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

PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 30, 2026

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the State's use in a capital sentencing proceeding of rap lyrics composed by a Black defendant to argue to a nearly all-White jury that the Black defendant must be a violent and dangerous person because he wrote the rap lyrics, violates due process, fundamental fairness, and equal protection under the Eighth and Fourteenth Amendments to the U.S. Constitution.

2. Whether 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, violates the Sixth Amendment to the U.S. Constitution under *Smith* v. *Arizona*, 602 U.S. 779 (2024).

RELATED PROCEEDINGS

Criminal District Court of Texas (Dallas County):

State v. *Broadnax*, No. F08-24667-Y (Aug. 21, 2009)

Ex parte Broadnax, No. W08-24667-Y(A) (Sept. 17, 2014)

Ex parte Broadnax, No. W08-24667-Y(B) (Feb. 6, 2023)

Texas Court of Criminal Appeals:

Broadnax v. *State*, No. AP-76,207 (Dec. 14, 2011)

Ex parte Broadnax, No. WR-81,573-01 (May 20, 2015)

Ex parte Broadnax, No. WR-81,573-02 (June 7, 2023)

Ex parte Broadnax, No. WR-81,573-03 (Nov. 6, 2025)

United States District Court (N.D. Tex.):

Broadnax v. *Davis*, Civ. No. 15-1758 (July 23, 2019)

United States Court of Appeals (5th Cir.):

Broadnax v. *Lumpkin*, No. 19-70014 (Feb. 8, 2021)

United States Supreme Court:

Broadnax v. *Texas*, No. 11-9294 (Oct. 1, 2012)

Broadnax v. *Texas*, No. 14-9964 (Oct. 5, 2015)

Broadnax v. *Lumpkin*, No. 21-267 (Jan. 18, 2022)

Broadnax v. *Texas*, No. 23-248 (June 24, 2024)

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Lucy J. Litt, *From Rhyming Bars to Behind Bars: The Problematic Use of Rap Lyrics in Criminal Proceedings,* 92 UMKC L. Rev. 121 (2023) 10

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PETITION FOR A WRIT OF CERTIORARI

James Garfield Broadnax respectfully petitions for a writ of certiorari to review the order of the Court of Criminal Appeals of Texas (the "TCCA") dismissing his second subsequent habeas application for relief from his conviction and death sentence.

OPINIONS BELOW

The notation of the Dallas County Criminal District Court forwarding Mr. Broadnax's second subsequent habeas application to the TCCA (App. A at 1a) is unreported. The TCCA's order dismissing Mr. Broadnax's second subsequent habeas application (App. B at 3a) is not published in the South Western Reporter, but is reproduced at 2025 WL 3095921.

JURISDICTION

The order of the TCCA dismissing Mr. Broadnax's second subsequent habeas application was entered on November 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the U.S. Constitution, which provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," and the Eighth Amendment to the U.S. Constitution, which provides that "cruel and unusual punishments" should not be inflicted. This case also involves the Sixth Amendment to the U.S. Constitution, which provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

This case further involves Texas Code of Criminal Procedure, Article 11.071 § 5(a)(1), which states that "a subsequent application for a writ of habeas corpus" is appropriate, *inter alia*, when "the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application . . . because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application."

* * *

STATEMENT OF THE CASE

James Garfield Broadnax, a Black man sentenced to death at a young age for the murder of two White victims

by a nearly all-White jury, respectfully petitions this Court for a writ of certiorari to review the TCCA's dismissal of his second subsequent habeas application. Mr. Broadnax's capital trial and sentencing were infected by at least two independent constitutional violations that are fatal to the State's case. Mr. Broadnax is currently scheduled to be executed on April 30, 2026; this Court should not permit his execution to go forward without addressing these violations.

The first question presented arises from the State's reliance on racially inflammatory evidence to secure a death sentence. At Mr. Broadnax's capital sentencing, 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 a "self-admission" of Mr. Broadnax's criminal "mentality." These arguments exploited racial stereotypes commonly associated with rap lyrics and the Black community to transform Mr. Broadnax's artistic expression into a death warrant, and, even more troublingly, fit into a broader pattern of racially charged prosecutorial practices and arguments throughout Mr. Broadnax's trial. The State offered little other purported evidence of dangerous propensity at the punishment phase—Mr. Broadnax was just past 18 years old at the time of the offense, with no prior criminal record aside from a single non-violent, marijuana possession charge. However, the jury asked to see the rap lyrics twice during deliberations before returning a death sentence that same day. Under this Court's recent decision reaffirming that the Constitution "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 death sentence cannot stand.

The second question presented arises from the State's introduction at trial of an absent forensic analyst's testimonial statements via a substitute expert, in violation of the Confrontation Clause under this Court's recent guidance in *Smith* v. *Arizona*, 602 U.S. 779 (2024). At Mr. Broadnax's trial, the State relied on serological evidence to link Mr. Broadnax to the victims and the crime scene. The serology report was prepared by Kimberly Mack, an analyst employed by the State, who collected the samples and performed blood tests, but Mack never testified at trial. Instead, another analyst, James Nichols, served as a surrogate, and purported to describe at trial what Mack did, how she ran the presumptive tests, and what those tests revealed. A conviction secured by such testimonial hearsay is squarely prohibited under *Smith* v. *Arizona*, as multiple courts have confirmed by applying *Smith* to reverse convictions secured by surrogate expert testimony. Mr. Broadnax is entitled to the same relief.

Mr. Broadnax has spent nearly two decades on death row as a result of a trial infected by multiple constitutional errors, and the trial court recently scheduled his execution for April 30, 2026. This Court has recognized that "[i]t is of vital importance that the decisions made in [the death penalty] context be, and appear to be, based on reason rather than caprice or emotion," and that the "qualitative difference between death and other penalties" requires "a greater degree of reliability when the death sentence is imposed." *Monge* v. *California*, 524 U.S. 721, 732 (1998); *Lockett* v. *Ohio*, 438 U.S. 586, 604 (1978). Both of the questions presented here strike at the heart of these protections. This Court should grant the petition for certiorari.

A. Facts Relevant to the First Question Presented

1. Mr. Broadnax is a Black man who was sentenced to death for the murder of two White victims. He was 19 years old at the time of the offense. The prosecution resorted to stereotypical racial insinuations throughout Mr. Broadnax's capital trial and sentencing. This started in *voir dire*, where the State deliberately sought an all-White jury, engaged in racially disparate questioning, and used the majority of its peremptory strikes to remove all seven Black prospective jurors from the pool of 47 qualified venire members. *See* Cert Pet. at 9–12, *Broadnax* v. *Texas*, No. 23-248 (Sept. 5, 2023).[1] The trial court restored one Black juror, and Mr. Broadnax was ultimately convicted and sentenced to death by a nearly all-White jury. *Id.* at 12–13. During trial, the State repeatedly made racially charged arguments, telling the jury that Mr. Broadnax sought out the crime scene "because that's where the rich white folks live," and referring to Mr. Broadnax as "a new breed" and a "monster," like the "predators" on "Animal Planet," "chomping at the bit to engage in violence." *Id.* at 8–9; Second Subsequent Appl. at 17–18, No. WR-81,573-03 (Aug. 16, 2024).

