No. 25A900

In the
Supreme Court of the United States

JAMES GARFIELD BROADNAX,
Petitioner,

v.

TEXAS,
Respondent.

On Petition for a Writ of Certiorari
to the Court of Criminal Appeals of Texas, No. 25-939

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR STAY OF EXECUTION

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PARTIES TO THE PROCEEDING

James Garfield Broadnax is the **Petitioner** in this proceeding.

The State of Texas is the **Respondent** in this proceeding.

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RESPONDENT'S OPPOSITION TO
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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

In 2008, James Garfield Broadnax and his cousin Demarius Cummings brutally shot and killed Stephen Swan and Matthew Butler in the course of a robbery. In December 2025, the Criminal District Court No. 7 of Dallas County, Texas scheduled Broadnax's execution for April 30, 2026. Broadnax's application for a stay of execution is based on his petition for a writ of certiorari, No. 25-939, filed February 4, 2026.

Broadnax fails to demonstrate he is entitled to a stay of execution under this Court's precedent. 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). Although Broadnax bases his claims raised in his petition for writ of certiorari on recent cases, his claims are grounded in evidence from trial and could have been raised in two prior state habeas applications. The delay in carrying out Broadnax's sentence should weigh heavily in the evaluation of this application for a stay. The State's interest in the timely enforcement of Broadnax's sentence is not

outweighed by the unlikely possibility that certiorari will be granted. Accordingly, this Court should deny Broadnax's request for a stay.

I. The Application for a Stay of Execution Should Be Denied

A stay of execution "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." *Hill,* 547 U.S. at 584 (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). Rather, the inmate must satisfy all the requirements for a stay, including a showing of a significant possibility of success on the merits. *Id.* (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983)). When the requested relief is 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 court must consider "the State's strong interest in proceeding with its judgment" and "attempt[s] at manipulation." *Nelson*, 541 U.S. at 649 (citing *Gomez v. U.S. Dist. Court for Northern Dist. of California,* 503 U.S. 653, 654 (1992)).

A. Broadnax is Unlikely to Succeed on the Merits.

Broadnax fails to make a strong showing that he will succeed on the merits. Given the procedurally defective and non-compelling character of his claims,

Broadnax fails to show there is any significant possibility the Court will grant certiorari.

1. *Article 11.071, Section (5)(a)(1) of the Texas Code of Criminal Procedure was an independent state-law basis that barred litigation of Broadnax's rap-lyrics and serology-evidence claims in state court.*

The Texas Court of Criminal Appeals (TCCA) determined Broadnax's second subsequent state habeas claims did not satisfy the statutory framework to excuse procedural default under Texas's abuse-of-the-writ bar, contained in Article 11.071, Section 5, and dismissed the application without reviewing the merits of the claims raised. *Ex parte Broadnax*, No. WR-81,573-03, 2025 WL 3095921, at *1 (Tex. Crim. App. Nov. 6, 2025) (per curiam) (not designated for publication). *See* Tex. Code Crim. Proc. art. 11.071, §§ 5(a), (c). The application included claims that (1) the punishment-phase admission of Broadnax's rap lyrics violated his Eighth and Fourteenth Amendment due process, fundamental fairness, and equal protection rights; and (2) the guilt-phase admission of a non-testifying serologist's findings and written report violated his Sixth Amendment Confrontation Clause rights. The state court dismissed these claims on the basis of an independent and adequate state-law ground—Texas's bar on subsequent writs—which deprives this Court of jurisdiction to consider them. Moreover, Broadnax lacks a compelling reason for this Court to grant his petition and review his claims.

Because the TCCA barred Broadnax's subsequent claims on state-law procedural grounds, the claims have not been litigated and developed in state court. *Id.* § 5(c) (requiring the TCCA to dismiss a subsequent application if the requirements

of Section 5(a) have not been satisfied); *see Ex parte Reed,* 670 S.W.3d 689, 700 (Tex. Crim. App. 2023) (noting that when the court determined a claim satisfied the requirements of Article 11.071, Section 5, it remanded the claim to the trial court for development). Due to the case's posture and the fact-dependent questions presented, Broadnax's petition is a poor vehicle for this Court to grant review—without evidentiary development or merits analysis having occurred in the state courts.

"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)).

Despite the TCCA's explicit statement that it did not reach the merits of his claims, Broadnax contends the TCCA's dismissal was not independent of federal law.[1] Broadnax's petition boils down to him candidly disagreeing with the TCCA's state-law procedural determinations.

