No. _____

IN THE

Supreme Court of the United States

LONNIE ALLEN BASSETT,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the Arizona Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly affirmed that the Constitution "prohibits *mandatory* life-without-parole sentences for murderers under 18." *Jones* v. *Mississippi*, 141 S. Ct. 1307, 1312 (2021); *see Miller* v. *Alabama*, 567 U.S. 460, 470 (2012); *Montgomery* v. *Louisiana*, 577 U.S. 190, 195, 206 (2016). Juvenile homicide offenders "*may* be sentenced to life without parole, but *only if* the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment" than life without parole. *Jones*, 141 S. Ct. at 1311 (emphases added).

Because Arizona abolished parole in 1994, *Miller* counted Arizona as one of "29 jurisdictions mandating life without parole for children" in violation of the Eighth Amendment. 567 U.S. at 482, 486-487 & nn.9, 13, 15. Both this Court and the Arizona Supreme Court have repeatedly "confirmed that parole was unavailable" under Arizona law. *Lynch* v. *Arizona*, 578 U.S. 613, 616 (2016) (per curiam). In the decision below, the Arizona Supreme Court nevertheless concluded that *Miller*, *Montgomery*, and *Jones* do not forbid Arizona courts from imposing mandatory sentences of life without parole.

The question presented is:

Whether the Eighth Amendment permits a juvenile to be sentenced to life without parole under a system that did not afford the sentencing court discretion to choose any other option.

PARTIES TO THE PROCEEDING

Petitioner in this Court is Lonnie Allen Bassett, who was the real party in interest in the proceedings below.

Respondent is the State of Arizona, which was the petitioner in the proceedings below.

RELATED PROCEEDINGS

Supreme Court of the United States (U.S.):

- *Lonnie Allen Bassett* v. *Arizona*, No. 23A475 (Nov. 29, 2023) (granting application to extend time to file petition for writ of certiorari)

Arizona Supreme Court (Ariz.):

- *State ex rel. Mitchell* v. *Cooper et al.*, No. CR-22-0227, 535 P.3d 3 (Sept. 18, 2023)

Arizona Court of Appeals (Ariz. Ct. App.):

- *State* v. *Bassett*, No. 1 CA-SA 22-0152 (Aug. 10, 2022) (declining jurisdiction of State's petition for special action)
- *State* v. *Bassett*, No. 2 CA-CR 2016-0151-PR, 2016 WL 3211766 (June 9, 2016) (denying petition for postconviction relief), *petition for review denied* (Ariz. Jan. 10, 2017)
- *State* v. *Bassett*, No. 1 CA-CR 06-0088, 161 P.3d 1264 (July 24, 2007) (upholding convictions and sentences on direct appeal), *petition for review denied* (Ariz. Nov. 29, 2007)

Arizona Superior Court, Maricopa County (Ariz. Super. Ct.):

- *State* v. *Bassett*, No. CR2004-005097-001 DT (May 26, 2022) (denying State's motion for reconsideration)
- *State* v. *Bassett*, No. CR2004-005097-001 DT (Apr. 28, 2022) (denying State's motion to vacate evidentiary hearing)
- *State* v. *Bassett*, No. CR2004-005097-001 DT (June 13, 2018) (ordering evidentiary hearing)
- *State* v. *Bassett*, No. CR2004-005097-001 DT (May 9, 2014) (denying postconviction relief)

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Petitioner Lonnie Allen Bassett respectfully petitions for a writ of certiorari to review the judgment of the Arizona Supreme Court.

INTRODUCTION

This petition is brought by a defendant sentenced as a juvenile to mandatory life without parole in Arizona, even though this Court's precedents dictate that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.

This Court has made clear that the Constitution "prohibits *mandatory* life-without-parole sentences for murderers under 18." *Jones* v. *Mississippi*, 141 S. Ct. 1307, 1312 (2021); *see Miller* v. *Alabama*, 567 U.S. 460, 470 (2012); *Montgomery* v. *Louisiana*, 577 U.S. 190, 195, 206 (2016). The Constitution permits a life-

without-parole sentence "only if" state law affords the sentencer "discretion to impose a lesser sentence than life without parole." *Jones*, 141 S. Ct. at 1311, 1318. "[A] State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Id.* at 1313.