2. During Mr. Broadnax's capital sentencing proceeding, the State heavily relied on rap lyrics composed by Mr. Broadnax as purported evidence of Mr. Broadnax's dangerous future propensity to commit criminal acts—a required finding in Texas for the jury to sentence a defendant to death. Second Subsequent Appl. at 10–13. The State introduced over 40 pages of rap lyrics handwritten in Mr. Broadnax's notebooks, and referred to

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[1] The prosecution's jury selection practice in violation of *Batson* v. *Kentucky*, 476 U.S. 79 (1986), further confirmed by recently revealed evidence, is the focus of a separate petition for a writ of certiorari from Mr. Broadnax, also filed with the Court this same date.

them as "gangster rap." *Id.* The State selectively quoted lyrics composed by Mr. Broadnax to highlight references to murder, robbery, drugs, gangs, and violence in general, while deliberately omitting large passages from his compositions that portrayed various other, peaceful themes such as love, regret, and redemption, and despite the substantial record making clear that these rap lyrics were Mr. Broadnax's artistic creations. *Id.* at 13–16.

The State then argued to the jury that the lyrics constituted a "self-admission" of Mr. Broadnax's purported criminal "mentality," and that Mr. Broadnax would engage in the activities depicted in his rap lyrics if he were allowed to live. *See, e.g.*, 49 RR 122–23[2] (arguing that references to murder and witnesses proved Mr. Broadnax's "mentality" of murdering witnesses); *see also* 51 RR 117–18 ("[M]any of [Mr. Broadnax's] lyrics, probably a large majority of them, are talking about just what he did in this case, and that's killing folks and robbing folks."); *id.* at 183 (arguing that the rap lyrics composed by Mr. Broadnax proved his "gang mentality" because "the root word of . . . gangster rap is gangster"). In its final closing argument, the State asserted to the jury that Mr. Broadnax "told you what he was going to do in his writings before he even did it." 53 RR 79. No limiting instruction was given despite defense counsel's request. 49 RR 74–76.

3. The record confirms that the jury focused on and was heavily influenced by the rap lyrics in their sentencing decision. During deliberation, the jury asked twice to see the lyrics Mr. Broadnax had composed that the State

[2] We cite to the trial transcript, contained in the Reporter's Record, as "[vol.] RR [page]." We cite to the other trial court records including court filings, contained in the Clerk's Record, as "CR [vol.]-[page]."

introduced. Second Subsequent Appl. at 16 (citing 53 RR 83–86; CR 3-645, 648). That same day, after examining these materials, the jury sentenced Mr. Broadnax to death. *Id.*

Aside from the rap lyrics and testimony interpreting the rap lyrics, the State otherwise had little evidence suggesting that Mr. Broadnax was likely to commit future acts of violence—nothing that was sufficient to overcome the substantial mitigating evidence presented in his favor. *See generally* Second Subsequent Appl. at 17–20. Mr. Broadnax was 19 years old at the time of the offense, just past the 18-year-old-threshold for which the death penalty would have been *per se* unconstitutional, *see Roper* v. *Simmons*, 543 U.S. 551 (2005), and he presented expert testimony on the underdeveloped nature of brain and emotional maturity at that young age, 50 RR 26–52. Mr. Broadnax also presented evidence about the physical and psychological abuse he experienced at the hands of his own family from childhood through adolescence, and that throughout childhood he never had a stable home environment and was at times homeless. 51 RR 51–62, 66–74, 80–82, 161–63. The evidence also established that despite these hardships, Mr. Broadnax had no history of being violent, and was viewed by others as trustworthy and thoughtful. 50 RR 232–33; 51 RR 273. He had no prior criminal record aside from a single marijuana possession charge, a non-violent offense. *See* State's Exhibit 454A; 50 RR 269–71.

B. Background Relevant to the First Question Presented

1. Due process and fundamental fairness under the Fourteenth and Eighth Amendments govern the State's conduct during capital criminal trials. *See Cooper* v. *Oklahoma*, 517 U.S. 348, 367 (1996); *Johnson* v. *Mississippi*,

486 U.S. 578, 584–85 (1988). Equal protection under the Fourteenth Amendment provides further protection for all criminal defendants. *See McCleskey* v. *Kemp*, 481 U.S. 279, 309 n. 30 (1987). These constitutional protections are no less vigorous during the punishment phase than during the guilt phase of trial. *Romano* v. *Oklahoma*, 512 U.S. 1, 12 (1994) ("It is settled that [the Due Process] Clause applies to the sentencing phase of capital trials."); *see also Spencer* v. *Texas*, 385 U.S. 554, 563–64 (1967).

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) (citing *Payne* v. *Tennessee*, 501 U.S. 808, 825 (1991)). "The relevant question in [such a] case, therefore, is whether the admission of evidence . . . so infected the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Romano*, 512 U.S. at 12; *see also Cooper*, 517 U.S. at 367 ("[T]he State's power to regulate procedural burdens [i]s subject to proscription under the Due Process Clause if it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.").

2. A growing number of federal and state courts have recognized that the introduction at trial of rap lyrics composed or performed by criminal defendants is highly prejudicial because rap lyrics, as a music genre, usually contain intentionally inflammatory messages, which may influence the jury to convict or inflict a longer sentence on a defendant on improper grounds. *See, e.g., United States* v. *Gamory*, 635 F.3d 480, 493 (11th Cir. 2011) (rap lyrics "presented a substantial danger of unfair prejudice" be-

cause they could be misunderstood "as promoting a violent and unlawful lifestyle"); *Boyd* v. *City & Cnty. of San Francisco*, 576 F.3d 938, 949 (9th Cir. 2009) (similar); *United States* v. *Williams*, 663 F. Supp. 3d 1085, 1133 (D. Ariz. 2023) ("[Rap] lyrics present a serious risk of inflaming the jurors and influencing them to convict a defendant on impermissible grounds."); *United States* v. *Bey*, 2017 WL 1547006, at *6 (E.D. Pa. Apr. 28, 2017) (similar); *United States* v. *Williams*, 2017 WL 4310712, at *7 (N.D. Cal. Sept. 28, 2017) (similar); *United States* v. *Sneed*, 2016 WL 4191683, at *6 (M.D. Tenn. Aug. 9, 2016) (similar); *State* v. *Skinner*, 95 A.3d 236, 253 (N.J. 2014) (similar); *Hannah* v. *State*, 23 A.3d 192, 196–97 (Md. 2011) (similar).

