No. 21-846

IN THE

Supreme Court of the United States

JOHN MONTENEGRO CRUZ,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO
THE ARIZONA SUPREME COURT

BRIEF OF AMICI CURIAE FEDERAL COURTS SCHOLARS IN SUPPORT OF PETITIONER

Melanie L. Bostwick
Counsel of Record
Thomas M. Bondy
Sheila Baynes
Melanie Hallums
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com
Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici are law professors who teach and write about the federal courts, habeas corpus, and the relationship between state and federal law. A list of amici is attached as Appendix A.

INTRODUCTION AND SUMMARY OF ARGUMENT

Whether at trial, on appeal, or in collateral proceedings, state courts are the primary forum for enforcement of constitutional rights in state criminal cases. Precisely because our federal system entrusts state courts with such great responsibility, that responsibility is constrained in two ways that are key to this case.

First, state courts may not insulate their decisions from this Court's review by relying on "inadequate" state-law grounds: state-law grounds that are either irregular or hostile to the underlying right the state has empowered its courts to enforce. A robust adequacy doctrine helps guarantee that states do not nullify federal rights either by imposing unanticipated procedural roadblocks or by frustrating enforcement of federal rights. And given the increasing tilt against federal habeas relief, a clear and consistently applied adequacy rule is essential to enforcement of constitutional law. The more exclusive the role of

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[1] The parties have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

state courts in enforcing constitutional rights in criminal cases, the greater the need to ensure that those courts are not using procedure to trim the scope of the underlying federal law. Such an adequacy doctrine, moreover, has no effect on states' legitimate interests in the consistent enforcement of neutral procedure.

Second, under *Yates v. Aiken*, 484 U.S. 211 (1988), and *Teague v. Lane*, 489 U.S. 288 (1989), a state post-conviction claimant is entitled to the benefit of settled constitutional law—that is, "old law"—at any point during collateral review. In the language of *Teague*, a claimant is entitled to the benefit of a *decision* that is new if the *law the new decision applies* is old. The principle that old law always applies ensures that states effectively perform their function as the primary guarantors of constitutional rights in criminal cases, and that state enforcement maps onto the constitutional scope of the federal right.

Old law is always supposed to apply in state post-conviction proceedings, and state post-conviction schemes often provide mechanisms for prisoners to assert intervening appellate decisions. In Arizona, that gateway is Rule 32.1(g). Specifically, Rule 32.1(g) is designed to give claimants a gateway to collateral remedies that, because of a change in controlling law, could not have been secured in a prior proceeding. Whereas Rule 32.2 precludes a post-conviction remedy for any claim that was or could have been raised in an earlier proceeding, Rule 32.1(g) allows claimants seeking a new state post-conviction proceeding the opportunity to obtain relief when there has been "a significant change in the law." Ariz. R. Crim. P. 32.1(g). Under Rule 32.1(g), the "newness" of a legal

holding had always been measured against the way *Arizona courts* had enforced the federal right. That way, when Arizona courts misapplied established federal precedent, Rule 32.1(g) ensured that claimants retained a remedy when the Supreme Court corrected that misapplication.

Until now. Arizona courts failed to apply settled law in this case, and then altered their procedural rules mid-stream so as to deny John Montenegro Cruz a remedy for that mistake. Mr. Cruz was sentenced to death by a jury that was instructed unconstitutionally—a jury permitted to believe that Mr. Cruz could get out of prison if he was not sentenced to death. In *Simmons v. South Carolina*, 512 U.S. 154 (1994), this Court had clearly established that due process required Mr. Cruz's sentencing jury to be informed that the only alternative to an execution was a life spent behind bars. *Simmons* reflects the intuitive proposition that the prosecution should not be permitted to falsely suggest that, if not executed, a defendant will endanger the public at some future time.

Mr. Cruz was entitled to a *Simmons* instruction at the time his conviction became final, but Arizona courts refused to properly honor *Simmons* for years, insisting on a narrow misreading of this Court's holding. Eventually, this Court stepped in to clarify that *Simmons* required the jury instruction, notwithstanding the remote possibility of clemency or subsequent legislative change, and summarily reversed the Arizona Supreme Court in *Lynch v. Arizona*, 578 U.S. 613 (2016) (per curiam). In doing so, this Court highlighted that Arizona's justifications for ignoring *Simmons* had already been rejected in *Simmons* itself. *Id.*

at 615-16. In other words, *Lynch* was "old law" that Arizona had failed to apply both at trial and on direct review.

