No. 25-1198 & 25A1158

IN THE

Supreme Court of the United States

JAMES GARFIELD BROADNAX,
Petitioner,

v.

TEXAS,
Respondent.

On Petition for Writ of Certiorari to the Court of Criminal Appeals of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

James Broadnax was convicted and sentenced to death for killing two men during a robbery. After the trial court set Broadnax's execution date and just six weeks before his execution, Broadnax belatedly filed a subsequent state habeas application. The Texas Court of Criminal Appeals (CCA) dismissed Broadnax's application as an abuse of the writ without considering the merits of his claims. Broadnax's petition for a writ of certiorari and application for a stay of execution now present the following questions for review:

1. Whether the state court's disposition, which relied upon an adequate and independent state procedural ground, forecloses certiorari review and a stay of execution?

2. Whether the Court should review Broadnax's jurisdictionally-barred claim that a new jury must evaluate whether he has the requisite culpability for the death penalty in light of highly questionable new evidence from his accomplice when Broadnax never objected to the lack of appropriate parties and anti-parties instructions at trial despite knowing about his purportedly new facts, when his claim is barred by the invited error doctrine and nonretroactivity principles, and when Broadnax consistently, repeatedly, and profanely admitted in media interviews to being the triggerman?

3. Whether the Court should expend its limited resources reviewing Broadnax's latest rehashing of his jurisdictionally-barred and meritless *Batson*[1] claim after numerous previous iterations have been rejected by the state and federal courts?

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[1] *Batson v. Kentucky*, 476 U.S. 79 (1986).

PARTIES TO THE PROCEEDING

The Petitioner is James Garfield Broadnax. The Respondent is the State of Texas. Because no party is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

LIST OF PROCEEDINGS

State v. Broadnax, No. F08-24667-Y (Crim. Dist. Ct. No. 7 Dallas Cty., Tex., Aug. 21, 2009) (capital murder conviction and death sentence)

Broadnax v. State, No. AP-76,207 (Tex. Crim. App. Dec. 14, 2011) (affirming conviction and sentence on direct appeal)

Ex parte Broadnax, No. WR-81,573-01 (Tex. Crim. App. May 20, 2015) (denying initial state habeas application)

Ex parte Broadnax, No. WR-81,573-02 (Tex. Crim. App. Jun. 7, 2023) (dismissing subsequent state habeas application)

Ex parte Broadnax, No. WR-81,573-03 (Tex. Crim. App. Nov. 6, 2025) (dismissing subsequent state habeas application)

Ex parte Broadnax, No. WR-81,573-04 (Tex. Crim. App. Apr. 7, 2026) (dismissing subsequent state habeas application)

Broadnax v. Davis, No. 3:15-CV-1758-N (N.D. Tex. July 23, 2019) (denying federal habeas relief)

Broadnax v. Lumpkin, No. 19-70014 (5th Cir. July 24, 2020) (granting in part and denying in part a certificate of appealability)

Broadnax v. Lumpkin, No. 19-70014 (5th Cir. Feb. 8, 2021) (affirming federal district court's denial of habeas relief)

Broadnax v. Tex., No. 11-9294 (Oct. 1, 2012) (denying certiorari off direct review)

Broadnax v. Tex., No. 14-9964 (Oct. 5, 2015) (denying certiorari off initial state habeas review)

Broadnax v. Lumpkin, No. 21-267 (Jan. 18, 2022) (denying certiorari off federal habeas review)

Broadnax v. Tex., No. 23-248 (June 24, 2024) (denying certiorari review of dismissal of subsequent state habeas application)

Broadnax v. Tex., Nos. 25-938 & 25A899 (denying certiorari review of denial of suggestion for reconsideration of dismissal of subsequent state habeas application)

Broadnax v. Tex., Nos. 25-939 & 25A900 (denying certiorari review of dismissal of subsequent state habeas application)

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INTRODUCTION

Broadnax was convicted of capital murder and sentenced to death after robbing and fatally shooting two men. After his arrest, Broadnax gave interviews to several local news stations. *Broadnax v. Lumpkin*, 987 F.3d 400, 404 (5th Cir. 2021). During the interviews, he confessed to the murder and robbery and offered explicit details. *Id*. Broadnax admitted that he alone killed the victims, had no remorse, and asked for the death penalty. *Id*.

Broadnax is presently scheduled to be executed sometime after 6:00 P.M. on April 30, 2026. App.D. Broadnax has already availed himself of the full state and federal appeals provided to death-row inmates in Texas, including *multiple* state writ proceedings. Now, a mere *ten days* before his scheduled execution, Broadnax seeks certiorari review of the CCA's decision to dismiss his subsequent state habeas application, which itself was only filed six weeks before Broadnax's execution date. *Ex parte Broadnax,* No. WR-81,573-04, 2026 WL 937859 (Tex. Crim. App. Apr. 7, 2026); App.B. In his dilatory petition for certiorari (Pet.), Broadnax first asserts that the Eighth Amendment precludes his execution because questionable new evidence purports to show that he did not shoot the victims, and he is therefore entitled to a new jury determination of his culpability. Pet.10–17 (citing *Tison v. Arizona*, 481 U.S. 137 (1987)). Secondly, Broadnax argues that the prosecution engaged in racial discrimination during jury selection. *Id*. at 18–26.

However, these claims are not worthy of the Court's review. Review is jurisdictionally barred by the CCA's application of an adequate and independent state procedural ground for dismissal, namely, Texas's abuse-of-the-writ bar. Broadnax contends that the Court should find jurisdiction to review his claims because the CCA's decision rests on a merits-based application of federal law. Pet.26–29. However, the CCA was explicit—it dismissed Broadnax's subsequent application without considering the merits of his claims. This Court will not presume that there is no independent and adequate state ground for a state court decision unless the decision "fairly appear[s] to rest primarily on federal law or to be interwoven with federal law." *Coleman v. Thompson*, 501 U.S. 722, 735 (1991). Here, the Court is dealing with a commonplace abuse-of-the-writ bar, straightforwardly applied.