Texas recently added its voice to this chorus. On May 8, 2024, in *Hart* v. *Texas*, 688 S.W.3d 883 (Tex. Crim. App. 2024), the TCCA held for the first time that "the admission of rap music," including rap lyrics, "is highly prejudicial due to the nature of the lyrics" and thus not permitted under Texas law. *Id.* at 894. The *Hart* court made it clear that this was a ruling of first instance, stating that "Texas ha[d] not yet addressed this issue." *Id.*

3. "Rap music has long been a subject of anti-Black stereotyping and suspicion." Jasmine Gonzales Rose et. al., *Antiracist Expert Evidence*, 134 Yale L. J. 2362, 2381 (2025). Rap music, and in particular, "gangsta rap," often includes discussion of violence and criminal behavior in an exaggerated fashion. Erin Lutes et. al., *When Music Takes the Stand: A Content Analysis of How Courts Use and Misuse Rap Lyrics in Criminal Cases*, 46 Am. J. Crim. L. 77, 84 (2019); *see also* Nicholas Stoia et. al., *Rap Lyrics as Evidence: What Can Music Theory Tell Us?*, 8 Race & Just. 300, 330–34 (2018); *Williams*, 663 F. Supp. 3d at 1135 ("Gangsta rap is 'generally made up,' and contains braggadocio, hyperbole, and exaggeration.").

Worse, rap music, predominately produced by and associated with Black men, often invokes negative racial stereotypes about Black men among jurors and judges. *See generally* Lucy J. Litt, *From Rhyming Bars to Behind Bars: The Problematic Use of Rap Lyrics in Criminal Proceedings,* 92 UMKC L. Rev. 121 (2023). Thus, rap music is "continually criminalized in ways that other art forms have never been," as racist stereotypes based on rap music are often offered as a rationale for justifying the punishment of Black men. *Id.* at 124. The result is that stereotypes associated with rap music have "contributed to widespread criminalization," as "lyrics [are] used to justify charging… or to justify sentencing recommendations." Rose et. al., *Antiracist Expert Evidence*, 134 Yale L. J. at 2381; *see also* Charis Kubrin et. al., *Rap Rhyme, Prison Time: How Prosecutors Use Rap Evidence in Gang Cases*, 27 Chap. L. Rev. 369 (2024).

C. Facts Relevant to the Second Question Presented

1. At Mr. Broadnax's trial, to link Mr. Broadnax and his co-defendant, Mr. Cummings (who was convicted and sentenced in a separate trial), to the victims and the crime scene, the State prepared one serology report and one DNA analysis report. State Exs. 391 & 392. Both reports were prepared by and were produced on the letterhead of the Texas Department of Public Safety Crime Laboratory. State Exs. 391 & 392. The Texas Department of Public Safety is a department of the state government of Texas, and the purpose of its Crime Laboratory is to provide "expert testimony" and "other related forensic services for the state of Texas."[3]

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[3] *See* Crime Laboratory Division Overview, Texas Department of Public Safety, available at https://tinyurl.com/5ffa4pyv.

2. Kimberly Mack, a forensic scientist employed by the Texas Department of Public Safety Crime Laboratory, wrote the serology report. She collected swab samples from physical evidence recovered from the victims and the items seized from Mr. Broadnax and Mr. Cummings, and described the location of each of the swab collections in detail in her report. State Ex. 392 at 1–2. Mack then examined the collected samples and performed blood tests. *Id.*; 46 RR 192–94. Based on the presumptive results of those tests, Mack concluded that blood was identified on the pocket liner of one of the victims, a pair of shoes possessed by Mr. Broadnax and Mr. Cummings, and the pistol that the State contended was the murder weapon. State Ex. 392 at 2; 46 RR 43. Mack then retained frozen swab samples with positive presumptive results pending further DNA analysis. State Ex. 392 at 2–3.

Mack's report was introduced into evidence at both the guilt and punishment phases of Mr. Broadnax's trial. State Ex. 392; 46 RR 193; 49 RR 260. However, Mack did not testify, nor did Mr. Broadnax ever have the opportunity to cross-examine her regarding her collection and examination of evidence, the creation of her report, or her findings.

3. James Nichols, another forensic scientist employed by the Texas Department of Public Safety Crime Laboratory, prepared a separate report—a DNA analysis report—that the State also introduced at trial. State Ex. 391. Nichols undertook a different task: analyzing the swab samples that were collected, tested, and retained by Mack for DNA results. 46 RR 185. Nichols concluded that Mr. Cummings's DNA was present in the blood sample that Mack collected from one of the victim's pocket liners; that DNA of the other victim was present in the blood sample that Mack collected from the shoes possessed by

Mr. Broadnax and Mr. Cummings; and that Mr. Cummings's DNA was present in the blood sample that Mack collected from the pistol that the State contended was the murder weapon. State Ex. 391; 46 RR 204–06. Throughout his report, Nichols cited and incorporated Mack's findings, including by reiterating the references and descriptions in Mack's report about where each of the tested samples was collected. State Ex. 391.

Nichols testified during the guilt phase of Mr. Broadnax's trial, explicitly relying upon and speaking to Mack's report. 46 RR 191–96. Nichols further testified as to the probability of DNA matches on the relevant items based on Mack's report, and the State took the time to stress the statistical rarity of the match, impressing upon the jury the scientific and conclusory nature of the DNA evidence. *Id.* at 198–99.

4. Mack's and Nichols's reports as well as Nichols's testimony, linking Mr. Broadnax and Mr. Cummings to the victims and the crime scene, were central to Mr. Broadnax's conviction, as the State presented no other physical evidence placing Mr. Broadnax at the crime scene. The only other evidence that linked Mr. Broadnax to the victims was media interviews given by Mr. Broadnax when he was in the State's custody, in which Mr. Broadnax purportedly admitted to his involvement in the murder; however, Mr. Broadnax presented evidence that he was under the influence of drugs during those interviews, and that statements given under his then-mental conditions were inherently unreliable. 47 RR 87–90; *see also* Second Subsequent Appl. at 55–56.

D. Background Relevant to the Second Question Presented

1. The Sixth Amendment's Confrontation Clause provides that a defendant in a criminal prosecution "shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. This bars the admission at trial of "testimonial hearsay" unless "the declarant is unavailable" and "the defendant has had a prior opportunity to cross-examine" the declarant. *Crawford* v. *Washington*, 541 U.S. 36, 59 (2004); *Davis* v. *Washington*, 547 U.S. 813, 823 (2006).

2. The application of this protection to expert testimony was uncertain until this Court's recent guidance. Specifically, it was unclear whether and to what extent the state could ask a "surrogate" expert to testify to the findings of an absent analyst without violating the Confrontation Clause.

In *Bullcoming* v. *New Mexico*, 564 U.S. 647 (2011), this Court held that the Confrontation Clause prohibits the state from introducing one lab analyst's blood-alcohol report through a different lab analyst who did not author the report. *Id.* at 651–52. After this holding, state practices shifted to having one expert testify to another analyst's report as a way of presenting *the testifying expert's own analysis*—i.e., the testifying expert would purport to speak only about his own findings, but in doing so would rely upon and introduce the absent analyst's findings as the underlying basis of the testifying expert's own opinions. In *Williams* v. *Illinois*, 567 U.S. 50 (2012), this Court was presented with such a circumstance, but did not produce a majority opinion on whether this practice is allowed under the Confrontation Clause. For the ensuing decade, there was "confusion in courts across the country" about the constitutionality of such practice. *See Stuart* v.

