

No. _____

Capital Case

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

IN THE SUPREME COURT OF THE UNITED STATES

KENDRICK SIMPSON,

Petitioner,

v.

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

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Tenth Circuit

APPLICATION FOR STAY OF EXECUTION

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February 9, 2026

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

Kendrick Simpson is scheduled to be executed this coming Thursday, February 12, 2026. His execution is at 10:00AM. Respectfully, Simpson requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari that is being filed along with this application.

INTRODUCTION

Simpson filed his complaint on October 16, 2025. App-47a. In it, he argued the state process violated his constitutional rights to due process, judicial access, and equal protection. The prison moved to dismiss the case on November 10, 2025. App-84.1a. It argued Mr. Simpson's claims were meritless and jurisdictionally barred by the *Rooker-Feldman* doctrine and sovereign immunity. App-84.1a. On Friday, December 19, 2025, the district court granted the motion and dismissed the case for lack of jurisdiction under the *Rooker-Feldman* doctrine and the Eleventh Amendment. App-34a. The following Monday, December 22, 2025, Simpson asked the district court to enjoin his execution while this appeal is pending. App-84.24a. The district court denied Simpson's motion to enjoin his execution pending appeal on January 8, 2026. App-30a. Simpson filed a notice of appeal the next day, and his opening brief and injunction request a week later. The Tenth Circuit

affirmed. Its judgment took effect on February 6, 2026, the same day the court denied rehearing en banc. Simpson has been diligently pursuing this litigation.

Three days after the prison filed its motion to dismiss, on November 13, 2025, the state attorney general asked the Oklahoma Court of Criminal Appeals (OCCA) to set Simpson's execution date. Notice Regarding Death Warrant, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 13, 2025). Simpson objected to the request, citing the present ongoing litigation. Objection to Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 17, 2025). He argued OCCA "should do what it did in Tremane Wood's case just a few months ago and wait until Mr. Simpson's pending litigation is resolved before setting his execution date." *Id.* at 1 (citing Order at 8, *Wood v. Oklahoma*, No. D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 28, 2025)). OCCA set Simpson's execution for February 12, 2026. Order Setting Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Nov. 19, 2025).

The timing and queue of executions in Oklahoma are not set in stone. For the last execution, the attorney general sought to change the order of executions by placing Simpson before Tremane Wood because Wood asked for new lawyers who may be unfamiliar with his case and might need more time to prepare for clemency proceedings. Notice Regarding the Setting of an

Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Aug. 22, 2025). Also, Wood’s fifth postconviction application was pending before the state court. Opinion Denying Relief, *Wood v. Oklahoma*, No. PCD-2024-879 (Okla. Crim. App. Sept. 2, 2025). The court ultimately held that Wood’s claims “completely failed” and were “nothing but speculation and suspicion.” *Id.* at 20, 14. Still, the court postponed his execution while those claims were pending. Order Unsealing Documents at 8, *Wood v. Oklahoma*, No. D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 28, 2025). His execution date was three months later than the original request. *Order Setting Execution Date, Wood v. Oklahoma*, No. PCD-2024-879 (Okla. Crim. App. Sept. 12, 2025); Notice Regarding Execution of Death Warrant, *Wood v. Oklahoma*, No. D-2005-171 (Okla. Crim. App. June 12, 2025).

STANDARD

Simpson respectfully requests that the Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari. *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (holding that

a court may stay an execution if needed to resolve issues raised in initial petition).

The considerations for a stay application in this Court are (1) a reasonable probability of obtaining certiorari, (2) a fair prospect of the Court reversing the decision below, and (3) a likelihood of irreparable harm absent the stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). The Court also considers the equities. *Id.*

ARGUMENT

I. Simpson has a reasonable probability of obtaining certiorari.

Simpson challenged the procedural process he encountered in state court, but the court below held that Simpson's claims were barred by *Rooker-Feldman* and the Eleventh Amendment. Three times in the last three years, this Court has granted certiorari to consider similar jurisdictional issues stemming from similar challenges to state procedural processes. *See Reed v. Goertz*, 598 U.S. 230, 234-35 (2023); *Gutierrez v. Saenz*, 606 U.S. 305, 309 (2025); *Wood v. Patton*, 145 S. Ct. 2839 (June 30, 2025) (GVR in light of *Gutierrez*). Indeed, the Court is currently considering a case where the petitioner has suggested scrapping *Rooker-Feldman* altogether. *See* Brief for Petitioner at § II, *T.M. v. Univ. of Md. Med. Sys. Corp.*, No. 25-197 (Jan. 14, 2026).

