

CAPITAL CASE

No. 17-1274

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In The  
**Supreme Court of the United States**

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CHARLES L. RYAN, DIRECTOR, ARIZONA  
DEPARTMENT OF CORRECTIONS, *et al.*,

*Petitioners,*

v.

ROBERT ALLEN POYSON,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**BRIEF OF AMICUS CURIAE  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

Arizona Voice for Crime Victims, Inc. (AVCV) is an Arizona nonprofit corporation that works to promote and protect crime victims' interests throughout the criminal justice process. To achieve these goals, AVCV empowers victims of crime through legal advocacy and social services. AVCV also provides continuing legal education to the judiciary, lawyers, and law enforcement. AVCV seeks to foster a fair justice system which (1) provides crime victims with resources and information to help them seek immediate crisis intervention, (2) informs crime victims of their rights under the laws of the United States and Arizona, (3) ensures that crime victims fully understand those rights, and (4) promotes meaningful ways for crime victims to enforce their rights, including through direct legal representation. A key part of AVCV's mission is working to give the judiciary information and policy insights that may be helpful in the sometimes difficult task of balancing an accused's constitutional rights with the crime victim's right to finality, while also protecting the wider community's need for deterrence.

AVCV believes that the Ninth Circuit's withholding of a mandate and retaining jurisdiction indefinitely, even after this Court had denied a petition for

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<sup>1</sup> Both Petitioners and Respondent consented to the filing of this amicus curiae brief and received 10 days notice of the intent to file in support of the Petitioners. No counsel for any party authored this brief in whole or in part, and no person or entity, other than amicus curiae, made a monetary contribution to the preparation or submission of this brief. Sup. Ct. R. 37.6.

certiorari, failed to properly balance these interests. While other advocates will offer the Court a comprehensive demonstration of the Ninth Circuit's error under existing statutes and caselaw, AVCV submits this brief in support of the State of Arizona (1) to articulate the distinct and powerful interest – well recognized under state and federal law – that victims of crime have in the finality by seeing punishment carried out, and (2) to demonstrate the harm that the delay tactics of the Ninth Circuit's in death penalty cases inflict on victims' rights and interests.

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### STATEMENT OF THE CASE

AVCV hopes to set this amicus brief in context by providing a factual and procedural background of this case, which began its journey through the legal system nearly twenty-two years ago, when Respondent Poyson heinously murdered three people, including a fifteen-year-old child.

Poyson met Lena Kagen, her fifteen-year-old son, Robert Delahunt, and her companion Roland Wear in April of 1996. *State v. Poyson*, 198 Ariz. 70, 74, 7 P.3d 79, 83 (2000). Poyson and his two companions, fourteen-year-old Kimberly Lane and forty-eight-year-old Frank Anderson, were homeless, so Lena Kagen allowed them to stay in her trailer home near Kingman, Arizona. *Id.* Poyson and his companions wanted to travel to Chicago but lacked transportation. *Id.* They devised a plan to kill Lena Kagen, Robert Delahunt,



and Roland Wear in order to steal Wear's truck. *Id.* On August 13, 1996, Lane lured fifteen-year-old Delahunt into a travel trailer on the property under the pretense that they would have sex. *Id.* Once in the travel trailer, Anderson slit Delahunt's throat with a bread knife. *Id.* Poyson heard Delahunt's screams and ran to the travel trailer. *Id.* While Anderson held Delahunt down, Poyson bashed Delahunt's head against the floor, beat it with his fists, and pounded it with a rock. *Id.* This still did not kill Delahunt, so Poyson took the bread knife and drove it through his ear. *Id.* Although the blade penetrated Delahunt's skull and exited through his nose, the wound was not fatal. *Id.* Poyson continued to slam Delahunt's head against the floor until he finally lost consciousness. *Id.* According to the medical examiner, fifteen-year-old Delahunt died of massive blunt force trauma to the head. *Id.* In all, the attack lasted approximately 45 minutes. Remarkably, Kagen and Wear, who were in the main trailer with the radio on, never heard the commotion coming from the travel trailer. *Id.*