Alabama, 586 U.S. 1026, 1027 (2018) (Gorsuch, J., dissenting from denial of certiorari).

3. This Court's decision in *Smith* v. *Arizona*, 602 U.S. 779 (2024), resolved this issue for the first time. In *Smith*, similar to what occurred at Mr. Broadnax's trial, the state first had one analyst examine items seized from the defendant, test them for the presence of drugs, and describe the findings in a report. *Id.* at 790–91. Then, the state had a different expert, who issued his own report based on findings in the out-of-court analyst's report, testify at trial and speak to the findings in both reports. *Id.* This Court recounted the history of its holdings under *Bullcoming* and *Williams*, and explained that the absence of a majority opinion in *Williams* had produced nationwide confusion about the contours of the Confrontation Clause, leading multiple lower courts to hold (erroneously) that the Confrontation Clause does not apply when "an [in-court] expert recites another [out-of-court] analyst's statements as the basis for his opinion." *Id.* at 784–89 (citations omitted). This Court stated unequivocally: "Today, we reject that view." *Id.* at 783.

Specifically, this Court made clear for the first time in *Smith* 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 "[n]either may the State introduce those statements through a surrogate analyst who did not participate in their creation." *Id.* at 802–03. Importantly, "nothing changes if the surrogate . . . presents the out-of-court statements as the basis for his expert opinion" because "[t]hose statements, as we have explained, come into evidence for their truth—because only if true can they provide a reason to credit the substitute expert." *Id.* at 803.

4. In the wake of *Smith*, courts across the country have applied its holding and found defendants' Sixth Amendment rights were violated by the introduction of an absent expert's findings via surrogate testimony. *See, e.g.*, *Watkins* v. *State*, 912 S.E.2d 574, 587–87 (Ga. 2025) (reversing convictions based on improper surrogate testimony); *Commonwealth* v. *Gordon*, 266 N.E.3d 369, 388–93, 398 (Mass. 2025) (remanding case for a new trial); *State* v. *Gleason*, 339 A.3d 774, 780–81 (Me. 2025) (same); *State* v. *Hall-Haught*, 569 P.3d 315, 323 (Wash. 2025) (same); *State* v. *Miller*, 2025 WL 583178, at *3–4, *6 (Minn. Ct. App. Feb. 24, 2025) (reversing conviction and remanding for a new trial); *State* v. *Clark*, 909 S.E.2d 566, 569–71 (N.C. Ct. App. 2024) (same). At least one of these reversals involved a surrogate expert's testimony regarding DNA testing which was essential in linking a defendant to the victim. *State* v. *Hale*, 2024 WL 4901601 (Ohio Ct. App. Nov. 27, 2024); *cf. United States* v. *Seward*, 135 F.4th 161, 168 (4th Cir. 2025) (holding that, under *Smith*, a DNA expert cannot testify about an out-of-court analyst's handling of the samples).

E. Procedural History

1. Mr. Broadnax was sentenced to death in 2009. He exhausted his direct appeal remedies in 2012. Mr. Broadnax timely sought state and federal habeas relief, including on *Batson* grounds based on the State's racially motivated peremptory strikes to select a nearly all-White jury at his trial. In 2015, the TCCA denied Mr. Broadnax's state habeas application, and this Court denied certiorari review. In 2022, Mr. Broadnax also exhausted federal habeas review.

2. Because the State did not disclose certain *Batson*-related materials until after Mr. Broadnax's initial state habeas proceedings were closed, Mr. Broadnax filed an

amended first subsequent state habeas application in 2023 on *Batson* grounds based on newly available evidence. The TCCA denied review that same year, and this Court denied certiorari in 2024. However, two Justices from this Court dissented from the denial of certiorari and noted that they would have reversed the judgment. *Broadnax* v. *Texas*, 144 S. Ct. 2700 (June 24, 2024).

3. In August 2024, following the newly issued decisions in *Hart* v. *Texas*, 688 S.W.3d 883 (Tex. Crim. App. 2024) and *Smith* v. *Arizona*, 602 U.S. 779 (2024), Mr. Broadnax filed his second subsequent state habeas application, on the grounds that (1) the State's use of rap lyrics at his sentencing proceeding violated his due process, fundamental fairness, and equal protection rights; and (2) the admission of the State's serology expert report without an opportunity for Mr. Broadnax to cross-examine the author of that report violated his Confrontation Clause rights. On November 6, 2025, the TCCA dismissed the application in an order that summarily stated: "We have reviewed the application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a)." App. B at 4a. This petition timely follows.

4. 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. App. C at 5a.

REASONS FOR GRANTING THE PETITION

A. The TCCA erred in failing to follow this Court's longstanding guidance, including most recently in *Andrew* v. *White*, regarding Mr. Broadnax's rights to due process, fundamental fairness, and equal protection under the Eighth and Fourteenth Amendments against the

use of racially inflammatory and prejudicial evidence in the form of rap lyrics.

This Court has reiterated that a criminal conviction and punishment secured by the erroneous admission of inflammatory and racially charged evidence violates a criminal defendant's rights to due process, fundamental fairness, and equal protection under the Fourteenth and Eighth Amendments. *Andrew*, 604 U.S. at 96 ("[C]learly 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.") (citing *Payne*, 501 U.S. at 825); *cf. United States* v. *Cabrera*, 222 F.3d 590, 594 (9th Cir. 2000) ("Appeals to racial, ethnic, or religious prejudice during the course of a trial" would violate a defendant's "due process and equal protection rights."). That is what happened here, where the State improperly relied upon rap lyrics composed by Mr. Broadnax, and the inflammatory and racially charged stereotypes associated with them, to obtain Mr. Broadnax's death sentence. This Court should reverse the TCCA's decision for failing to follow this Court's guidance. In the alternative, this Court should grant certiorari, vacate the judgment, and remand to the state court ("GVR") for reassessment of the constitutional implications of the rap lyrics in light of this Court's recent guidance in *Andrew* v. *White*.

a. The erroneous admission of rap lyrics violated Mr. Broadnax's rights to due process and fundamental fairness under the Fourteenth and Eighth Amendments.

1. This Court has repeatedly held that courts must honor the age-old "premise that the Due Process Clause guarantees the fundamental elements of fairness in a criminal trial." *Spencer*, 385 U.S. at 563–64. This means

that at all criminal trials, including the punishment as well as the guilt phases, "the State's power to regulate procedural burdens [i]s subject to proscription under the Due Process Clause," and must be corrected "if it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Cooper*, 517 U.S. at 367. This Court recently reaffirmed this principle in *Andrew*, stating that "this Court ha[s] made clear that when evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." 604 U.S. at 88 (citing *Payne*, 501 U.S. at 825). "The relevant question in [such a] case, therefore, is whether the admission of evidence . . . so infected the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Romano*, 512 U.S. at 12.

