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 he now faces imminent execution on April 30, 2026, unless this Court grants a stay of execution. This Court should grant a stay because Mr. Broadnax's conviction and capital sentence were based on a trial plagued by violations of *Batson* v. *Kentucky*, 476 U.S. 79 (1986), among other constitutional errors.[1]

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 confirms that the State struck Black jurors because of their race, that the State's proffered explanation for the existence of a spreadsheet on which

[1] Mr. Broadnax is concurrently filing a separate petition for certiorari and an accompanying application for a stay of execution based on the admission of inflammatory rap lyrics evidence in violation of his constitutional rights to due process, fundamental fairness, and equal protection, and the admission of expert evidence in contravention of the Confrontation Clause under *Smith* v. *Arizona*, 602 U.S. 779 (2024).

they marked jurors by race was false, and that the State in fact used that spreadsheet during jury selection, in violation of Mr. Broadnax's *Batson* rights.

## BACKGROUND

Mr. Broadnax was convicted by a nearly all-White jury, after the State systematically struck every qualified Black prospective juror during *voir dire*. At the *Batson* hearing, the trial judge explicitly declined to engage in the required *Batson* analysis, 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." 42 RR 33–35. Instead, the trial judge reinstated a single Black juror simply "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." 42 RR 35. After direct appeal and while Mr. Broadnax's federal habeas petition was pending, the State disclosed, for the first time, a juror 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. First Subsequent Habeas Corpus Appl. ("Appl."), Ex. A, Jury Selection Spreadsheet from *State* v. *Broadnax*, No. F08-24667-Y (Feb. 8, 2023).

In light of this new evidence supporting his *Batson* claim, Mr. Broadnax filed an amended federal habeas petition on November 18, 2016. 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 asserted 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 race-and-gender-marked spreadsheet "when preparing to defend its use of peremptory challenges." *Broadnax* v. *Lumpkin*, 987 F.3d 400, 410 (5th Cir. 2021).

On February 8, 2023, Mr. Broadnax filed an amended first subsequent state habeas petition before the Texas Court of Criminal Appeals, arguing that the newly disclosed evidence from the State's jury selection files, including the spreadsheet and the juror questionnaire, established multiple *Batson* violations at his trial. Am. First Subsequent Appl. for Post-Conviction Writ of Habeas Corpus, *Ex parte Broadnax*, No. WR-81,573-01 (Feb. 8, 2023). The state court dismissed the petition. *Ex parte Broadnax,* No. WR-81,573-02, 2023 WL 3855947 (Tex. Crim. App. June 7, 2023). In September 2023, Mr. Broadnax petitioned this Court for a writ of certiorari. Pet. for a Writ of Cert., *Broadnax* v. *Texas*, 144 S. Ct. 2700 (Sept. 5, 2023). Though the petition was denied, 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).

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, Demarius Cummings. Mr. Cummings, who is Mr. Broadnax's cousin, was tried, convicted, and sentenced to life without parole for his involvement in the same incident underlying Mr. Broadnax's conviction. The State had previously allowed Mr. Broadnax's counsel to review Mr. Cummings' case files in September 2021, but at that time withheld all materials related to jury selection as work product. The newly available documents from Mr. Cummings' 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. *Compare* Suggestion to Reconsider on Ct.'s Own Mot. Dismissal of Am. First Subsequent Appl. ("Suggestion for Reconsideration"), Ex. 1, *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. June 3, 2025) *with* Appl. at Ex. A.

However, in Mr. Cummings' 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.

On June 3, 2025, Mr. Broadnax filed with the Texas Court of Criminal Appeals the Suggestion to Reconsider, seeking reconsideration of the dismissal of the *Batson* claim

based on the newly disclosed Cummings' jury chart, as well as new evidence in the form of juror affidavits from several of the excluded Black jurors in Mr. Broadnax's case. Suggestion for Reconsideration, *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. June 3, 2025). On November 6, 2025, the court denied Mr. Broadnax's Suggestion for Reconsideration. *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. Nov. 6, 2025).

This Court's review of Mr. Broadnax's claim—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 by the State's violations of Mr. Broadnax's rights to a fair trial and Equal Protection under the Constitution.

**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.

Mr. Broadnax's *Batson* claim, especially in light of the new evidence confirming the State's systematic, race-based jury selection practices, warrants review. "[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 (1986). 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). Appl. at Ex. A. 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***." 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, 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, 410 (5th Cir. 2021).

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' jury chart was prepared by substantially the same team of attorneys representing the State as in Mr. Broadnax's case, and Mr. Cummings' 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' trial). Notably, in Cummings' 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' 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' file now undeniably demonstrating that the State engaged in impermissible race-based use of peremptory strikes during Mr. Broadnax's trial, 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, 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 Suggestion for Reconsideration on November 6, 2025, Mr. Broadnax timely petitioned this Court for a writ of certiorari. Briefing

on the petition itself will likely extend into late March, *see* Sup. Ct. R. 15.3, and merits briefing will take place over following 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 a serious constitutional violation that is 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.

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 and quotations 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 *Batson* rights, 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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