Texas law restricts applicants to one habeas review, except in circumstances outlined by statute. Tex. Code Crim. Proc. art. 11.071, § 5(a). To receive review, Broadnax needed to establish that his claims could not have been presented previously in a state habeas application because the legal bases for the claims were unavailable at the time a previous application was filed. *See id.* § 5(a)(1). A legal basis for a claim is unavailable within the meaning of Section 5(a)(1) if it was not recognized

[1] Broadnax does not challenge the adequacy of the lower court's decision.

by or could not have reasonably been formulated from a decision of this Court, a federal appellate court, or a Texas appellate court. Tex. Code Crim. Proc. art. 11.071, § 5(d).

Broadnax's complaints are couched as constitutional violations but are grounded in evidence admitted at trial—serology evidence (admitted in the guilt/innocence phase) and his rap lyrics (admitted in the punishment phase). Broadnax did not object at trial to admission of the serology evidence. (RR46: 184–208) (where Broadnax's counsel stated affirmatively, "we have no objection" to the serology report). Broadnax objected at trial to admission of the rap lyrics on evidentiary and search-and-seizure grounds, but not on the basis of due process, fundamental fairness, and equal protection as alleged in his petition. (RR49: 8, 12, 38–39, 41, 104). Further, Broadnax did not raise the constitutional complaints alleged in this proceeding in his direct appeal. It is a fundamental concept in Texas law that failure to raise a claim at trial or on appeal bars an applicant from raising it in a habeas proceeding—either original or subsequent. *Ex parte De La Cruz*, 466 S.W.3d 855, 864 (Tex. Crim. App. 2015) (noting the TCCA "has long held that a convicted person may not raise a claim for the first time in a habeas-corpus proceeding if he had a reasonable opportunity to raise the issue at trial or on direct appeal and failed to do so"); *see also Ex parte Townsend*, 137 S.W.3d 79, 81 (Tex. Crim. App. 2004) (holding that even a constitutional claim is forfeited in habeas if the applicant had an opportunity to raise the issue on appeal). Thus, Broadnax's habeas claims were

procedurally barred, and the TCCA properly dismissed them on this predicate reason alone.

The TCCA also dismissed the claims under Article 11.071, Section 5(a)(1) because ample decisions from this Court, a federal appellate court, or a Texas appellate court existed on which Broadnax could have based his claims earlier. (Brief in Opposition, at 21–22, 26–28). Thus, his lack of diligence in raising them in his original and first subsequent state habeas applications, filed in 2011 and 2023 respectively, barred litigation in a second subsequent habeas application. *See Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007) (indicating Section 5 requires proof of unavailability in all prior state habeas applications).

Broadnax disagrees that the TCCA dismissed his rap claim on procedural grounds, contending its 2024 *Hart* decision was "new law" that rendered his claim easier to raise under Texas law. *See Hart v. State*, 688 S.W.3d 883 (Tex. Crim. App. 2024). Broadnax is incorrect. First, Hart's claim was based on the rules of evidence—not constitutional rights. If *Hart* raised Broadnax's claim, any prior cases based on Texas or Federal Rule of Evidence 403 and rap lyrics would have also raised the claim. *Hart* was just another case where the court analyzed the probative versus prejudicial value of rap-music-related evidence, admitted during the guilt/innocence phase of trial. *See Hart*, 688 S.W.3d at 897 (characterizing the error as "an abuse of discretion in admitting [ ] evidence" and applying the harm standard for non-constitutional error). Second, it is irrelevant that the TCCA declared *Hart* a matter of first impression in Texas (Reply at 5–6), because Section 5(a)(1)'s analysis of previously

available claims looks to caselaw from this Court, the federal circuit courts, or any of Texas's appellate courts. *See* Tex. Code Crim. Proc. art. 11.071, § 5(d). Third, Broadnax is wrong that *Hart* provided a new legal basis for his claim because Hart prevailed in his guilt-phase complaint on his facts. Other applicants have received post-conviction relief on rap-lyrics claims. This Court need only look to one of the seminal federal cases about rap music, *United v. Gamory*, which the Eleventh Circuit decided *before* Broadnax filed his original habeas application. *See United States v. Gamory,* 635 F.3d 480, 493 (11th Cir. 2011) (holding that the guilt-phase admission during Gamory's drug-distribution and money-laundering trial of a rap video produced by his music-recording business was error and "heavily prejudicial"). Also, Broadnax wholly misunderstands that whether a former applicant prevailed on his claim is not factored into whether a claim was previously available. (Reply at 6). *See Ex parte Navarro*, 538 S.W.3d 608, 615 (Tex. Crim. App. 2018) (indicating the likelihood of a claim's success is not relevant to determining whether its legal basis was previously unavailable). Finally, Broadnax overgeneralizes the Texas rule that a legal basis was previously unavailable if subsequent caselaw makes it easier to establish the claim. To meet this test, the subsequent caselaw must alter the legal standards under which relief is available—not just decide in one side's or the other's favor based on existing law. *See Ex parte Barbee*, 616 S.W.3d 836, 839 (Tex. Crim. App. 2021); *Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex. Crim. App. 2012).

