No. 25-1198 & 25A1158

In the Supreme Court of the United States

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS

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

REPLY BRIEF FOR THE PETITIONER

CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 30, 2026

AMANDA VALERIO-ESENE
SRAAVYA POONUGANTI
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
JENNIFER R. KIM
SOPHIA CHUNG
JULIE J. CHANDLER
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PARTIES TO THE PROCEEDING

James Garfield Broadnax, Petitioner

State of Texas, Respondent

In the Supreme Court of the United States

No. 25-1198 & 25A1158

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS

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

REPLY BRIEF FOR THE PETITIONER

In its brief, the State argues that Mr. Broadnax's claims are meritless and that the Court lacks jurisdiction over this petition. The State is wrong on both counts. The State does not dispute that the jury that sentenced Mr. Broadnax to death never found he possessed the mental culpability required of a non-shooter under Texas law and this Court's precedents. Nor does the State dispute that no court has meaningfully reviewed the totality of the evidence showing that prosecutors in Mr. Broadnax's case struck every prospective Black juror based on their race or held the State accountable for concealing its *Batson* violations. Instead, the State hangs its hat on a jurisdictional argument that this Court has already considered and dismissed, and on mischaracterizations of the record

that ignore the new evidence supporting this petition. The State wholly fails to distinguish, or even acknowledge, this Court's controlling precedent in *Glossip* v. *Oklahoma*, where it confronted precisely the type of boilerplate language at issue here—and even concedes that the lower court only references the prima facie case requirement in some of its dismissals using this boilerplate. It would defy justice and common sense for this Court to permit Mr. Broadnax's scheduled April 30th execution to go forward given the weight of the newly available evidence.

A. Mr. Broadnax was sentenced to death without the necessary showing for a non-shooter under *Tison* v. *Arizona*.

1. The State does not dispute that the jury in Mr. Broadnax's case was not presented with the instruction necessary to sentence him to death as the non-shooter under Tex. Code Crim. Proc. Art. 37.071 § 2(b)(2). Instead, the State posits as "indisputable" its assumption that "if Broadnax did not shoot Swan and Butler and lie[] during his media interviews, he would know as much through his personal knowledge," Br. in Opp. 19, and "would have known" the same "since before trial," *Id.* at 2–3. Based on this supposition, the State blames Mr. Broadnax for not objecting at trial to the lack of instruction and because he purportedly "invited" the error because "it was his own . . . lies that caused the instructions to be omitted in the first place." *Id.* at 22–23. That is wrong.

It is far from "indisputable" that Mr. Broadnax had personal knowledge he was not the shooter before Mr. Cummings came forward with his confession in 2026. In fact, the record directly disproves the State's false premise. It is well-documented that Mr. Broadnax's memory regarding the incident was impaired, as he was under the

influence of PCP and marijuana and suffered from severe psychological distress. The inmate intake form completed at the time of arrest—less than 12 hours after the offense—documented that Mr. Broadnax had smoked a "wet blunt," which is marijuana "laced with something like PCP or formaldehyde." 47 RR 23, 34. Contemporaneous accounts from media outlets report Mr. Broadnax saying his memory "blanked [] out" from drug use at the time of the offense, and that he needed "to come down from the high." 45 RR 144. Indeed, Mr. Broadnax repeatedly asserted that he "blanked out" and "do[es]n't even remember the day." *Id.*; 46 RR 246; State Ex. 403 at 04:58; State Ex. 18 at 04:27; State Ex. 406 at 02:33. Nor does Mr. Broadnax's "aware[ness] of his . . . conspiracy with [Mr.] Cummings" for Mr. Broadnax to claim responsibility for the shootings require a clear recollection of the events. Br. in Opp. 12. The instinct to protect one's family is very often not rooted in a clearness of mind.

This Court should view the State's "personal knowledge" misassumption as exactly that. Without it, the State's arguments fall apart. *First*, the argument that Mr. Broadnax is not entitled to constitutional protections based on newly available evidence because he did not object at trial to the lack of jury instruction that he could not know he was entitled to is entirely circular. The fact that Mr. Broadnax "conceded at trial he was responsible for the crime as charged" (Br. in Opp. 22) only underscores that he lacked "personal knowledge" of his non-shooter status at the time. *Second*, the notion that the TCCA would have "denied [the claim] as invited error" also necessarily requires that Mr. Broadnax possessed the personal knowledge to "invite" the error in the first place. *Id.*

at 23.[1]

2. The State incorrectly argues that Mr. Broadnax's claim is *Teague*-barred because the Court's precedents do not require "retrial by a jury" or "that the reassessment occur with post-conviction evidence." Br. in Opp. 23–24. But *Teague* "made clear" that a case does not "announce a new rule" when it applies "a prior decision to a different set of facts," *Chaidez* v. *United States*, 568 U.S. 342, 348 (2013), as is the case here. Moreover, as the State itself points out, a "determination of requisite culpability [under *Enmund*] can be made at any point in the proceedings—and it can be made by a jury, a judge, or an appellate court." Br. in Opp. 22.

