

No. 25A900

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. 25-939*

**PETITIONER'S REPLY IN SUPPORT OF 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 |
|---|-------------|
| INTRODUCTION | 1 |
| THIS COURT SHOULD GRANT A STAY OF EXECUTION | 1 |
| I. Mr. Broadnax Has Shown Likely Success on the Merits..... | 1 |
| a. Mr. Broadnax’s first claim, based on the introduction of his rap lyrics against him during the punishment phase of his trial, warrants review and is likely to succeed on the merits..... | 2 |
| b. Mr. Broadnax’s second claim, based on this Court’s recent <i>Smith</i> ruling, which implicates Mr. Broadnax’s Sixth Amendment rights, warrants review and is likely to succeed on the merits..... | 4 |
| c. This Court has jurisdiction to review this claim. | 5 |
| II. Absent a Stay, Mr. Broadnax Will Suffer Irreparable Harm..... | 8 |
| III. The Balance of Equities and Public Interest Justify a Stay..... | 9 |
| CONCLUSION | 10 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|------------|
| Cases | |
| <i>Ake v. Oklahoma</i> , 470 U.S. 68 (1985)..... | 6 |
| <i>Andrew v. White</i> , 604 U.S. 86 (2025)..... | 3 |
| <i>Ex parte Barbee</i> , 616 S.W.3d 836 (Tex. Crim. App. 2021) | 7 |
| <i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983)..... | 2, 3 |
| <i>Buckley v. Precythe</i> , 587 U.S. 119 (2019)..... | 9 |
| <i>Ex parte Campbell</i> , 226 S.W.3d 418 (Tex. Crim. App. 2007) | 7 |
| <i>Evans v. Bennett</i> , 440 U.S. 1301 (1979)..... | 8 |
| <i>Hart v. Texas</i> , 688 S.W.3d 883 (Tex. Crim. App. 2024) | 7, 8 |
| <i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)..... | 9 |
| <i>Rocha v. Thaler</i> , 626 F.3d 815 (5th Cir. 2010)..... | 7 |
| <i>Ruiz v. Quarterman</i> , 504 F.3d 523 (2007) | 6, 7 |
| <i>Smith v. Arizona</i> , 602 U.S. 779 (2024)..... | 4, 5, 7, 8 |

Wainwright v. Booker,
473 U.S. 935 (1985).....8

Statutes

Tex. Code Crim. Proc. Art. 11.071 § 5(a)(1).....6-8

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 constitutional errors, including violations of due process, fundamental fairness, and equal protection under the Fourteenth and Eighth Amendments and the Confrontation Clause of the Sixth Amendment (among other constitutional errors), unless this Court grants a stay of execution. Mr. Broadnax has demonstrated likely success on the merits of his claims, 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.

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

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.

court’s decision” regarding Mr. Broadnax’s Sixth, Eighth, and Fourteenth Amendment claims. *Barefoot v. Estelle*, 463 U.S. 880, 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 claims justify such a stay now.

- a. Mr. Broadnax’s first claim, based on the introduction of his rap lyrics against him during the punishment phase of his trial, warrants review and is likely to succeed on the merits.**

Mr. Broadnax has made a strong showing that his first claim—based on the State’s use of his rap lyrics against him in his capital sentencing proceeding in order to argue to a nearly all-White jury that the composition of such lyrics proved his criminal propensity—presents an important question warranting this Court’s review and a significant possibility of reversal upon review.

During Mr. Broadnax’s sentencing, the State introduced Mr. Broadnax’s rap lyrics, characterizing them as “gangster rap” and arguing to the jury that the lyrics constituted Mr. Broadnax’s “self-admission” of his criminal “mentality.” *See* Pet. 5–6. Mr. Broadnax submits that this exploitation of racial stereotypes commonly (and incorrectly) associated with rap music violated Mr. Broadnax’s rights under the Eighth and Fourteenth Amendments. Notably, the jury in Mr. Broadnax’s case asked to see the rap lyrics twice before

returning a death sentence that same day. *Id.* at 6–7. The State’s misrepresentation of Mr. Broadnax’s rap lyrics is particularly troubling because the State engaged in racially charged strategies throughout the entire trial. For example, 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.

This Court recently reiterated 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). Mr. Broadnax’s case presents an optimal opportunity for this Court to provide guidance on the application of these principles to 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. *See* Pet. 16–23. Given the specific circumstances of Mr. Broadnax’s case—where the State invoked racially motivated arguments, including the use of rap lyrics, before a nearly all-White jury to secure a death penalty for Mr. Broadnax, a young male Black defendant—there clearly exists 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.

- b. Mr. Broadnax's second claim, based on this Court's recent *Smith* ruling, which implicates Mr. Broadnax's Sixth Amendment rights, warrants review and is likely to succeed on the merits.**

Mr. Broadnax has also demonstrated that his second claim—based on the State's introduction of a state-employed and out-of-court expert's serology report and findings at trial, via the testimony of another expert who testified to and relied upon the absent expert's out-of-court statements as a basis of the second expert's own findings, in violation of the Sixth Amendment to the U.S. Constitution under *Smith v. Arizona*, 602 U.S. 779 (2024)—likewise warrants this Court's review and presents a significant possibility of reversal upon review.