Broadnax also asserts that the CCA misapplied its own law and should have permitted merits review of his claims because they were previously unavailable. Pet.26–27. Broadnax contends that he could not have raised his *Tison* claim until he obtained an affidavit from his cousin and accomplice Demarius Cummings in which Cummings explains that he, and not Broadnax, actually shot the victims in this case, but the duo agreed to lie and place the blame for the murders on Broadnax. However, by his own consistent and vulgar media admissions—not recanted and offered to anyone who would listen—Broadnax is the actual triggerman. And, even assuming the truth of Cummings's dubious assertions, Broadnax would have known both that he was not the triggerman and about his conspiracy to lie

since before trial, meaning any claim predicated on those facts was previously available. Likewise, Broadnax has repeatedly pressed variations on his *Batson* claim in both state and federal court. His argument that his *Batson* claim was previously unavailable because he lacked the State's spreadsheet from Cummings's trial is demonstrably incorrect.

Regardless, Broadnax's claims fail on the merits. His *Tison* claim fails for lack of a contemporaneous objection, constitutes invited error, and is barred by *Teague v. Lane*, 489 U.S. 288 (1989). Moreover, Broadnax clearly had the requisite culpability for a death sentence. Broadnax admitted to being the triggerman and was convicted as such. App.C at 8a. By his own words, "I pulled the trigger, he was just there." *Id.* And, "We robbed them. I killed them." *Id.* But even if Cummings's assertions are true, Broadnax still had the requisite culpability for a death sentence under *Tison* because he was a major participant in the robbery and displayed reckless indifference for human life. As for his *Batson* claim, Broadnax has repeatedly and unsuccessfully raised this claim in state and federal court. His current rehashing provides no compelling reason to revisit those prior rejections.

Simply put, Broadnax's petition does not demonstrate any special or important reason for this Court to review the CCA's procedural decision, and this Court does not typically engage in routine error correction. Certiorari review is therefore unwarranted.

Concomitantly, Broadnax's request for a stay is meritless. Broadnax has the burden of persuasion on his stay request, and he is required to make "a clear showing" that he is entitled to one. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Last-minute stays should be the extreme exception, not the norm[.]" *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019); *see also Barr v. Lee*, 591 U.S. 979, 981 (2020). As the Court has explained:

> "[T[he last-minute nature of an application" that "could have been brought" earlier, or "an applicant's attempt at manipulation," "may be grounds for denial of a stay." *Hill*, 547 U.S. at 584 (internal quotation marks omitted). . . . [F]ederal courts "can and should" protect settled state judgments from "undue interference" by invoking their "equitable powers" to dismiss or curtail suits that are pursued in a "dilatory" fashion or based on "speculative" theories. [*Hill*, 547 U.S. at 584–85].

Bucklew, 587 U.S. at 150–51 (footnote omitted).

By delaying until the last minute to raise his claims, Broadnax fails to make the requisite showing to justify interference by the federal courts. As shown below, Broadnax's claims have been available since trial or before. Furthermore, almost eighteen years have passed since Broadnax killed his victims. The ensuing delay in carrying out Broadnax's sentence should weigh heavily in the evaluation of this application for a stay, and justice for Broadnax's victims should be denied no longer. Simply put, "[t]he people of [Texas], the

surviving victims of [Broadnax]'s crimes, and others like them deserve better." *Id*. at 149. The State's interest in the timely enforcement of Broadnax's sentence is not outweighed by the unlikely possibility that certiorari will be granted. Broadnax thus fails to demonstrate that he is entitled to a stay of execution under this Court's precedent. Accordingly, Broadnax's request for a stay should be denied alongside his petition.

STATEMENT OF THE CASE

I. Guilt-innocence Evidence

On direct appeal, the CCA provided the following summary of the facts of the crime:

> A man riding his bicycle home from work saw the bodies of Stephen Swan and Matthew Butler in the street outside their recording studio in Garland shortly after 1:00 a.m. on June 19, 2008. The man alerted Garland firefighters at a nearby fire station. Upon arriving at the scene, the firefighters quickly determined that both Swan and Butler were recently deceased. At [Broadnax]'s trial, the medical examiner testified that Swan had suffered an intermediate-range gunshot wound to the head, in addition to a gunshot wound to the left chest.
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> Later that day, [Broadnax] and his cousin, [Cummings], arrived at the Southeast Dallas apartment where [Broadnax] had been staying with family members. While there, [Broadnax]

boasted of "hit[ting] a lick"—street slang for committing a robbery—and displayed Swan's driver's license. [Broadnax] and Cummings left the apartment in Swan's Ford Crown Victoria, after telling those present that they planned to sell the vehicle. Fifteen minutes after [Broadnax] and Cummings left, [Broadnax]'s aunt's friend who had been present in the apartment saw news reports of the double homicide. She realized that [Broadnax] and Cummings were likely involved, and she called the Garland Police.

That evening, police officers in Texarkana (which is about 150 miles from Garland) saw Swan's car in a high-crime area. After a check of the license plates returned information for a Cadillac, rather than a Ford, officers pulled the vehicle over. [Broadnax] gave the officers his name, and after they learned that there were warrants for [Broadnax]'s arrest, the officers placed [Broadnax] in custody. The arresting officer testified that [Broadnax] did not appear to be intoxicated when he was pulled over.

After being returned to Dallas, [Broadnax] gave multiple interviews to television broadcasters in the Dallas area. These interviews became the crux of the State's case at trial. In them, [Broadnax] confessed to murdering and robbing Swan and Butler, and he provided explicit details of the crimes. He said that he and Cummings had traveled to Garland that day with the specific intent of committing a robbery.

> [Broadnax] said that while Cummings had participated in the robberies, [Broadnax], alone, had murdered the victims. [Broadnax] told reporters that he had no remorse for his actions, and that he hoped a jury would sentence him to death.
>
> At trial, the defense conceded that [Broadnax] had shot Swan and Butler, but argued that [Broadnax] was under the influence of marijuana and PCP at the time of the murders. The defense further posited that [Broadnax] was still intoxicated at the time of his multiple television interviews and confessions four days after his arrest. Several of the State's witnesses were skeptical of [Broadnax]'s theory. In addition to the arresting officer's testimony that [Broadnax] was lucid at the time of his arrest, the reporters who interviewed him described [Broadnax] as intelligent and rational. The jail nurse, too, testified that [Broadnax] did not appear to be under the influence of alcohol or drugs.

Broadnax v. State, No. AP-76,207, 2011 WL 6225399, at *1 (Tex. Crim. App. Dec. 14, 2011).