After they were certain that Delahunt was dead, Poyson and Anderson prepared to kill Kagen and Wear. *Id.* Poyson loaded Wear's .22 rifle and tested it for about five minutes to make sure it would function properly. *Id.* He then stashed it near a shed to use to murder Kagen and Wear later that evening. *Id.* Before entering Kagen's trailer, Poyson cut the telephone line so that neither Kagen nor Wear would be able to call for help. *Id.* After Kagen and Wear were asleep, Poyson and Anderson went into their bedroom. *Id.* Poyson shot

Kagen in the head, killing her instantly. *Id.* After quickly reloading the rifle, Poyson shot Wear in the mouth, shattering his upper right teeth. *Id.* Wear attempted to fight for his life, but Poyson repeatedly clubbed him in the head with the rifle *Id.* At some point, the struggle moved outside of Kagan's trailer. *Id.* Anderson threw a cinder block at Wear, hitting him in the back and knocking him to the ground. *Id.* While the victim was lying there, Poyson kicked him in the head before picking up a cinder block and repeatedly threw it at Wear's head. *Id.* After Wear was dead, Poyson stole his wallet and the keys to his truck. *Id.* Before the trio fled from Arizona to Illinois in Wear's truck, Poyson covered Wear's body with debris from the yard. *Id.* Poyson was apprehended several days later in Illinois. *Id.*

In 1998, Poyson was convicted on three counts of first degree murder and sentenced to death. *Id.* at 73, 82. His convictions and sentence were affirmed by the Arizona Supreme Court. *Id.* The sentencing judge found the presence of three death-qualifying aggravating factors: each of the three murders was committed in expectation of pecuniary gain, there were multiple homicides, and that Delahunt and Wear were murdered in an especially cruel manner. *Id.* at 78, 87. Neither the sentencing judge nor the Arizona Supreme Court, on review, found sufficient mitigation to warrant leniency. *Id.* at 80, 89.

After seeking post-conviction relief and exhausting his state remedies in 2004, Poyson filed a federal habeas petition in the Federal District Court. *Poyson v. Ryan*, 743 F.3d 1185, 1195 (9th Cir. 2013). The federal

habeas process took six years before relief was denied in 2010, fourteen years after Delahunt, Kagen, and Wear were brutally murdered. *Id.* Poyson appealed to the Ninth Circuit, making three claims. *Id.* Poyson first asserted a claim that the Arizona Supreme Court applied an unconstitutional causal nexus test to mitigating evidence of his mental health, traumatic childhood, and substance abuse history. *Id.* at 1196. He also asserted that the trial court and the Arizona Supreme Court failed to treat his history of drug and alcohol abuse as a non-statutory mitigating factor. *Id.* at 1200. Last, he asserted that he received ineffective assistance of counsel during the penalty phase of his trial. *Id.* at 1202. On March 2, 2013, approximately sixteen-and-a-half years after the murders, a three-judge panel of the Ninth Circuit affirmed the district court's ruling. *Id.* at 1185.

Poyson's petition for a panel and en banc rehearing was denied on November 7, 2013. *Id.* The Ninth Circuit panel amended its opinion on November 7, 2013, but again reached the same result. In April 2014, after Poyson filed a petition for certiorari with this Court that was eventually denied, the Ninth Circuit's panel considered Poyson's dismissed petition for rehearing and stayed the proceedings pending the resolution of another Arizona case, *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015). *Poyson v. Ryan*, 879 F.3d 875, 886-87 (9th Cir. 2018). In May of 2016, close to twenty years after the murders of Kagen, Delahunt, and Wear, the Ninth Circuit extended the stay on Poyson's petition for rehearing pending a petition for certiorari filed in *McKinney v. Ryan*. *Id.* at 887. After this Court

denied the petition for certiorari in *McKinney*, the Ninth Circuit further extended the stay on Poyson's petition and ordered additional briefing. *Id.* By the time oral argument was held on Poyson's petition for rehearing in September of 2017, twenty-one years had passed since the murders. *Id.* On January 12, 2018, an amended opinion was issued granting relief that had previously been denied to Poyson on the same record and under the same standard. *Id.* at 875. Twenty-two years after Poyson murdered three innocent people, the Ninth Circuit has remanded the case claiming Arizona applied an unconstitutional causal nexus test to his mitigation. *Id.*