Broadnax also disagrees that the TCCA dismissed his serology-evidence claim on procedural grounds, alleging this Court's decision in *Smith v. Arizona* constituted

a new legal basis to support his claim. *See Smith v. Arizona,* 602 U.S. 779 (2024). Under this Court's ruling in *Smith,* a surrogate forensic analyst cannot present the substance of an out-of-court analyst's opinions and conclusions *as the basis of* the testifying expert's opinions and conclusions. *Id.* at 803.

First, Broadnax's claim is not dependent on *Smith*, and he could have raised it from the parade of state and federal cases applying the Confrontation Cause to forensic testimony and reports, beginning at least with *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009) and *Bullcoming v. New Mexico,* 564 U.S. 647 (2011). (Brief in Opposition at 26–27).

Although *Smith* resolved some discrepancies among the federal circuit courts' interpretation of the Confrontation Clause line of cases, Broadnax could have already raised his claim based on Texas law. *See Paredes v. State*, 462 S.W.3d 510, 517 (Tex. Crim. App. 2015) (analyzing prior caselaw and holding that admission of a lab report created solely by a non-testifying analyst, without calling that analyst to sponsor it, violates the Confrontation Clause).

Even a Dallas Court of Appeals case held in 2009 that admission of a non-testifying forensic analyst's report and notes violated the Confrontation Clause. *See Cuadros-Fernandez v. State*, 316 S.W.3d 645, 654–58 (Tex. App.—Dallas 2009, no pet.). The facts of *Cuadros-Fernandez* are the flip side of Broadnax's facts. There, the State offered a DNA analyst's report and notes (about testing of a child's blood found on a cabinet door) through a trace-evidence-analyst witness from the same lab. *Id.* at 654. The trace-evidence analyst did not perform any of the DNA testing in the case.

Id. Relying on *Melendez-Diaz,* the court held that admission of the non-testifying analyst's DNA report and notes violated the Confrontation Clause. *Id.* at 656–58. Accordingly, Broadnax's confrontation claim was readily available to him at trial, on appeal, during his original state habeas proceeding, and certainly before he filed his 2023 first subsequent habeas application. *See Campbell*, 226 S.W.3d at 421 (noting that Section 5(a)(1) requires proof of unavailability in all prior state habeas applications).

Broadnax's reasoning is circular. He argues that because his claims are based on previously unavailable law and could not have been raised in his original or first subsequent writ, then the TCCA must have reached the merits. But he is absolutely wrong that his claims were not available earlier—this was an easy decision for the TCCA.

The TCCA issued an unambiguous ruling that it dismissed Broadnax's claims without merits review. Broadnax simply disagrees with the ruling. Even though it is clear the TCCA instituted the procedural bar because countless cases have addressed similar confrontation allegations and the prejudicial impact of rap lyrics since before Broadnax's original state habeas application was filed in 2011 and his first subsequent application was filed in 2023, Broadnax insists the TCCA must have reached his constitutional issues, advocating that the lower court always applies the two-prong test articulated in *Campbell,* 226 S.W.3d 418, in its Section 5(a) analysis. (Reply at 2). That is blatantly wrong. Broadnax's argument "undebatably fails" and "misreads *Campbell*" because a Texas court may dismiss a claim on *Campbell*'s first

ground alone without ever reaching any constitutional issues. *See Buntion v. Lumpkin,* 31 F.4th 952, 962 (5th Cir. 2022).