Lynch made clear that criminal defendants had been constitutionally entitled to the instruction Mr. Cruz requested since this Court decided *Simmons*. Rule 32.1(g) was supposed to ensure that Mr. Cruz could get back into court, and *Teague* was supposed to ensure that *Lynch* applies when he gets there. But the Arizona Supreme Court improvised a procedural rule to avoid a state post-conviction remedy. Specifically, the Arizona Supreme Court foreclosed otherwise available state remedies by reinterpreting Rule 32.1(g) to exclude significant changes "in the *application* of the law." Pet. App. 9a. In doing so, the Arizona Supreme Court broke from its longstanding approach to that provision. The Arizona Supreme Court held that the "newness" of the claim was determined by reference to whether the requested remedy applied precedent that was new *under this Court's retroactivity decisions*—not, as it previously had, in relation to its own precedents. Under this new interpretation of Rule 32.1(g), there was no remedy for the Arizona courts' error because Mr. Cruz sought to assert what *Lynch* had established to be "old law."

The decision below appears tailor-made to deny claimants like Mr. Cruz from *ever* receiving the benefit of *Simmons*—a constitutional guarantee that, but for the Arizona Supreme Court's own mistake, should have been applied the *first time* the state courts encountered the question. Before *Cruz*, the Arizona Supreme Court's interpretation of Rule 32.1(g) functioned in concert with this Court's retroactivity

doctrine, and for good reason: Rule 32.1(g)'s purpose was to afford relief to those individuals who, through no fault of their own, could not obtain a judicial remedy until there was a change in precedent—an objective entirely consistent with *Teague* and *Yates*. But after *Lynch* clearly communicated that Arizona had long misapplied the settled law of *Simmons*, the Arizona Supreme Court wiped away the state post-conviction remedy. Specifically, the Arizona Supreme Court concocted a novel interpretation of Rule 32.1(g) that was both untethered to decades of Arizona precedent and hostile to the *Simmons* right. If Rule 32.1(g) precludes relief where state courts previously failed to apply this Court's settled precedent and enforce a federal constitutional right, then the Arizona Supreme Court's improvisation nullifies Mr. Cruz's *Simmons* right—and jeopardizes other federal constitutional rights that could be left without any remedy. *Cf. Brown v. Davenport*, 142 S. Ct. 1510 (2022) (further limiting the availability of federal habeas relief).

This Court has made clear that state courts cannot evade their duty to faithfully apply federal constitutional rights by inventing novel and unpredictable procedural requirements. "[A]n unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question." *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964). A state procedural rule is inadequate unless it is "firmly established and regularly followed," *James v. Kentucky*, 466 U.S. 341, 348-49 (1984). *See also Michigan v. Long*, 463 U.S. 1032, 1040 (1983) ("Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the

cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground."). As this Court recently explained, it will decline to hear a federal claim where a state-court judgment "rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)).

The state-law ground invoked by the Arizona Supreme Court is inadequate to support the decision. First, the Arizona Supreme Court's reinterpretation of Rule 32.1(g) is not "firmly established and regularly followed," *James*, 466 U.S. at 348-49. The novel and inconsistent application was far from settled, and Mr. Cruz could not have foreseen it. Second, it places an insurmountable burden on the exercise of federal constitutional rights while discriminating against federal law and undermining a federal interest—all without advancing any conceivable state interest.

The Arizona Court's decision also flies in the face of the Supremacy Clause, which animates this Court's adequate and Supreme independent state grounds doctrine. This Court considers whether adequate and independent grounds exist not only to ensure comity, but also to protect constitutional rights and the supremacy of federal law. "The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose*, 496 U.S. 356, 371 (1990). *See, e.g.*, *Haywood v. Drown*, 556 U.S. 729, 736 (2009) ("[A]lthough States retain substantial leeway to

establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies."); *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) (Holmes, J.) ("If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds.").

States that choose to provide a collateral forum to enforce constitutional rights may not improvise procedural rules to disfavor particular rights. The Supremacy Clause requires that state courts provide defendants with at least the federal constitutional safeguards in place at the time their convictions became final. *Montgomery v. Louisiana*, 577 U.S. 190, 204-05 (2016); *accord id.* at 219 (Scalia, J., dissenting). This is a modest but critical restriction on the otherwise wide latitude states are afforded in adjudicating constitutional rights. And it extends to *all* "settled" or "old" rules regardless of whether those rules were applied correctly by the state court at the time an individual's conviction became final—in other words, on collateral review, state courts must apply the federal law they ought to have applied in the first place. *See Yates*, 484 U.S. at 216-17; *Teague*, 489 U.S. at 307 (recognizing that *Yates* requires states to apply old law). The fact that the decision below is contrary to federal law further underscores the importance of this Court exercising review.

