



**Table of Contents**

Table of Authorities .....iv

Table of Exhibits.....vi

COMPLAINT FILED PURSUANT TO 42 U.S.C. § 1983 ..... 1

I. Jurisdiction... .....4

II. Venue.....4

III. Parties.....4

IV. Relevant Factual and Procedural History.....5

    A. Young’s Case.....5

        1. The crime .....5

        2. Improvement in prison .....5

        3. Closest living relative support.....6

    B. Whitaker’s Case ..... 7

        1. The crime ..... 7

        2. Improvement in prison .....8

        3. Closest living relative support.....8

V. The Texas Board of Pardons and Paroles’ July 13th, 2018 decision not to recommend Young’s death sentence be commuted was a violation of the Equal Protection Clause of the Fourteenth Amendment .....9

VI. In light of the actions of the Defendants denying Young Equal Protection, it would be a violation of the Eighth Amendment’s protections against Cruel and Unusual Punishment to allow the State to execute Young at this time .....11

VII. Prayer for Relief.....12

Verification.....13

Certificate of Service.....14

**Table of Authorities**

**Cases**

*Buck v. Davis*,  
137 S. Ct. 759 (2017).....11

*Faulder v. Tex. Bd. of Pardons & Paroles*,  
178 F.3d 343 (5th Cir. 1999) .....9

*Mahone v. Addicks Utility Dist.*,  
836 F.2d 921 (5th Cir. 1988) ..... 9-10

*Nelson v. Campbell*,  
541 U.S. 637 (2004).....4

*Ohio Adult Parole Auth. v. Woodard*,  
523 U.S. 272 (1998).....9

*Peña-Rodriguez v. Colorado*,  
137 S. Ct. 855 (2017).....10

*Washington v. Davis*,  
426 U.S. 229 (1976).....9

*Whitaker v. Davis*,  
853 F.3d 253 (5th Cir. 2017) ..... 7-8

*Young v. Davis*,  
860 F.3d 318 (5th Cir. 2017) .....5

**Other Authorities**

Deven Clarke, *Son of man killed on East Side in 2004 asks for father’s killer to be spared*, www.ksat.com (July 10, 2018), [https://www.ksat.com/news/son-of-man-killed-on-east-side-in-2004-asks-for-fathers-killer-to-be-spared?\\_vfz=medium%3Dsharebar](https://www.ksat.com/news/son-of-man-killed-on-east-side-in-2004-asks-for-fathers-killer-to-be-spared?_vfz=medium%3Dsharebar) [<https://perma.cc/A5J8-B4LL>].....7

Emilie Eaton, *As activists gather, court denies request to halt San Antonio man’s execution*, San Antonio Express-News (July 10, 2018), [https://www.expressnews.com/news/local/article/As-activists-gather-court-denies-request-to-halt-13064835.php?utm\\_campaign=twitter-premium&utm\\_source=CMS%20Sharing%20Button&utm\\_medium=social](https://www.expressnews.com/news/local/article/As-activists-gather-court-denies-request-to-halt-13064835.php?utm_campaign=twitter-premium&utm_source=CMS%20Sharing%20Button&utm_medium=social) [<https://perma.cc/SVJ7-WPMT>] .....7

Jolie McCullough, *Families of Chris Young and the man he killed call for a halt to his execution*, The Texas Tribune (July 10, 2018), <https://www.texastribune.org/2018/07/10/texas-san-antonio-chris-young-execution-faith-leaders/> [https://perma.cc/A6T4-MNW4].....6

The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* (2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> [ https://perma.cc/KT7E-CB4L] .....10

**Exhibits**

Exhibit 1 Plaintiff's Clemency Petition

Exhibit 2 Summary of Board's Vote



survived and became a leading vocal advocate in the fight to spare his son's life. In Whitaker's time on death row, he matured, expressed deep and sincere remorse, counseled other inmates, and improved himself.

Unlike Whitaker, who was involved in the planning of three murders (two of which succeeded), Christopher Anthony Young murdered Hasmukh Patel impulsively, without planning or premeditation. In that respect, Whitaker's crime was the far more egregious of the two. In other respects, however, Whitaker and Young are very much alike. Both Whitaker and Young were transformed. Both expressed genuine remorse. Both were forces of positive good in prison. And perhaps most significantly of all, the closest surviving relatives of the murders opposed the execution. In Whitaker's case, of course, this opposition was unsurprising, as the closest surviving relative of the murder victims was also the father of the murderer. In Young's case, on the contrary, the opposition is, while not unprecedented perhaps, nonetheless extraordinary: Mitesh Patel, the son of the victim, asked the Board to commute Young's death sentence. Mitesh does not want the execution to proceed.

