

No.

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*

APPLICATION FOR STAY OF EXECUTION

**CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 30, 2026**

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To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

The State of Texas has scheduled the execution of James Garfield Broadnax for April 30, 2026. Pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23, Mr. Broadnax respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari filed along with this application.

INTRODUCTION

Mr. James Broadnax has been on Texas death row since 2009, and now faces imminent execution on April 30, 2026, unless this Court grants a stay of execution. This Court should grant a stay because new evidence undercuts the bases for Mr. Broadnax's conviction and capital sentence, and because his trial was plagued by violations of his Eighth and Fourteenth Amendment rights.

First, Mr. Broadnax was convicted and sentenced to death for the murder of two victims on the theory that Mr. Broadnax was the individual who shot both victims. New evidence, in the form of a declaration under penalty of perjury from Mr. Broadnax's co-defendant Mr. Demarius Cummings, confirms that Mr. Cummings, not Mr. Broadnax, was the actual shooter of these victims. This new evidence establishes multiple constitutional violations of Mr. Broadnax's Eighth and Fourteenth Amendment rights, as no jury or court has evaluated whether, in light of the actual facts of the crime, he was sufficiently culpable to be sentenced to death, or whether his sentence was disproportionate and unfair.

Second, Mr. Broadnax, a Black defendant, was convicted by a nearly all-White jury after a trial replete with racially charged statements and arguments by the Dallas County

District Attorney's Office. New evidence from Mr. Cummings's trial confirms that the State sorted prospective jurors based on their race and relied on those racial classifications to strike Black jurors in violation of Mr. Broadnax's *Batson* rights, and then lied about it.

BACKGROUND

In 2008, Mr. Broadnax and Demarius Cummings were arrested for the murder of two victims during the course of a botched robbery. Their cases were severed. The State prosecuted Mr. Broadnax and secured a death sentence on the theory that Mr. Broadnax shot both victims, and prosecuted Mr. Cummings as a participant in the crime. The State did not seek the death penalty against Mr. Cummings, and Mr. Cummings was sentenced to life without parole.

The central evidence in the State's case against Mr. Broadnax were statements made by Mr. Broadnax and Mr. Cummings to the media following their arrests, where both defendants identified Mr. Broadnax as the shooter. However, the other evidence in both trials pointed to Mr. Cummings being the shooter, as only Mr. Cummings's DNA was found on the murder weapon and in the pocket of one victim, whereas Mr. Broadnax's DNA was not identified on these items. Mr. Broadnax's statements to the media confessing that he was the shooter were also inherently unreliable, as he was under the influence of drugs at the time of the offense and could not reliably recount the events of that evening, and displayed signs of severe psychological distress and suicidal tendencies at the time of the interviews.

Following the trial judge's December 17, 2025 order setting an execution date, Mr. Broadnax's counsel met with Mr. Cummings, as he had done several times over the past

ten years. Mr. Cummings had always maintained that Mr. Broadnax was the shooter, but during a February 20, 2026 meeting with Mr. Broadnax's counsel, Mr. Cummings admitted for the first time that he was in fact the shooter of the two victims, and Mr. Broadnax falsely took the blame for being the shooter to protect him. Mr. Cummings executed a declaration under penalty of perjury, stating that:

It was my idea to rob Mr. Swan and Mr. Butler, and I obtained the pistol we took with us that evening and which was used to shoot the victims. Following the crime, James and I spoke about the story we would tell. . . . ***I persuaded James to take the blame for shooting the two victims.*** Later, we both gave statements to the media. In James's statements, he said that he had participated in the robberies and shot the two victims, while in my statements, I said that while I had participated in the robberies, James had shot the two victims. These statements were not accurate. ***In fact, I was the one who shot the two victims, not James.***

Third Subsequent Appl. at Ex. A ¶¶ 4–5, *Ex parte Broadnax*, No. WR-81,573-04 (Tex. Crim. App. Apr. 7, 2026) (“Appl.”) (emphases added).