II. Punishment Evidence

At punishment, the prosecution presented victim impact testimony from Swan and Butler's mothers. *Broadnax v. Davis*, No. 3:15-CV-1758-N, 2019 WL 3302840, at *2 (N.D. Tex. July 23, 2019). The State also showed that Broadnax was a violent and noncompliant

inmate. *Id*. A member of the Dallas Police Department's gang unit testified that Broadnax's drawings and writings suggested that he belonged to a gang. *Id*.

For its part, Broadnax's defense team called experts to testify about "brain development in humans," Broadnax's "substance abuse-induced psychosis," and the possibility that "Broadnax was under the influence of marijuana and PCP" during the crime and his media interviews. *Id*. The defense presented numerous family members who testified to Broadnax's good character and his abusive, unstable childhood. *Id*. It also suggested that Broadnax was not the instigator of a jail fight presented by the State. *Id*.

In rebuttal, the prosecution introduced "a series of recordings of telephone calls Broadnax made from the Dallas County Jail on the same day the jury returned its [guilt-innocence] verdict" in which Broadnax laughed, joked, and flirted. *Id*. at *3, *65. The State also called "a forensic psychologist, who read a list of the characteristics of a psychopathic personality" but who did not interview Broadnax or opine that he possessed those traits *Id*. Finally, the prosecution presented more victim impact testimony. *Id*.

III. Course of Proceedings

In 2009, Broadnax was convicted of capital murder and sentenced to death. *Broadnax*, 2011 WL 6225399, at 1, *cert. denied sub nom. Broadnax v. Tex.*, 568 U.S. 828 (2012). The CCA affirmed on automatic appeal. *Id*.

Broadnax filed an initial state habeas application. The CCA adopted the trial court's findings and conclusions and denied relief. *Ex parte Broadnax*, No. WR-81,573-01, 2015 WL 2452758, at *1 (Tex. Crim. App. May 20, 2015), *cert. denied sub nom. Broadnax v. Tex.*, 577 U.S. 842 (2015).

Broadnax then sought federal habeas relief. The district court denied relief on all claims and declined to issue a certificate of appealability (COA). *Broadnax*, 2019 WL 3302840, at *1. Broadnax then asked the Fifth Circuit for a COA, which was granted. *Broadnax v. Davis*, 813 F. App'x 166 (5th Cir. 2020). The Fifth Circuit ultimately affirmed the district court's denial of habeas relief. *Broadnax*, 987 F.3d at 400, *cert. denied*, 142 S. Ct. 859 (2022).

Broadnax then filed his first subsequent state habeas application. The CCA denied it as an abuse of the writ. *Ex parte Broadnax*, No. WR-81,573-02, 2023 WL 3855947, at *1 (Tex. Crim. App. June 7, 2023) (reconsideration denied November 6, 2025), *cert. denied sub nom. Broadnax v. Tex.*, 144 S. Ct. 2700 (2024). Broadnax then filed a second subsequent state habeas application and suggested that the CCA reconsider his first subsequent application. The CCA denied reconsideration and dismissed Broadnax's second subsequent application as an abuse of the writ on the same day. *Id.*; *see also Ex parte Broadnax*, No. WR-81,573-03, 2025 WL 3095921, at *1 (Tex. Crim. App. Nov. 6, 2025). On December 17, 2025, the trial court set Broadnax's execution for April 30, 2026. *Tex. v.*

Broadnax, No. F08-24667-Y (Crim. Dist. Ct. No. 7, Dallas Cty, Texas, Dec. 17, 2025); App.D.

Broadnax filed two certiorari petitions challenging, respectively, the CCA's denial of his suggestion for reconsideration of the dismissal of his first subsequent state habeas application and the CCA's dismissal of his second subsequent state habeas application. *Broadnax v. Tex.*, Nos. 25-938 (suggestion) & 25-939 (application). He also moved the Court to stay his execution. *Broadnax v. Tex.*, Nos. 25A899 (suggestion), 25A900 (application).[2] The Court denied certiorari review in both causes on April 27, 2026.

On March 19, 2026, Broadnax filed a third subsequent state habeas application, which the CCA dismissed as an abuse of the writ without considering the merits. App.B at 4a. Broadnax now seeks certiorari review of that decision and has concurrently moved for a stay of execution.

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[2] Broadnax also has a civil rights lawsuit pending in the Eastern District of Texas. *Broadnax v. Elliot, et al.*, No. 9:25-cv-00040-MJT-ZJH (E.D. Tex.). In this suit, Broadnax alleged deliberate indifference by prison staff to a medical event Broadnax purportedly experienced in September 2023. *Id.* (ECF No. 110 at 2). Following mediation, the parties agreed to settle. *Id.* (ECF No. 138).

REASONS FOR DENYING THE WRIT

I. The Petition Does Not Warrant This Court's Review.

The questions that Broadnax presents for review are unworthy of the Court's attention. Supreme Court Rule 10 provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for "compelling reasons." Where a petitioner asserts only factual errors or that a properly stated rule of law was misapplied, certiorari review is "rarely granted." *Id.* Broadnax identifies no conflict among the courts of appeals, no departure from accepted and usual judicial standards, and no important question of federal law that warrants this Court's intervention in the CCA's rote application of its abuse-of-the-writ bar.

Indeed, the issues in this case involve only the lower court's proper application of state procedural rules for collateral review of death sentences. Specifically, Broadnax was cited for abuse of the writ because he did not meet the subsequent application requirements of Texas Code of Criminal Procedure Article 11.071, Section 5. The state court's disposition, which relied upon an adequate and independent state procedural ground and did not reach the merits of Broadnax's claims, forecloses a stay of execution or certiorari review.

Additionally, as Justice Stevens noted, concurring in the denial of an application for a stay in *Kyles v. Whitley*, 498 U.S. 931, 932 (1990):

> This Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims.

However, if Broadnax attempted to raise his claims in federal habeas proceedings now, a new habeas petition would be impermissibly successive[3] and barred by the statute of limitations.[4] A federal court would also

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[3] Broadnax raised a *Batson* claim in his initial federal habeas proceeding. *Broadnax*, 987 F.3d at 406. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C § 2244(b)(1). Broadnax's *Tison* claim is new, but it fails to meet requirements of 28 U.S.C. § 2244(b)(2)(A). Broadnax fails to show that he could not have diligently raised the claim earlier because—even assuming the truth of the Cummings affidavit—Broadnax was aware of his own purported conspiracy with Cummings to lie about the shooting since before trial and could have raised it then or in any of his state or federal habeas proceedings in the seventeen years since trial. Likewise, the Cummings affidavit fails to show that Broadnax is actually innocent, especially given that Broadnax has not recanted his own incriminating statements and that even under his current telling a properly instructed jury would have found Broadnax guilty as a party, if not as the principal shooter.

