Nos. 25A914, 25A915

IN THE
SUPREME COURT OF THE UNITED STATES

NICOLE MALLIOTAKIS, *et al.*,
Intervenor-Applicants,
and
PETER S. KOSINSKI, *in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State Of New York, et al.,*
Respondent-Applicants,
v.
MICHAEL WILLIAMS, *et al.*,
Petitioner-Respondents.

WILLIAMS PETITIONER-RESPONDENTS' MOTION FOR LEAVE TO FILE SUR-REPLY

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Williams Petitioner-Respondents respectfully request that the Court direct the Clerk to file the attached Sur-Reply responding to new contentions raised by Applicants in their replies in support of their Emergency Applications. Williams Petitioner-Respondents state as follows:

1. On February 12, Applicants submitted the pending Emergency Applications to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit.
2. On February 13, Circuit Justice Sotomayor requested responses to the Emergency Applications by 4 p.m. (EST) on February 19.
3. On the morning of February 19, the Appellate Division of the Supreme Court, First Judicial Department, entered an order denying Applicants' pending motions for a partial stay of the trial court's January 22 order, and granting Williams Petitioner-Respondents' cross-motion seeking vacatur of a partial automatic stay of the same. The Appellate Division also denied Applicants' request for a direct appeal of the trial court's order to the Court of Appeals.
4. Williams Petitioner-Respondents acknowledged the Appellate Division's late-breaking order in their timely-filed responses shortly before 4 p.m. on February 19.
5. On February 20, Applicants filed replies in support of their Emergency Applications for Stay. Applicants raised new contentions regarding the Appellate Division's February 19 order and the nature of the relief Applicants requested from the Appellate Division. *E.g.*, Int. Reply 13–14;

Resp. Reply 8–9.

6. Because the Appellate Division issued its order shortly before Williams Petitioner-Respondents filed their responses to the Applications, Williams Petitioner-Respondents request leave to file the attached Sur-Reply addressing Applicants' characterization of the Appellate Division's February 19 order.

DATED: February 22, 2026

Respectfully submitted,

s/ Marc E. Elias

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Williams Petitioner-Respondents seek to correct an assertion in Applicants' replies on an issue that affects this Court's jurisdiction. As explained, the Applications are premature because Applicants have not yet sought permission from the Appellate Division to have New York's highest court—the Court of Appeals—review the Appellate Division's denial of their request for a stay while their merits appeal is pending. Williams Resp. 21–31; *see also Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1 (2022) (denying stay request as premature where applicants had not taken this step). That simple fact is established in the record.

Yet Applicants appear to claim in their replies that they *have* already sought such relief, and the Appellate Division's February 19 order denied it. *E.g.*, Int. Reply 13–14; Resp. Reply 8–9. That is not correct. Applicants asked the Appellate Division to certify their *merits appeals* directly to the Court of Appeals—thereby bypassing the Appellate Division on the *merits*. But Applicants never asked the Appellate Division for permission to appeal that court's *stay denial* to the Court of Appeals.[1] That would have been an odd request, as the Appellate Division had not yet denied their stay motion, and New York's civil rules do not contemplate an unsuccessful stay applicant preemptively seeking permission to appeal an adverse ruling. *See* 22 NYCRR § 1250.16(d)(1) (requiring Applicants to seek permission to appeal "from an order. . . within 30 days after service of the order of the court with notice of entry"). And,

[1] *See* App. 3647a (Intervenor-Applicants asking for "leave to appeal directly to" the New York Court of Appeals "*in addition to* granting an interim stay") (emphasis added); App. 2029a (Respondent-Intervenors likewise asking the Appellate Division to "grant leave to appeal *directly* to the Court of Appeals") (emphasis added).

tellingly, Applicants nowhere made this argument in their opening Applications—they attempt to construct it looking backwards from their replies.

Relatedly, Applicants obfuscate the Appellate Division's ruling by suggesting that court has already denied leave to appeal the stay denial to the Court of Appeals. But the Appellate Division's order is clear. It denied Applicants leave to *directly appeal* the trial court's order to the Court of Appeals—the relief Applicants actually sought in the papers.[2] The Appellate Division presumably denied that aspect of Applicants' request because there is no statutorily authorized way to bypass the Appellate Division before it issues a ruling. *See* N.Y. C.P.L.R. §§ 5601, 5602. Accordingly, this is yet another instance among several where Applicants failed to "comply with the requirements of state appellate procedure." 16B Charles Alan Wright et al., Federal Practice & Procedure § 4007 (3d ed. 2014) (explaining how applicants can satisfy this Court's highest state court requirement); *see also* State Resp. Br. 12 (New York's Attorney General agreeing Applicants can still seek leave for further review).

At bottom, nothing in the Appellate Division's February 19, 2026, order denying a stay—or, for that matter, the Court of Appeals' order denying jurisdiction

[2] The Appellate Division's order notes that each Applicant asked "for leave to appeal same to the Court of Appeals." Suppl. App. 102–03. The term "same" in that sentence refers to the "aforesaid order," which in turn refers to "an order of the Supreme Court, New York County, entered on or about January 22, 2026." *Id.* at 102. The Appellate Division's reference to the "aforesaid order" was very plainly *not* its own order denying Applicants' stay request. It strains any understanding of English syntax to contend that the "aforesaid" order at issue was the order itself being issued, rather than the order mentioned in the preceding paragraph. *See* AFORESAID, Black's Law Dictionary (12th ed. 2024) ("Mentioned above; referred to previously.").

over Applicants' *direct* appeal in that court—forecloses review of the stay denial in New York's high court. Accordingly, Applicants have still not yet sought and been denied review in New York's "highest court . . . in which a decision could be had." 28 U.S.C. § 1257(a). This Court thus lacks jurisdiction to consider their stay applications and should deny them.

DATED: February 22, 2026

Respectfully submitted,

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