The reliability of Mr. Cummings's declaration is underscored by the other evidence presented at Mr. Broadnax's trial, including DNA evidence linking Mr. Cummings, and not Mr. Broadnax, to the murder weapon and clothing of one of the victims. Mr. Cummings described why he did not reveal this information previously:

I have always maintained that James was the one who shot Mr. Swan and Mr. Butler. But the fact that James received a death sentence for these crimes, while I was the one who shot the victims, has been weighing on my conscience, particularly as I have become more spiritual during my years in prison. When [Mr. Broadnax's counsel] told me on February 20 that James was scheduled to be executed on April 30, 2026, I decided it was time to come clean.

Appl. at Ex. A ¶¶ 6–7.

During his trial, Mr. Broadnax was convicted by a nearly all-White jury after the

State systematically struck every qualified Black prospective juror. The trial judge declined to engage in the required *Batson* analysis during a *Batson* hearing, expressing that there was a “problem with the whole line of [*Batson*] cases” for “impl[ying] some sort of nefarious intent on the part of the prosecutors.” Cert. Pet. at 6–7 n.1. The trial judge reinstated a single Black juror “because of the fact that there are no African-American jurors on this jury and there was a disproportionate number of African-American jurors who were struck.” *Id.* Years later, the State disclosed, for the first time, a spreadsheet used during *voir dire* which marked the race and gender of each prospective juror. The names of *every single* Black juror, and *only* the Black jurors, were bolded. In light of this new evidence, Mr. Broadnax filed an amended federal habeas petition. First Am. Pet., *Broadnax v. Davis*, No. 3:15-CV-01758-N (N.D. Tex. Nov. 18, 2016), ECF No. 48. In response, the State claimed that this spreadsheet “was created in preparation for a . . . *Batson* hearing held **after** the jury had been selected.” Resp’t’s Answer with Br. in Supp. at 64, *Broadnax v. Davis*, No. 3:15-CV-01758-N (N.D. Tex. June 26, 2017), ECF No. 63 (emphasis in original). In denying relief, the Fifth Circuit explicitly relied on the State’s assertion that it created the spreadsheet “when preparing to defend its use of peremptory challenges.” *Broadnax v. Lumpkin*, 987 F.3d 400, 410 (5th Cir. 2021).

In January 2025, the Dallas County District Attorney’s Office allowed counsel for Mr. Broadnax to review, for the first time, its jury selection files from the separate trial of Mr. Broadnax’s co-defendant. Mr. Cummings was tried, convicted, and sentenced to life

without parole for his involvement in the same incident underlying Mr. Broadnax's conviction. The newly available documents from Mr. Cummings's case included a chart of prospective jurors, prepared by the same team of attorneys representing the State as in Mr. Broadnax's case, with the same notations used to track the race and gender of the prospective jurors. Cert. Pet. at 8, 21. However, in Mr. Cummings's case, there were no *Batson* objections, and the State had no need to prepare for a *Batson* hearing. In other words, the newly disclosed chart confirmed that the State tracked jurors by race and gender during jury selection as part of their usual, systematic *voir dire* practices, **not** in preparation for a particular *Batson* hearing, as the State previously asserted.

On March 18, 2026, Mr. Broadnax filed a Third Subsequent Habeas Corpus Application with the Texas Court of Criminal Appeals, seeking relief pursuant to the Eighth and Fourteenth Amendments based on the newly issued declaration from Mr. Cummings, the newly disclosed jury chart from Mr. Cummings's trial, and new juror affidavits from several of the excluded Black jurors in Mr. Broadnax's case. On April 7, 2026, the court denied Mr. Broadnax's Petition. *Ex parte Broadnax*, No. WR-81,573-04 (Tex. Crim. App. April 7, 2026).

This Court's review of Mr. Broadnax's claims—and a stay of his execution during the pendency of such review—is necessary to prevent the carrying out of a death sentence that was secured in violation of Mr. Broadnax's Eighth and Fourteenth Amendment rights.