[4] Both of Broadnax's claims have been available since trial or before, meaning that the federal statute of limitations has long since expired. 28 U.S.C. § 2244(d)(1). And Broadnax's incremental addition of evidence does not alter the statute of limitations start date. *See*, *e.g.*, *Flanagan v. Johnson*, 154 F.3d 196, 199 (5th Cir. 1998) ("[Petitioner] is confusing his knowledge of the factual

find any new claims defaulted by virtue of the CCA's application of Section 5.[5]

Certiorari review should be denied.

II. Certiorari Review and a Stay of Execution Are Foreclosed by an Independent and Adequate State-Procedural Bar.

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision.'" *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989))).[6] The state law ground

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predicate of his claim with the time permitted for gathering evidence in support of that claim . . . [§] 2244(d)(1)(D) does not convey a statutory right to an extended delay . . . while a habeas petitioner gathers every possible scrap of evidence that might . . . support his claim."). The relevant question is when Broadnax was first aware of the factual predicates of his claims, not when he obtained the most recent piece of evidence supporting the claims.

[5] *Aguilar v. Dretke*, 428 F.3d 526, 533 (5th Cir. 2005) ("Texas' abuse-of-writ rule is ordinarily an 'adequate and independent' procedural ground on which to base a procedural default ruling.").

[6] *Foster* is illustrative of a failed bar. The *Foster* Court held the state court's bar of the petitioner's *Batson* claim was not independent of the merits of his federal claim because the state court "engaged in four pages of" a *Batson* analysis and concluded the claim was without merit. 578 U.S. at 498. Here, the CCA's terse order explicitly stated it did not review the merits of Broadnax's claims.

barring federal review may be "substantive or procedural." *Coleman*, 501 U.S. at 729.

To be adequate, a state law ground must be "firmly established and regularly followed." *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). Discretion does not deprive a state law ground of its adequacy because "a discretionary rule can be 'firmly established' and 'regularly followed'—even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Ultimately, situations where a state law ground is found inadequate are a "small category of cases." *Kemna*, 534 U.S. at 381.

A state law ground is "independent of federal law [when it] do[es] not depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002). There is no presumption of federal law consideration. *Coleman*, 501 U.S. at 735–36. To so find, the state court's decision must "fairly appear to rest primarily on federal law, or to be interwoven with the federal law." *Id*. Where there is no "clear indication that a state court rested its decision on federal law, a federal court's task will not be difficult." *Id*. at 739–40.

Here, Article 11.071 Section 5(a) of the Texas Code of Criminal Procedure forbids state courts to consider a prisoner's subsequent state habeas application unless the prisoner can show previous unavailability of his claims or actual innocence of the crime or the death penalty. This statute, like the federal habeas "second or

successive" writ prohibition, works to limit the number of attempts an inmate may seek to collaterally attack a conviction, subject to certain, limited exceptions. *Compare* Tex. Code Crim. Pro. art. 11.071 § 5(a), *with* 28 U.S.C. § 2244(b); *see also Beard*, 558 U.S. at 62 (federal courts should not "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts.").

Here, the CCA dismissed Broadnax's application as "an abuse of the writ without reviewing the merits of his claims." App.B at 4a (citing Tex. Code Crim. Pro. art. 11.071, § 5(c)). Broadnax's claims are therefore unequivocally procedurally barred because the state court's disposition of the claims relies upon an adequate and independent state law ground, i.e., the Texas abuse-of-the-writ statute. *See*, *e.g.*, *Moore v. Texas*, 122 S. Ct. 2350, 2352–53 (2002) (Scalia, J., dissenting); *Balentine v. Thaler,* 626 F.3d 842, 857 (5th Cir. 2010) (recognizing that Section 5 is an adequate state law ground for rejecting a claim); *Matchett v. Dretke*, 380 F.3d 844, 848 (5th Cir. 2004) ("Texas' abuse-of-the-writ rule is ordinarily an 'adequate and independent' procedural ground on which to base a procedural default ruling."); *Barrientes v. Johnson*, 221 F.3d 741, 758–59 (5th Cir. 2000); *Fuller v. Johnson*, 158 F.3d 903, 906 (5th Cir. 1998); *Emery v. Johnson*, 139 F.3d 191, 195–96 (5th Cir. 1997).

As noted above, this Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to

support the judgment," *Coleman*, 501 U.S. at 729, because "[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal: since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory." *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (citing *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) & *Sochor v. Florida*, 504 U.S. 527, 533–34 & n.112 (1992)); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983). Despite this long-standing precedent, Broadnax now argues that Section 5 is not adequate and independent. Pet.26–28. But even considering this Court's federal habeas jurisprudence—which does not apply to a jurisdictional bar—Broadnax's arguments fail. In *Long*, the Court made clear that, in determining whether a state court judgment is independent and adequate on direct review, it would first decide whether a state court decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." 463 U.S. at 1040. If this predicate was met, the Court would presume that the state court's decision turned on federal law unless the "adequacy and independence of any possible state law ground" was "clear from the face of the opinion." *Id.* at 1040–41. This framework was imported into the federal habeas context in *Harris*, 489 U.S. at 260–63, and it has since been called the "*Harris* presumption" when it is applied in such matters. *See*, *e.g.*, *Ylst v. Nunnemaker*, 501 U.S. 797, 802 (1991).

The Court later made clear in *Coleman* that a two-part, conjunctive test is required: "In habeas, if the decision of the last state court to which the petitioner

presented his federal claims fairly appeared to rest primarily on resolution of those claims, or to be interwoven with those claims, and did not clearly and expressly rely on an independent and adequate state ground, a federal court may address the petition." 501 U.S. at 735. *Coleman* rejected the notion that *Harris* imposed a "clearly and expressly" requirement on all procedural default holdings. *Id.* at 736. Rather, the Court explained that the *Harris* presumption, and hence the "clearly and expressly" requirement, "appl[ies] only in those cases in which it fairly appears that the state court rested its decision primarily on federal law." *Id.* (internal quotation marks omitted); *see also id.* at 735 (describing this "predicate to the application of the *Harris* presumption"). Thus, there is no presumption of federal-law consideration unless it is first determined that the state court decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Id.* at 735.