The Court has great interest in ensuring *Rooker-Feldman* is applied correctly and consistently. The decision below splits with decisions from the Tenth Circuit itself; the Second, Third, and Eighth Circuits; and the Supreme Court. And it splits against the current movement toward a narrower *Rooker-Feldman* doctrine. The Court is likely to grant certiorari.

II. There is a fair prospect of this Court reversing the decision below.

As the petition shows, Simpson’s jurisdictional arguments are likely to succeed. *Rooker-Feldman* does not bar the present action because Simpson does not challenge the state court decision. Rather, he challenges the procedural rule. A “state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action.” *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Regarding Eleventh Amendment immunity, *Ex parte Young* provides an exception that applies here. *Reed v. Goertz*, 598 U.S. 230, 234 (2023). The decision below conflicts with this Court’s latest decisions on *Rooker-Feldman* and *Ex parte Young*.

III. Executing Simpson will cause irreparable harm.

Absent an injunction, Simpson will be executed before this case is complete. “There is no question that death as a punishment is unique in its

severity and irrevocability.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). Simpson’s execution will also foreclose review of the issues. Like the state court issue, the federal issues will be immune from judicial review. That too constitutes irreparable harm. *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984). There is no remedy for a wrongful execution.

IV. The equities and public interest favor Simpson.

Oklahoma and the prison have an interest in carrying out executions, but executions must be lawful. The public’s interest in the timely enforcement of criminal sentences does not override the interest in ensuring those sentences are lawful. “Oklahoma does not have an interest in enforcing a law that is likely constitutionally infirm.” *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). At best, that interest is minuscule, and it pales in comparison to Simpson’s constitutional interests in his life and fairly accessing state procedures and causes of action. *See Dist. Attorney’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68 (2009); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982).

Staying Simpson’s execution now does not prevent the prison from lawfully executing him later. The timing and queue of executions are not set in stone. Just last year, the Attorney General sought to change the order of executions by placing Simpson earlier in line because Tremane Wood asked for

new lawyers. If granted, Wood's new lawyers might be unfamiliar with his case and might need more time to prepare for his clemency proceedings. Notice Regarding the Setting of an Execution Date, *Simpson v. Oklahoma*, No. D-2007-1055 (Okla. Crim. App. Aug. 22, 2025). Wood's fifth postconviction application was also pending before the state court. Opinion Denying Relief, *Wood v. Oklahoma*, No. PCD-2024-879 (Okla. Crim. App. Sept. 2, 2025). The state court ultimately held that the claims "completely failed" and were "nothing but speculation and suspicion." *Id.* at 20, 14. Still, the court postponed Wood's execution while those claims were pending. Order Unsealing Documents at 8, *Wood v. Oklahoma*, No. D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 28, 2025).

And the issues here are fleeting. After Mr. Simpson's state case, anyone seeking to challenge the lawfulness of the prison's ability to exercise the state's most awesome power will face the same overburdening procedures in state court, and that person too will be executed before their claims can be heard. The same thing will be true if that person tries to challenge the state process in federal court. The state process insulates the statute, and the execution insulates the process. Thus, the cycle ensures both state and federal claims, as well as the statute and process, remain unchallengeable. "When, as in this case, the normal course of appellate review might otherwise cause the case to

become moot, issuance of a stay is warranted.” *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers) (quotation marks and citations omitted); *see also Chafin v. Chafin*, 568 U.S. 165, 178 (2013).

Simpson has been on death row for nearly twenty years, but this Court has stayed executions in similar situations when considering similar issues. In *Gutierrez*, the plaintiff spent more than twenty years on death row before the Court stayed his execution and considered his jurisdictional arguments. *Gutierrez*, 606 U.S. at 309-310. Similarly, the plaintiff in *Skinner* spent fifteen years on death row before the Court stayed his execution to consider his jurisdictional arguments. *Skinner v. Switzer*, 562 U.S. 521, 529 n.6 (2011). David Wood has spent more than thirty years on death row, and this Court recently granted, vacated, and remanded his case raising jurisdictional issues on a challenge to state procedures in light of *Gutierrez*. *Wood v. Patton*, No. 24-6727 (June 30, 2025). And the Court in *Reed* considered issues like those raised here, and Reed spent more than twenty years on death row before the Court heard his jurisdictional claims. *Reed*, 598 U.S. at 232-33.

CONCLUSION

The Court should stay Simpson’s execution to consider his petition for certiorari.

Respectfully submitted,

/s/ Emma V. Rolls

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