No.

In the Supreme Court of the United States

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS

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

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
EVA WENWA GAO
JULIE J. CHANDLER
DAVID O. CEASAR
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

To the Honorable Samuel A. Alito, Jr., 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. Broadnax has been on Texas death row since he was 20 years old, and he now faces imminent execution on April 30, 2026, unless this Court stays his execution. This Court should grant a stay, because Mr. Broadnax's conviction and capital sentence were based on a trial plagued by at least two constitutional errors.[1]

First, in this capital proceeding where two Black men were accused of murdering two White victims, the State appealed to the racial bias of the nearly all-White jury, including by using rap lyrics composed by Mr. Broadnax to incorrectly portray him as a violent, blood-thirsty Black gang member and resorting to racially inflammatory arguments, in violation of due process, fundamental fairness, and equal protection under the Fourteenth and Eighth Amendments. *Second*, the State relied on an out-of-court expert's testimonial

[1] Mr. Broadnax is concurrently filing a separate petition for a writ of certiorari and an accompanying application for stay of execution based on that petition, which focuses on the state's unconstitutional jury selection practices in violation of *Batson* v. *Kentucky*, 476 U.S. 79 (1986), and the state court's refusal to consider new evidence—made available to Mr. Broadnax for the first time after all previous federal and state habeas proceedings had been exhausted—that further confirms such violations occurred at Mr. Broadnax's trial.

hearsay statements, via a surrogate expert who did not himself have personal knowledge about the truth of those statements, to link Mr. Broadnax to the crime scene and the victims, in violation of the Confrontation Clause of the Sixth Amendment. As Mr. Broadnax demonstrates in detail in his concurrently filed certiorari petition, his conviction and capital sentencing cannot stand under established law.

On November 6, 2025, the Texas Court of Criminal Appeals denied Mr. Broadnax's second subsequent habeas application for relief from his conviction and capital sentence on both of these grounds. On December 17, 2025, upon request by the Texas State Attorney General's office, the trial judge presiding over Mr. Broadnax's case set an execution date of April 30, 2026. This Court's review of the merits of Mr. Broadnax's claims—and a stay of his execution before such merits review is concluded—is necessary to prevent the carrying out of a death sentence that was secured by multiple violations of the Constitution.

STANDARD FOR STAY OF EXECUTION

The standard for granting a stay of execution is well-established: the party seeking a stay must show "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, 895 (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 889. 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 this 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 that there is "a significant possibility of reversal of the lower court's decision." *Barefoot*, 463 U.S. at 895. Both of Mr. Broadnax's claims for relief readily meet this standard.

A. The First Question Presented Warrants Review and Is Likely to Succeed on the Merits.

Mr. Broadnax's first claim presents an important and meritorious question warranting this Court's review: whether the State's use of rap lyrics composed by a Black defendant in a capital sentencing proceeding, in order to explicitly argue to a nearly all-White jury that the composition of such lyrics proved the criminal propensity of the Black defendant, violates the due process, fundamental fairness, and equal protection guarantees of the Eighth and Fourteenth Amendments. As explained in detail in Mr. Broadnax's petition,

the answer should be yes.

At the punishment phase of Mr. Broadnax's capital sentencing proceeding, the State introduced over 40 pages of his handwritten rap lyrics, characterized them as "gangster rap," and argued to the jury that the lyrics constituted Mr. Broadnax's "self-admission" of his criminal "mentality"—exploiting racial stereotypes commonly (and incorrectly) associated with rap music to transform artistic expression into a death warrant. Cert. Pet. at 5–6. Further building upon such racially inflammatory references, and escalating the troubling pattern of racially charged prosecutorial conduct that permeated the entire trial, during closing argument to the jury, the State explicitly called Mr. Broadnax "a new breed" and a "monster," like "predators" on "Animal Planet," "chomping at the bit to engage in violence." *Id.* at 5–6, 21–22. These arguments made a troublingly strong impression upon the jury—during deliberation, the jury specifically asked to see the rap lyrics twice before returning a death sentence that same day. *Id.* at 6–7. As a growing body of jurisprudence and scholarship recognizes—including, most recently, the Texas Court of Criminal Appeals itself in *Hart* v. *Texas*, 688 S.W.3d 883 (Tex. Crim. App. 2024)—such use of rap lyrics as propensity evidence against criminal defendants is "highly prejudicial" due to the inherent "nature of the [rap] lyrics" and the rap music genre. Cert. Pet. at 8–10. This prejudice was realized at Mr. Broadnax's trial, and, if unchecked by this Court, will soon result in Mr. Broadnax's execution.

This case presents an optimal vehicle for review of this first question presented. This Court recently reaffirmed that "clearly established law provide[s] that the Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair." *Andrew* v. *White*, 604 U.S. 86, 96 (2025). However, this Court has not yet developed further guidance on what constitutes "unduly prejudicial" evidence that crosses the threshold for unconstitutionally unfair criminal proceedings. The unique fact circumstances of this case—featuring a Black defendant in a capital proceeding accused of murdering two White victims, and the State's appeals to a nearly all-White jury of community-wide racial stereotypes associated with rap lyrics as a music genre—presents an appropriate vehicle for assessing the implications of the use of rap lyrics and related racially charged evidence and prosecutorial arguments, which are at the cross roads of the due process clause of the Fourteenth Amendment, the cruel and unusual punishment clause of the Eighth Amendment, and the equal protection clause of the Fourteenth Amendment. There is more than a reasonable probability that four members of this Court would consider this claim sufficiently meritorious to grant certiorari, and a significant possibility of reversal upon review.

