No. 26-_____

CAPITAL CASE

** Execution Scheduled for Nov. 12, 2026 at 10 a.m. Central Time **

IN THE

Supreme Court of the United States

JAMES DWIGHT PAVATT, PETITIONER,

V.

STATE OF OKLAHOMA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPLICATION FOR A STAY OF EXECUTION

TO THE HONORABLE NEIL GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT:

Petitioner James Pavatt respectfully asks the Court for a stay of execution pending the disposition of his accompanying petition for a writ of certiorari. Mr. Pavatt's execution is currently scheduled to take place on Thursday, November 12, 2026, at 10:00 a.m. Central Time. That petition raises important questions about whether the Sixth and Fourteenth Amendments require a state's no-impeachment rule to give way where new evidence reveals that prosecutors won a death sentence through knowingly false information that was dispositive to at least one juror's vote

for death, and whether, under such circumstances, the Constitution requires that a death sentence so obtained be set aside.

Mr. Pavatt recognizes that "[s]tays of execution are not automatic pending the filing and consideration of a petition for a writ of certiorari." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Rather, "[i]t is well established that there must be a reasonable probability that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or notation of probable jurisdiction; there must be a significant probability of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if [the lower court's] decision is not stayed." *Id.* (quoting *White v. Florida*, 458 U.S. 1301, 2 1302 (1982) (Powell, J., in chambers)) (internal quotation marks omitted).

Mr. Pavatt can satisfy each criterion.

I. There is a reasonable probability that at least four Members of this Court would consider the questions raised in Mr. Pavatt's petition sufficiently meritorious to warrant the grant of certiorari.

The exceptional circumstances in Mr. Pavatt's case are on all fours with those in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), where this Court confronted a case so "grave[]" and "important" that it held the Sixth Amendment compelled an exception to Colorado's no-impeachment rule. That renders it at least reasonably probable that four Members of this Court would vote to grant Mr. Pavatt's certiorari petition.

In *Peña-Rodriguez*, this Court held that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal

defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." 580 U.S. at 225. This Court reached that result by identifying, first, the unique threat that racism poses to "the equal dignity of all persons[,]" *id.* at 221; second, the constitutional "imperative to purge racial prejudice from the administration of justice" in America. *Id.* at 221–22 ("[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States" (quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)); and third, the "particular threat both to the promise of the [Fourteenth] Amendment and to the integrity of the jury trial" posed by "racial discrimination in the jury system[.]" *Id.* at 222.

The Court distinguished racial bias from the circumstances in prior cases where it insulated the no-impeachment rule from constitutional attack. *Id.* at 223–24. It reasoned that unlike the quotient verdict in *McDonald v. Pless*, 238 U.S. 264 (1915), the drug and alcohol abuse in *Tanner v. United States*, 483 U.S. 107 (1987), and the pro-defendant bias in *Warger v. Shauers*, 574 U.S. 40 (2014), racism is "a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." *Id.* at 224. This Court also found that "racial bias implicates unique historical, constitutional, and institutional concerns." *Id.* On these grounds the Court held that the exception to the no-impeachment rule compelled by the Sixth Amendment "is necessary to prevent a systemic loss of confidence in jury

verdicts, a confidence that is a central premise of the Sixth Amendment trial right." *Id.* at 225.

Like *Peña-Rodriguez*, Mr. Pavatt presents this Court with a "grave[] and most important case[]" that compels a Sixth Amendment exception to Oklahoma's no-impeachment rule when a juror's statements reveal that the State's presentation of knowingly false information at the penalty phase of a capital trial was dispositive to at least one juror's vote for a death sentence. *See McDonald*, 238 U.S. at 268–69.