The State is not advocating that all Section 5(a)(1) determinations preclude this Court's review. But when nothing indicates involvement of a federal question, this Court does not presume the TCCA reached a federal question. The TCCA has explained that the "prima facie" prong was incorporated into its Section 5 analysis because "[t]o read [Article 11.071, Section 5(a)(1)] otherwise would mean that every time a new law is passed or precedent is set, every inmate could file a subsequent application for writ of habeas corpus, regardless of whether the newly available legal basis applied to his situation, and the court would have to consider the merits" which "clearly undermines the purpose of the subsequent-writ provisions." *Ex Parte Oranday-Garcia*, 410 S.W.3d 865, 868–69 (Tex. Crim. App. 2013) (discussing *Ex parte Staley*, 160 S.W.3d 56, 57 (Tex. Crim. App. 2005), the predecessor of *Campbell,* 226 S.W.3d 418). Yet clearly the TCCA need not reach the prima facie analysis in every case, if it merely concludes the "new law" an applicant relies on was, in fact, previously available.

Accordingly, in determining whether a Texas subsequent writ meets Section 5's mandates, the TCCA may examine whether the factual or legal basis of the claim was previously available—and the court may stop its analysis there. The TCCA does not always reach the second prong, and Broadnax misinterprets *Rocha v. Thaler,* 626 F.3d 815, 831 (5th Cir. 2010) to read that it does. (Reply at 2). Post-*Campbell*, *Rocha*'s point is that Section 5(a)(1) dismissals must be examined on a case-by-case basis to

determine whether the lower court reached a federal question. *Rocha,* 626 F.3d at 835. *Nothing* indicates that occurred here.

Broadnax misleadingly relies on several post-*Campbell* federal cases interpreting Section (5)(a)(1) dismissals that "upheld jurisdiction for federal review" (*see* Reply at 2–5), but these cases are distinguishable or Broadnax grossly misconstrues them. *Davila* is distinguishable because the TCCA's order explicitly referenced the applicant's failure to make a prima facie showing—which is not the case here. *See In re Davila,* 888 F.3d 179, 182 (5th Cir. 2018) (stating that the TCCA dismissed the applicant's claims, holding in part he "failed to make a *prima facie* showing of a *Brady* violation"). In *Ruiz,* the Fifth Circuit made it clear that the TCCA's Section 5(a)(1) decision can be based on *Campbell's* first element alone. *See Ruiz v. Quarterman,* 504 F.3d 523, 527 (5th Cir. 2007) (holding the concurring opinion, which was needed to reach a quorum of five judges, inserted uncertainty about whether the TCCA's decisional basis was only an independent state-law decision or encompassed a federal constitutional question). In *Busby*, the Fifth Circuit held that although the TCCA dismissed several claims via its boilerplate order on Section 5(a)(1)'s independent state-law grounds, Busby's intellectual disability claim was necessarily dismissed pursuant to Section 5(a)(3), under which the TCCA analyzes the merits of the claim. *Busby v. Davis,* 925 F.3d 699, 707–09 (5th Cir. 2019). And Broadnax makes a blatant misrepresentation when he contends that *Rocha* indicates all of the TCCA's Section 5(a)(1) decisions entail a prima facie review of the substantive merits of each applicant's claims. (Reply at 2). *See Rocha v. Thaler,* 626

F.3d 815, 819 (5th Cir. 2010) ("When the CCA determines that a successive state habeas application does not satisfy § 5(a)(1) and dismisses it as an abuse of the writ, *it sometimes does so because* it has concluded that the federal constitutional claim on which the application seeks relief is meritless.").

The TCCA's short order is not ambiguous or obscure. It merely does not reach the merits.

2. *Broadnax's rap-lyrics claim does not warrant this Court's review.*

Broadnax's constitutional rap-lyrics claim is meritless and not worthy of this Court's attention. The trial court admitted Broadnax's rap lyrics in two forms in the punishment phase of trial. The first were lyrics contained in two spiral notebooks, or journals, collected after Broadnax's arrest from his belongings in the trunk of Swan's stolen Ford Crown Victoria. (RR46: 142, 148–49; RR49: 104, 106–08, 118; SX 131-I, 131-J). The two spiral notebooks also contain drawings, phone numbers, notes about drugs and ways to make money, job research from the internet, and a letter. (RR49: 125–33; SX 131-I, 131-J). The second were two pages of lyrics Broadnax wrote while detained in the county jail awaiting trial. (RR49: 36–41, 49–52; SX 474–75).

The State used the rap lyrics from the spiral notebooks to show Broadnax's association with and use of gang terminology and symbols. These lyrics and other evidence showed Broadnax identified with the Gangster Disciples gang. (*See* RR49: 89–91, 95–96, 100, 104, 109–11, 122, 131). The lyrics also referred to murder, robbery, and drug sales. (RR49: 108, 116, 118–19, 123–24; SX 131-I, 131-J, 474–75).