In *Rocha v. Thaler*, 626 F.3d 815 (5th Cir. 2010), the Fifth Circuit considered the independent nature of Texas's Section 5 bar in the federal habeas context. There, the court rejected Rocha's contention "that § 5(a)(1) is dependent on federal law in all cases." *Id.* at 835. Instead, whether a § 5(a)(1) dismissal is independent of federal law turns on case-specific factors. *Id.* As the court held,

> If the CCA's decision rests on availability, the procedural bar is intact. If the CCA determines that the claim was unavailable but that the application does not make a prima facie showing

> of merit, a federal court can review that determination under the deferential standards of AEDPA.[7]

Rocha, 626 F.3d at 835.

But in this case, there is no need to assume. The CCA dismissed Broadnax's application as "an abuse of the writ without reviewing the merits[.]" App.B at 4a. The CCA conducts the availability and prima facie inquiries sequentially, *Rocha*, 626 F.3d at 834, and there is no indication the CCA proceeded to a prima facie merit analysis instead of resting its decision on availability. Broadnax argues that the CCA does not mean it when it says it dismisses a claim without reviewing the merits, because sometimes the CCA finds no prima facie merit and still says that it is not reaching the merits. Pet.27–28. However, the CCA's instant order does not resemble Broadax's cited orders, some of which specifically reference the "prima facie" requirement, *Ex parte Davila*, 2018 WL 1738210, at *1 (Tex. Crim. App. Apr. 9, 2018), present an uncertain decisional basis stemming from a lack of a plurality, *Ruiz v. Quarterman*, 504 F.3d 523, 527 (5th Cir. 2007), or involve a recognized exception for categorical ineligibility for the death penalty, *Busby v. Davis*, 925 F.3d 699, 707 (5th Cir. 2019). *Rocha*, 626 F.3d at 823–24, 826–27.

Finally, Broadnax appears to contest the Section 5 bar's adequacy by asserting that the CCA misapplied its own law. Pet.26–27. However, this is not a situation

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7 The Antiterrorism and Effective Death Penalty Act of 1996.

where the imposition of the bar was exorbitant. *See*, *e.g.*, *Kemna*, 534 U.S. at 376, 381–84. Broadnax's meritless claims have been available since trial, and it is utterly unremarkable that the CCA refused to authorize further proceedings.

Broadnax argues that he could not have previously raised his claims because he was not able to review the Cummings jury selection materials until January 2025 and he did not acquire the information in the Cummings affidavit until a meeting with Cummings on February 20, 2026.[8] Stay Application (Stay Appl.) at 4; App.E at 23a. But Broadnax has been raising *Batson* since trial, *see generally* 42.RR[9], and offered iterations on the claim on direct appeal and in both state and federal habeas. Concerning his *Tison* claim, it is indisputable that if Broadnax did not shoot Swan and Butler and lied during his media interviews, he would know as much through his personal knowledge. Indeed, if Broadnax did not pull

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[8] An applicant can prove either factual or legal unavailability of a claim. Tex. Code Crim. Pro. art. 11.071, § 5(a)(1). This requires proof of unavailability in *all* prior state habeas applications. *See Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007); *Ex parte Sales*, No. WR-78,131-02, 2023 WL 382321, at *1 (Tex. Crim. App. Jan. 25, 2023) ("[T]he factual basis must have been unavailable as to *all previous applications*." (emphasis added)). A claim is not factually available when its factual basis "was not ascertainable through the exercise of reasonable diligence," Tex. Code Crim. Pro. art. 11.071, § 5(e). Broadnax filed his second subsequent application on August 20, 2024, meaning his claims must have been unavailable on that date.

[9] "RR" refers to the reporter's record of transcribed trial proceedings, preceded by volume number and followed by page number.

the trigger, he has been fully aware of that fact throughout the entirety of his legal proceedings. He would have necessarily known that any trial evidence suggesting that he shot the victims was categorically false, and he could have related the same to his trial, appellate, state habeas, and federal habeas attorneys, who could have pursued his remedies. As noted by the concurrence below, "if [Broadnax's confessions were lies, he knew that at the time he made his confessions, and he has had 16 years and 3 prior applications in which he could have recanted those confessions and argued that they were false." App.C at 5a–6a, 9a–10a ("He has had three prior habeas applications in which he could have presented his claim that his own confessions were false. He could easily have executed an affidavit recanting his confessions. He did not and still has not."). The concurrence further observed "[Broadnax] has not shown diligence" and the "highly questionable proposition" that "Cummings's conscience was awakened on the eve of execution" is negated by the fact that his conscience might have been awakened earlier had Broadnax bothered to pursue his claims.[10] *Id*. at 10a.

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[10] *Drew v. State*, 743 S.W.2d 207, 228–29 (Tex. Crim. App. 1987) ("It is not unusual for one of two convicted accomplices to assume the entire fault and thus exculpate his codefendant by the filing of a recanting affidavit or other statement. . . . In such situations recanting affidavits, other statements and witnesses are viewed with extreme suspicion by the courts."); *Herrera v. Collins*, 506 U.S. 390, 423 (1993) (O'Connor, J., concurring) ("such affidavits are to be treated with a fair degree of skepticism").

This is simply not an "exceptional case[]" or "one of rarest of situations, [where] 'an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question.'" *Cruz v. Arizona*, 598 U.S. 17, 26 (2023) (citing *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964)). Certiorari review must be denied.