2. The State's use of rap lyrics during the punishment phase of Mr. Broadnax's trial violated his constitutional rights to due process, which an examination of the relevant precedents clearly shows. For example, the court in *McKinney* v. *Rees* reversed a conviction and judgment because the state's "erroneously admitted character evidence"—i.e., defendant's purported "fascination with knives"—deprived defendant of a fair trial and violated his rights to due process. 993 F.2d 1378, 1384–86 (9th Cir. 1993). Because the trial "was so infused with irrelevant prejudicial evidence as to be fundamentally unfair," the court ruled that the case required reversal and remanded for a new trial. *Id.* at 1386. Likewise, the court in *Panzavecchia* v. *Wainwright* held that the defendant was unconstitutionally prejudiced by the prosecution's "repeated references to the defendant's criminal past without any limiting instruction." 658 F.2d 337, 341 (5th Cir. 1981). Reversal and remand was warranted because "this

prejudice rose to such a level as to make the petitioner's trial fundamentally unfair and in violation of the fourteenth amendment." *Id.* Other instances of erroneously admitted evidence that have been found to violate a defendant's rights to due process and fundamental fairness have included evidence of prior criminal acts, *United States* v. *Parker*, 604 F.2d 1327, 1329 (10th Cir. 1979), *abrogated on other grounds by United States* v. *Pennon*, 816 F.2d 527 (10th Cir. 1987); overly emotional victim evidence, *Postelle* v. *Carpenter*, 901 F.3d 1202, 1220–21 (10th Cir. 2018); repeated references to a defendant's street nicknames, *United States* v. *Farmer*, 583 F.3d 131, 146–47 (2d Cir. 2009); and more, *see generally Walker* v. *Engle*, 703 F.2d 959, 964 (6th Cir. 1983); *Alcala* v. *Woodford*, 334 F.3d 862, 887–88 (9th Cir. 2003).

Same here. Like the evidence about the defendant's purported "fascination with knives" in *McKinney* and the unwarranted references to the defendant's past criminal affiliations and street names discussed in *Panzavecchia* and *Farmer*, the State's hand-picked violent themes from Mr. Broadnax's rap lyrics had questionable probative value at best, and had a great tendency to mislead and inflame the jury into sentencing Mr. Broadnax to death based upon improper stereotypes and cultural affiliations. Indeed, the entire purported probative value of the rap lyrics rested upon the premise that a composer or performer of gangster rap lyrics necessarily has engaged and/or will engage in the same acts depicted in the lyrics—the very inferences that have been found unacceptable in courts across the nation. The State explicitly urged the jury to interpret the lyrics as Mr. Broadnax's confessions and diary: "He told you what he was going to do in his writings before he even did it. He talked about the murder and the robbery of people." 53 RR 79; *see also* 49

RR 122 (the rap lyrics referencing gangs were a "self-admission" of gang membership by Mr. Broadnax); *id.* at 123–24 (the rap lyrics are telling about Mr. Broadnax's criminal "mentality"). Such "autobiographical" use of rap lyrics by the State is exactly what numerous courts admonished against as overly inflammatory and prejudicial, and yet it predominated over Mr. Broadnax's entire punishment phase at trial. *Supra* at 8–10; *cf. Hart* at 980–96. The State's improper use of Mr. Broadnax's composition of rap lyrics "so infected the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Romano*, 512 U.S. at 12.

b. The erroneous admission of rap lyrics violated Mr. Broadnax's rights to equal protection under the Fourteenth Amendment.

1. The State's use of rap lyrics at Mr. Broadnax's punishment phase also violated his rights to equal protection under the Fourteenth Amendment. It is indisputable that "[t]he Constitution prohibits racially biased prosecutorial arguments." *McCleskey* v. *Kemp*, 481 U.S. 279, 309 n. 30 (1987). "Appeals to racial, ethnic, or religious prejudice during the course of a trial violate a defendant's [constitutional] right to a fair trial." *Cabrera*, 222 F.3d at 594; *see also Bains* v. *Cambra*, 204 F.3d 964, 974 (9th Cir. 2000).

2. Federal courts have routinely provided relief to defendants who were convicted or sentenced after racially motivated trials based on facts similar to this case. For example, the court in *Bennett* v. *Stirling* recognized that the state violated a Black defendant's equal protection rights by referring to him as "a monster," "a big old tiger," and "King Kong," which are "poorly disguised appeals to racial prejudice." 842 F.3d 319, 324–25 (4th Cir. 2016); *see also Cabrera*, 222 F.3d at 597 (reversing conviction due to

the state witness's "generalizations about racial and ethnic groups" to which defendant belonged); *United States* v. *Vue*, 13 F.3d 1206, 1212–13 (8th Cir. 1994) (reversing conviction "because the injection of ethnicity into the trial clearly invited the jury to put the [defendant's] racial and cultural background into the balance," which is "a serious trespass on the rights to due process and equal protection").

The State's problematic use of rap lyrics at Mr. Broadnax's trial fits squarely into this jurisprudence. Mr. Broadnax's entire trial, which concerned two young Black males accused of murdering two White victims in Dallas county, proceeded on a race-based strategy by the State. *Supra* at 5–7. The State accused Mr. Broadnax of being a member of a Black gang, called Mr. Broadnax "a new breed" and a "monster" who was "chomping at the bit to engage in violence," and urged the jury to equate Mr. Broadnax with the "worst kind of predator[s]" on Animal Planet, 49 RR 86; 53 RR 22, 26–27, 74–75—precisely the kinds of "racially inflammatory remarks" that federal courts have consistently found to violate defendants' equal protection rights. *United States* v. *Doe*, 903 F.2d 16, 18, 24 (D.C. Cir. 1990); *United States* v. *Cruz*, 981 F.2d 659, 663–64 (2d Cir. 1992). The emphasis on the rap lyrics was a key element in this racially charged narrative, because the State used it to directly appeal to the jury's bias and prejudices based on the historical association in this country of "dangerous" Black men with gangster raps. Worse, the record in this case *confirms* that the jury delivered a death sentence based on the racial stereotypes invoked by the rap lyrics: at Mr. Broadnax's sentencing proceeding, the State offered very little other evidence to argue his purported dangerous propensity, and the jury during deliberation asked to see the rap lyrics twice before they sentenced Mr. Broadnax to death. *See supra* at

6–7. "The fairness and integrity of criminal trials are at stake" when defendants like Mr. Broadnax are improperly sentenced to death based on such inflammatory "generalizations about racial and ethnic groups." *Cabrera*, 222 F.3d at 597.

3. The State's use of rap lyrics was also particularly problematic because it was completely unchecked, as the trial court "did nothing to curb the abuse or mitigate the prejudice" resulting from the presentation of the rap lyrics. *Farmer*, 583 F.3d at 147; *cf. Bai* v. *Williams*, 2025 WL 999477, at *3 (9th Cir. 2025) (emphasizing the importance of limiting instructions); *Martinez* v. *Quick*, 134 F.4th 1046, 1063–65 (10th Cir. 2025) (same). Because there were no limiting instructions given regarding the prejudicial nature of the rap lyrics, the only guidance for the jury was the blatantly erroneous suggestion from the prosecution that the jury could consider the rap lyrics as Mr. Broadnax's confession of his thirst for crime and violence. *See, e.g.*, 53 RR 79 ("[H]e told you what he was going to do in his writings before he even did it."). This was a clear violation of Mr. Broadnax's equal protection rights.

c. This Court's review is justified.