The jury asked to see the spiral notebooks and the two pages from Broadnax's jail cell, along with a great deal of other evidence, during its punishment deliberations.[2]

Ironically, Killer Mike in his *amici* brief and Broadnax complain that the State did not introduce the lyric from the jail in the guilt/innocence phase of trial, and they allege this is a concession it lacked any factual nexus to the crime. (Reply at 9; Killer Mike Amici Br. at 10–11). But the State had already used several admissions by Broadnax during the guilt/innocence phase, and so the State saved the jailhouse lyric, written while Broadnax was awaiting trial, for the punishment phase—to demonstrate to the jury Broadnax's outrageous and extreme lack of empathy, regret, remorse, and accountability. Contrary to common sense, Broadnax claims the "State posits without basis" that his jailhouse rap refers to the robbery, murders, and trial in this case (Reply at 10), while the jury could and this Court should readily see the parallels between the face of the lyric and the facts of this case:

> . . . Send da press, send da paper. Hold up. Stop N rewind[] [t]hat shit[.] I'm about [to] tell a little story [why] I'm in this b****[.]
>
> [ ] Yeah, I hit the lick, but the reason I got caught cuz the n**** snitching [] [s]hit. Now this bitch [illegible] me, I got two counts of murder. I might go to trial and tell the Judge I'm going to [murk] [m] because I'm JB, bitch. Do you know who you fucking wit? [3]

[2] Broadnax couches this as the jury asking "twice" to see "all lyrics." (Reply at 9). This slants the circumstances. The jury requested the exhibit Broadnax wrote while in jail (and other evidence). (CR3: 645; *see* SX 474). It separately requested the journals from the car (and other evidence). (CR3: 648; *see* SX 131-I, 131-J). The jury did not request any rap lyric more than once.

[3] Murk means "kill." (*See* SX 403).

(RR49: 50–51; *see* SX 474). "Send da press, send da paper" refers to Broadnax's interviews and admissions to several Dallas media outlets. (*See* RR45: 117, 270–71; RR46: 216, 219; SX 18, 403–407). "Hit the lick" refers to the robbery; the term is common, and Broadnax used this term in his media interviews. Getting caught because "the n**** snitching [] [s]hit" refers to a witness, Evelyn Barg, who was at Broadnax's aunt's home the morning of the murder, heard Broadnax discussing the robbery, saw Broadnax and Cummings with a victim's property, and called the police shortly upon their departure. (RR45: 195–228). "I got two counts of murder" refers to the murders of Swan and Butler, and Broadnax's two pending indictments for capital murder. "I might go to trial and tell the Judge I'm going to [murk] [m] because I'm JB" refers to Broadnax's scheduled trial. Frankly, the applicability of the lyric to the facts of this case could not be any more apparent on its face. But even if there were a reasonable argument that the lyric is fictional, it still goes to Broadnax's lack of remorse—for creating artistic fiction about circumstances identical to his own while sitting in jail awaiting trial. And Broadnax could have called a rap-lyrics expert at trial to contend what he claims here—that his lyrics were fictional, invoke racial bias, and should not be held against him. He chose not to.

The State does not misunderstand the rap music genre. The above lyric is relevant and admissible to show not only Broadnax's admission but also his cold, flippant attitude toward the murders and the judicial process. The rap lyrics in his journals are relevant and admissible to show not only his gang affiliation or interest, but also that themes of lawlessness, violence, and drugs—whether fictional or not—

occupied his time and thoughts. *See* Tex. Code Crim. Proc. art. 37.07, § 3(a)(1) (allowing punishment-phase admission of any matter the court deems relevant to sentencing, including the defendant's reputation and character). Such evidence would be admissible whether it takes the form of music lyrics, written fiction, painting, or any other artistic form or narrative. If Johnny Cash had ever been on trial for murder, particularly if the murder was alleged to have occurred in Reno, no doubt his "Folsom Prison Blues" lyrics ("I shot a man in Reno, just to watch him die") would have been admissible during the punishment phase of his trial. (*See* Killer Mike Amici Br. at 9). The trial judge determined the rap-lyric evidence here was not unduly prejudicial. This Court should not disturb that ruling, particularly nearly seventeen years post-trial.