III. Broadnax's *Tison* Claim Is Meritless.

Broadnax claims that his death sentence violates the Eighth Amendment because he did not kill the victims or intend to kill them. Pet.10–17. In *Enmund*[11] and *Tison*, the Court addressed the culpability required for assessing the death penalty in felony-murder convictions. The Court held in *Enmund* that the death penalty may not be imposed on one who "aids and abets a felony in the course of which murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that a level of lethal force will be employed." 458 U.S. at 797. But the Court created an exception in *Tison* when it was faced with two brothers who assisted their father in an armed prison escape and went on to commit robberies to further that escape. It held that the concerns of *Enmund* are not implicated where an accomplice was a major participant in the felony and displayed a "reckless indifference to human life." *Tison*, 481 U.S. at 158. It explained that reckless disregard for human life is "implicit in knowingly engaging in criminal activities known to

[11] *Enmund v. Florida*, 458 U.S. 782 (1982).

carry a grave risk of death" and represents a highly culpable mental state when that conduct "causes its natural, though also not inevitable, lethal result." *Id*. at 157–58. Critically, the Court did not establish any procedural guidelines or instructions on how to implement *Enmund*. Later, the Court expressly left discretion to the states: "*Enmund* does not impose any particular form of procedure upon the States." *Cabana v. Bullock*, 474 U.S. 376, 386 (1986).[12] A determination of requisite culpability, then, can be made at any point in the proceedings—and it can be made by a jury, a judge, or an appellate court. *Id*. at 386–87; *see also Hopkins v. Reeves*, 524 U.S. 88, 99–100 (1998) (states can comply with *Enmund* requirement at sentencing or on appeal).

Here, Broadnax's claim suffers from numerous fatal defects. First, Broadnax has not demonstrated that he objected to the lack of a parties instruction at guilt-innocence or a corresponding anti-parties instruction at punishment. 47.RR.148–51 (charge conference); App.C at 14a–15a. In fact, Broadnax *conceded* at trial he was responsible for the crime as charged. 45.RR.58–59 ("Now some trials are about whether or not the person on trial is responsible for the act they're charged with. This is not that case. James Broadnax is responsible for the deaths of Matthew Butler and Stephen Swan."). Even if this claim could be considered, it would likely be barred for lack of a contemporaneous objection. *Cotton v. Cockrell*, 343 F.3d 746, 754 (5th Cir. 2003) (holding that

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[12] *Cabana* has been called into question, but not for this proposition. *Pope v. Illinois*, 481 U.S. 497, 503 n.7 (1987).

a violation of the Texas contemporaneous objection rule is an adequate and independent barrier to federal habeas review); *Hogue v. Johnson*, 131 F.3d 466, 496 (5th Cir. 1997).

Second, even if the CCA had considered this claim, it would have been denied as invited error. *Druery v. Thaler*, 647 F.3d 535, 545 (5th Cir. 2011) ("The invited-error doctrine provides that 'a defendant cannot complain on appeal of alleged errors which he invited or induced[.]'" (citation omitted)). "No one disputes that [Broadnax] participated in a robbery with Cummings." App.C at 13a. Accordingly, Broadnax would have been liable for the death penalty under the law of parties coupled with an antiparties special issue, which the jury would have received if not for Broadnax's purported lies to the court and media. *Id*. Such an instruction was not given at trial and would have been improper based on the evidence, but that "was largely [Broadnax]'s fault." *Id*. at 14a. It would "distort" jurisprudence to allow Broadnax to prevail on the absence of the parties and antiparties instructions when it was his own purported lies that caused the instructions to be omitted in the first place. *Id*. at 15a. Indeed, this would simply reward Broadnax and Cummings for their alleged deceptions.

Third, this claim is barred by *Teague*. While this Court's precedent provides for a retroactive culpability assessment, it does not require a retrial by a jury. Pet.3, 11, 13 (requesting jury reassessment); *Cabana*, 474 U.S. at 384–85. Likewise, precedent does not require that the reassessment occur with *post-conviction evidence*. *See generally id*. Habeas is generally not an appropriate

avenue for the recognition of new constitutional rules. *Teague*, 489 U.S. at 310. Thus, for the most part, new constitutional rules do not apply to convictions final before the new rule was announced. *Id*. The inquiry then turns on whether the rule Broadnax proposes is substantive or a watershed rule of criminal procedure. It is neither. The proposed rule is not substantive—it does not "prohibit the imposition of capital punishment on a particular class of persons." *Saffle v. Parks*, 494 U.S. 484, 495 (1990). Rather, it is clearly procedural. *Cf. Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) ("[R]ules that regulate only the *manner of determining* the defendant's culpability are procedural."). And because the "watershed" exception is "moribund," *Edwards v. Vannoy*, 593 U.S. 255, 272 (2021), Broadnax's proposed rule does not qualify for retroactive application. As such, *Teague*'s non-retroactivity bar applies.

Finally, even assuming that Broadnax could bypass the myriad procedural hurdles standing in his way, the Court has ample evidence to find that Broadnax's claim is meritless, both with and without the Cummings affidavit. *Hopkins*, 524 U.S. at 99–100 (culpability determination can be made on appeal). The evidence at trial clearly established that Broadnax was a major participant in the crime who displayed reckless indifference to human life because he identified himself as the actual killer/triggerman. As observed by the federal district court, "Broadnax and his cousin [Cummings] fatally shot and robbed [Swan and Butler] in the parking lot of Butler's recording studio in downtown Garland. *There is no genuine dispute about*

these facts." *Broadnax*, 2019 WL 3302840, at *1 (emphasis added). The district court further explained:

> If a picture is worth a thousand words, Broadnax's videotaped interviews were worth multiple sets of encyclopedia in terms of permitting his jury to intelligently evaluate Broadnax's culpability and lack of remorse for his crimes. In his interviews, Broadnax gave multiple, detailed, almost clinical accounts of how he approached two people he had never met before, engaged them in casual conversation, asked for a cigarette, and, when one of the men reached to get one, Broadnax withdraw his handgun and, without first making a demand for money or car keys, shot the first victim in the chest. Broadnax then described, albeit at times in crude terms, how his first victim responded to the first shot and how his second victim reacted physically when Broadnax shot him the first time. Broadnax casually explained how he proceeded to shoot both victims again in the head to make sure they were dead. Broadnax also described how, after they robbed both victims, he casually wiped the blood off his gun as Cummings drove them away from the crime scene in Swan's vehicle.

Id. at *34; *see also id*. at *55–58.[13]

It is also worthing noting that "Broadnax's crude,

[13] The federal district court provided an exhaustive appendix detailing the guilt-innocence phase in its opinion.

dismissive comments about his victim's families were consistent throughout his [ ] interviews. During [one interview], Broadnax replied to a question about what he would tell the widow of one of his victims with 'I laugh in her face.' During [another interview], Broadnax made a similarly vulgar reply when [ ] asked what he would say to his victims' families." *Id*. at *56. "Even months after his arrest, in his telephone conversations with family and friends, Broadnax continued to display absolutely no remorse for his offenses and no empathy for his victims or their families." *Id*. at *35. At one point, "[w]hen asked . . . what he thought would happen to him, Broadnax replied 'Hopefully, the death penalty.' Broadnax followed that comment by explaining that if they did not give him the death penalty, he would kill again, declaring there would be more bodies if he did not receive the death penalty." *Id*. at *56.