The logic underpinning that rule is straightforward: "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471. A discretionary sentencing procedure ensures that the sentencer considers the defendant's youth in deciding whether the defendant should spend the rest of his life in prison without any possibility of parole. And data bears out the conclusion that "a discretionary sentencing procedure" makes "life-without-parole sentences relatively rare." *Jones*, 141 S. Ct. at 1318.

This Court recognized in *Miller* that Arizona was one of "29 jurisdictions" with sentencing laws that unconstitutionally "mandat[ed] life without parole for children." 567 U.S. at 482, 486-487 & nn.9, 13, 15. The Arizona Supreme Court therefore initially responded to *Miller* and *Montgomery* by ordering hearings to determine whether defendants given mandatory life-without-parole sentences were entitled to relief.

After this Court decided *Jones*, however, the Arizona Supreme Court overruled its precedent and concluded it was not obligated to provide relief from mandatory life-without-parole sentences after all. Although this Court in *Jones* made clear—repeatedly—that it did "not overrule *Miller* or *Montgomery*," 141 S. Ct. at 1321, the Arizona Supreme Court treated *Jones* as doing just that.

Notwithstanding *Jones*'s holding that juvenile life-without-parole sentences are permissible *only if* the sentencer "has discretion to impose a lesser punishment," *id.* at 1311, the Arizona Supreme Court has now blessed juvenile life-without-parole sentences even though it is undisputed that the sentencer lacked discretion to impose a lesser punishment.

This petition arises from the Arizona Supreme Court's published decision announcing its new interpretation of this Court's opinion in *Jones*. Petitioner Lonnie Allen Bassett was sentenced to life without parole under a system that did not afford the sentencing court discretion to choose any other option. It is undisputed that Arizona had abolished parole for homicide defendants during the relevant period. And it is undisputed that the "only alternative sentence to death" in Arizona "was life imprisonment without parole." *Lynch* v. *Arizona*, 578 U.S. 613, 614 (2016) (per curiam). In the decision below, the Arizona Supreme Court nonetheless refused to apply *Jones*, *Miller*, and *Montgomery*, and declined to order relief from Bassett's unconstitutional sentence.

In a decision reminiscent of the Arizona Supreme Court's other recent refusals to apply this Court's precedent in *State* v. *Lynch*, 357 P.3d 119 (Ariz. 2015), *rev'd*, 578 U.S. 613 (2016) (per curiam), and *State* v. *Cruz*, 487 P.3d 991 (Ariz. 2021), *rev'd*, 598 U.S. 17 (2023), the Arizona Supreme Court's opinion below flouts this Court's precedents and defies this Court's assurance that *Jones* did not overrule *Miller* and *Montgomery*. Worse, the Arizona Supreme Court's decision—which conflates the availability of parole with the availability of executive clemency—repeats the very same error this Court already summarily

reversed in *Lynch*. *See* 578 U.S. at 614. In refusing to follow this Court's precedents, the decision below diverges from the decisions of state high courts in Mississippi, Wyoming, Nebraska, North Carolina, and Iowa—all of which have concluded that their similar sentencing schemes imposed mandatory life without parole and were thus unconstitutional.

The Arizona Supreme Court's refusal to follow the same approach here creates a square conflict on an important constitutional issue with enormous stakes for Bassett, for other defendants whose *Miller* claims Arizona courts have since rejected, and for still other defendants with *Miller* claims pending in Arizona. Just as in *Lynch* and *Cruz*, Arizona once again stands alone in its refusal to grant the relief dictated by this Court's precedents.

This Court should grant the petition.

OPINIONS BELOW

The Arizona Supreme Court's decision denying Bassett's petition for postconviction relief is reported at 535 P.3d 3. Pet. App. 1a-31a. The Arizona trial court's decision denying the State's motion to dismiss the petition is unpublished. *Id.* at 32a-41a.