In sum, and as will be discussed at greater length below, there are three sets of considerations the Board examines when deciding whether to recommend clemency: the nature of the crime, the maturation of the inmate, and the wishes of the surviving family members. On one of those variable, Whitaker and Young are equally deserving of clemency. On the other two, Young is the more deserving of the

two. Yet the Board unanimously recommended clemency for Whitaker, but not for Young;<sup>1</sup> and this vote is most likely explained by a single variable – a variable the Constitution precludes decisions-makers from taking into account: race.

Whitaker is white, and his victims were white; Young is black, and his victim was South Asian. The members of the Board do not announce reasons for their decisions, but the facts here speak for themselves. Young is entitled to a stay of execution so that his lawyers have the opportunity to examine the Board members under oath and ascertain whether what appears to be the driving force in this case was in fact the driving force – to determine whether Whitaker received clemency because he is white, while Young did not because he is black.

Young has a liberty interest protected by the Fourteenth Amendment in not being discriminated against on the basis of his race. The Board's arbitrary action, that can only be explained as purposefully discriminatory in nature, now threatens to result in the execution of someone who should be given the same chance to live and contribute to society that Thomas Whitaker was given.

Young is not asking for relief from his death sentence, but is simply seeking relief from a constitutional violation. A favorable ruling for Young would not mean that Texas can never execute him, as the claim does not call into question the validity of his sentence. *See Nelson v. Campbell*, 541 U.S. 637 (2004). Therefore, this

---

<sup>1</sup> Today, July 13, 2018, the Board voted 6-0 not to recommend Young's sentence be commuted. Board member Carmella Jones abstained. A summary of the Board's vote is attached as Exhibit 2.

claim is appropriately raised in a 1983 action. *Id.* All Young is asking for is that the Texas Board of Pardons and Paroles review his petition for clemency with the same eyes it did Thomas Whitaker's clemency petition, with no regard for his race.

### **I. Jurisdiction**

This court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983. The injury Young complains of is the absence of equal protection of law, which is guaranteed in the Fourteenth Amendment to the United States Constitution.

### **II. Venue**

Venue is proper under 28 U.S.C. § 1391(a) because Board member Federico Rangel, the board member at the Huntsville, Texas office, resides in Huntsville and all other defendants are residents of the State in which this district is located. Additionally, venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the major events or omissions giving rise to Young's claims occurred in this district. Counsel believes Mr. Rangel cast his vote against recommending clemency from the Huntsville office.

### **III. Parties**

Young is currently incarcerated under a sentence of death at the Polunsky Unit of the Texas Department of Criminal Justice in Livingston, Texas. He is scheduled to be executed on July 17, 2018.

David Gutierrez, James LaFavers, Brian Long, Federico Rangel, Ed

Robertson, and Fred Solis are members of the Texas Board of Pardons and Paroles. They are all being sued in their official capacity.

#### **IV. Relevant factual and procedural history**

##### **A. Young's case**

##### **1. The crime**

On the morning of November 21, 2004, Christopher Young entered the mini-mart owned by Hasmukh Patel. *Young v. Davis*, 860 F.3d 318, 322 (5th Cir. 2017). Young went to the store intending to ask Patel about an interaction he believed Mr. Patel had with Young's then-girlfriend, based on her report to him. Exhibit 1 (Young's Clemency Petition) at 11. His intention was never to kill Mr. Patel, but the situation got out of hand. Young shot Mr. Patel twice. *Young*, 860 F.3d at 322. Mr. Patel later died from his injuries. *Id.* Young did not realize he had killed Mr. Patel until he was at the police station later that day. *Id.*

##### **2. Improvement in prison**

Despite trauma Young experienced in his youth, including losing his father to murder, witnessing his sister get raped by his step-father, and joining a gang, Young turned his life around while in prison. Exhibit 1 (Young's Clemency Petition) at 10. In his twelve years on death row, Young has educated himself, become grounded in his religion, and helps his fellow inmates. *Id.* at 14. He helped resolve tensions when death row was on the verge of a race war, talked an inmate who planned to seriously assault an officer out of doing so, and helped a fellow inmate decide not to commit suicide. *Id.*; *see also* Exhibit 1 at 82-103.