1. Many courts—including the TCCA itself—have recognized the inherently prejudicial nature of rap lyrics, both for such lyrics' prevalent description of violence and for their invocations of racial stereotypes and biases. *Hart*, 688 S.W.3d at 895; *see also supra* at 8–9. Scholars likewise are increasingly ringing the alarms of the troublesome and long-standing connection between rap lyrics and "anti-Black stereotyping and suspicion," and cautioning against the "widespread criminalization" of rap lyrics to justify the unwarranted charging, convicting, and sentencing of Black defendants. *See supra* at 9–10 (collecting

sources). This Court should grant review to ensure state courts could properly assess the due process and equal protection implications of this inherently problematic genre of evidence in criminal trials, and to prevent the execution of Mr. Broadnax, whose death sentence was obtained on this improper basis.

2. The fact that, in this case, the constitutional error occurred during the punishment phase of a capital trial makes it all the more urgent for this Court to grant certiorari. This Court has recognized that "[i]t is of vital importance that the decisions made in [the death penalty] context be, and appear to be, based on reason rather than caprice or emotion. Because the death penalty is unique in both its severity and its finality, we have recognized an acute need for reliability in capital sentencing proceedings." *Monge*, 524 U.S. at 732. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment" cannot be taken lightly, *Johnson*, 486 U.S. at 584, and the "qualitative difference between death and other penalties" requires "a greater degree of reliability when the death sentence is imposed," *Lockett*, 438 U.S. at 604; *see also Deck* v. *Missouri*, 544 U.S. 622, 632 (2005) (stressing "the acute need for reliable decision-making when the death penalty is at issue"). This Court should grant review to clarify how the clearly established principle reiterated in *Andrew* applies to the use of racially charged and prejudicial evidence like rap lyrics in capital cases—or, in the alternative, issue a GVR order so that the state court has a proper opportunity to do so.

B. The TCCA erred in failing to follow this Court's recent guidance in *Smith* v. *Arizona* regarding Mr.

Broadnax's rights under the Confrontation Clause with respect to expert evidence.

This Court's recent decision in *Smith* v. *Arizona* clarified for the first time 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 it is also testimonial. 602 U.S. at 800. That holding squarely applies to Mr. Broadnax's case. The TCCA erred in failing to follow the clear guidance in *Smith* v. *Arizona* and denying Mr. Broadnax's second subsequent habeas application on this basis. This Court should grant review to ensure that state courts properly apply *Smith* v. *Arizona*, and reverse.

a. The State's use of testimonial out-of-court statements from an absent serology expert via a surrogate expert violated the Confrontation Clause.

1. The Confrontation Clause bars the admission of "testimonial hearsay" in criminal trials unless the defendant had prior opportunity to cross-examine the out-of-court declarant. *Davis*, 547 U.S. at 823. "[I]n that two-word phrase," "testimonial hearsay," "are two limits": (i) that hearsay was introduced against the defendant for the truth of the matter asserted, and (ii) that the hearsay was testimonial in nature. *Smith*, 602 U.S. at 784. Here, the first requirement is satisfied under *Smith*, which made clear that what occurred at Mr. Broadnax's trial—the introduction of an out-of-court analyst's report through a substitute expert—is hearsay for purposes of the Confrontation Clause. The second requirement is also satisfied because the out-of-court findings of the absent

analyst were testimonial in nature. Mr. Broadnax is thus entitled to relief under the Confrontation Clause.

2. At Mr. Broadnax's trial, the State improperly introduced hearsay in the form of a serology report written by an analyst who never testified. Kimberlee Mack, a serology analyst employed by the State, collected swab samples from physical evidence seized from the victims and from Mr. Broadnax and Mr. Cummings; performed presumptive tests on them; and wrote a report detailing the process of her collecting, handling, testing, and retaining of the samples. State Ex. 392. Mack's report also concluded that, based on the tests she performed, blood was identified in swab samples collected from (i) one of the victim's pocket liners, (ii) a pair of shoes seized from Mr. Broadnax's and Mr. Cummings's possession, and (iii) a pistol that the State contended was the murder weapon. *Id.* at 2; 46 RR 43. Mack's report further stated that these particular samples were retained and frozen pending further DNA analysis. State Ex. 392 at 2–3.

Mack's report was admitted against Mr. Broadnax at both the guilt and the punishment phases of his trial, without Mack ever appearing in court or being subject to cross-examination. *Id.*; 46 RR 193; 49 RR 260. Instead of presenting Mack for testimony, the State had another expert, James Nichols, testify to the jury at length about Mack's report. 46 RR 192–201. Nichols, speaking for the absent Mack, described to the jury in detail who Mack is, the actions that Mack took, and the content of Mack's findings in Mack's report. *See* Second Subsequent Appl. at 43–47. Nichols explained to the jury that "Kimberly Mack is a forensic scientist in our laboratory and she works in the serology section." 46 RR 191. Nichols further explained that "the serology section . . . studies the

presence of body fluids, such as blood, and semen, and saliva," and that Mack's job is to act as "a screener," meaning that Mack "examines items of evidence, performs presumptive tests on items for possible blood or semen, and then collects those stains." *Id.* at 191–92. Then, pointing to Mack's report that had been introduced into evidence, Nichols confirmed, one by one, a series of Mack's findings set down in Mack's report:

> Q. "As far as you know, did [Mack] collect what is known [*sic*] blood standards from Stephen Swan and Matthew Butler?"
>
> A. "Yes, sir."
>
> Q. "Do you know what [*sic*] [Mack] also collected from the pocket, the front right-pant pocket of Stephen Swan; the left front-pant pocket of Stephen Swan; and the right left [*sic*] pant pocket of Stephen Swan, that those items were collected and submitted for a DNA analysis?"
>
> A. "Yes, sir."
>
> Q. "In addition to that, do you know that there was a left -- both left and right side of white Nike shoes that were also submitted for DNA analysis?"
>
> A. "Yes, sir."
>
> Q. "And finally, that there was a handgun that was submitted, or swabs from the handgun were submitted also for DNA analysis?"
>
> A. "Yes, sir."
>
> Q. "In addition to that, does [Mack's] report indicate that there are buccal swabs collected from

a Demarius Cummings and a James Broadnax that were also submitted for DNA analysis?"

A. "Yes, sir."

46 RR 192–94. Nichols did not perform any of the actions described above, nor did he have any first-hand, personal knowledge of Mack carrying out these actions—instead, Nichols's testimony was solely based on the content of Mack's report, with Nichols confirming in each case what Mack did by taking what Mack's report stated at face value.