3. *Broadnax's serology-evidence claim does not warrant this Court's review.*

Broadnax has not proffered a compelling reason for this Court to review his dilatory serology-evidence claim—a confrontation claim he chose not to raise at trial because it strategically benefited him. None of the DNA evidence admitted at trial directly connected Broadnax to the murders, and Broadnax's counsel used this fact in his closing argument. (RR46: 204–208; RR47: 189; *see also* RR46: 155, 158–60 (where Broadnax's trial counsel foreshadowed later DNA evidence by asking witnesses about DNA testing a victim's pocket liners and swabbing the gun)). Without a trial objection, the claim is barred on habeas review. *See Ex parte Dutchover*, 779 S.W.2d 76, 77 (Tex. Crim. App. 1989) (citing *Ex parte Crispin*, 777 S.W.2d 103, 106 (Tex. Crim. App. 1989)) (noting the failure to make a contemporaneous objection at

trial based on the Confrontation Clause bars habeas review). At a minimum, Broadnax could have raised this claim when he filed his 2011 original habeas application or his 2023 first subsequent habeas application based on *Melendez-Diaz, Bullcoming,* and other state and federal cases.

Moreover, the facts of this case are distinguishable from those in *Smith*; therefore, even if *Smith* presents a new legal basis for *Crawford* claims, *Smith* is not controlling. The serologist performed a preliminary step in the review of physical evidence, examining the evidence for presumptive fluids. (RR46: 191–92; SX 392). The DNA analyst performed a different step—the actual DNA testing. (RR46: 184–85, 194–95, 202–03; SX 391). Only the DNA analyst testified at trial. His conclusions and opinions were not based on any DNA testing by the serologist. *Compare Smith,* 602 U.S. at 791 (where the substitute analyst offered his independent opinion and conclusions on the drugs but did so using only the absent analyst's drug report and notes).

Comparable facts here would have been if the DNA analyst testified to the serology-evidence conclusions *as if those were his own conclusions*. Instead, the DNA analyst formed his own conclusions based on his own DNA testing. Thus, *Smith* is not new law that Broadnax needed in order to raise his claim.

Moreover, constitutional errors can be harmless, including Confrontation Clause violations. *See Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986); *United States v. Seward,* 135 F.4th 161, 170 (4th Cir. 2025) (concluding any error in admitting DNA analyst's testimony in violation of *Smith v. Arizona* was harmless

beyond a reasonable doubt). The serology results were merely background to explain to the jury the process of handling evidence and were not that significant to the case. There was no dispute regarding the serology evidence, and serology evidence does not inculpate anyone. Therefore, admission of the serology results did not affect Broadnax's substantial rights. *See United States v. Dominguez Benitez*, 542 U.S. 74, 81 (2004). Broadnax seems to contend the DNA evidence could not have been admitted without the serology results because the DNA analyst testified that he "relied" on them, but that is just not the case because the DNA report stands alone. Regardless, test results on the DNA evidence admitted at trial excluded Broadnax and did not directly tie him the crime scene (RR46: 204–208)—which is why Broadnax's trial counsel exercised a strategy not to object to either the serology or DNA evidence. Admission of the serologist's findings and report was a straight confrontation issue, which Broadnax did not see fit to raise for 17 years, and the issue is not worth this Court's time.

Broadnax has not shown this Court possesses jurisdiction over the matters for which he seeks review or that there are otherwise compelling grounds to issue a writ of certiorari. His failure to offer sound claims for relief supports the denial of a stay of execution.

B. Broadnax Will Not be Irreparably Injured Absent a Stay.

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 points to the severity of penalty in attempting to show harm, which is insufficient in and of itself. (Appl. for Stay at 7).

Broadnax also contends this Court does not have time to give due consideration to whether his claims meet this Court's standards for review. (Appl. for Stay at 7). However, the Court has docketed Broadnax's petition for certiorari for its April 24, 2026 conference, and the State trusts that schedule allows the Court sufficient time and full consideration of its decision on Broadnax's petition.

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's case has already received full state and federal direct and collateral review. The petition for certiorari behind this application is an appeal from his second subsequent state habeas application. The public's interest is not advanced by postponing Broadnax's execution, and the State opposes actions 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). The fact that Broadnax's rap-lyrics and serology-evidence claims were not raised years earlier—at trial, in his direct appeal, or during state habeas—must also inform the Court's analysis. "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). That presumption applies with full force here.

CONCLUSION

Respondent respectfully asks this Court to deny Broadnax's application for a stay of execution based on his petition for certiorari in No. 25-939.

Respectfully submitted,

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