3. The State argues that the new confession by the actual shooter, Mr. Cummings, corroborating Mr. Broadnax's non-shooter status does not matter because the Court otherwise has "ample evidence" purportedly undermining the merit of Mr. Broadnax's claim. *Id.* at 24–29. The entirety of this purported evidence consists of Mr. Broadnax's drug-induced media statements (made without personal knowledge of the events and without the benefit of Mr. Cummings's newly available confession) and

---

[1] The State separately argues Mr. Broadnax failed to show "diligen[ce]" because he "has not recanted his own incriminating statements." Br. in Opp. 12. That, too, mistakenly assumes Mr. Broadnax's personal knowledge, and in any event is not what the law requires. *Tison* v. *Arizona*, 481 U.S. 137, 157 (1987); *see, e.g.*, *Floyd* v. *Vannoy*, 894 F.3d 143 (5th Cir. 2018). It is hard to imagine how "diligence" would require recantation or assertion of a claim of innocence when no new evidence supported such a recantation, and the facts here demonstrate that Mr. Broadnax was diligent. Mr. Broadnax's counsel repeatedly met with Mr. Cummings over the years before Mr. Broadnax's execution date was set and questioned him about his role in the crime—and as soon has he obtained a confession, filed a claim.

the testimony of an acquaintance of Mr. Broadnax's aunt stating that on the day after the shootings Mr. Broadnax was carrying a pistol and "appeared bold." *Id.* at 28. Nowhere does the State acknowledge that the only weapon presented at trial as being present at the crime was the murder weapon and that only the DNA of Mr. Cummings was present on that gun. *See Falcon Carriche* v. *Ashcroft*, 350 F.3d 845, 857 (9th Cir. 2003) ("[f]acts do not cease to exist because they are ignored").

Rational jurors in Mr. Broadnax's case, presented with Mr. Cummings's newly available confession, would have believed Mr. Cummings because his account aligns with the forensic evidence at trial showing that Mr. Cummings's DNA, and not Mr. Broadnax's DNA, was present on the murder weapon and a sample recovered from the body of one of the victims. State Ex. 391. As such, they would not have found Mr. Broadnax to have had the "reckless indifference to human life" needed to make him death-eligible under *Tison*. 481 U.S. at 157–58.

Even if, *arguendo*, a properly charged jury could have found Mr. Broadnax to have had the requisite culpability under Article 37.071 § 2(b)(2), the multiple additional mitigating factors Mr. Broadnax presented at sentencing under 37.071 § 2(e)—including his young age at the time of the offense, his lack of any previous violent criminal record, his altered state of mind at the time of the offense given his drug use, and the long-standing abuse he suffered at the hands of his own family and caretakers—make it exceedingly unlikely he would have been sentenced to death as a non-shooter had the State even

sought the death sentence under such circumstances.[2] *See, e.g.*, *Johnson* v. *Texas*, 509 U.S. 350, 367 (1993); *Eddings* v. *Oklahoma*, 455 U.S. 104, 116 (1982).

B. New evidence shows the State violated Mr. Broadnax's *Batson* rights and exposes as pretextual the State's explanation for striking every Black juror.

The State would have this Court believe that Mr. Broadnax's *Batson* claims have already been considered and resolved, Br. in Opp. 29, but that is grossly misleading. No court has meaningfully examined Mr. Broadnax's *Batson* claims with *all* of the relevant supporting evidence *precisely because* of the State's previous failure to produce the evidence Mr. Broadnax now proffers.[3]

1. During Mr. Broadnax's trial, prosecutors struck every qualified Black juror, using a spreadsheet that sorted each Black juror by race. The State has previously argued that this document was created in preparation for a *Batson* hearing. Pet. 6–7. Mr. Broadnax presented metadata evidence—the only evidence available to him at the time—indicating that the spreadsheet was prepared in advance of jury selection, 38 RR 1–86, but the lower court accepted the State's explanation in good faith. *Broadnax* v. *Lumpkin*, 987 F.3d 400, 410 (5th Cir. 2021).