JURISDICTION

The Arizona Supreme Court entered judgment against Bassett on September 18, 2023. Pet. App. 1a, 31a. This Court granted Bassett's timely application to extend the time to file a petition for a writ of certiorari to January 31, 2024. No. 23A475 (Nov. 29, 2023). This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment, U.S. Const. amend. VIII, provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment, U.S. Const. amend. XIV, provides in relevant part:

> No state shall * * * deprive any person of life, liberty, or property, without due process of law.

The Supremacy Clause, U.S. Const. art. VI, para. 2, provides in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Pertinent statutory provisions are set out in the Petition Appendix. Pet. App. 42a-43a.

STATEMENT OF THE CASE

A. Legal Background

1. In *Miller* v. *Alabama*, this Court held that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 567 U.S. at 470. As the Court explained, "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471. The Constitution thus requires that the sentencing authority have

"discretion to impose a different punishment." *Id.* at 465. And although "[a] State is not required to guarantee eventual freedom," its sentencing scheme at least "must provide some meaningful opportunity to obtain release." *Id.* at 479 (citation and quotation marks omitted).

Miller identified "29 jurisdictions mandating life without parole for children"—including Arizona. *Id.* at 482, 486-487 & nn.9, 13, 15. *Miller* "overrule[d]" those sentencing schemes. *Id.* at 514 (Alito, J., dissenting).

2. In *Montgomery* v. *Louisiana*, this Court reiterated *Miller*'s holding that "mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on cruel and unusual punishments" and held that *Miller* applied retroactively in cases on collateral review. 577 U.S. at 195, 206 (citation and quotation marks omitted). This Court subsequently vacated several Arizona court orders dismissing claims for postconviction relief under *Miller*, ordering further consideration in light of *Montgomery*. *See Tatum* v. *Arizona*, No. 15-8850, 580 U.S. 952 (2016); *Arias* v. *Arizona*, No. 15-9044, 580 U.S. 951 (2016); *DeShaw* v. *Arizona*, No. 15-9057, 580 U.S. 951 (2016); *Najar* v. *Arizona*, No. 15-8878, 580 U.S. 951 (2016); *Purcell* v. *Arizona*, No. 15-8842, 580 U.S. 953 (2016).

3. In *Jones* v. *Mississippi*, this Court yet again explained that "an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but *only if* the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." 141 S. Ct. at 1311 (emphasis added). The Constitution "prohibits

mandatory life-without-parole sentences for murderers under 18, but * * * allow[s] *discretionary* life-without-parole sentences for those offenders." *Id.* at 1312.

Jones highlighted the difference between (impermissible) mandatory and (permissible) discretionary life-without-parole sentencing schemes. When the defendant in *Jones* was first sentenced, the punishment for homicide under Mississippi law was "imprisonment for life." *Parker* v. *State*, 119 So. 3d 987, 996 (Miss. 2013). And although that statute did "not carry a specific sentence of life without parole," a separate statute eliminated parole for homicide offenders. *Id.* at 996-997. Those "legislative mandates, when read together, [were] tantamount to life without parole" such that Mississippi's "statutory scheme * * * contravene[d] the dictates of *Miller*." *Id.* at 997. This Court thus agreed that "[u]nder Mississippi law at the time, murder carried a *mandatory* sentence of life without parole." *Jones*, 141 S. Ct. at 1312.

But "[i]n the wake of *Miller*, the Mississippi Supreme Court * * * ordered a new sentencing hearing where the sentencing judge could consider [a juvenile defendant's] youth and exercise discretion in selecting an appropriate sentence." *Id.* at 1312-13. This Court held that this revised "discretionary sentencing system [wa]s both constitutionally necessary and constitutionally sufficient," and rejected any additional fact-finding requirement. *Id.* at 1313. This Court's decision "carefully follow[ed] both *Miller* and *Montgomery*" and emphasized repeatedly that it did "not overrule" either case. *Id.* at 1321. "*Miller* held that a State may not impose a

mandatory life-without-parole sentence on a murderer under 18," and *Jones* did "not disturb that holding." *Id.*