### **SUMMARY OF THE ARGUMENT**

Violent crime takes an extraordinarily painful toll on victims. But the crime itself is merely the beginning of the emotional harm victims and their families suffer. Victims' suffering is compounded and exacerbated by long delays between the commission of the crime and the imposition of punishment. Now, nearing twenty-two years since Poyson committed three brutal murders, the victims have yet to receive finality after conviction and sentence – a right guaranteed to them under the Arizona Victims' Bill of Rights (VBR), Ariz. Const. art. II, § 2.1(A)(10).

Social science research demonstrates that the initial trauma victims suffer after a violent crime is compounded by their experience with the criminal justice system. When punishment and finality are delayed,

the victim's trauma is prolonged as resolution to a traumatic life event appears to be nonexistent. And while our system justly ensures that some delays are inevitable, the human cost of delay warrants special consideration. State and federal laws recognize the importance of finality to victim healing and recovery. However, the Ninth Circuit's decision to withhold a mandate and retain jurisdiction over this case indefinitely threatens to harm interests of crime victims in attaining finality. While the state and victim share a legitimate interest in seeing that punishment is carried out, the state's interest in finality arises from the need for proper enforcement of its laws in a timely manner, but the victims' interest in finality is personal and relates to their emotional well-being. For the victim, finality represents the resolution of a traumatic life event and its aftermath.

Accordingly, AVCV respectfully urges the Court to grant the State of Arizona's petition for certiorari.



## ARGUMENT

### **I. Delays in obtaining justice cause emotional harm to victims of violent crime.**

Victims have a compelling interest in finality as it is essential to their healing and recovery. The murder of a loved one causes significant psychological implications conceptualized within a post-traumatic stress disorder (PTSD) framework; the most consistently documented consequence of violent crime. Heidi M.

Zinzow, et al., *Examining Posttraumatic Stress Symptoms in a National Sample of Homicide Survivors: Prevalence and Comparison to Other Violence Victims*, 24 J. Traum. Stress 743 (December 2011); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. Traum. Stress 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traum. Stress 119 (2003); Patricia A. Resick, *The Psychological Impact of Rape*, 8 J. Interpersonal Violence 223, 225 (1993). Victims of all types of violent crime can experience PTSD or various symptom clusters, but homicide survivors are twice as likely to meet the criteria for PTSD and report more symptoms of PTSD than victims of other types of trauma. Zinzow at 744. The high prevalence of PTSD in homicide survivors may be partially due to the fact that survivors are forced to cope not only with the loss of a loved one, but also the sudden and violent nature of their death. Zinzow at 744 citing Angelynne Amick-McMullan, et al., *Family Survivors of Homicide Victims: Theoretical Perspectives and an Exploratory Study*, 2 J. Traum. Stress 21, 35 (1989). Studies also suggest a connection between initial victimization and later depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and even suicide. Parsons & Bergin at 182.

Courts often overlook the effects that delayed judicial proceedings, as well as delays in the imposition of punishment, have on victims. A prolonged experience in the criminal justice system adds to the

intense and painful consequences of initial victimization. *See id.* at 182-183; *see also* Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traum. Stress 159, 159 (2003). Secondary victimization often causes more harm than the initial criminal act. Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Res. 313, 321 (2002). A victim's experience with the justice system often "means the difference between a healing experience and one that exacerbates the initial trauma." Parsons & Bergin at 182. For example, one study examining the effect of offender punishment on crime victim recovery found that most victims experienced improved recovery when there was an increased perceived punishment of the offender. Dr. Joel H. Hammer, *The Effect of Offender Punishment on Crime Victim's Recovery and Perceived Fairness (Equity) and Process Control*, University Microfilms International 87, Ann Arbor, MI (1989). Similarly, where offenders accepted plea bargains, the victims experienced greater recovery because of the absence of extended delays. *Id.*

