No. 25-938

IN THE

Supreme Court of the United States

JAMES GARFIELD BROADNAX,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

BRIEF OF *AMICUS CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Since its founding by Thurgood Marshall more than 80 years ago, the NAACP Legal Defense and Educational Fund, Inc. ("LDF") has strived to secure the constitutional promise of equality for all people. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954). Accordingly, LDF has long been concerned with eradicating jury discrimination. *See, e.g.*, *Ham v. South Carolina*, 409 U.S. 524 (1973); *Alexander v. Louisiana*, 405 U.S. 625 (1972); *Swain v. Alabama*, 380 U.S. 202 (1965), *overruled by Batson v. Kentucky*, 476 U.S. 79 (1986); *Chamberlin v. Hall*, 588 U.S. 920 (2019); *Miles v. California*, 141 S. Ct. 1686 (2021); *Flowers v. Mississippi*, 588 U.S. 284 (2019); *Attala*

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae or their counsel made a monetary contribution to the preparation or submission of this brief. All parties have been timely notified of the submission of this brief.

Cnty. NAACP v. Evans, 37 F.4th 1038 (5th Cir. 2022); *Ramos v. Louisiana*, 590 U.S. 83 (2020); *Edwards v. Vannoy*, 593 U.S. 255 (2021).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution embodies the loftiest of our ideals. "The Fourteenth Amendment requires that equal protection to all must be given—not merely promised." *Smith v. Texas*, 311 U.S. 128, 130 (1940). For whether the pronouncements of the Equal Protection Clause ring true, or instead are empty promises, determines the extent to which this country is a community of equals or a caste system that relegates many to second-class citizenship.

"The Fourteenth Amendment's mandate that race discrimination be eliminated from all official acts and proceedings of the State is most compelling in the

judicial system." *Powers v. Ohio*, 499 U.S. 400, 415 (1991) (citing *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)); *Batson*, 476 U.S. 79, 85 (1986) ("Exclusion of [B]lack citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure."). Indeed, "race neutrality in jury selection [is] a visible, and inevitable, measure of the judicial system's own commitment to the commands of the Constitution." *Powers*, 499 U.S. at 416. By contrast, racial discrimination in jury selection not only "violates our Constitution and the laws enacted under it," but it "is at war with our basic concepts of a democratic society and a representative government." *Smith*, 311 U.S. at 130.

Longstanding precedent makes clear that racially discriminatory peremptory challenges violate the Equal Protection Clause of the Fourteenth

Amendment. Yet the lower court decisions in this case would place just such a grave constitutional violation beyond the reach of judicial review. The opinion below would allow prosecutors to deny equal rights to Black jurors and the accused, thereby undermining not only the fairness of the deliberative process but also the very legitimacy of our justice system and our representative democracy. We urge the Supreme Court to grant certiorari and declare that the Texas Court of Criminal Appeals erred when it declined to reconsider its dismissal of Mr. Broadnax's amended first subsequent habeas application for relief from his conviction and death sentence on the grounds that he failed to make a prima facie showing of a constitutional violation despite significant new evidence of a *Batson* violation.

ARGUMENT

I. This Court Should Grant Certiorari to Ensure Meaningful Review of the Powerful New Evidence That Mr. Broadnax's Conviction and Sentence of Death Are Tainted by Racial Discrimination in Jury Selection.

a. The Insidious Harms Caused by Racially Discriminatory Peremptory Challenges Extend Beyond Individual Court Proceedings.

As this Court explained long ago, denying Black people the

> right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.