ARGUMENT

This Court has jurisdiction to review the Arizona Supreme Court's decision because its reliance on Rule 32.1(g) is an inadequate state-law basis for its decision. Adequacy doctrine developed to ensure that states faithfully adhere to federal law, especially when individual constitutional rights are at stake. Our judicial federalism tolerates a degree of nonuniformity in the adjudication of federal rights to promote comity, but state procedural rules are afforded such latitude only when then they are applied consistently, foreseeably, and in a manner that does not unduly burden assertion of federal rights or amount to exorbitant formalism.

Therefore, "[e]ven though the constitutional protection invoked be denied on nonfederal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded." *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 540 (1930). "The question whether a state procedural ruling is adequate is itself a question of federal law." *Beard v. Kindler*, 558 U.S. 53, 60 (2009). This Court has "framed the adequacy inquiry by asking whether the state rule in question was 'firmly established and regularly followed.'" *Id. See also Lee v. Kemna*, 534 U.S. 362, 376 (2002) ("Ordinarily, violation of 'firmly established and regularly followed' state rules … will be adequate to foreclose review of a federal claim."); *James*, 466 U.S. at 348-49 ("Kentucky's distinction between admonitions and instructions is not the sort of firmly established and regularly followed state

practice that can prevent implementation of federal constitutional rights.").

This Court has exercised its jurisdiction in many cases where it found the state ground inadequate, especially where state courts have invoked procedural rules in a manner that would insulate violations of federal constitutional rights from review. *See, e.g.*, *Ward v. Bd. of Cnty. Comm'rs of Love Cnty.*, 253 U.S. 17, 22 (1920) ("It therefore is within our province to inquire not only whether the [federal] right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support."); *Williams v. Georgia*, 349 U.S. 375, 383 (1955) ("[W]e are not concluded from assuming jurisdiction and deciding whether the state court action in the particular circumstances is, in effect, an avoidance of the federal right."); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457-58 (1958) ("Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights."); *see also* Eve Brensike Primus, *Federal Review of State Criminal Convictions: A Structural Approach to Adequacy Doctrine*, 116 Mich. L. Rev. 75, 80 (2017) ("[P]rocedural adequacy doctrine gives federal courts the power and the duty to declare state procedural rules inadequate when those rules unduly burden defendants' abilities to assert violations of their federal rights, and that is precisely what many state postconviction labyrinths do.").

As explained further below, the state-law ground is inadequate. Its "heads we win, tails you lose" formulation is exactly the sort of mischief the doctrine evolved to capture. The Arizona Supreme Court's rule creates the quintessential Catch-22: An Arizona prisoner wishing to benefit from a decision by this Court through the Rule 32.1(g) gateway must first satisfy the rule's requirement that there has been a significant change in the law. But any successful claimant must also demonstrate that, under *Teague*, she qualifies for retroactive application of this Court's precedents—*i.e.*, that the constitutional rule at stake is "old law" for federal retroactivity purposes. Under the Arizona Supreme Court's new interpretation of Rule 32.1(g), the courthouse doors slam shut anytime Arizona courts previously misapplied a constitutional rule on the ground that the decision is not "new" for purposes of Rule 32.1(g) because the law it applies is "old" for purposes of retroactivity. In other words, petitioners like Mr. Cruz are denied the benefit of a rule they had been entitled to all along for the very reason that *they were entitled to it all along*.

That Kafka-esque outcome illustrates why this Court has been willing to disregard procedural grounds deployed to thwart enforcement of federal rights. "We have … been mindful of the danger that novel state procedural requirements will be imposed for the purpose of evading compliance with a federal standard." *Kindler*, 558 U.S. at 64 (Kennedy, J., concurring) (citing *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 293-302 (1964)). "[A] state procedural ground would be inadequate if the challenger shows a 'purpose or pattern to evade constitutional guarantees,'" *Walker v. Martin*, 562 U.S. 307, 321 (2011)

(quoting *Kindler*, 558 U.S. at 65 (2009) (Kennedy, J., concurring)), or where a rule is applied "in a surprising or unfair manner," *id.* at 320.

