the present motion makes no attempt to cast doubt

on the adequacy of these procedures nor the constitutionality of his convictions and sentences. Execution is the ultimate irreversible punishment, to be sure, but Simpson fully earned that remedy when he took the lives of Anthony Jones and Glen Palmer in the early morning hours of January 16, 2006. "[I]n the eyes of the law, petitioner does not come before the Court as one who is 'innocent,' but, on the contrary, as one who has been convicted by due process of law of two brutal murders." *Herrera v. Collins*, 506 U.S. 390, 399–400 (1993). The balance of harms clearly favors the State.

Finally, Simpson has never explained: (1) why he waited more than a year after the OCCA's decision to file this lawsuit; and (2) why he did not attempt to bring similar claims in his earlier lawsuit in federal court challenging numerous aspects of Oklahoma's execution protocol. The obvious answer is that Simpson has intentionally delayed in order to thwart his execution. This is yet another reason why this case is a terrible vehicle for certiorari or a stay. *See Ramirez v. Collier*, 595 U.S. 411, 434 (2022) ("[L]ate-breaking changes in position, last-minute claims arising from long-known facts, and other 'attempt[s] at manipulation' can provide a sound basis for denying equitable relief in capital cases." (citation omitted)); *Mills v. Hamm*, 102 F.4th 1245, 1250 (11th Cir. 2024) (Pryor, C.J.) ("If a prisoner who seeks a stay of execution could have sued early enough to allow consideration of the merits without requiring the entry of a stay, equity disfavors the stay." (citation modified)).

CONCLUSION

Oklahoma respectfully asks this Court to deny the Application and Petition. The Tenth Circuit's decision was correct and will obviously not "wreak havoc,"

"immunize[] state officials from federal civil rights suits," or "corrupt[] other doctrines." Pet. at i, 1, 27. Nearly the opposite is true. A contrary decision here would let a murderer who literally wreaked havoc on his fellow Oklahomans escape justice, undermining our criminal justice process. And, by exposing state court decisions to review in lower federal courts, it would open the floodgates to countless lawsuits and diminish federalism in a way surely not envisioned by Congress or our Constitution.

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