Flowers, 588 U.S. at 294–95 (quoting Strauder v. West Virginia, 100 U.S. 303, 308 (1879)). Racial

discrimination in jury selection also "causes a criminal defendant cognizable injury," Powers, 499 U.S. at 411, by denying his "right under the Fourteenth Amendment to 'protection of life and liberty against race or color prejudice,'" *Batson*, 476 U.S. at 87 (citation omitted). In addition, "[a]ctive discrimination by a prosecutor during this process condones violations of the United States Constitution within the very institution entrusted with its enforcement, and so invites cynicism respecting the jury's neutrality and its obligation to adhere to the law." *Powers*, 499 U.S. at 412. "The overt wrong, often apparent to the entire jury panel, casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial of the cause." *Id.*

Racial discrimination in jury selection also undermines "the established tradition in the use of juries as instruments of public justice that the jury be

a body truly representative of the community." *Smith*, 311 U.S. at 130. The exclusion of an "identifiable segment of the community" "from jury service" "deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented." *Peters v. Kiff*, 407 U.S. 493, 503–04 (1972).

Research shows that racially heterogeneous juries deliberate longer, consider more facts, and make fewer mistakes than homogenous juries. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 597, 606 (2006).

Moreover, our judicial system's failure to eradicate racial discrimination from jury selection compromises the legitimacy of our judicial system. Most Americans have lost faith in "the courts as a fair

and impartial arbiter where all are treated equally."[2] Per a 2021 Gallup poll, 61% of Black Americans, 41% of white Americans, and 30% of Hispanic Americans "say they have 'very little' or 'no' confidence in the criminal justice system."[3] Moreover, a 2019 public opinion poll found that only one-third of Americans were confident in the courts and judiciary, with a majority of Americans holding the belief that people of color and the poor are not treated fairly in our courts.[4]

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[2] *Do Americans Have Confidence in the Courts?*, WILLOW RSCH. (Mar. 27, 2019), https://willowresearch.com/american-confidence-courts/. *Accord, Crisis in Confidence: America Loses Faith in its Institutions,* WILLOW RSCH. (Sept. 15, 2022), https://willowresearch.com/crisis-in-confidence/.

[3] Jeffrey M. Jones, *In U.S., Black Confidence in Police Recovers From 2020 Low*, GALLUP (July 14, 2021), https://news.gallup.com/poll/352304/black-confidence-police-recovers-2020-low.aspx. *See also* GALLUP NEWS SERVICE, June Wave 1: Final Topline at 10 (July 6, 2023), https://news.gallup.com/file/poll/508193/230706ConfidenceInstitutions.pdf (showing that, as of June 2023, 43% of white respondents and 44% of non-white respondents had "very little" confidence in the criminal justice system).

[4] *See Do Americans Have Confidence in the Courts? supra* note 2.

As this Court has stressed, "[t]he purpose of the jury system is to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair." *Powers*, 499 U.S. at 413. These purposes cannot be realized if racial discrimination is allowed to infect the jury selection process. Indeed, "[i]n view of the heterogeneous population of our Nation, public respect for our criminal justice system and the rule of law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race." *Batson*, 476 U.S. at 99.

The harm to those excluded from jury service cannot be overstated. "Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers*, 588 U.S. at 293 (citing *Powers*, 499 U.S. at

407). Serving on a jury "postulates a conscious duty of participation in the machinery of justice"; indeed, "[o]ne of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse." *Powers*, 499 U.S. at 406 (quoting *Balzac v P[ue]rto Rico*, 258 U.S. 298, 310 (1922)). In this way, "[j]ury service preserves the democratic element of the law, as it guards the rights of the parties and ensures continued acceptance of the laws by all of the people." *Id.* at 407.

In sum, racially discriminatory jury selection "damages both the fact and the perception" of the fairness of our judicial system, and thereby harms the excluded jurors, the community at large, and the criminal defendant. *Powers*, 499 U.S. at 406, 409, 411; *see id*. at 406 (citing *Batson*, 476 U.S. at 87). Thus, this Court has reaffirmed again and again that "Equal

justice under law requires a criminal trial free of racial discrimination in the jury selection process." *Flowers*, 588 U.S. at 301; *see also id*. at 295 (collecting cases).

b. The Racially Discriminatory Use of Peremptory Challenges Has Continued Since *Batson*.