4. During the period relevant here, Arizona provided two alternatives to death for defendants convicted of first-degree murder—"natural life," under which a defendant was categorically ineligible for "commutation, parole, *** or release from confinement on any basis," and "life," which required a defendant to serve at least 25 years before he could be eligible for "release[] on any basis." Ariz. Rev. Stat. § 13-703(A) (2003); *see id.* §§ 13-703.01(A) (2003), 13-1105(C) (2002). As in Mississippi, a separate provision of Arizona law abolished parole for felons as of January 1, 1994. *Id*. § 41-1604.09(I) (1994). Thus, "the only 'release' available under Arizona law is executive clemency, not parole." *Cruz* v. *Arizona*, 598 U.S. 17, 23 (2023). And so, although Arizona's sentencing statute "continued to list two alternatives to death," *id.* at 21, Arizona has repeatedly "acknowledged that [the] *only* alternative sentence to death was life imprisonment without parole," *Lynch*, 578 U.S. at 614 (emphasis added); *see also Cruz*, 487 P.3d at 994 (recognizing that "defendants were thus essentially sentenced to life without the possibility of parole"). Indeed, Arizona told this Court in an amicus brief filed in *Miller* that its laws "make the punishment mandatory." States Amicus Br. 1, *Miller* v. *Alabama*, Nos. 10-9646, 10-9647 (Feb. 21, 2012); *see* Alabama Br. 16-19, *Miller* v. *Alabama*, No. 10-9646 (Feb. 14, 2012) (listing Arizona as among the "jurisdictions requir[ing], at a minimum, a sentence of life without parole"); Arkansas Br. App. C, *Jackson* v. *Hobbs*, No. 10-9647 (Feb. 14, 2012) (same).

5. After *Miller*, Arizona reinstated parole for some juvenile offenders—those who had received life sentences with possible release after 25 years. Ariz. Rev. Stat. §§ 13-716 (2014), 41-1604.09(I)(2) (2014); *cf. Montgomery*, 577 U.S. at 212 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). As for juveniles who had received natural life sentences, the Arizona Supreme Court held they were entitled to evidentiary hearings to determine if resentencing was required. *See State* v. *Valencia*, 386 P.3d 392, 396 (Ariz. 2016); Ariz. R. Crim. P. 32.8 (2017). The court acknowledged that Arizona law "did amount to sentences of life without the possibility of parole." *Valencia*, 386 P.3d at 394; *see also Cruz*, 487 P.3d at 994 (noting that "the law in place at the time [juvenile] defendants were sentenced permitted what *Miller* later precluded"). That remained the law in Arizona until the decision below, which overruled *Valencia*.

B. Procedural Background

1. Petitioner Lonnie Allen Bassett had a horrific childhood. As a young child, Bassett was abandoned by his mother, kidnapped and abused by his father, and was kept in a closet with just one meal a day. *See* Pet. App. 5a-6a; *see also* Bassett Sentencing Mem. Ex. E, 02/13/2002 Psych. Eval. Bassett was later diagnosed with posttraumatic stress disorder and prescribed medication. In 2004, at the age of 16, and during a period when he had stopped taking his medication, Bassett fatally shot two people. The State's notice of intent to seek the death penalty was struck after this Court held that "the Eighth Amendment prohibit[s] the imposition of the death

penalty on juveniles." *Roper* v. *Simmons*, 543 U.S. 551, 570-571 (2005). Bassett was convicted of two counts of first-degree murder. Pet. App. 33a.

When Bassett was sentenced in 2006, the sentencing judge "did not have discretion" to choose a sentence that would have allowed for parole. Pet. App. 33a-34a & n.2; *see id.* at 11a. Arizona law at that time "abolished parole" for homicide offenders. *Id.* at 33a n.1, 11a. The trial court sentenced Bassett to "natural life," rendering him categorically ineligible for "commutation, parole, * * * or release from confinement on any basis." Ariz. Rev. Stat. § 13-703(A) (2003); *see* Pet. App. 10a, 33a. The trial court also imposed an additional consecutive life sentence with the possibility of " 'release' after twenty-five years through the executive clemency process." Pet. App. 11a; *see id.* at 33a & n.1. Both convictions and sentences were affirmed on appeal, and the Arizona Supreme Court denied review. *Id.* at 11a. Bassett's subsequent petitions for postconviction review were denied. *Id.* at 12a, 33a-34a.