Timely resolution is essential to victim recovery. *Id.* The emotional harm caused by a prolonged process is severe in death penalty cases, such as this one, where the delay between the initial sentencing in 1998 and the current procedural posture of the case has spanned two decades. The automatic, and often repeated, appeals in a death penalty cases are continually brutal on victim family members. Dan S. Levy, *Balancing the Scales of Justice*, 89 *Judicature* 289, 290

(2006). Year after year, survivors summon the strength to go to court, schedule time off work, and relive the murder of their loved one. *Id.* The years of delay exact an enormous physical, emotional, and financial toll. *Id.*

Here, the Ninth Circuit's withholding of a mandate and retaining indefinite jurisdiction over a matter in which they initially affirmed the District Court's ruling represents an unnecessary infliction of additional trauma to the victims. Allowing the Ninth Circuit to willingly contribute to delays in the imposition of punishment comes at a great cost to victims of crime who, after twenty-two years, are still seeking a resolution to a traumatic life event that only the end of the criminal process and imposition of punishment can bring.

**II. The emotional harm caused to victims by delay should be given great weight as it is recognized by state and federal law.**

Arizona, through its Victims' Bill of Rights (VBR) seeks to minimize the traumatic impact of murder on victims by enumerating specific individual constitutional rights to victims intended to preserve and protect their rights to justice and due process. Ariz. Const. art. II, § 2.1; Gessner H. Harrison, *The Good, The Bad, and The Ugly: Arizona's Courts and the Crime Victims' Bill of Rights*, 34 Ariz. St. L.J. 531, 531-32 (2002). In cases involving murder, these rights are conferred on the victim's spouse, parent, child, and other family



members. Ariz. Const. art. II, § 2.1(C)-(D); A.R.S. § 13-4401-19.

Most relevant here is that the VBR gives victims an express “right to a speedy trial or disposition and *final conclusion of the case after conviction and sentence.*” Ariz. Const. art. II, § 2.1(A)(10) (emphasis added). Arizona constitutional law expressly recognizes the harm caused by undue delay. Thus, Arizona’s courts are required to consider not only the speedy trial rights of the accused, but also to account for the crime victim’s rights to reasonable finality. *See State v. Dixon*, 226 Ariz. 545, 555, 250 P.3d 1174, 1184 (2011). The Arizona Supreme Court has been clear that a victim’s constitutional right to finality warrants protection. *Fitzgerald v. Myers*, 243 Ariz. 84, 402 P.3d 442, 450 (2017); *State v. Gates*, 243 Ariz. 451, 410 P.3d 433, 436-37 (2018). Victim’s rights may not be whittled away through judicially created ad hoc exceptions or contrary court rules, and the Arizona legislature is similarly prohibited from reducing rights conferred by Arizona’s VBR. *See Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992); *see also State v. Lee*, 226 Ariz. 234, 237, 245 P.3d 919, 922 (App. 2011) (“[N]either the legislature nor court rules can eliminate or reduce rights guaranteed by the VBR”). In other words, Arizona’s Constitution gives crime victims a fundamental right not to be victimized a second time by an unending criminal justice process.

The authority of a state to enact and pass its own laws is futile if a state cannot enforce them. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (internal

citations omitted). The delay that arises when a circuit court decides to withhold a mandate and retain jurisdiction over a death penalty case indefinitely is detrimental to both the state's interest in enforcing its moral judgment and to a victim's constitutional right to a prompt and final conclusion. By providing a constitutional right to finality, Arizona seeks to ensure that victims of violent crimes such as this one receive a resolution. Without justice, victims cannot heal. Candy Lightner, Remarks at the Rally in Support of the Passage of the Arizona VBR (September 1990).

Arizona is not alone in recognizing the need for finality for victims of violent crime. Federal law also recognizes the importance of victims seeing finality and avoiding undue delay in capital cases. For instance, the Crime Victims' Rights Act of 2004 (CVRA) confers a number of rights to victims of federal offenses. 18 U.S.C. § 3771. It provides that victims have a "right to proceedings free from unreasonable delay." 18 U.S.C. § 3771(a)(7). Additionally, the right to be free from unreasonable delay expressly applies to victims and their families in all "[f]ederal habeas corpus proceeding[s] arising out of a State conviction." 18 U.S.C. § 3771(b)(2). The plain language of the CVRA demonstrates a desire to protect victims from delay and other harms encountered throughout the criminal justice process. The CVRA guarantees that victims will no longer be ignored, but instead would be guaranteed "a role in the criminal justice process" as "independent participant[s]." See Paul G. Cassell, *Crime Victims'*

*Rights During Criminal Investigations?*, 104 J. Crim. Law and Criminology 59, 66-67 (2014).