In *Smith v. Arizona*, this Court resolved, for the first time, “confusion in courts across the country” by holding that when a state's expert testifies about an absent analyst's findings, *even if* purportedly for the purpose of explaining the basis of the testifying expert's own analysis, the absent analyst's findings are being introduced for the truth of the matter asserted and are thus hearsay triggering the protection of the Confrontation Clause when the statements are also testimonial. 602 U.S. at 800. At Mr. Broadnax's trial, the

State, as part of its strategy to link Mr. Broadnax to the victims and the crime scene, introduced a serology report prepared by one forensic scientist, Kimberlee Mack, via *another* surrogate expert, James Nichols. Nichols—the surrogate expert—and not Mack, testified extensively about how Mack 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. *See* Pet. 25–29. Mr. Broadnax was never given the opportunity to cross examine Mack, despite the fact that Nichols’ testimony brought in Mack’s statements for the truth of the matter asserted, in direct violation of *Smith*. *See id.*

In denying Mr. Broadnax’s second subsequent habeas application, the TCCA clearly erred and failed to follow the clear precedent set by *Smith*. If the TCCA’s decision is allowed to stand and Mr. Broadnax’s execution is not stayed, Mr. Broadnax will be executed based on a conviction and sentence secured by the State’s violation of his Confrontation Clause rights. There is therefore more than a reasonable probability that four members of this Court would consider this claim sufficiently meritorious to grant certiorari, as well as a significant possibility of reversal upon review.

c. This Court has jurisdiction to review this claim.

This Court has jurisdiction to review the TCCA’s dismissal of Mr. Broadnax’s claims, as the dismissal was necessarily based upon the TCCA’s interpretation of Mr. Broadnax’s rights to due process, fundamental fairness, and equal protection under the Eighth and

Fourteenth Amendments to the U.S. Constitution, and his right to confront out-of-court hearsay declarants under the Sixth Amendment to the U.S. Constitution.

Regardless of the language the court used in its dismissal, jurisdiction exists when there is a federal law question that is “integral to the state court’s disposition of the matter” and the holding of the state court “depends on the court’s federal law ruling and consequently does not present an independent state ground for the decision rendered.” *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). Mr. Broadnax’s claims, which are based on the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, satisfy this standard. The State’s contention that the TCCA issued an “explicit statement that it did not reach the merits of his claims,” BIO 4, is incorrect and seeks to avoid this Court’s and the Fifth Circuit’s clear guidance that analysis is required to determine whether jurisdiction exists based on a federal law question. *See* Pet. 30–32.

It is well-established that the TCCA’s statement that it “dismiss[ed] the application as an abuse of the writ without considering the merits of the claims,” Pet., App. B at 4a, is a boilerplate formulation of its dismissals of § 5(a) applications, **regardless of** whether the underlying decision was based on a procedural or substantive ground. *See* Reply Br. of Petr. 3–5 (listing cases where the court found that federal jurisdiction existed despite the TCCA’s boilerplate language that it denied the application as an abuse of the writ without considering the merits of the claims). The Fifth Circuit has made clear that the boilerplate

language of such a dismissal is not dispositive of the grounds for the dismissal. *See Ruiz v. Quarterman*, 504 F.3d 523, 527 (2007) (“The boilerplate dismissal by the CCA of an application for abuse of the writ is itself uncertain on this point, being unclear whether the CCA decision was based on the first element, a state-law question, or on the second element, a question of federal constitutional law.”). Instead, since the TCCA’s boilerplate language is utilized regardless of what ground it based its dismissal on, a closer look at the underlying record is required to determine whether there is federal jurisdiction or not. The State has already conceded, as it must, that “[w]hether a § 5(a)(1) dismissal is independent of federal law turns on case-specific factors,” including the records of the case, which a federal court “can—and should—read . . . to determine which of the two elements of § 5(a)(1) was the basis of the court’s dismissal.” *Rocha v. Thaler*, 626 F.3d 815, 835–37 (5th Cir. 2010) (cited in Opp’n 14–15). Such a review confirms that this Court has jurisdiction over both claims presented here.

The first element of Art. 11.071, § 5(a) is present when there is “a legal basis . . . previously unavailable,” including when “subsequent case law makes it easier to establish the claim,” *Ex parte Barbee*, 616 S.W.3d 836, 839 (Tex. Crim. App. 2021), and the second element requires a “*prima facie* showing” of “a cognizable constitutional claim,” which necessarily involves a substantive review of the underlying constitutional issue, *Ex parte Campbell*, 226 S.W.3d 418, 421–22, n.7 & n.9 (Tex. Crim. App. 2007). Mr. Broadnax filed his

second subsequent application after the TCCA held in *Hart v. Texas*, 688 S.W.3d 883 (Tex. Crim. App. 2024), as a matter of first impression in Texas, that “the admission of rap music . . . is highly prejudicial due to the nature of the lyrics,” 688 S.W.3d at 894, and after this Court’s recent decision in *Smith v. Arizona* cleared up, for the first time, the “confusion in courts across the country” about whether a state is permitted to introduce an out-of-court expert’s findings through a surrogate expert testifying at trial, 602 U.S. at 789. Each of these two claims was thus prompted by a new legal basis that had been unavailable at the time of Mr. Broadnax’s previous habeas proceedings, satisfying the first requirement under Art. 11.071 § 5(a). *See* Pet. 9, 14. Thus, the TCCA’s dismissal of these claims was necessarily founded on the federal constitutional issues that serve as the bases for these claims, and both claims are properly presented for this Court’s review.

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 violations of Mr. Broadnax’s Sixth, Eighth, and Fourteenth Amendment rights. 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 constitutional 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 would 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 claims, provides further guidance on the contours of the important constitutional issues raised in Mr. Broadnax’s petition, and ensures that the states comply with federal constitutional precedent.

Considering the significant constitutional questions raised in Mr. Broadnax’s petition, and the irreversible nature of the death penalty, 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.

STEVEN C. HERZOG
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

APRIL 20, 2026