No. 25A899

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, NO. 25-938

PETITIONER'S REPLY IN SUPPORT OF 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:

Petitioner, Mr. James Broadnax, files this Reply to Respondent's Brief in Opposition to Petitioner's Application for Stay of Execution ("BIO").[1] Mr. Broadnax faces imminent execution on April 30, 2026, as a result of a trial plagued by *Batson* violations (among other constitutional errors), unless this Court grants a stay of execution. Mr. Broadnax has demonstrated likely success on the merits of his *Batson* claim, and he will suffer irreparable harm absent a stay. As well, the balance of equities and public interest weigh heavily in favor of a stay, especially because a *Batson* violation harms not only the defendant, but also the community at-large.

THIS COURT SHOULD GRANT A STAY OF EXECUTION

I. Mr. Broadnax Has Shown Likely Success on the Merits.

Mr. Broadnax's claims readily meet the standard required for a stay of execution pending the Court's consideration of a writ of certiorari. There is both "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari" and "a significant possibility of reversal of the lower court's decision" regarding Mr. Broadnax's *Batson* claims. *Barefoot* v. *Estelle*, 463 U.S.

[1] Because Respondent makes identical arguments raised in the BIO to Mr. Broadnax's Petition to Writ of Certiorari, Mr. Broadnax incorporates his Reply to the Petition herein, and provides a shortened Reply.

800, 895 (1983). Furthermore, 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." *Id.* at 889. Mr. Broadnax's circumstances and claim justify such a stay now.

a. Newly available evidence, which no court has ever reviewed in its totality, shows that the State violated Mr. Broadnax's *Batson* rights.

Mr. Broadnax has made a strong showing that his *Batson* claim warrants this Court's review, particularly in light of the new evidence showing that the State's proffered race-neutral reasons for striking *all seven* Black qualified jurors based upon race from Mr. Broadnax's jury pool were pretextual. "[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). Importantly, "[i]n considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, ***all of the circumstances that bear upon the issue of racial animosity must be consulted.***" *Snyder* v. *Louisiana*, 552 U.S. 472, 478 (2008) (emphasis added).

The State acknowledges that there are "two instances of alleged new evidence" here: (1) the "voir dire seating chart from Broadnax's co-defendant's trial" and (2) the "declarations by three prospective jurors from Broadnax's case." BIO 3. In addition to the newly available evidence, no court has fully considered the metadata related to the jury selection

chart used at Mr. Broadnax's trial. The metadata shows that the chart, which had the names of *every single* Black juror, and *only* the Black jurors, bolded, was created in advance of jury selection. The newly available evidence and the metadata point are critical because they show that the State created and used the race-marked spreadsheet during jury selection and *not* after the jury had been selected, as the State has previously argued, and that the State's use of peremptory strikes were impermissibly based on race. *See* Pet. 8, 19–20.

As detailed in Mr. Broadnax's petition, every single one of the factors laid out in *Flowers* v. *Mississippi* as "probative evidence" of a *Batson* violation weighs in favor of finding that Mr. Broadnax's *Batson* rights were violated. 588 U.S. 284, 301–02 (2019); *see also* Pet. 12–16 (detailing how evidence concerning statistical evidence, disparate questioning, side-by-side comparisons of Black and White prospective jurors' responses, the State's misrepresentations of the record, the Dallas County District Attorney's Office extensive history of *Batson* violations, and the State's persistent reliance on racial biases throughout the trial all weigh in favor of finding *Batson* violations). The State maintains that the prosecutors using peremptory strikes on 100% of the prospective Black jurors from Mr. Broadnax's jury pool was a result of race-neutral motivations. But the newly available evidence demonstrates otherwise, and confirms that the State's motivations for striking the prospective Black jurors were race-based.

First, the jury selection chart from Mr. Cummings' trial, prepared by substantially

the same team of attorneys representing the State as in Mr. Broadnax's case, bore the same race and gender notations as seen on Mr. Broadnax's jury selection spreadsheet. *See* Pet. 16–21. Why is the discovery of Mr. Cummings' racially notated chart important? Because, significantly, in Mr. Cummings' case, there were no *Batson* objections that the State had to prepare for. This therefore undermines the State's prior assertion that it created the spreadsheet disclosed in Mr. Broadnax's case after jury selection and only to prepare for the *Batson* hearing. The spreadsheet confirms that the State systemically tracked jurors by race, in clear violation of *Batson.* [2]

Second, the jurors' declarations further reveal that the State's proffered reasons for excluding Black prospective jurors were pretextual and instead impermissibly motivated by the desire to keep Black prospective jurors off of the jury due to their race. While the State argued that it struck all of the prospective Black jurors for race-neutral reasons, the record, further confirmed by the jurors' declarations, shows that that was not the case. The State attempts to argue that it excluded prospective Black jurors because they "opposed

[2] The State argues that "the circumstances of Cummings's jury selection disprove the State engaged in race discrimination" because "Cummings's jury was composed of six White, four Black, and two Hispanic individuals." BIO 7. However, in Mr. Cummings' case, the State did not seek the death penalty, meaning the State did not have the same motive to employ the racial stereotypes of young Black men as violent predators as it had in Mr. Broadnax's case, where the State was seeking the death penalty. *See* Reply Br. of Petr. at 6–7. What is relevant is that, even in Mr. Cummings' case, the State still notated all prospective jurors by race, demonstrating that tracking jurors by race was a consistent and intentional practice, and that it was not done just to prepare for the *Batson* hearing in Mr. Broadnax's case. The fact that the State has been offering a demonstrably false explanation for the spreadsheet undermines the credibility of the State's arguments that it had race-neutral reasons to strike all of the Black jurors.