It is enough that the Arizona Supreme Court's interpretation of Rule 32.1(g) is novel, has been inconsistently applied, and imposes an undue burden on federal constitutional rights. But Arizona's demonstrated hostility to *Simmons* is the final nail in the coffin of its purportedly adequate state-law basis for ignoring *Lynch*. By throwing up a brand-new procedural roadblock with its reinterpretation of Rule 32.1(g), it continues to evade its obligations to apply federal constitutional law, and to discriminate against the federal right at issue. In the words of Justice Holmes, "[w]hatever spring[]s the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis*, 263 U.S. at 24 (quoted in *Lee*, 534 U.S. at 376).

I. The State-Law Ground Is Inadequate Because It Rested On A Novel Interpretation Of An Inconsistently Applied Rule Of State Procedure.

Perhaps the most glaring reason the Arizona Supreme Court's decision does not rest on an adequate state ground is that it created a new interpretation of Rule 32.1(g) out of whole cloth. Newly adopted state procedural rules are deemed inadequate for purposes of this Court's review. "We have not allowed state courts to bar review of federal claims by invoking new procedural rules without adequate notice to litigants

who, in asserting their federal rights, have in good faith complied with existing state procedural law." *Kindler*, 558 U.S. at 63-64 (Kennedy, J., concurring); *see also Patterson*, 357 U.S. at 457 ("[S]uch a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures to obtain appellate review, cannot avail the State here, because petitioner could not fairly be deemed to have been apprised of its existence."); 2 *Federal Habeas Corpus Practice and Procedure* § 26.2 n.50 (2021) (listing dozens of federal circuit court decisions applying adequacy rules to allow federal habeas review).

Previously, the Arizona Supreme Court held that a change is "significant" for purposes of Rule 32.1(g) when it represents a "clear break from the past." *State v. Valencia*, 386 P.3d 392, 394 (Ariz. 2016). It described as the "archetyp[al]" situation creating such a break "when an appellate court overrules previously binding case law." *State v. Shrum*, 203 P.3d 1175, 1178 (Ariz. 2009). And the "newness" of an intervening decision by this Court had always been determined by reference to prior application of the law *in Arizona courts*. *See infra* at 15. But *Cruz* changed that referent, looking instead only to this Court's retroactivity decisions. And for the very first time in the decision below, the court reinterpreted "significant change in the law" to exclude a "significant change in the *application* of the law." Pet. App. 9a. Never before had an Arizona court held that the state-court decisions that erred in the *application* of federal law were an exception to Rule 32.1(g). Nor had Arizona courts followed any such practice. The Arizona Supreme

Court's reinterpretation of Rule 32.1(g) was in no way "firmly established."

On top of its novelty, that distinction makes no sense. Every opinion of a court applying a statutory provision or rule is an "application of the law." So, too, are decisions by state courts applying this Court's constitutional precedent. And it would surely come as a great surprise to all the people denied a *Simmons* instruction pre-*Lynch* that there was no "clear break" or "significant change" created by *Lynch*: if they had brought their petitions after *Lynch*, they might have obtained relief under *Simmons*. Instead, they were denied its due process guarantee. *Lynch* explicitly overruled Arizona precedent on a significant question of federal law; had it occurred earlier, those people would have benefitted from it. By distinguishing "the law" and its "application"—and then denying review on the basis of that distinction—the Arizona Supreme Court would use its own errors under *Simmons* and *Teague* to shield its decisions from review.

The outlier status of Arizona's rule further underscores its novelty and thus its inadequacy. In determining the adequacy of a state procedural bar, this Court also looks to the practice of other states and of federal courts. *See, e.g.*, *Johnson v. Lee*, 578 U.S. 605, 609 (2016) (concluding that California's rule was adequate where it was not at all "unique" and where "[f]ederal and state habeas courts across the country follow the same rule"). If a state's rule is unique or even unusual, it is "novel" in the sense that litigants may not reasonably anticipate its application. In *Johnson*, for example, the Court noted in finding a lack of novelty that "[i]t appears that every State

shares this procedural bar in some form." 578 U.S. at 609.