The CCA's concurrence likewise observed:

> [Broadnax] made numerous damning statements inculpating himself as the shooter: A friend of his aunt testified that, after coming back from the robbery, Cummings had the "big gun" and [Broadnax] had a "pistol." The friend also testified about [Broadnax] that, "the last thing he said was that if it comes out, he did it."
>
> In an interview with the local Channel 4, [Broadnax] described the shootings, essentially bragging about his conduct. In describing one of the shootings, he said that he was sure the victim would've died, but he "shot his bitch ass again"

just to make sure. When asked whether he was worried about getting caught later, [Broadnax] said, "I got nothin' to live for." He also said he "kinda" regretted what he did. When asked what he would like to say to the families, [Broadnax] looked directly into the camera and said, "Fuck 'em . . . Straight up." When the interviewer asked what was going through [Broadnax]'s head "right now," [Broadnax] hung up the phone and walked away. As he was walking away, he said, "tell 'em I said fuck 'em."

In an interview with the local Channel 5, [Broadnax] gave the exact story he told Channel 4 and added that he wanted the death penalty. He further said that if he gets life, he will go crazy and kill someone else. And when asked what he would say to the people who find his conduct reprehensible, he said "Fuck em, fuck em, fuck em, even if they celibate." [Broadnax] also made the following statements:

> I pulled the trigger, he was just there.
>
> We robbed them. I killed them.
>
> I popped they bitch ass, you know what I'm sayin'.
>
> Fuck his family too. Both of them.

[Broadnax]'s confessions were not half-hearted. They were detailed and showed a lack of

remorse. And he has not recanted any of them.

App.C at 7a–8a.

The federal district court also noted evidence beyond the media interviews:

> [A]n acquaintance of Broadnax's aunt, [ ] testified that the day after the double murder/robbery (a) she saw Broadnax and Cummings at Broadnax's aunt's residence driving a Crown Victoria vehicle, (b) Broadnax and Cummings said they had "hit a lick," which she construed as meaning they had committed a robbery, (c) Broadnax was carrying a pistol, (d) Cummings looked scared but Broadnax appeared "bold," (e) Broadnax appeared to be the leader of the two, (f) she saw Stephen Swan's identification, (g) she saw various items in the trunk of the Crown Victoria, (h) Broadnax and Cummings said they planned to sell the vehicle, (i) later that same day she saw Stephen Swan's picture on the television and realized Broadnax and Cummings had robbed and murdered Swan.

Broadnax, 2019 WL 3302840, at *56.

Even with the Cummings affidavit, the evidence would still show that Broadnax was the triggerman by his own admission, he was armed with a pistol, he appeared to be duo's leader, and he and Cummings had the fruits of the robbery. Moreover, the CCA concurrence aptly noted that "without a recantation of [Broadnax]'s own confessions, there is absolutely no basis for

discounting them." App.C at 13a. Accordingly, Broadnax's culpability is clear, as is his eligibility for a death sentence.

IV. Broadnax's *Batson* Claim Is Meritless.

As Broadnax acknowledges, his instant *Batson* claim is "substantively the same" as the claim presented in the petition he filed in cause number 25-938. Pet.18. This petition was denied on April 27th. Broadnax explains that he "re-presented" the *Batson* claim here—now challenging the CCA's dismissal of his third subsequent state habeas application—to ensure this Court has jurisdiction. However, the State has already adequately briefed this issue and correctly explained that there is no compelling reason for further review of Broadnax's *Batson* claim even if there was jurisdiction. Brief in Opposition (BIO) at 19–35, *Broadnax v. Tex.*, No. 25-938 (U.S.) (filed Mar. 25, 2026).

Further, this Court previously denied review of his *Batson* claim both two years ago[14], and his "new evidence" does not alter the analysis of that claim. *Id.* As previously shown, Broadnax's *Batson* claim is entirely meritless because the State's peremptory strikes in question were not based on race, rather, they were based on the jurors' responses to written questionnaires and during individual voir dire.

In his current petition, Broadnax emphasizes the racial identifiers on the Broadnax and Cummings juror

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[14] *Broadnax*, 144 S. Ct. at 2700.

spreadsheets, the purported disparate questioning of minority jurors, the racial disparity in jury statistics, and the history of *Batson* violations in Dallas County. Pet.18–21. But, as the State previously noted, the Court can readily reject these arguments because most are duplicative of the complaints that this Court declined to review two years ago. In fact, over the last fifteen years Broadnax's assorted *Batson* arguments have been repeatedly and correctly rebuffed by the CCA on direct appeal[15], by this Court following Broadnax's petition for certiorari off direct appeal[16], by the Northern District of Texas[17], by the Fifth Circuit[18], by this Court following Broadnax's petition for certiorari off federal habeas[19], by the CCA following Broadnax's first subsequent state habeas application[20], by this Court following Broadnax's petition for certiorari off Broadnax's first subsequent state habeas application[21], by the CCA following

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[15] *Broadnax*, 2011 WL 6225399, at *2–4. On appeal, the CCA actually found that the trial court had improperly upheld a *Batson* challenge to ensure a racially diverse jury despite *explicitly finding no racial discrimination by the State*. *Id*. at *4.

[16] Pet., *Broadnax v. Tex.*, No. 11-9294 (U.S.) (filed Mar. 9, 2012).

[17] *Broadnax*, 2019 WL 3302840, at *36.

[18] *Broadnax*, 987 F.3d at 406.

[19] Pet., *Broadnax v. Lumpkin*, 21-267 (U.S.) (filed Aug. 20, 2021).

[20] *Ex parte Broadnax*, 2023 WL 3855947, at *1.

[21] Pet., *Broadnax v. Tex.*, No. 23-248 (U.S.) (filed Sept. 5, 2023).

Broadnax's suggestion to reconsider[22], by the CCA following the instant third subsequent state habeas application,[23] and by this Court in its certiorari denial of April 27th.