Our Nation all too often honors the Equal Protection Clause in the breach. For as long as this Court has denounced racial discrimination in jury selection, the practice has persisted. *See Miller-El v. Drekte*, 545 U.S. 231, 267–69 (2005) [hereinafter *Miller-El II*] (Breyer, J., concurring) (citing eight studies and anecdotal reports detailing widespread race discrimination in jury selection); *Flowers*, 588 U.S. at 295–96 ("[i]n the century after *Strauder*, . . . [t]he exclusion of [B]lack prospective jurors was almost total in certain jurisdictions, especially in cases involving [B]lack defendants."). This is the case despite the Court's stated commitment to "eradicate

racial discrimination in" jury selection. *Batson*, 476 U.S. at 85.

For example, a 2018 study that reviewed over 1,300 North Carolina felony trials throughout 2011 found that prosecutors exercised peremptory strikes against Black jurors "at more than twice the rate that they excluded white jurors[.]" Ronald F. Wright et al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. ILL. L. REV. 1407, 1419, 1422, 1426 & tbl.3 (2018). *See also* Will Craft, *Peremptory Strikes in Mississippi's Fifth Circuit Court District* at 2, Am. Pub. Media Reps. (2018), https://features.apmreports.org/files/peremptory_strike_methodology.pdf (analyzing 225 trials from 1992-2017 and finding that prosecutors in Mississippi's Fifth Circuit Court District struck potential Black jurors "at a rate four and a half times that of white jurors").

Similarly, in a study of over 5,000 Louisiana criminal trials between 2011 and 2017, investigative journalists determined that "prosecutors disproportionately strike [B]lack jurors no matter who they are prosecuting." Thomas Ward Frampton, *The Jim Crow Jury*, 71 VAND. L. REV. 1593, 1620-22, 1624 & n.178, 1628 (2018) (collecting studies and other resources with empirical findings on *Batson*). A study of *Batson* claims on appeal in California from 2006–2018 likewise showed that California prosecutors disproportionately use their peremptory strikes against Black and Latinx jurors. Elisabeth Semel et al., *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* 13, Berkeley L. Death Penalty Clinic (2020), https://www.law.berkeley.edu/wp-content/uploads/2020/06/Whitewashing-the-Jury-Box.pdf. And a study of capital murder cases in

Pennsylvania from 1981-1997 found that *Batson* had "no effect whatever on prosecutorial strikes against [B]lack venire members." David C. Baldus et al., *The Use of Peremptory Challenges in Capital Murder Trials*, 3 U. PA. J. CONST. L. 3, 73 (2001).

II. The Dallas County District Attorney's Office, Which Prosecuted Mr. Broadnax, Has a History of Systematically Removing Black Prospective Jurors, and Mr. Broadnax Presented Evidence of Racially Disparate Removal in His Case.

a. The Dallas County DA's Office Has A History of Systematically Removing Qualified Black Prospective Jurors.

As in any case concerning intentional discrimination, context matters. *See Batson*, 476 U.S. at 93 (requiring "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available") (citation omitted). Thus, in *Batson* cases, this Court has found relevant the "historical evidence of racial discrimination by the District Attorney's

Office." *Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003) [hereinafter *Miller-El I*]. And this Court and other courts have recognized that the Dallas County District Attorney's Office has an "appalling" and "disturbing" unbroken history of intentionally discriminating against Black people and other racial minorities in jury selection. Findings and Recommendation of the United States Magistrate Judge, *Miller-El v. Johnson*, No. 3:96-CV-1992-H (N.D. Tex. Jan. 31, 2000) (Dkt. No. 102); *see also Miller-El I*, 537 U.S. at 346–47.