STANDARD FOR STAY OF EXECUTION

The standard for granting a stay of execution is well-established: the party seeking

a stay must establish that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Ramirez v. Collier*, 595 U.S. 411, 421 (2022) (citations omitted); *see also Barefoot v. Estelle*, 463 U.S. 880, 888–89 (1983). In death penalty cases, this Court has the equitable power to order a stay in order to “resolve the merits of [petitioners’ claim] before the scheduled date of execution . . . to permit due consideration of the merits.” *Barefoot*, 463 U.S. at 899. All of these factors weigh in favor of staying Mr. Broadnax’s execution pending this Court’s resolution of his petition for a writ of certiorari, concurrently filed with this application.

THIS COURT SHOULD GRANT A STAY OF EXECUTION

I. Petitioner Is Likely to Succeed on the Merits.

In the context of an application for a stay of execution pending the Court’s consideration of a writ of certiorari, a likelihood of success on the merits means that there is “a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari” and there is “a significant possibility of reversal of the lower court’s decision.” *Barefoot*, 463 U.S. at 895. Mr. Broadnax’s claims for relief readily meet this standard.

1. Mr. Broadnax’s Eighth and Fourteenth Amendment claims are likely to succeed on the merits.

Mr. Broadnax’s Eighth Amendment claim warrants review, as the new declaration from

Mr. Cummings wholly undermines the theory on which Mr. Broadnax was convicted of capital murder, as Mr. Broadnax was prosecuted, convicted, and sentenced to death on the mistaken premise that he acted as the triggerman.

This Court's holdings demonstrate that the death penalty is disproportionate under the Eighth Amendment for a non-shooter under these facts. "While the States generally have wide discretion in deciding how much retribution to exact in a given case, the death penalty, unique in its severity and irrevocability, requires the State to inquire into the relevant facets of the character and record of the individual offender." *Tison v. Arizona*, 481 U.S. 137, 149 (1987) (quoting *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) and *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)). This means that "the focus had to be on [defendant's] culpability . . . for we insist on individualized consideration as a constitutional requirement in imposing the death sentence." *Id.* (quoting *Enmund v. Florida*, 458 U.S. 782, 798 (1982)); *Id.* at 156 ("A critical facet of the individualized determination of culpability required in capital cases is the mental state with which the defendant commits the crime.").

In particular, and critically for the purpose of this case, the death penalty is not proportionate under the Eighth Amendment for non-killer defendants unless an examination shows that that defendant's own "conduct and state[] of mind warrant[] imposition of the death penalty" by distinguishing him to be "the most culpable and dangerous of murderers." *Id.* at 157–58. The State's case for establishing that Mr. Broadnax should be sentenced to death and that he constituted a continuing threat to society was primarily based on the theory that Mr. Broadnax shot the two victims and the manner in which he allegedly

did so. But Mr. Cummings' confession undermines this theory, and the jury was never presented with the question of whether Mr. Broadnax's conduct, as non-triggerman, and his state of mind, warranted imposition of the death penalty. . Mr. Broadnax's punishment must be "limited to his participation in the [underlying felony]" and "tailored to his personal responsibility and moral guilt." *Enmund*, 458 U.S. at 801. The death penalty is disproportionate here in light of the Mr. Cummings' confession because it indicates that Mr. Broadnax did not suggest the robbery, obtain the murder weapon, or actually shoot the two victims. Without the findings required by this Court's decision in *Tison*, Mr. Broadnax's death sentence violates the Eighth Amendment.

Mr. Broadnax's claims based on this new evidence carry a "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari," and there is "a significant possibility of reversal of the lower court's decision."

2. Mr. Broadnax's *Batson* claim is likely to succeed on the merits.

Mr. Broadnax's *Batson* claim warrants review, especially in light of the new evidence confirming the State's systematic, race-based jury selection practices. "[F]or more than a century, this Court consistently and repeatedly has reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause." *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005) ("*Miller-El II*"). Indeed, such racial discrimination "denies [a defendant] the protection that a trial by jury is intended to secure." *Batson v. Kentucky*, 476 U.S.

79, 86 (1985). Striking even a single juror based upon race violates the Fourteenth Amendment. *Id.* at 95.

Here, the State struck *all seven* Black qualified jurors based upon race. Put differently, the State used its peremptory strikes on just 18% of White jurors, but on 100% of the Black jurors. *See, e.g., Miller-El II*, 545 U.S. at 240–41 (finding a *Batson* violation where the State struck “91% of the eligible African-American venire members”); *Flowers v. Mississippi*, 588 U.S. 284, 287 (2019) (finding a *Batson* violation where the State “struck five of the six [or 83%] black prospective jurors”).