2. In 2017, Bassett sought postconviction relief on the ground that *Miller* and *Montgomery* constituted a "significant change in the law" entitling him to relief and resentencing. *Id.* at 12a-13a, 33a-34a; *see* Ariz. R. Crim. P. 32.1(g). The State initially agreed that Bassett was entitled to an evidentiary hearing under the Arizona Supreme Court's decision in *Valencia*. Pet. App. 13a, 35a; *Valencia*, 386 P.3d at 396.

After this Court decided *Jones*, however, the State claimed that *Jones* had revoked Bassett's entitlement to relief. The State argued that the scheme under which Bassett was sentenced was not "mandatory" under *Miller* because the court could have imposed a

punishment other than natural life—even though parole was not an option and the only form of "release" available was executive clemency. Pet. App. 35a, 38a.

The trial court rejected the State's argument, concluding that "Bassett was sentenced under a mandatory natural life sentencing scheme that *Miller* and *Jones* found to be unconstitutional," as "the law did not allow the sentencing judge to consider life with the possibility of parole as an alternative to a sentence of natural life." *Id.* at 38a, 40a-41a. The trial court explained that "executive clemency (or commutation) is *not* a constitutionally adequate substitute for the possibility of parole," and *Miller* had already "recognized the distinction" when it "counted Arizona as one of 29 jurisdictions with mandatory LWP sentences for juvenile homicide offenders, despite the court's ability to order life with possible *release*." *Id.* at 38a-39a. Because "[t]he sentencing laws under which Mr. Bassett was sentenced did not allow for the discretion – i.e. a sentence with the possibility of parole – that *Miller* requires for a constitutionally sound sentencing," the trial court concluded that Bassett was entitled to relief. *Id.* at 39a.

The Arizona Court of Appeals soon reached the same conclusion in another case, holding that "[i]t matters not whether the superior court had 'discretion' to impose alternative non-parole-eligible penalties or whether the court considered the defendant's youth in exercising that discretion"; "because the superior court had no discretion to sentence [the defendant] to a parole-eligible term, his sentence is encompassed by *Miller*." *State* v. *Wagner*, 510 P.3d 1083, 1087 (Ariz. Ct. App. 2022), *review continued* (Sept. 12, 2023). The Court of Appeals

subsequently granted relief in other cases involving juveniles sentenced to mandatory life without parole.[1]

The State appealed the trial court's decision in Bassett's case. Pet. App. 13a-14a. The Court of Appeals declined jurisdiction, but the Arizona Supreme Court granted review. *Id.* at 14a.

3. The Arizona Supreme Court reversed the trial court and dismissed Bassett's petition for postconviction relief. The court acknowledged that "Bassett was actually ineligible for parole" because "the Arizona Legislature eliminated parole for all offenses committed on or after January 1, 1994," meaning that "Bassett's only option would have been 'release' after twenty-five years through the executive clemency process." *Id.* at 11a. The court nevertheless held that Arizona's sentencing scheme was "not mandatory under *Miller*" because sentencing courts had "a *choice* between two sentencing options": natural life, or life with possible "release" after 25 years—even though such "release" did not include parole. In the Arizona Supreme Court's view, the possibility of executive clemency or a later change in the law to create a system of parole sufficed because—according to the court—"*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile offender." *Id.* at 19a, 23a.

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[1] *See State* v. *Cabanas*, No. 1 CA-CR 21-0534 PRPC, 2022 WL 2205273, at *1 (Ariz. Ct. App. June 21, 2022), *review continued* (Sept. 12, 2023); *State* v. *Arias*, No. 1 CA-CR 22-0064 PRPC, 2022 WL 3973488, at *1 (Ariz. Ct. App. Sept. 1, 2022), *review continued* (Sept. 12, 2023); *State* v. *Odom*, No. 1 CA-CR 21-0537 PRPC, 2022 WL 4242815, at *1 (Ariz. Ct. App. Sept. 15, 2022), *review continued* (Sept. 12, 2023); *cf. State* v. *Aston*, No. 1 CA-SA 22-0068 (Ariz. Ct. App. May 19, 2022) (declining jurisdiction).