Broadnax argues that "the newly disclosed jury selection chart" from Cummings's trial undermines the State's argument—endorsed by the federal courts—that it only listed the races on the spreadsheet in Broadnax's case[24] to prepare for a *Batson* hearing because it shows that "the State was engaging in a systemic and intentional practice of considering race during jury selection." Pet.21. But the seated jury in Cummings's trial was composed of fifty percent minority jurors—six white, four African-American, and two Hispanic individuals. Petition at 17 (jury selection chart), *Broadnax v. Tex.*, No. 25-938 (U.S.). And the State has previously represented that records show each party exercised ten peremptory challenges, and of the total twenty individuals that were struck—sixteen were white, two were African-American, one was Hispanic, and one was Asian. BIO.26. This diversity shows there was no prima facie case of race-discrimination in

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[22] *Ex parte Broadnax*, No. WR-81,573-02 (Nov. 6, 2025 docket entry).

[23] App.B.

[24] "The spreadsheet alone is no smoking gun . . . [the State had] considerable motivation to identify which jury venire members belonged to a protected class when preparing to defend its use of peremptory challenges." *Broadnax*, 987 F.3d at 410 (footnote omitted). The same argument applies to the Cummings spreadsheet.

Cummings's trial, and Broadnax's "newly disclosed" chart therefore fails to show the State engaged in any systemic or intentional racial discrimination.

Lastly, Broadnax argues that "[d]eclarations from Black venire members further confirm that the State struck qualified jurors based on their race." Pet.22. But this Court should disregard the declarations because *Batson* determinations are generally made on jurors' statements during voir dire, not statements made sixteen years later and beyond the knowledge of the prosecution. Indeed, the State had valid, race-neutral reasons for its strikes based on its information at the time—namely, the juror questionnaires. Five of the six excluded African-American jurors in Broadnax's case indicated that they were not in favor of the death penalty or believed it should never be invoked. BIO.20; *Broadnax*, 987 F.3d at 411–12 ("The State struck every veniremember, regardless of race, who indicated he or she was not in favor of the death penalty, including five against whose strikes Broadnax's counsel raised *Batson* objections."). Regarding a prospective African-American juror (A.L) that did not oppose the death penalty, that juror indicated that the defendant being on drugs at the time of the offense would automatically prevent the juror from assessing a death sentence. BIO.22 (A.L. questionnaire); *Broadnax*, 2019 WL 3302840, at *42 n.72 (listing A.L.'s problematic answers). As the federal district court correctly determined, the stricken "venire members' questionnaire answers or voir dire testimony . . . all constituted racially neutral, objectively verifiable, record-based, reasons for a prosecutorial peremptory strike." *Broadnax*, 2019 WL 3302840, at *41–43. On

appeal, the Fifth Circuit agreed, properly rejecting Broadnax's arguments based on statistics, disparate questioning, and the State's spreadsheet. *Broadnax*, 987 F.3d at 410–12 (footnote omitted). Broadnax shows no compelling reason why he should be entitled to a redo of his *Batson* claim at this late date when so many courts have already spurned it.

V. Broadnax Is Not Entitled to a Stay.

A stay of execution is an equitable remedy. *Hill*, 547 U.S. at 584. "It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). "It 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[ ]; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (internal quotations and citation omitted), superseded on other grounds by 28 U.S.C. § 2253(c)(2). Indeed, "[a]pplications for stays of death sentences are expected to contain the information and materials necessary to make a careful assessment of the merits of the issue and so reliably to determine whether plenary review and a stay are warranted." *Id.* at 896. To demonstrate an entitlement to a stay, a petitioner must offer more than "the absence of frivolity" or "good faith." *Id.* at 892–93. Rather, the petitioner must make a

substantial showing of the denial of a federal right. *Id.* In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but "the severity of the penalty does not in itself suffice." *Id.* at 893. The State's "powerful and legitimate interest in punishing the guilty," as well as its interest in finality, must also be considered, especially in a case such as this where the State and victims have for years borne the "significant costs of federal habeas review." *Herrera*, 506 U.S. at 421 (O'Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State and the victims of crime have an important interest in the timely enforcement of a sentence).

Thus, in deciding whether to grant a stay of execution, the Court must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991).

A. Broadnax has not made a strong showing that he will succeed on the merits.

Given the procedurally defective and meritless nature of his claims, Broadnax fails to show that there is any significant possibility that the Court will grant certiorari. As amply demonstrated above, Broadnax's

failure to offer a sound claim for relief supports the denial of a stay of execution.

B. Broadnax is unlikely to suffer irreparable harm.

In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but "the severity of the penalty does not in itself suffice." *Barefoot*, 463 U.S. at 893. Broadnax's stay application mostly points to the severity of penalty in attempting to show harm, which is insufficient. Stay Appl.12–13. Broadnax also suggests that a stay is necessary so the Court can address his claims in the normal course. *Id.* However, the fact that Broadnax's claims cannot be considered in the normal course cuts against him. "A court considering a stay must also apply 'a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.'" *Hill*, 547 U.S. at 584 (quoting *Nelson*, 541 U.S. 650). Broadnax entered into his purported conspiracy with Cummings to deceive the courts, State, and public before trial. His *Batson* claim has been available since trial. His *Batson* claim is also, by his own admission, "substantially the same" as the one raised in his earlier certiorari petition, Pet.18, and that petition is being addressed in the normal course. Any rush in processing the instant claims is unequivocally Broadnax's own fault.

C. The State and the public have a strong interest in seeing the state court judgment carried out.

The State and crime victims have a "powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (citation omitted). And "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a [death] sentence," *Bucklew*, 587 U.S. at 149 (quotation omitted); *see Nelson*, 541 U.S. at 650 ("a State retains a significant interest in meting out a sentence of death in a timely fashion"); *Gomez v. United States Dist. Court*, 503 U.S. 653, 654 (1992) (per curiam) ("[e]quity must take into consideration the State's strong interest in proceeding with its judgment"). Once post-conviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id.* The State should be allowed to pursue its "strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Broadnax has already passed through the state and federal collateral review process. This proceeding derives from his fourth state habeas application. He has filed a half-dozen certiorari petitions. The public's interest is not advanced by postponing Broadnax's execution, and the State opposes any action that would

cause further delay. *Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice.") (emphasis in original).

CONCLUSION

For the forgoing reasons, Broadnax's petition for a writ of certiorari should be denied. Moreover, the State's strong interest in the timely enforcement of Broadnax's death sentence is not outweighed by the unlikely possibility that Broadnax's petition will be granted. Thus, Broadnax's application for a stay should be denied too.

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