Nichols's testimony about Mack's report did not stop there. Again pointing to Mack's report in evidence, the State further asked Nichols: "Did you rely on the report prepared by Ms. Mack in preparation for you preparing your DNA report?" Nichols answered: "Yes, I did." 46 RR 192. Having paved that foundation, the State then had Nichols testify to the following aspects of his findings, each of which was intertwined with and necessarily relied upon findings made by Mack: (i) Mr. Cummings's DNA was present in a sample that Mack collected from one of the victim's pocket liners, (ii) another victim's DNA was present in a sample that Mack collected from the shoes seized from Mr. Broadnax's and Mr. Cummings's possession, and (iii) Mr. Cummings's DNA was present in a sample that Mack collected from the pistol that the State contended was the murder weapon. *Id.* at 196–97, 200–01; State Ex. 391. In each instance, Nichols was able to link the DNA he identified to the victims and defendants in the underlying case because he was taking as true (and asking the jury to take as true) what Mack stated in her report.

This case thus presents the exact same circumstances that this Court addressed in *Smith*. As with the surrogate expert in *Smith*, Nichols's "opinions were predicated on

the truth" of the absent expert's out-of-court testimony, through which Nichols "effectively became" Mack's "mouthpiece." *Smith*, 602 U.S. at 798, 800. Put differently, Nichols repeatedly testified to his own DNA test results based on "what had been ***presumptively told to [him] by Ms. Mack***" regarding where the samples submitted for DNA analyses were collected. 46 RR 204 (emphasis added). This falls squarely under this Court's holding in *Smith*: "When an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." *Id.* at 783.

3. And it should be beyond dispute that Mack's out-of-court statements were, indeed, testimonial, satisfying the second requirement to trigger the protection of the Confrontation Clause. A statement is testimonial if "in light of all the circumstances, viewed objectively, the 'primary purpose' of the [statement] was to creat[e] an out-of-court substitute for trial testimony." *Ohio* v. *Clark*, 576 U.S. 237, 245 (2015); *see also Crawford*, 541 U.S. at 51–52 (testimonial statements are those that the "declarants would reasonably expect to be used prosecutorially"). "There is little doubt" that forensic reports created by a state's crime labs "fall within the core class of testimonial statements thus described." *Melendez-Diaz* v. *Massachusetts*, 557 U.S. 305, 310 (2009). That is the case here.

The testimonial character of Mack's report is clear from the face of the document. The report itself states it was created by the "Garland Crime Laboratory" of the "Texas Department of Public Safety"—a Texas state agency whose purpose is to examine and analyze evidence in support of potential criminal proceedings brought by the State. State Ex. 392. The report is formatted by fields

such as "Evidence," "Suspect(s)," and "Offense[s]," confirming its testimonial character. *Id.* Mack herself is a forensic scientist employed by the Texas Department of Public Safety, whose job is to "examine[] items of evidence" and perform the testing required on the "evidence" collected so as to enable Nichols and the State to perform "future DNA testing." State Ex. 392; 46 RR 191–92. In sum, Mack prepared her report to assist in the prosecution of this case, and her findings are a textbook example of testimonial statements. In similar circumstances, courts have uniformly agreed that reports like Mack's are testimonial for the purpose of Confrontation Clause protections. *See, e.g.*, *Jenkins* v. *United States*, 75 A.3d 174, 183–84 (D.C. 2013); *Commonwealth* v. *Grandinetti*, 2024 WL 3043313, at *16 (Pa. Super. Ct. June 18, 2024); *Derr* v. *State*, 29 A.3d 533, 556 (Md. 2011), *vacated on other grounds*, *Maryland* v. *Derr*, 567 U.S. 948 (2012); *State* v. *Hurt*, 702 S.E.2d 82, 99 (N.C. 2010), *rev'd on other grounds*, 743 S.E.2d 173 (N.C. 2013).

b. This Court's review is justified.

The improper admission of Mack's out-of-court statements prejudiced Mr. Broadnax and requires relief. The serological and DNA reports and testimony presented by Nichols were a central part of the State's case, as they were the only objective evidence linking the two defendants, Mr. Broadnax and Mr. Cummings, to the victims and the crime scene. There were no eyewitness reports, no video evidence, and no fingerprints, footprints, or personal items left at the scene belonging to Mr. Broadnax and Mr. Cummings—indeed, the only other evidence potentially placing Mr. Broadnax at the scene of the crime was Mr. Broadnax's unreliable confessions given under the influence of PCP. 47 RR 41, 80, 87–90, 235. Yet,

Mr. Broadnax was denied the chance to "assur[e] accurate forensic analysis" underlying this crucial evidence, because Mack's hearsay was admitted via Nichols's surrogate testimony. *Melendez-Diaz*, 557 U.S. at 318. This Court should review and reverse.

C. This Court Has Jurisdiction to Review Both Questions Presented.

1. This Court has jurisdiction to review a state court's decision 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). That is the case regarding both questions presented here, which are based, respectively, 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 rights to confront out-of-court hearsay declarants under the Sixth Amendment to the U.S. Constitution. Both issues are federal law questions upon which the TCCA's decision was predicated, properly presented for this Court's review. *See, e.g.*, *Smith* v. *Texas*, 550 U.S. 297, 313–15 (2007) (holding that this Court had jurisdiction to review the TCCA's order denying relief upon the second state habeas application because "the predicate finding of [the state law] procedural failure . . . is based on a misinterpretation of federal law.")

2. It does not matter that the TCCA's dismissal of Mr. Broadnax's second subsequent application summarily stated that "[w]e have reviewed the application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a)." App. B at 4a. It is established law

in Texas that "to satisfy Art. 11.071, § 5(a)," two elements must be met: (1) "the factual or legal basis for an applicant's current claims must have been unavailable" during his/her previous state habeas applications; and (2) "the specific facts alleged, if established, would constitute a constitutional violation that would likely require relief from either the conviction or sentence." *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). The first element is present when there is "a legal basis . . . previously unavailable" because "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, *Campbell*, 226 S.W.3d at 421–22, n.7 & n.9.

Here, it is beyond dispute that the *first* element of Article 11.071 § 5(a) is satisfied as to both questions presented. Mr. Broadnax filed his second subsequent application after the TCCA held in *Hart* v. *State* 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, as well as after this Court's recent decision in *Smith* v. *Arizona* for the first time cleared up 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; *see also State* v. *Dotson*, 450 S.W.3d 1, 68 (Tenn. 2014) (noting the widespread confusion on this issue pre-*Smith*); *State* v. *Michaels*, 95 A.3d 648, 666 (N.J. 2014) (same). Each of these two issues was thus predicated on 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).