Young has long desired to be able to mentor children growing up in an environment similar to the one in which he was raised so he can help them avoid making bad choices he made. With the help of his aunt, Young has mentored three children while incarcerated, all of whom are members of his extended family. Exhibit 1 at 14, 105-06. In all of these relationships, Young has taught these children to do what he did not do in his own youth: to think of the consequences of their actions and thereby make good decisions. *Id.* at 14, 105-06. Many of these children have reported positive development because of Young's guidance. *Id.* at 105-06.

### **3. Closest living relative support**

The family of Hasmukh Patel, the man whom Young killed, does not want Young to be executed. Mitesh Patel, the son of Hasmukh, has been one of the most vocal advocates for Young. As Mitesh has recognized, Young's execution would mean his daughters would lose their father, and Mitesh does not want Young's daughters to grow up without a father. Jolie McCullough, *Families of Chris Young and the man he killed call for a halt to his execution*, The Texas Tribune (July 10, 2018), <https://www.texastribune.org/2018/07/10/texas-san-antonio-chris-young-execution-faith-leaders/> [<https://perma.cc/A6T4-MNW4>]. Mitesh believes Young can be a positive force in the world if he is allowed to live through his efforts to mentor troubled youth. Emilie Eaton, *As activists gather, court denies request to halt San Antonio man's execution*, San Antonio Express-News (July 10, 2018),

[https://www.expressnews.com/news/local/article/As-activists-gather-court-denies-request-to-halt-13064835.php?utm\\_campaign=twitter-premium&utm\\_source=CMS%20Sharing%20Button&utm\\_medium=social](https://www.expressnews.com/news/local/article/As-activists-gather-court-denies-request-to-halt-13064835.php?utm_campaign=twitter-premium&utm_source=CMS%20Sharing%20Button&utm_medium=social) [https://perma.cc/SVJ7-WPMT]. Mitesh thinks Young might be able to “break the chain” and prevent other young people from traveling down the path he took. Deven Clarke, *Son of man killed on East Side in 2004 asks for father’s killer to be spared*, www.ksat.com (July 10, 2018), [https://www.ksat.com/news/son-of-man-killed-on-east-side-in-2004-asks-for-fathers-killer-to-be-spared?\\_\\_vfz=medium%3Dsharebar](https://www.ksat.com/news/son-of-man-killed-on-east-side-in-2004-asks-for-fathers-killer-to-be-spared?__vfz=medium%3Dsharebar) [https://perma.cc/A5J8-B4LL]. Mitesh is correct in these sentiments, and he conveyed them to the Board prior to the Board’s decision in this case.

**B. Whitaker’s case**

**1. The crime**

If the adjectives “wayward” and “misguided” aptly described Young’s life prior to his arrival on death row, the adjectives “duplicitous” and “conniving” aptly described Whitaker’s. Thomas Whitaker had led his family to believe he was enrolled in college and was about to graduate. *Whitaker v. Davis*, 853 F.3d 253, 255 (5th Cir. 2017). On December 10, 2003, Whitaker and his father, mother, and younger brother went out to celebrate Whitaker’s graduation from college. *Id.* As it happened, Whitaker had been lying to his family; he was not actually enrolled in college at all, nor was he about to graduate. *Id.* Since at least 2000, Whitaker had planned, with several other individuals, at different times, to murder his family and had made at least one unsuccessful attempt. *Id.*

On December 10, 2003, Whitaker was successful. *Id.* When the family arrived home from the “graduation” dinner, Whitaker’s roommate was inside, and he shot and killed Whitaker’s mother and younger brother and wounded Whitaker’s father as they entered. *Id.* Whitaker himself was shot in the arm, in an attempt to trick authorities into believing that he too was an attempted victim of the attack. Whitaker’s mother and brother died, but his father survived his injuries. Whitaker, who had directed his roommate to do this, was subsequently convicted of capital murder and sentenced to death. *Id.*

## **2. Improvement in prison**

On death row, Whitaker was a calming influence who often helped his fellow inmates. Whitaker made positive relationships outside of the prison as well, including with a murder victim survivor and an inmate in Washington.

## **3. Closest living relative support**

Whitaker’s father, Kent Whitaker, the sole survivor and closest living relative of the victims, was his most vocal advocate. He fought for clemency for his son, asking the Board to recommend commutation so he would not lose the last surviving member of his family.