The pretextual nature of the State's explanation can

---

[2] It is very likely that the Dallas DA would not have sought the death penalty against Mr. Broadnax as a non-shooter had Mr. Cummings's confession been available during trial and sentencing. *See State* v. *Gamble*, 63 So.3d 707, 724 (Ala. Crim. App. 2010).

[3] The DA's Office previously denied Petitioner's request to review the Cummings file, asserting it was privileged, and only allowed review for the first time in January 2025.

no longer be ignored in light of new evidence showing that the team of substantially the same prosecutors created a document sorting prospective jurors by race during Mr. Cummings's trial, which took place less than five months after Mr. Broadnax's trial and included no *Batson* hearing. *Compare* 45 RR 2 *with* 4 RR 2, *State* v. *Cummings*, No. F08-24666-Y. The State's purported answer to this argument—that no *Batson* challenge was raised in Mr. Cummings's case because of the racial composition of the jury—is no answer at all. While the absence of a *Batson* challenge by Mr. Cummings's defense counsel is explained by the composition of the jury, the State's notation of the race of jurors in the absence of a *Batson* claim lacks a noninvidious explanation and only establishes that it was the office's routine practice to categorize jurors by race. That is both indicative of ongoing racial motivation by these prosecutors, and reveals that the explanation proffered for the racial designations in Mr. Broadnax's case was false.

2. The recent declarations of three of the struck Black jurors further confirm that the State's reasons for excluding Black prospective jurors were impermissibly motivated by the desire to keep Black jurors off of the jury. *See* Pet. 22–25.

3. Faced with clear evidence that prosecutors in Mr. Broadnax's case, motivated by the improper basis of race, subjected Black prospective jurors to disparate questioning and struck all seven Black prospective jurors (Pet. 19–22), the State again tries to explain away the obvious.

This Court should not be distracted by the State's new, purportedly race-neutral explanations that are contradicted by record evidence. Br. in Opp. 32–33. Such shifting justifications are precisely what this Court has previously condemned as "reek[ing] of afterthought." *Foster*

v. *Chatman*, 578 U.S. 488, 490–91 (2016). It would set a dangerous precedent to incentivize prosecutors to conceal evidence of *Batson* violations until direct appeal and state habeas proceedings are concluded.

C. The Court has jurisdiction to review these claims and stay Mr. Broadnax's execution.

The State's argument that this Court lacks jurisdiction because the Texas Court of Criminal Appeals (TCCA) included standard language dismissing Mr. Broadnax's application as "an abuse of the writ without reviewing the merits of the claims" (Br. in Opp. 15) runs contrary to this Court's decision in *Glossip* v. *Oklahoma*, 604 U.S. 226, 242 (2025)—a holding the State conspicuously avoids mentioning—and the TCCA's own rulings. Regardless of the language a court uses in its dismissal, jurisdiction exists when there is a federal law question that is "integral to the state court's disposition of the matter" and the holding of the state court "depends on the court's federal law ruling and consequently does not present an independent state ground for the decision rendered." *Ake* v. *Oklahoma*, 470 U.S. 68, 75 (1985). Mr. Broadnax's claims, which are based on the Eighth and Fourteenth Amendments to the U.S. Constitution, readily satisfy this standard.

The State wholly fails to distinguish, or even acknowledge, this Court's controlling precedent despite Mr. Broadnax's reliance on *Glossip* because it knows that when this Court was faced with precisely the type of language the TCCA uses here purporting to "dismiss[] [an] application as an abuse of the writ without considering the merits of the claims," Pet., App. B at 4a, the Court nonetheless presumed reliance on federal law. 604 U.S. 226 at 245. This Court held in *Glossip* that a procedural bar

arises only when it is clear from the language of the order, the state court's authoritative construction of the state rule, and the state court's practice when applying its rule that the state court's decision was in no way intertwined with the merits of the claim. *Id.* The Fifth Circuit too has made clear that the boilerplate language of such orders is not dispositive of the grounds for the dismissal. *See e.g.*, *Ruiz* v. *Quarterman*, 504 F.3d 523, 527 (5th Cir. 2007).