The conclusion that necessarily follows is that the TCCA, when holding that both of Mr. Broadnax's questions presented "failed to satisfy the requirements of Article 11.071, § 5(a)," App. B at 4a, based its decision on findings that Mr. Broadnax had failed to satisfy the *second* element of Article 11.071 § 5(a)—i.e., that Mr. Broadnax had failed to make a "prima facie showing" of a constitutional claim for the two questions presented here. *Campbell*, 226 S.W.3d at 421–22, n.7 & n.9. Those findings "depend[ed] on the court's federal-law ruling and consequently do[] not present an independent state ground for the decision rendered." *Ake*, 470 U.S. at 75. Indeed, had the TCCA's dismissal of Mr. Broadnax's second subsequent application been based on purely procedural rules, the application of those rules would not be an "adequate" state ground barring review because both of Mr. Broadnax's claims are plainly based upon established federal law. *Cruz* v. *Arizona*, 598 U.S. 17, 25–26 (2023) (a state ground would not be sufficiently "adequate" to prevent this Court's review if it is applied in a way that is so "unfounded" and "unsupported" such that it cannot be fairly used to "preclude this Court's review of a federal question."). The TCCA's holdings on both questions presented are thus appropriate for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 4, 2026

APPENDIX

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APPENDIX A

IN THE CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY, TEXAS

Writ No. W-0824667-C
Trial Court Cause No. F08-24667-Y

EX PARTE

JAMES BROADNAX

Applicant

NOTATION OF SUBSEQUENT WRIT APPLICATION

The undersigned Judge of the Criminal District Court No. 7 of Dallas County, Texas, enters this Notation of a Subsequent Writ Application, in the above-styled cause pursuant to Article 11.071, §5 of the Texas Code of Criminal Procedure.

Applicant is confined pursuant to the judgment and sentence of the Criminal District Court No. 7 of Dallas County, Texas, in Cause No. F08-24667-Y, wherein the Applicant was convicted of the offense of Capital Murder and sentenced to death.

Applicant filed his initial application for writ of habeas corpus on December 20, 2011, which was denied on May 20, 2015. Applicant filed a subsequent writ on January 30, 2023. The Court of Criminal Appeals dismissed that with written order on June 7, 2024. Subsequently, the Supreme Court of the United States denied Applicant's petition for writ of cer-

tiorari. In the instant case, Applicant filed a second subsequent writ on August 20, 2024.

IT IS THEREFORE ORDERED that the Clerk of this Court assign an ancillary file number to this second subsequent writ application, attach this notation to the second subsequent writ application, and immediately forward to the Court of Criminal Appeals in Austin, Texas, certified copies of the second subsequent writ application, this notation, and the order scheduling the Applicant's execution, if scheduled.

IT IS FURTHER ORDERED that the Clerk of this Court send a copy of this notation to Applicant's counsel, Camille M. Knight and Steven C. Herzog and to counsel for the State, Shelly Yeatts within three days of the date this notation is signed by the Court.

SIGNED this the 29th day of August, 2024.

/s/Chika Anyiam

[Digitally signed by
Judge Chika Anyiam
Date: 2024.08.29
15:30:30 -05'00']

JUDGE CHIKA ANYIAM
CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY, TEXAS

APPENDIX B

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

No. WR-81,573-03

EX PARTE JAMES GARFIELD BROADNAX,

Applicant

ON APPLICATION FOR
WRIT OF HABEAS CORPUS
CAUSE NO. F-0824667-Y
IN CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY

Per curiam.

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.[1]

In August 2009, a jury convicted Applicant of the offense of capital murder for killing Stephen Swan in the course of robbing or attempting to rob him. *See* TEX. PENAL CODE § 19.03(a)(2). The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal.

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[1] Unless we specify otherwise, all references in this order to "Articles" refer to the Texas Code of Criminal Procedure.

Broadnax v. State, No. AP-76,207 (Tex. Crim. App. Dec. 14, 2011) (not designated for publication).

Applicant filed his initial post-conviction application for a writ of habeas corpus in the trial court in 2011. This Court denied relief on the claims raised in his initial writ application. *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. May 20, 2015) (not designated for publication). Applicant filed his first subsequent writ application in the trial court in 2023. This Court dismissed the first subsequent writ application as an abuse of the writ without considering the merits of the claims. *Ex parte Broadnax*, No. WR-81,573-02 (Tex. Crim. App. June 7, 2023) (not designated for publication). Applicant filed the instant post-conviction application for writ of habeas corpus in the trial court on August 20, 2024, and it was thereafter received in this Court.

Applicant presents two allegations in the instant application. In Claim One, Applicant alleges that his "due process and fundamental fairness rights were violated at the punishment stage by the admission of rap lyrics as evidence." See *Hart v. State*, 688 S.W.3d 883 (Tex. Crim. App. 2024). In Claim Two, Applicant asserts that his "Confrontation Clause rights were violated by the admission of Kimberlee Mack's forensic report and the testimony of DNA expert James Nichols." See *Smith v. Arizona*, 602 U.S. 779 (2024).

We have reviewed the application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss the application as an abuse of the writ without considering the merits of the claims.

IT IS SO ORDERED THIS THE 6th DAY OF NOVEMBER, 2025.

Do Not Publish

APPENDIX C

IN THE CRIMINAL
DISTRICT COURT NO. 7
DALLAS COUNTY, TEXAS

Cause No. F08-24667-Y

THE STATE OF TEXAS

v.

JAMES GARFIELD BROADNAX

EXECUTION ORDER

You, James Garfield Broadnax, were indicted by the Grand Jury of Dallas County, Texas, and charged with the offense of capital murder in cause number F08-24667-Y. A jury in this Court returned a verdict finding you guilty of the offense of capital murder on August 12, 2009, in cause number F08-24667-Y. On August 20, 2009, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal, and it was affirmed by that court on December 14, 2011, with mandate issued on January 9, 2012. The United States Supreme Court denied your petition for writ of certiorari on October 1, 2012. Subsequently, on May 20, 2015, the Court of Criminal Appeals denied your initial application for writ of habeas corpus, and the

United States Supreme Court denied your petition for writ of certiorari on October 5, 2015.

The District Court for the Northern District of Texas, Dallas Division, denied your federal petition for writ of habeas corpus on July 23, 2019, and the United States Court of Appeals for the Fifth Circuit granted your application for a Certificate of Appealability on July 24, 2020. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the district court on February 8, 2021. Afterwards, the United States Supreme Court denied your petition for writ of certiorari on January 18, 2022. The Court of Criminal Appeals dismissed your second application for writ of habeas corpus on June 7, 2023, and the United States Supreme Court denied your petition for writ of certiorari on June 24, 2024. The Court of Criminal Appeals also dismissed your third application for writ of habeas corpus on November 6, 2025. This Court now proceeds with the judgment and sentence in your case and enters the following Order:

IT IS HEREBY ORDERED by this Court that you, James Garfield Broadnax, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 30th day of April, 2026, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the

Correctional Institutions Division of the Texas Department of Criminal Justice.

Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Dallas County, Texas, a Warrant of Execution in accordance with this Order, directed to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, at Huntsville, Texas, commanding him, the said Director, to put into execution the Judgment of Death against the said James Garfield Broadnax.

The Sheriff of Dallas County, Texas is hereby ordered, upon receipt of said Warrant of Execution, to deliver said Warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, Huntsville, Texas.

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Camille M. Knight, to counsel for the State, Shelly Yeatts, and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff.

ENTERED THIS 17th day of December 2025.

/s/ Chika Anyiam

[Digitally Signed by
Judge Chika Anyiam
Date: 2025.12.17
13:28:25 -6'00']

Honorable Chika Anyiam
Presiding Judge
Criminal District Court No. 7
Dallas County, Texas