The State’s race-conscious jury selection is confirmed by the fact that the State created, used, modified, and printed a spreadsheet for jury selection which listed each qualified prospective juror with a “Race/Sex” column, which marked each juror as “B/M” (Black male), “B/F” (Black female), “W/M” (White male), or “W/F” (White female). Cert. Pet. at 7, 18–19. The names of *every single* Black juror, and *only* the Black jurors, were bolded.

The State also engaged in disparate questioning of Black jurors, and struck Black jurors while keeping similarly situated White jurors. For example, the State asked Mr. Curtis Riser, a Black prospective juror: “[Y]ou’re sitting in the case of a Black man Do you feel like you owe him any allegiance because of that?” 13 RR 251. And when Mr. Riser answered, “No,” the State continued to press: “So, in terms of race . . . There is not a problem for you in that . . . somebody could potentially say to you afterwards, how could you do that to another [B]lack man?” 13 RR 252. On this same juror’s questionnaire, the State handwrote, “Seems okay. . . **only concern** . . . [Defendant]’s **age + race** w/ Juror’s son **age**

+ *race*.” Cert. Pet. at 19, 23; Appl. at Ex. B. (emphases added). The State’s own notes clearly convey that race was top of mind among jury selection considerations.

The State continued to invoke unfair racial biases throughout the trial. For instance, the State asserted to the nearly all-White jury that Mr. Broadnax sought out the crime scene “because that’s where the rich white folks live,” used rap lyrics as evidence that Mr. Broadnax was part of a Black gang, and in closing argument explicitly compared Mr. Broadnax to “the worst kind of predator” that “we like to watch” on “Animal Planet.” 45 RR 50; 49 RR 89, 108, 111; 53 RR 22, 26–27, 74–75. After a trial in which the State relied heavily on race-based strategies and stereotypes, Mr. Broadnax was convicted and sentenced to death by a nearly all-White jury.

During the appeals process, the State argued that the spreadsheet “was created in preparation for a . . . *Batson* hearing held *after* the jury had been selected.” Resp’t’s Answer with Br. in Supp. at 64, *Broadnax v. Davis*, No. 3:15-CV-01758-N (N.D. Tex. June 26, 2017), ECF No. 63 (emphasis in original). In denying Mr. Broadnax relief on his previously filed federal habeas petition, the Fifth Circuit explicitly relied on the State’s assertion that it created the race-and-gender-marked spreadsheet “when preparing to defend its use of peremptory challenges.” *Broadnax v. Lumpkin*, 987 F.3d 400 at 410.

However, newly disclosed evidence confirms that the State misrepresented its timing and purpose for creating a race-marked spreadsheet in its appellate arguments. In January 2025, the Dallas County District Attorney’s Office allowed counsel for Mr.

Broadnax for the first time to review its jury selection files from the trial of Demarius Cummings. The Cummings files included a chart of prospective jurors, which bore the same race and gender notations as seen on the jury selection chart in Mr. Broadnax's case. The Cummings case was tried by substantially the same team of attorneys representing the State as in Mr. Broadnax's case, and Mr. Cummings's trial took place less than five months after Mr. Broadnax's trial concluded in August 2009. *Compare* 45 RR 2 (appearances for the State during Mr. Broadnax's trial) *with* 4 RR 2, *State v. Cummings*, No. F08-24666-Y (appearances for the State during Mr. Cummings's trial). Notably, in Cummings's case, there were no *Batson* objections, meaning that the State had no need to prepare for a *Batson* hearing. Since there was no *Batson* hearing to prepare for in Cummings's case, yet the State still prepared a jury chart with the same race and gender-focused notations, this newly disclosed file undermines the State's prior assertion that it created the spreadsheet disclosed in Mr. Broadnax's case to prepare for the *Batson* hearing. The newly disclosed file confirms that the State's marking of prospective jurors by race and gender was evidence of systematic raced-based discrimination by the State during jury selection proceedings.

