Nos. 26-6095 & 26A661
CAPITAL CASE

In the

SUPREME COURT OF THE UNITED STATES

JAMES DWIGHT PAVATT, *Petitioner*,

-vs-

STATE OF OKLAHOMA, *Respondent.*

To the Honorable Neil M. Gorsuch,
Associate Justice of the Supreme Court of the United States

RESPONSE IN OPPOSITION TO APPLICATION FOR STAY OF EXECUTION

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Execution Scheduled for November 12th, 2026, at 10:00 a.m. CST

On November 20, 2001, Applicant James Pavatt ("Petitioner") murdered Robert ("Rob") Andrew with his co-conspirator, Brenda Andrew. *Pavatt v. State*, 159 P.3d 272 (Okla. Crim. App. 2007). An Oklahoma jury convicted Petitioner of one count of First-Degree (Malice Aforethought) Murder and sentenced him to death in 2003. *Id*.

Petitioner exhausted all state and federal appeals and is scheduled for execution on November 12, 2026, nearly a quarter century after murdering Rob Andrew. Now, mere days before his execution, Petitioner seeks a stay of his execution pending the disposition in this Court of a petition for certiorari review of the decision by the Oklahoma Court of Criminal Appeals ("OCCA") denying the procedurally barred claim he alleged in a successive application for post-conviction relief. This Court lacks jurisdiction over the OCCA's application of an adequate and independent state procedural bar. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Petitioner's application for a stay should be denied.

STATEMENT OF THE CASE

Petitioner was convicted of the murder of Rob Andrew in 2003. *Pavatt*, 159 P.3d 272. Since then, as detailed in the State's Brief in Opposition, his convictions and sentences have withstood myriad challenges.

On August 27, 2026, the OCCA issued an order scheduling Petitioner's execution on November 12, 2026. On September 18, 2026, Petitioner received the State's clemency packet which purportedly furnished the factual basis for his claim. Yet, Petitioner waited until October 28, 2026, to file the Third Application that is the

subject of the instant Application. The OCCA denied relief on November 6, 2026, finding Petitioner's claim procedurally barred. (Pet. App. at 5a-12a).

ARGUMENT

This Court will not grant a stay pending the filing and disposition of a certiorari petition unless the Petitioner establishes:

> (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (*per curiam*); *see also Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers); *Evans v. Alabama*, 461 U.S. 1301, 1302 (1983) (Powell, J., in chambers); *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

"A stay is not a matter of right, even if irreparable injury might otherwise result," and is "instead an exercise of judicial discretion," "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation marks omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34. Moreover, in the execution context, the decision whether to grant a stay "must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Accordingly, last-minute execution stays are especially disfavored. *See Dunn v. Price*, 587 U.S.

929, 929 (2019); *Bucklew v. Precythe*, 587 U.S. 119, 149-50 (2019); *Hill*, 547 U.S. at 584.

Here, Petitioner cannot show a reasonable probability that certiorari review will be granted, let alone a significant possibility of reversal, because his claim is procedurally barred.

I. Petitioner fails to meet his burden of showing he is entitled to a stay of execution.

As shown in the contemporaneously filed Brief in Opposition, Petitioner has not shown a reasonable probability that four members of this Court will be of the opinion that Petitioner's claim is sufficiently meritorious to warrant a grant of certiorari, let alone a significant possibility of reversal of the OCCA's decision. *Hollingsworth*, 558 U.S. at 190. Moreover, the balance of equities weighs in favor of the State.

A. A stay is unwarranted because Petitioner's claim is procedurally barred.

As shown in the State's Brief in Opposition, Petitioner's claim was procedurally barred by the OCCA pursuant to adequate and independent state law grounds. This court lacks jurisdiction. *Coleman*, 501 U.S. at 729.

Moreover, Petitioner asks this Court to extend *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017), which creates a narrow Sixth Amendment exception in cases of racial animus to the rule otherwise preventing juries from impeaching their verdicts, to the OCCA's refusal to consider an affidavit from a juror on a topic having nothing to do with racial animus. (Application for a Stay of Execution at 2-7). But Petitioner did not press this issue below and the OCCA did not consider it. This Court generally

does not decide questions that were not pressed or passed on below. *United States v. Williams*, 504 U.S. 36, 41 (1992). Nor would Petitioner's case—presenting only a barred claim beyond this Court's jurisdiction—be an appropriate vehicle for considering any extension of *Pena-Rodriguez*.

Further, the OCCA's application of § 2606(B) is not necessary to the court's judgment. The juror's affidavit does not bear on when the factual basis for Petitioner's claim became available. As found by the OCCA, Petitioner's claim has been "readily discoverable for more than twenty years." (Pet. App. at 9a). Petitioner could have asked this juror whether the State's arguments at Brenda's trial would have affected his verdict. Thus, even if the affidavit were not barred by § 2606(B), Petitioner's claim would remain barred under § 1089(D)(8)(b)(1), and a decision by this Court on the no-impeachment question could not affect the judgment.

Petitioner cannot show a reasonable probability that certiorari review will be granted, let alone a significant possibility of reversal.

B. The remaining factors weigh against granting a stay.

Further, Petitioner has not shown a likelihood of irreparable harm if he is not granted a stay, nor has he shown that the balance of equities and harms weighs in his favor. *Hollingsworth*, 558 U.S. at 190.

(1) Petitioner fails to show irreparable harm.

An inmate cannot show irreparable harm simply from the fact he will be executed where he fails to also show that his claims have merit. *See Hill*, 547 U.S. at 584; *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) ("For

our system of justice to function effectively, litigation in cases such as this . . . must cease when there is no reasonable ground for questioning either the guilt of the defendant or the constitutional sufficiency of the procedures employed to convict him."). Under the circumstances, Petitioner has failed to show irreparable harm.

(*2) A balancing of the equities and harms weighs against Petitioner.*

Moreover, Petitioner fails to show that a balancing of the equities weighs in his favor. This Court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. It has been almost a quarter of a century since Petitioner murdered Rob Andrew. The interests of the State and the victim's family would certainly be harmed by a stay. *See Booker*, 473 U.S. at 935 n.1 (Powell, J., concurring) ("For our system of justice to function effectively, litigation in cases such as this . . . must cease when there is no reasonable ground for questioning either the guilt of the defendant or the constitutional sufficiency of the procedures employed to convict him.").

Additionally, a stay is not in the public interest. Petitioner's convictions and sentences have been affirmed over decades of judicial review. *See Hill*, 547 U.S. at 584. To stay Petitioner's lawful execution based on his procedurally defaulted claim would be against the public interest. *Hill*, 547 U.S. at 584. The people of Oklahoma and the family of Rob Andrew "deserve better." *Bucklew*, 587 U.S. at 150.

Finally, the necessity of a stay of execution is a problem of Petitioner's own making. The OCCA held that the factual basis for Petitioner's claim has "been readily

discoverable for more than twenty years." (Pet. App. at 9a). Petitioner's delay supports denying the equitable relief he seeks.

CONCLUSION

This Court should deny Petitioner's stay application.

Respectfully submitted,
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November 9, 2026