Here, the opposite is true. Arizona's decision in *Cruz* makes it an extreme outlier. As interpreted by the Arizona Supreme Court, there is no means for prisoners to correct major constitutional mistakes of the courts' own making—specifically, state-court mistakes about whether Supreme Court precedent is retroactive. If a prisoner loses a first post-conviction proceeding on the ground that a U.S. Supreme Court decision is nonretroactive, and if that reasoning is later declared erroneous, the very fact of that error bars the Rule 32.1(g) gateway. Among the states with relevant decisional law or state statutes governing the question at issue here—whether a non-new rule receives a post-conviction forum—Alaska, California, Delaware, Florida, Hawaii, Massachusetts, Mississippi, New York, South Carolina, Tennessee, Texas, and Vermont all provide such a forum or cite with approval federal law indicating willingness to provide such a forum. Only Arizona has announced, for the *Simmons* claims at issue here, that it will not do so, citing its novel interpretation of Rule 32.1(g).[2]

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[2] Arizona insists that other states' practices have no relevance to its interpretation of Rule 32.1(g). BIO at 16-17. *Johnson* instructs otherwise. 578 U.S. at 609 (comparing a rule to other states' practices in determining whether it is novel and thus inadequate). What is more, the Arizona Supreme Court itself has cited other states' law in deciding cases under its previous interpretation of Rule 32.1(g). *See, e.g.*, *Shrum*, 203 P.3d at 1180 (citing California law when evaluating whether an appellate decision was "a significant change in the law"); *State v. Towery*,

As an entirely new invention, it is no surprise that the Arizona Supreme Court's legal rule also fails as an adequate state ground because it is not "strictly or regularly followed." *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964). The rule of state procedure announced in *Cruz* sharply departed from that court's previous jurisprudence. The Arizona Supreme Court was in fact quite consistent on this point—which contradicts its newfound approach here—explaining again and again over the course of decades that Rule 32.1(g) permits review where an intervening decision overruled state-court precedent. *See State v. Rendon*, 776 P.2d 353, 354-55 (Ariz. 1989); *State v. Slemmer*, 823 P.2d 41, 47 (Ariz. 1991); *Shrum*, 203 P.3d at 1178; *State v. Bigger*, 492 P.3d 1020, 1029 (Ariz. 2021). Because the state court's new interpretation of Rule 32.1(g) was both novel and inconsistently applied, Mr. Cruz "could not be 'deemed to have been apprised of its existence,'" *Ford v. Georgia*, 498 U.S. 411, 423 (1991). For these reasons, the state-law basis for the decision is inadequate.

II. The State-Law Ground Is Also Inadequate Because The Rule Of State Procedure It Announced Is Unduly Burdensome And Discriminates Against A Federal Right.

Even if the Arizona Supreme Court's decision were "firmly established and regularly followed," this Court's review of the federal question would not be

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64 P.3d 828, 832-33 (Ariz. 2003) (citing Nevada and Illinois law in conducting retroactivity analysis). In *Cruz*, of course, the Arizona Supreme Court departed markedly from that earlier interpretation.

foreclosed. "[F]ederal courts must carefully examine state procedural requirements to ensure that they do not operate to discriminate against claims of federal rights." *Martin*, 562 U.S. at 321; *cf. Johnson*, 578 U.S. at 609 (holding that California's *Dixon* bar was "adequate to bar federal habeas review" where "[n]othing suggests … that California courts apply the … bar in a way that disfavors federal claims"). This Court has repeatedly held that its review is not foreclosed where "nothing would be gained," *Osborne v. Ohio*, 495 U.S. 103, 124 (1990), by application of a state procedural rule with "pointless severity," *Flowers*, 377 U.S. at 297.

The Arizona Supreme Court's application of Rule 32.1(g) fails this inquiry from every angle. It burdens a federal right to the point of foreclosing all review for a class of petitioners through no fault of their own. It discriminates against federal law by treating decisions of this Court differently than its own decisions. And it undermines a federal interest while advancing no compelling state interest.

First, as described above, the state-court rule makes it impossible to correct any judgment tainted by Arizona's cramped view of settled precedent. Under Arizona's interpretation of Rule 32.1(g), the very fact that a person ought to have benefitted from a rule earlier makes it impossible for them to benefit from it later. Such a Catch-22 would remove an entire class of diligent claimants from the protection of *Simmons*—and in so doing, would raise "an insuperable barrier to one making claim to federal rights" and deny any "reasonable opportunity to have the issue as to the claimed right heard and determined by the

State court," *Michel v. Louisiana*, 350 U.S. 91, 93 (1955).