**V. The Texas Board of Pardons and Paroles' July 13th, 2018 decision not to recommend Young's death sentence be commuted was a violation of the Equal Protection Clause of the Fourteenth Amendment.**

In *Ohio Adult Parole Auth. v. Woodard*, the Supreme Court addressed the question of what procedures are required by the Due Process clause in clemency proceedings. Justice O'Connor's concurring opinion for the five-to-four Court provides the law of the case. As Justice O'Connor explained, while clemency proceedings do not trigger the same panoply of Due Process protections implicated in judicial proceedings, minimal procedural safeguards nevertheless do apply to clemency proceedings. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998); *see also Faulder v. Tex. Bd. of Pardons & Paroles*, 178 F.3d 343, 344 (5th Cir. 1999). "Judicial intervention might, for example, be warranted in the fact of a scheme whereby a state official flipped a coin to determine whether to grant clemency." *Woodard*, 523 U.S. at 289. Comparing Young's case to Whitaker's, the Board's decision to deny Young clemency is arbitrary, as there are no rational differences to warrant a difference in outcome. To the extent there is any difference between the two cases that can explain the disparate outcome, however, that difference is race; and it is clear the consideration of race is impermissible under the Due Process and Equal Protection clauses. *See, e.g., Washington v. Davis*, 426 U.S. 229, 239 (1976) ("The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race."); *Mahone v. Addicks Utility Dist.*, 836 F.2d 921, 932 (5th Cir. 1988)

(“the [Fourteenth Amendment’s] protections reach only dissimilar treatment among similar people”).

The pernicious role played by race throughout the criminal justice system is by now well known. “African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to experience lengthy prison sentences.” The Sentencing Project, Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System (2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> [ <https://perma.cc/KT7E-CB4L>]. “African-American adults are 5.9 times more likely to go to prison than white adults.” *Id.* Adding to the racial disparities, research also shows that prosecutors are “more likely to charge people of color with crimes that carry heavier sentences than whites.” *Id.* “Nearly half (48%) of the 206,000 people serving life and ‘virtual life’ prison sentences are African American.” *Id.* What this case illustrates is the influence of race in clemency proceedings, and to say that there are few standards regulating clemency is not to say that racial discrimination is therefore permissible.

Courts have repeatedly held that discrimination on the basis of race is “odious in all aspects, [but] is especially pernicious in the administration of justice.” *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017) (quoting *Rose v. Mitchell*, 443 U.S. 524 (1979)). If left unchecked, racial bias “would risk systemic injury to the administration of justice.” *Id.* The basic premise of our criminal justice system is

that “[o]ur law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017). Holding this premise to be true, Young’s punishment should be equal to or less than the punishment that Thomas Whitaker received, as what Young did was inherently equal to or less than what Whitaker did. Whitaker received mercy and will now live out his life in a prison cell. This same result is what Young has requested and what the closest living relatives of Hasmukh Patel want as well. No factor other than race can explain the disparate results reached in these two cases, and the Constitution does not permit that factor to operate.

**VI. In light of the actions of the Defendants denying Young Equal Protection, it would be a violation of the Eighth Amendment’s protection against Cruel and Unusual Punishment to allow the State to execute Young at this time.**

Young re-alleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint. Because of the State’s conduct, Young has been denied equal protection of law. This Court should stay Young’s imminent execution until Young has received the equal protection to which he is entitled, for until that point, carrying out a death sentence on an inmate who should have been given clemency but was denied it because of his race would violate the Eighth Amendment’s prohibition on cruel and unusual punishment.

**VII. Prayer for relief**

WHEREFORE, Plaintiff Christopher Young prays that the Court provide relief as follows:

1. Stay his execution currently set for July 17, 2018;
2. Order an evidentiary hearing at which the members of the Texas Board of Pardons and Paroles offer reasons for their decision and, to the extent those reasons involve racial considerations, order the Board to reconsider Young's clemency petition through a process not tainted by racial discrimination.

Respectfully submitted,

/s/ David R. Dow

---

David R. Dow  
Texas Bar No. 06064900  
University of Houston Law Center  
4604 Calhoun Rd.  
Houston, Texas 77204-6060  
Tel. (713) 743-2171  
Fax (713) 743-2131  
Email ddow@central.uh.edu

*Counsel for Plaintiff Christopher Young*

**Verification**

I, David R. Dow, attorney for Plaintiff in the above-entitled action, state that to the best of my knowledge and belief, the facts set forth in this Complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on July 13, 2018.

/s/ David R. Dow

\_\_\_\_\_  
David R. Dow

**Certificate of Service**

I certify that on July 13, 2018 a true and correct copy of the above pleading was delivered via email to:

Bettie Wells, General Counsel  
Texas Board of Pardons and Pardons  
209 West 14th Street, Suite 500  
Austin, Texas 78701  
Tel. (512) 406-5353  
Fax. (512) 463-8120  
Email: Bettie.Wells@tdcj.texas.gov

s/ David R. Dow

---

David R. Dow