First, just as racism poses a special threat to "the equal dignity of all persons[,]" *Peña-Rodriguez*, 580 U.S. at 221, so too does a prosecutor who abuses their unique position as a minister of justice—to seek out and defend *the truth*—by presenting knowingly false information to a capital jury in order to win a death sentence. *Banks*, 540 U.S. at 696; *see also Donnelly*, 416 U.S. at 650–51 (Douglas, J., dissenting) ("The prosecutor is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties."). Such a prosecutor degrades the dignity (and duty) of their office, runs roughshod over the fundamental fair trial and due process rights of the criminally accused, and harms the jurors whom their deception successfully misled. *Cf. Strickler v. Greene*, 527 U.S. 263, 281 (1999) (reaffirming "the special role played by the American prosecutor in the search for truth in criminal trials[]").

Here, Mr. Pavatt's jury foreman, Mark Haydon, attests to feeling "used" by prosecutors into returning a death sentence through their insistence at the sentencing phase—now exposed as false—that Mr. Pavatt, and Mr. Pavatt alone,

inflicted the fatal shots that snuffed out Rob Andrew's life. Pet App. 319a ¶ 13. The harm stemming from the prosecutors' lies is especially acute for Mr. Haydon:

> [D]uring sentencing deliberations, four or five jurors had initially expressed that they did not want to impose the death penalty. As the jury foreman, I reminded the jurors that we knew from the prosecutors' arguments to us that Mr. Pavatt was the shooter. I also explained to them how a single-shot shotgun operates as I described above. My explanation and reasoning influenced the other jurors, and we ultimately voted to sentence Mr. Pavatt to death.

Pet. App. 317a-318a ¶ 5. Now aware that the prosecution's assurances that Mr. Pavatt was the shooter were false, Mr. Haydon "do[es] not like that the prosecution put that on my soul." *Id.* ¶ 13.

Second, just as this Court found that purging racism from the criminal justice system rises to the level of a constitutional imperative, *Peña-Rodriguez*, 580 U.S. at 221–22, so too have "[a] long series of decisions of this Court[ ] . . . established the proposition that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence" by representatives of the State. *Donnelly*, 416 U.S. at 645–46 (applying this proposition to knowingly false prosecutorial arguments). Nearly a century ago, this Court condemned as "inconsistent with the rudimentary demands of justice" the state's "contriv[ance] [of] a conviction through the pretense of a trial in which truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury[.]" *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

Third, a prosecutor's use of knowingly false information to win a death sentence, like racism, poses a "particular threat to the promise of the [Fourteenth]

Amendment and to the integrity of the jury trial." *Peña-Rodriguez*, 580 U.S. at 222. That is especially so because a prosecutor is not "the representative of an ordinary party to a controversy, but of a sovereignty . . . whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 87 (1935). As such, "the prosecutor's opinion carries the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence." *United States v. Young*, 470 U.S. 1, 18–19 (1985). And a prosecutor's statements "can covey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury[.]" *Compare id.* at 18, *with* Pet. App. 317a ¶ 3 (Juror Haydon attesting that, "I voted for death because of the prosecutors' argument that Mr. Pavatt took the first shot and then had to break open the shotgun, reload, stand over Rob Andrew at point blank range with a shotgun and take another shot[]").

Finally, the irrevocability of a death sentence combined with the unique threat posed by a prosecutor's knowing use of false information to the "confidence that is a central premise of the Sixth Amendment trial right[,]" call for a constitutional rule that, in capital cases, such conduct "must be addressed—including, in some instances, after a verdict has been entered." *Peña-Rodriguez*, 580 U.S. at 225.

It also bears mention that one member of this Court has already condemned circumstances analogous to those here where, until the eleventh hour before an

execution, "[p]rosecutors not only failed to disclose [the victim's] parents' unwavering desire that [the petitioner] not be sentenced to death, but also misled the jury in summation to successfully secure a death sentence." *See Storey v. Lumpkin*, 142 S. Ct. 2576, 2578 (2022) (Sotomayor, J., statement respecting the denial of certiorari). Justice Sotomayor identified the grave concern that Mr. Storey "faces the possibility of execution without resolution of his claims[,]" even as she agreed with this Court's decision to deny the petition for a writ of certiorari given the procedural and vehicle problems attendant to the way Mr. Storey's case arrived at this Court. *Id.* ("The posture of Storey's case renders it a poor fit for this Court's review.").