the death penalty or [thought] it should not be invoked," BIO 7, but the record evidence as well as the jurors' declarations disprove that argument. *See* Pet. 21–26 (showing that three prospective Black jurors who were excluded all confirmed that they were able to follow the law impartially and impose the death penalty according to the law, contrary to the State's characterization of their views); *see also* Reply Br. of Petr. at 5–6 (demonstrating how the State misrepresented the Black prospective jurors' beliefs concerning the death penalty in its attempt to manufacture race-neutral reasons for its strikes by mischaracterizing its own juror questionnaire options).

With the newly available Cummings' jury selection chart and juror declarations demonstrating that the State engaged in impermissible race-based use of peremptory strikes during Mr. Broadnax's trial, clearly there exists "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" regarding Mr. Broadnax's *Batson* claim.

b. This Court has jurisdiction to review this claim.

This Court has jurisdiction to review the TCCA's denial of a suggestion for reconsideration on the court's own motion under 28 U.S.C. § 1257, and this case presents an important opportunity for this Court to ensure that constitutional *Batson* safeguards are meaningfully enforced. The text of Tex. R. App. P. 79.2(d) explicitly allows for the TCCA

to hear a suggestion for reconsideration "on its own initiative," and in accordance with Tex. R. App. P. 79.2(d), the TCCA has a well-developed practice of rehearing decisions "on its own initiative" following the filing of a suggestion for reconsideration. *See* Pet. 27; *see also* Reply Br. of Petr. at 8–10. The State is also incorrect that "no precedent suggests the TCCA's denial of Broadnax's Suggestion to Reconsider is an appealable final decision." BIO 4. In *Emerson* v. *Johnson,* the Fifth Circuit held that because "the [TCCA] has entertained motions for reconsideration, notwithstanding the language in . . . Rule 79.2(d)" a habeas petitioner's filing of a suggestion for reconsideration constitutes a "***properly filed application for State postconviction*** or other collateral review." 243 F.3d 931, 932, 934–35 (2001); *see also* Pet. 27 and Reply Br. of Petr. 8–9. As well, this Court's Rule 13.3 contemplates the review of a "denial of rehearing" from a lower court's "*sua sponte* consider[ation]" in addition to, and separately from, a lower court judgment following a grant of rehearing. *See* Pet. 27–28. The TCCA's denial of Mr. Broadnax's Suggestion for Reconsideration, after its *sua sponte* consideration, constitutes an appealable final decision and provides this Court with jurisdiction to review under 28 U.S.C. § 1257.

The TCCA's denial was also necessarily based on federal law because the only claim that Mr. Broadnax presented was a federal *Batson* claim. *See* Pet. 28–29. Contrary to the State's assertion that "[t]here is no federal law involved in the TCCA's decision to reconsider a habeas case," BIO 5–6, the Fifth Circuit in *Rocha* v. *Thaler* rejected the assumption

that "a dismissal under § 5(a)(1) always rest[s] on an independent and adequate state-law ground," explaining that "[t]hat assumption cannot survive *Campbell*." 626 F.3d 815, 835 (5th Cir. 2010); *see also* Reply Br. of Petr. 10–11. Instead, where the decision of the state court "fairly appear[s] to rest primarily on federal law or to be interwoven with federal law[,]" then federal law consideration exists. *Coleman* v. *Thompson*, 501 U.S. 722, 735 (1991). That is precisely the case here—Mr. Broadnax presented a single, federal *Batson* claim, and where that claim was based on evidence previously unavailable to Mr. Broadnax, the TCCA necessarily considered the underlying federal claim to reach its denial.

II. Absent a Stay, Mr. Broadnax Will Suffer Irreparable Harm.

This is a capital case and irreparable harm is "necessarily present in capital cases." *Wainwright* v. *Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring). Undeniably, the "nature of the death penalty" is "obviously irreversible." *Evans* v. *Bennett*, 440 U.S. 1301, 1306 (1979). Absent intervention from this Court, Mr. Broadnax will be executed on the basis of a conviction and sentence that was obtained through a trial plagued with multiple constitutional errors, including the multiple *Batson* violations at issue here. This Court should grant the stay so that it will have time to consider these critical issues properly before Mr. Broadnax is put to death and suffers irreparable injury.

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

As this is a death penalty case and Mr. Broadnax sufficiently demonstrates "a reasonable probability of success of the merits" of his *Batson* claims, 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."). The public interest would not be served and instead suffer significantly if capital sentences were secured through the violation of constitutional rights, and this Court's "duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case." *Kyles* v. *Whitley*, 514 U.S. 419, 422 (1995). The public interest would be much better served by this Court granting this stay while the Court considers Mr. Broadnax's claim and ensures that the states comply with federal constitutional precedent.

The public interest is also directly implicated when a *Batson* claim is at issue because a *Batson* violation inflicts harm not only upon the parties, but also upon the excluded juror and the entire community. As this Court recognized, 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 balance of equities and public interest overwhelmingly weigh in favor of granting the stay of execution pending

this Court's review.

CONCLUSION

The application for stay of execution should be granted.

Respectfully submitted.

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