Like the CVRA, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) expressly recognizes the need to avoid delay in death penalty cases by imposing a one-year statute of limitations on habeas petitions. 28 U.S.C. § 2244(d)(1). AEDPA also bars second or successive habeas petitions. 28 U.S.C. § 2244(b)(1). This Court has previously recognized the intended function of AEDPA of reducing delay in capital cases and the interest states have in finality. *Woodford v. Garceau*, 538 U.S. 202, 206 (2003); *Duncan v. Walker*, 533 U.S. 167, 179 (2001).

The actions of the Ninth Circuit in withholding mandate and retaining jurisdiction indefinitely compounds the emotional harm victims endure through the criminal process. Additionally, these actions undermine established state and federal policy in protecting victims from undue delay.

**III. The Ninth Circuit's decision to withhold a mandate and retain jurisdiction indefinitely harms the recognized rights of crime victims and their interest in achieving finality that can only come from knowing that punishment will be imposed.**

This Court has previously recognized that the impact of crime on a particular victim is an appropriate consideration when determining the appropriate sentence for a crime. *Payne v. Tennessee*, 501 U.S. 808, 819

(1991). Without knowledge of the impact of a crime on the victim, a jury will not be able to understand the extent of the harm a certain crime has caused on victims and their families. *Id.* at 830 (O'Connor, J., concurring). If a sentencing decision fails to account for this loss, then it is possible that the penalty will not reflect the true "human cost of the crime." *Id.* at 826. The "human cost of the crime" recognized in *Payne* is very worthy of consideration when the state seeks to implement its sentence. Victims of crime share a legitimate interest in seeing that the punishment is ultimately carried out. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). Only after the sentence is executed can a victim achieve true finality, and "[f]inality is essential to both the retributive and the deterrent functions of criminal law." *Calderon*, 523 U.S. at 555.

"Both the state and the victims of crime have an important interest in the *timely* enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (emphasis added). A victim's interest in finality is distinct from the state's interest. While the state seeks to exercise its power to enforce laws and impose punishment, a victim's interest in finality is personal and directly related to their emotional well-being and is seen as a resolution to a traumatic life event and its aftermath. "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Calderon*, 523 U.S. at 556.

The Ninth Circuit's decision not to issue a mandate, especially after this Court denied Poyson's petition for certiorari, added nearly four years to

an already lengthy appellate process. Under Rule 41(d)(2)(D) of the Federal Rules of Appellate Procedure, appeals courts must issue the mandate immediately when a copy of the order of the United States Supreme Court denying the petition for writ of certiorari is filed. Thus, a mandate should have been issued in 2014. The Ninth Circuit departed from the established rules of mandate procedure, something in which they have been previously admonished by this Court. *Ryan v. Schad*, 570 U.S. 521 (2013). The stay of a mandate is entered solely to allow this Court time to consider a petition for certiorari. *Id.* at 524 (internal citation omitted). Thus, once this Court denies a petition, there is generally not a need for action by lower courts as a decision from this Court denying discretionary review signals the end of litigation. *Id.*

Despite this Court's direction to the Ninth Circuit in *Schad*, they held a case in limbo nearly four years as the victims awaited finality. When lengthy federal proceedings indefinitely delay the implementation of punishment, victims necessarily experience a concomitant postponement of his or her ability to achieve reasonable finality. *Calderon*, 523 U.S. at 556. A delay in finality equates to a delay in healing and recovery. This trauma, and the victim's interest of being protected from it, must be accounted for when making decisions that could cause this harm to continue indefinitely.



**CONCLUSION**

For the reasons set forth above, AVCV respectfully urges this Court to grant the State of Arizona's Petition for Certiorari.

Respectfully submitted,

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