Those dispositive vehicle problems—which included the fact that the Fifth Circuit denied a certificate of appealability ("COA") over the district court's dismissal of Mr. Storey's Rule 60(b) motion as an improper, unauthorized second or successive habeas petition that contravened 28 U.S.C. § 2244(b)—are absent here. *Compare Storey v. Lumpkin*, 8 F.4th 382, 393 (5th Cir. 2021) ("We decline to issue a COA to appeal the district court's decisions dismissing Storey's purported Rule 60(b) motion . . ."), *with Buck v. Davis*, 580 U.S. 100, 122 (2017) ("We have held that a litigant seeking a COA must demonstrate that a procedural ruling barring relief is itself debatable among jurists of reason; otherwise, the appeal would not 'deserve encouragement to proceed further[.]'" (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). It is thus reasonably probable that Justice Sotomayor and at least three other Members of this Court would find the analogous circumstances in Mr. Pavatt's case worthy of the Court's plenary review.

II. There is a reasonable probability that the Oklahoma Court of Criminal Appeals' decision will be reversed.

For the reasons discussed *supra*, Section I, and here, it is reasonably probable that the Oklahoma Court of Criminal Appeals' decision will be reversed were this Court to grant Mr. Pavatt's pending certiorari petition. The record demonstrates that the State presented knowingly false information at Mr. Pavatt's sentencing proceeding which influenced at least one juror's vote for a death sentence in violation of Mr. Pavatt's Sixth and Fourteenth Amendment rights. *See Napue v. Illinois*, 360 U.S. 264 (1959); *Brady v. Maryland*, 373 U.S. 83 (1963); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974) (applying to a claim of knowingly false prosecutorial argument its "long series of decisions" establishing the now-familiar rule that "the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence" (citing *Mooney*, 294 U.S. 103 (1935), and *Napue*, 360 U.S. 264) (cleaned up)).

Whereas in *Donnelly*, this Court deemed the prosecutor's baseless statement harmless because of its ambiguity, in Mr. Pavatt's case the State's knowingly false insistence that Mr. Pavatt, and Mr. Pavatt alone, shot and killed Rob Andrew was unequivocal, repeated, and prejudicial under either subjective or objective tests. Under a subjective test, Mr. Pavatt's jury foreman, Mark Haydon, has attested to the dispositive effect that the prosecutors' false argument had on his decision to sentence Mr. Pavatt to death. Pet. App. 317a-318a ¶¶ 3-5. Meanwhile, under an objective test, the unequivocal, pervasive, and prejudicial nature of the prosecutors' false statements to Mr. Pavatt's jury are objectively apparent. *Cf. Donnelly*, 416 U.S. at

645 (finding prosecutor's remark harmless not only because it was "admittedly an ambiguous one" but also because it "was but one moment in an extended trial and was followed by specific disapproving instructions[]").

III. Mr. Pavatt will be irreparably harmed in the absence of a stay.

Denying a stay risks foreclosing review of Mr. Pavatt's important constitutional questions before he is executed—questions which, if considered, would compel relief from the very death sentence which the State seeks to carry out. That is a quintessential "irreparable harm." *See Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984). And were that to occur, as set forth in Mr. Pavatt's certiorari petition and summarized *supra*, Sections I & II, his execution will be carried out in defiance of the Sixth and Fourteenth Amendment's guarantees. By contrast, any harm stemming from a stay to which the State may try to lay claim is at its nadir where its misconduct—only revealed at the eleventh hour before Mr. Pavatt's execution—gives rise to the Sixth and Fourteenth Amendment questions which Mr. Pavatt's pending certiorari petition presents. *See Sawyer v. Smith*, 497 U.S. 227, 246 (1990) (Marshall, J., dissenting) (". . . the State has no legitimate interest in the finality of the death sentence it obtained through intentional misconduct.").

The threatened harm to Mr. Pavatt is clear, serious, and irreversible. *See, e.g.*, *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) (the requirement of irreparable harm in the absence of a stay "is necessarily present in capital cases").

Respectfully submitted,

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