In its brief, the State itself concedes that "sometimes" the TCCA uses standard language purporting to dismiss a case without considering the merits and yet, importantly, only "some of" these cases reference the prima facie case requirement when doing so. Br. in Opp. 18. Under this precedent, one must examine the underlying record to determine whether there is federal jurisdiction, and such review confirms this Court's jurisdiction over both questions presented.

First, Mr. Broadnax promptly filed his petition "when [he] was first aware of the factual predicates of his claims" and not merely "when he obtained the most recent piece of evidence supporting the claims" as the State claims. Br. in Opp. 13. Notwithstanding the State's false assumption that Mr. Broadnax "since before trial" possessed "personal knowledge" he was the non-shooter, Mr. Cummings's sworn declaration of March 11, 2026, confessing that he was the shooter was not available to Mr. Broadnax any earlier. Pet. App. E at 23a–24a. Nor can the State credibly dispute that the relevant evidence from Mr. Cummings's trial on which Mr. Broadnax bases his *Batson* claim was previously unavailable; it was unavailable precisely because of the State's refusal to produce the evidence prior to 2025. Each provides Mr. Broadnax with previously unavailable factual predicates for his claims.

Second, the TCCA's dismissal of Mr. Broadnax's

Third Subsequent Application is within this Court's purview because Mr. Broadnax's claims raise federal law questions that are "integral to the state court's disposition of the matter" under Art. 11.071, § 5(a). *Ake*, 470 U.S. at 75; *see also Rocha* v. *Thaler*, 626 F.3d 815, 831 (5th Cir. 2010). Thus, the TCCA's dismissal of Mr. Broadnax's claims was necessarily founded on the federal constitutional issues that serve as the bases for these claims. *See, e.g.*, *Smith* v. *Texas*, 550 U.S. 297, 313–15 (2007).

Moreover, the TCCA's irregular application of Art. 11.071, § 5(a) renders the state's asserted procedural ground inadequate to foreclose this Court's jurisdiction. The TCCA's own prior rulings invoking the same boilerplate language while explicitly considering the merits of the federal question presented demonstrate that this is "not the sort of firmly established and regularly followed state practice that can prevent implementation of federal constitutional rights." *James* v. *Kentucky*, 466 U.S. 341, 348 (1984).

D. Mr. Broadnax is entitled to a stay.

1. Mr. Broadnax's claims readily meet the standard for this Court to issue a stay of execution because, for all the reasons explained above, there is a reasonable probability that four members of the Court would consider the issues "sufficiently meritorious" for the grant of certiorari and there is a "significant possibility" of reversal in each of Mr. Broadnax's claims. *Barefoot* v. *Estelle*, 463 U.S. 880, 895 (1983). Moreover, this Court possesses the equitable power to order a stay in order to "permit due consideration of the merits" of Mr. Broadnax's claims. *Id.* at 889.

2. The State claims Mr. Broadnax will not suffer ir-

reparable harm because "[a]ny rush in processing the instant claims is unequivocally [Mr.] Broadnax's own fault," Br. in Opp. 35. This misstates the facts and defies both common sense and this Court's precedent. In capital cases, irreparable harm is "necessarily present," *Wainwright* v. *Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring), because it is "obvious[]" that the death penalty is, by nature, "irreversible," *Evans* v. *Bennett*, 440 U.S. 1301, 1306 (1979). Absent intervention from this Court, Mr. Broadnax will suffer the ultimate irreparable injury of being put to death based on a trial that was plagued by multiple constitutional errors, as revealed by newly available evidence including documents the State itself previously refused to produce.

3. The balance of equities and public interest justify a stay. *See Bucklew* v. *Precythe*, 587 U.S. 119, 172 (2019) (Sotomayor, J., dissenting). The public interest is not served, as the State claims (Br. in Opp. 36), by the State rushing to carry out a death sentence that was secured through multiple violations of his constitutional rights, and this Court's duty to search for constitutional error with "painstaking care" is "never more exacting" than in a capital case. *Kyles* v. *Whitley*, 514 U.S. 419, 422 (1995). This Court should grant a stay to consider Mr. Broadnax's claims, provide further guidance, and ensure that the prosecutors are given the appropriate directives and held accountable for prior misconduct.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted,

AMANDA VALERIO-ESENE
SRAAVYA POONUGANTI
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

STEVEN C. HERZOG
PIETRO J. SIGNORACCI
JENNIFER R. KIM
SOPHIA CHUNG
JULIE J. CHANDLER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

APRIL 28, 2026