Beginning in at least the 1950s, the Dallas County District Attorney's Office culture was "suffused with bias against African-Americans in jury selection." *Miller-El I*, 537 U.S. at 347. For example, one former Dallas County assistant district attorney recalled that when he was a prosecutor in the late

1950s, he allowed a Black woman to serve on a jury.[5] After his supervisor, longtime Dallas County District Attorney Henry Wade, learned that the Black woman was reluctant to convict and caused a deadlocked jury, Wade warned the assistant district attorney: "If you ever put another n****r on a jury, you're fired."[6]

In 1963, a district attorney's aide created a written circular on how to select a jury. The document encouraged prosecutors not to "take Jews, Negroes, Dagos, Mexicans[,] or a member of any minority race on a jury, no matter how rich or how well educated." *Miller-El I*, 537 U.S. at 334–35. A longtime assistant district attorney followed up the circular with a memorandum advising other prosecutors to exclude "any member of a minority group" because "they

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[5] Tex. Def. Serv., *A State of Denial, Texas Justice and the Death Penalty* 52 n.41 (2000), https://www.texasdefender.org/wp-content/uploads/2019/12/TDS-2001-State-of-Denial.pdf.
[6] *Id*.

almost always empathize with the accused."[7] The memorandum was included in the training manual for all Dallas County ADAs for nearly a decade, and was available to office personnel and prosecutors well into the 1980s. *See Miller-El I*, 537 U.S. at 335, 347.

Even after the training manual was removed from circulation, the office's culture of disparately removing Black and minority prospective jurors persisted. A study published in the Dallas Morning News of capital murder cases tried in Dallas County between 1980 and 1986 showed that prosecutors used 90 percent of all peremptory strikes to keep Black prospective jurors out of the jury box.[8] The blatant nature of the practice was evidenced by prosecutors' coding of the venire lists, using "C," "N," or "B" to

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[7] *Id.* at 53.
[8] *Id.* at 54 & n.53.

identify the Black prospective jurors on the rolls.[9] *See Miller-El I*, 537 U.S. at 347. A follow-up study from the Dallas Morning news confirmed that in 2002, Dallas County prosecutors were excluding qualified Black prospective jurors at more than twice the rate they removed white prospective jurors and subjecting Black people to disparate questioning when compared to white jurors.[10]

b. Mr. Broadnax Presented Evidence of Racially Disparate Removal in His Case

The Dallas County District Attorney's Office prosecutors' actions at Mr. Broadnax's 2009 trial were consistent with the office's longstanding pattern of discriminatory strikes, revealing an intent to remove all Black prospective jurors. And they largely

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[9] *Id* at 56.

[10] Associated Press, *Report: Dallas Prosecutors Bar Black Jurors*, NBC NEWS (Aug. 22, 2005), https://www.nbcnews.com/id/wbna9033376.

succeeded. During jury selection, the State disparately questioned Black prospective jurors, engaged in race-based questioning of Black venire members, and used peremptory strikes to remove all Black prospective jurors and one of two Hispanic prospective jurors. *See* Pet'r. Br. at 5. The final jury included a Black member solely because the court reinstated him after a *Batson* hearing at the end of jury selection. *Id.* at 6. During the *Batson* hearing, the court determined that the state struck "one hundred percent of the African-Americans in the strike range," which "resulted in a disproportionate number of African-Americans being struck from the panel," Pretrial Hr'g Tr. at 6:9-12 *Broadnax v. Davis* No. 3:15-CV-1758-N (N.D. Tex. June 29, 2016), ECF No. 41-16; *see also* Pet'r. Br. at 6.

In June 2016, during federal habeas proceedings, Mr. Broadnax discovered, for the first time, that the prosecutors in his case had "marked the

race of each [Black] prospective juror," Pet'r. Br. at 7-8; *see Miller-El I*, 537 U.S. at 347—just as other prosecutors in their office had in the past. And in September 2016, prosecutors disclosed, for the first time, handwritten notes indicating that their only concern about a Black prospective juror was that he had a Black son about Mr. Broadnax's age. Pet'r. Br. at 8. Yet the federal district court refused to consider that evidence during federal habeas proceedings—even though it demonstrates that the prosecution improperly focused on race when exercising peremptory strikes in Mr. Broadnax's case. *Broadnax v. Davis*, No. 15-cv-1758, 2019 WL 3302840, at *19 (N.D. Tex. July 23, 2019). On appeal, the Fifth Circuit denied relief, *Broadnax v. Lumpkin*, 987 F.3d 400, 404 (5th Cir. 2021), and this Court denied certiorari, *Broadnax v. Lumpkin*, 142 S. Ct. 859 (2022). Then, after Mr. Broadnax filed a subsequent state habeas