Prior to the disclosure of this new evidence directly contradicting the State's pretextual reasons, Mr. Broadnax had petitioned this Court for a writ of certiorari. Although this Court denied the petition, both Justice Sotomayor and Justice Jackson dissented from the denial, stating that they "would reverse the judgment." *Broadnax v. Texas*, 144 S. Ct. 2700 (2024) (Sotomayor, J., and Jackson, J., dissenting). With the Cummings's file now

confirming that the State's previous explanation for the spreadsheet identifying prospective jurors by race was not true, there is certainly "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari," as well as "a significant possibility of reversal of the lower court's decision."

II. Petitioner Will Be Irreparably Harmed If a Stay Is Not Granted.

Irreparable harm is "necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring); *see also Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (granting a stay of execution and noting the "obviously irreversible nature of the death penalty"). Absent intervention from this Court, Mr. Broadnax will be executed on April 30, 2026, based on an erroneous theory that he was the shooter, without the necessary findings justifying a death sentence, and without ever receiving a fair trial free of invidious *Batson* violations. Such a situation undeniably constitutes irreparable injury.

In addition, this Court must "give non-frivolous claims of constitutional error the careful attention that they deserve." *Barefoot*, 463 U.S. at 888; *cf. id.* at 889 ("Approving the execution of a defendant before his appeal is decided on the merits would clearly be improper."). This consideration further warrants a stay of execution.

After the Texas Court of Criminal Appeals denied Mr. Broadnax's Third Subsequent Application on April 7, 2026, Mr. Broadnax timely petitioned this Court for a writ of certiorari. Merits briefing will take place over the next three months if this Court grants review, *see* Sup. Ct. R. 25.1–25.3. The Court cannot give due consideration to Mr. Broadnax's claims if he is executed as scheduled on April 30, 2026. Mr. Broadnax's petition raises serious

constitutional violations that are at odds with this Court’s precedents. This Court should grant the stay so that these issues may be properly evaluated before Mr. Broadnax is put to death.

III. The Balance of Equities and Public Interest Justify a Stay.

The equities in this case strongly favor granting a stay. *See Buckley v. Precythe*, 587 U.S. 119, 172 (2019) (Sotomayor, J., dissenting) (“[T]he equities in a death penalty case will almost always favor the prisoner so long as he or she can show a reasonable probability of success on the merits.”); *Barr v. Roane*, 589 U.S. 1097, 1098–99 (2019) (“[I]n light of what is at stake, it would be preferable for the [lower court’s] decision to be reviewed on the merits. . . before the executions are carried out.”). While states have an interest in enforcing criminal judgments obtained in accordance with the Constitution, the public equities would only suffer if convictions and capital sentences secured by constitutional violations are carried out without serious claims of such violations being duly assessed. *See Kyles v. Whitley*, 514 U.S. 419, 422 (1995) (“[O]ur duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.”).

Mr. Broadnax has been on death row for more than 17 years, and an execution date had not been set until December of last year. The State will not be prejudiced by a short stay of execution while this Court considers the merits of Mr. Broadnax’s claims. On the other hand, the public interest will be served by this Court ensuring that states comply with the Court’s decisions.

Further, as this Court has recognized, a *Batson* violation inflicts harm not only upon

the parties, but also upon the excluded juror and the entire community. *See e.g., Powers v. Ohio*, 499 U.S. 400, 407 (1991) (“Jury 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.”) (internal citations omitted). The public is harmed by the State’s participation in the “perpetuation of invidious group stereotypes and the inevitable loss of confidence in our judicial system that state-sanctioned discrimination in the courtroom engenders.” *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 140 (1994). The community at-large stands to gain from this Court’s meaningful enforcement of the crucial constitutional safeguards afforded by *Batson*.

When balanced against this limited delay requested by Mr. Broadnax, the benefits of this Court’s protection of Mr. Broadnax’s rights pursuant to the Eighth and Fourteenth amendment, combined with the irreversible nature of the death penalty, heavily tip the equities in favor of a limited stay of execution pending this Court’s review.

CONCLUSION

The application for stay of execution should be granted.

Respectfully submitted.

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APRIL 20, 2026