B. The Second Question Presented Warrants Review and Is Likely to Succeed on the Merits.

Mr. Broadnax's second claim similarly warrants review. It is based on the State's

introduction of an absent forensic analyst's testimonial statements through a surrogate expert, in violation of the Sixth Amendment's Confrontation Clause under this Court's recent decision in *Smith* v. *Arizona*, 602 U.S. 779 (2024). In *Smith*, this Court made clear for the first time that "[a] State may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her," and that "nothing changes if the surrogate . . . presents the out-of-court statements as the basis for his expert opinion," because those hearsay statements are still being improperly admitted for their truth. *Id.* at 802–03.

That is precisely what occurred at Mr. Broadnax's trial. To link Mr. Broadnax to the victims and the crime scene, and as a central part of the State's case during the trial phase, the State introduced a serology report prepared by one forensic scientist at the Texas Department of Public Safety Crime Laboratory, via *another* surrogate expert who testified extensively about what the absent analyst did, how she ran the presumptive tests, and what those tests revealed, and then relied upon the absent analyst's findings as the basis for his own DNA analysis. The first analyst, who authored the serology report that the second expert relied upon, was never subject to cross-examination. Mr. Broadnax is entitled to relief under a straightforward application of *Smith*. Cert. Pet. at 10–12, 23–29.

This case also presents an optimal vehicle for review under *Smith*. Before *Smith*, there was uncertainty across the country about whether a state could use one surrogate

expert to introduce another expert's reports and findings at trial without violating the Confrontation Clause. *Smith* answered that question with a clear and resounding no. And yet, if the Texas Court of Criminal Appeals' decision is allowed to stand and Mr. Broadnax's execution is not stayed, Mr. Broadnax will be put to death based on a conviction that was secured by exactly the same practice condemned by *Smith*. There is thus more than a reasonable probability that four members of this Court would consider this claim sufficiently meritorious to grant certiorari, and a significant possibility of reversal upon review.

II. Petitioner Will Be Irreparably Harmed If 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—an execution wrongly secured by multiple constitutional errors underlying his conviction and death penalty. That 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."). That consideration further warrants a stay by this Court. After the Texas Court of Criminal Appeals denied Mr. Broadnax's second subsequent habeas application on

November 6, 2025, Mr. Broadnax timely files this petition for a writ of certiorari with this Court. Briefing on the petition itself will likely extend into late March, *see* Sup. Ct. R. 15.3, 15.5, and merits briefing will take place over the next three to four months if this Court grants review, *see id.* at 25.1–25.3. That means this Court cannot give due consideration to whether either or both of Mr. Broadnax's claims meets the standard for review and relief—which, Mr. Broadnax respectfully submits, should be answered in the affirmative for both of his claims—unless this Court grants a stay of the execution currently scheduled for April 30, 2026. Mr. Broadnax's petition raises at least two serious constitutional errors that warrant correction. This Court should grant the stay so that these claims are properly evaluated before Mr. Broadnax irreversibly loses his life over them.

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) ("Our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.") (citations omitted).

In addition, in this particular case, Mr. Broadnax has been on death row for almost 17 years, and an execution date had never 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, whereas, on the other hand, public interest will be served by any further guidance from this Court's review on the contours of the important constitutional issues raised in Mr. Broadnax's petition.

Further, in considering the equities and relative harms to the parties, this Court also considers the extent to which a prisoner had unnecessarily delayed bringing their claim. *See, e.g.*, *Nelson* v. *Campbell*, 541 U.S. 637, 649–50 (2004). In this case, Mr. Broadnax has caused no such delay. He has been timely and diligent in identifying and pursuing his claims. The bases underlying his two claims brought in the accompanying petition—*Hart* v. *Texas*, 688 S.W.3d 883 (Tex. Crim. App. 2024), in which the Texas Court of Criminal Appeals held for the first time that "the admission of rap music" as character evidence in a criminal trial "is highly prejudicial due to the nature of the lyrics" under Texas law, *id.* at 894, and *Smith* v. *Arizona*, 602 U.S. 779 (2024), in which this Court clarified for the first time that "[a] State may not introduce the testimonial out-of-court statements of a forensic

analyst at trial," including "through a surrogate analyst who did not participate in their creation," *id.* at 802–03, were respectively issued in May and June of 2024. Promptly following the issuance of these decisions, which provided previously unavailable legal grounds for Mr. Broadnax to challenge his conviction and death penalty pursuant to Article 11.071 § 5(a)(1) of the Texas Code of Criminal Procedure, Mr. Broadnax filed his second subsequent state habeas application in August 2024, and, upon the Texas Court of Criminal Appeals' denial of that application in November 2025, timely files this petition and application without any delay or requests for extension. Should this Court grant a stay of execution, Mr. Broadnax will continue to litigate his claims in the same timely and diligent fashion. When balanced against this limited delay requested by Mr. Broadnax, the weighty constitutional questions raised in Mr. Broadnax's petition, 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.

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
EVA WENWA GAO
JULIE J. CHANDLER
DAVID O. CEASAR
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

FEBRUARY 4, 2026