petition in 2023, the Texas Court of Criminal Appeals summarily dismissed this compelling new evidence of racial discrimination in jury selection, apparently viewing it as insufficient to support a prima facie showing of a constitutional violation.

Thereafter, in January 2025, prosecutors—who had claimed that the notes marking the race of each juror in Mr. Broadnax's case were not evidence of jury discrimination, but rather may have been created in preparation for the *Batson* hearing—disclosed files that showed that a team of substantially the same set of prosecutors had also marked the race of prospective jurors in a separate, related trial even though there was no *Batson* hearing in that case. Pet'r. Br. at 10. In addition, three of the Black jurors who prosecutors struck from Mr. Broadnax's trial have since submitted declarations stating that they supported the death penalty, would have fairly applied the law, and made

that clear to prosecutors during voir dire. Despite this additional new compelling evidence of jury discrimination in Mr. Broadnax's case, the Texas Court of Criminal Appeals declined to reconsider its decision. *Ex parte Broadnax*, No. WR-81,573-01, 2025 WL 3095921 (Tex. Crim. App. Nov. 6, 2025).

The Texas Court of Criminal Appeals' conclusion cannot be squared with this Court's case law. The evidence shows that the prosecution was identifying and tracking Black prospective jurors, which is a tactic that this Court has deemed especially relevant in prior *Batson* cases. *See, e.g., Miller-El I*, 537 U.S. at 347 (emphasizing that "the prosecutors marked the race of each prospective juror on their juror cards"); *Foster v. Chatman*, 578 U.S. 488, 493, 514 (2016) (noting that "the names of [B]lack prospective jurors were highlighted in bright green" on jury venire list and "N' was noted next to the name of

each Black prospective juror). This evidence sheds light directly on the prosecution's intent, which is the essence of the *Batson* inquiry.

As a result, absent this Court's intervention, Mr. Broadnax may be put to death without any court meaningfully considering clear evidence of racial discrimination in jury selection. It is especially important for this Court to grant certiorari because of the grave harms of racially discriminatory jury selection. The new evidence must be considered not only to protect the constitutional rights of Mr. Broadnax, but also to vindicate the constitutional rights of excluded Black jurors, protect the integrity of the deliberative process, and promote the legitimacy of our judicial system. *See, e.g.*, *Miller-El II*, 545 U.S. at 238 (explaining that "the very integrity of the courts is jeopardized when a prosecutor's discrimination invites cynicism respecting the jury's neutrality . . . and

undermines public confidence in adjudication" (internal quotation marks and citation omitted)); *Flowers*, 588 U.S. at 299 (Indeed, "[t]he core guarantee of equal protection, ensuring citizens that their State will not discriminate on account of race, would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the jurors' race.").

CONCLUSION

This Court should grant certiorari and hold that the Texas Court of Criminal Appeals' decision contravenes this Court's precedent and its commitment to taking the "unceasing efforts" that are necessary "to eradicate racial prejudice from our criminal justice system." *McCleskey v. Kemp*, 481 U.S. 279, 309 (1987) (citing *Batson*, 476 U.S. at 85). To do otherwise would render the Equal Protection Clause "but a vain and illusory requirement," *Batson*, 476

U.S. at 98 (citation omitted), and thereby erode public confidence in "'the law as an institution'" and in "'the democratic ideal reflected in the processes of our courts,'" *Buck v. Davis*, 580 U.S. 100, 124 (2017) (citation omitted).

Respectfully submitted,

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