Second, the Arizona Supreme Court's interpretation would privilege its *own* decisions overturning state precedents as a "significant change in the law"—thus allowing for review under Rule 32.1(g)—while denying the same treatment when this Court does the same thing. *Compare* Pet. App. 8a-9a (this Court's decision in *Lynch* overruling Arizona precedent did not qualify as a "significant change in the law"), *with Slemmer*, 823 P.2d 41 (decision by Arizona Supreme Court overruling Arizona precedent qualified as a "significant change in the law"). Such a result cannot be squared either with this Court's pronouncements on adequacy or with the Supremacy Clause. It discriminates against decisions of this Court by treating them differently than the state court's own decisions. It discriminates against federal rights by denying prisoner claimants the benefit of retroactive application of settled rules. And it flies in the face of the supremacy of this Court over state courts in matters of federal law.

Third, the interpretation of Rule 32.1(g) announced by the Arizona Supreme Court advances no state interest whatsoever. Rule 32.1(g) already creates a carveout from the general principle of finality where, as here, a petitioner *should* have benefitted from a ruling but could not have through no fault of his own. The State identifies no policy justification for the ruling below. It cannot: the purpose of Rule 32.1(g) is to provide an avenue for defendants to benefit from intervening decisions while promoting judicial economy by discouraging them from bringing a

laundry list of foreclosed claims. *See Shrum*, 203 P.3d at 1178. That legitimate interest would be "substantially served," *Henry v. Mississippi*, 379 U.S. 443, 448 (1965), by allowing Mr. Cruz's claim to be heard—and not served in any way by denying him. And Arizona's new interpretation of Rule 32.1(g) would eviscerate that purpose when the intervening decision comes from this Court.

The inescapable conclusion is that denying relief is indeed the *raison d'être* for the Arizona Supreme Court's newly-minted interpretation of Rule 32.1(g). The Arizona Supreme Court's rule serves no purpose other than to nullify *Lynch*, which held that the Arizona courts had been wrong about the scope of *Simmons* all along. For the Arizona Supreme Court's brand-new rule and *Teague* are mirror images: if a petitioner satisfies *Teague* because a new decision applies old law, he will necessarily be obstructed by Rule 32.1(g). To categorically bar claims for the *same reason* federal law demands their retroactive application is to flout the principles underlying *Yates* as well as the division of labor between federal and state courts and this Court's supremacy.

In isolation, the Catch-22 at the core of the Arizona Supreme Court's decision might look like nothing more than an inadvertent mistake. But the Catch-22 is no coincidence. For years, the Arizona Supreme Court refused to properly apply *Simmons*. After it was instructed by this Court in no uncertain terms that it must, it invented a new reason to avoid the tranche of claims to which Mr. Cruz's *Simmons* challenge belongs. The adequacy doctrine exists to preclude such maneuvers.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Arizona Supreme Court.

Respectfully submitted,

Melanie L. Bostwick
Counsel of Record
Thomas M. Bondy
Sheila Baynes
Melanie Hallums
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com

Date June 21, 2022

APPENDIX A

Amici are law professors who teach and write about the federal courts, habeas corpus, and the relationship between state and federal law. Their titles and institutional affiliations are provided for identification purposes only.

John H. Blume
Samuel F. Leibowitz Professor of Trial Techniques
Director, Cornell Death Penalty Project
Cornell Law School

Erwin Chemerinsky
Dean, Berkeley School of Law
Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

Randy A. Hertz
Vice Dean of N.Y.U. School of Law
Professor of Clinical Law
Director, Clinical and Advocacy Programs
New York University School of Law

Sheri Lynn Johnson
James and Mark Flanagan Professor of Law
Cornell Law School

Lee Kovarsky
Bryant Smith Chair in Law
The University of Texas at Austin School of Law

James S. Liebman
Simon H. Rifkind Professor of Law
Columbia Law School

Leah Litman
Assistant Professor of Law
University of Michigan Law School

Justin Marceau
Professor of Law
Brooks Institute Faculty Research Scholar
University of Denver Sturm College of Law

Eve Brensike Primus
Yale Kamisar Collegiate Professor of Law
University of Michigan Law School

Judith Resnik
Arthur Liman Professor of Law
Yale Law School

Jordan M. Steiker
Judge Robert M. Parker Endowed Chair in Law
Co-Director, Capital Punishment Center
The University of Texas at Austin School of Law

Stephen I. Vladeck
Charles Alan Wright Chair in Federal Courts
The University of Texas at Austin School of Law

Keir M. Weyble
Clinical Professor of Law
Director, Death Penalty Litigation
Cornell Law School

Samuel Wiseman
Professor of Law
Penn State Law