The Arizona Supreme Court also disputed this Court's categorization of Arizona in *Miller* as among "29 jurisdictions mandating life without parole for children" because Arizona law lists age as a statutory mitigating factor that the sentencer must consider in deciding whether to sentence a person convicted of murder to death, natural life, or life with possible release (through executive clemency) after 25 years. *Id*. at 22a. But "even if an issue remained with Arizona's sentencing scheme," the Arizona Supreme Court claimed that the state legislature had "remedied" the problem by reinstating parole for some juveniles—even though the Arizona Supreme Court admitted that this subsequent statutory change *did not apply* to Bassett. Pet. App. 22a.

Despite this Court's repeated statements in *Jones* that it was not overruling *Miller* or *Montgomery*, *see* 141 S. Ct. at 1321, 1317 n.4, the Arizona Supreme Court held that "*Jones* refuted the premise" for its understanding that *Miller* and *Montgomery* required relief, *see* Pet. App. 24a. The Arizona Supreme Court accordingly dismissed Bassett's petition for postconviction relief.[2]

This petition follows.

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[2] Following its decision in *Bassett*, the Arizona Supreme Court reversed and remanded numerous decisions in which the Arizona Court of Appeals had granted relief under *Miller* to juvenile defendants. The Court of Appeals has since reversed its earlier decisions. *See State* v. *Arias*, No. 1 CA-CR 22-0064 PRPC (Ariz. Ct. App. Sept. 25, 2023); *State* v. *Odom*, No. 1 CA-CR 21-0537 PRPC (Ariz. Ct. App. Sept. 25, 2023); *State* v. *Cabanas*, No. 1 CA-CR 21-0534 PRPC (Ariz. Ct. App. Dec. 6, 2023); *State* v. *Wagner*, No. 1 CA-CR 21-0492 PRPC (Ariz. Ct. App. Dec. 20, 2023); *State* v. *Aston*, No. 1 CA-SA 22-0068 (Ariz. Ct. App. Jan. 3, 2024).

REASONS FOR GRANTING THE PETITION

This Court in *Miller* counted Arizona as among the "29 jurisdictions mandating life without parole for children." 567 U.S. at 482, 486-487 & nn.9, 13, 15. And although this Court in *Jones* was clear that its decision "does not overrule *Miller* or *Montgomery*," 141 S. Ct. at 1321, the Arizona Supreme Court has nevertheless effectively held that *Miller* and *Montgomery* no longer apply in Arizona.

The decision below is wrong. *Miller*, *Montgomery*, and *Jones* concluded that the Constitution prohibits *mandatory* life-without-parole sentences for juveniles. To comply with the Constitution, the sentencing authority must have discretion to impose a lesser punishment. Nothing in *Jones* relieved Arizona of its obligation to correct the unconstitutional sentences meted out prior to *Miller* pursuant to the State's mandatory life-without-parole sentencing scheme. The Arizona Supreme Court's refusal to abide by this Court's precedents creates a square split by departing from the approach that at least five other state high courts have taken in similar circumstances.

This petition is an ideal vehicle for addressing the Arizona Supreme Court's error, and it presents a question of profound importance for Bassett, for other prisoners given mandatory life-without-parole sentences as juveniles whose claims have been summarily denied since the decision below issued, and for at least 20 other prisoners with similar claims.

I. THE ARIZONA SUPREME COURT'S DECISION DEFIES THIS COURT'S PRECEDENTS.

This Court's precedents should have led the Arizona Supreme Court to the straightforward

conclusion that Arizona's sentencing laws violated the Eighth Amendment by imposing mandatory life-without-parole sentences on juveniles.

A. Arizona's Sentencing Laws Imposed Mandatory Life Without Parole For Juveniles, Violating *Miller*, *Montgomery*, And *Jones*.

1. *Miller* was clear: "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 567 U.S. at 470. This Court reaffirmed that holding in *Montgomery*, 577 U.S. at 195 ("mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment[]"), and again in *Jones*, 141 S. Ct. at 1312 ("[t]he Eighth Amendment prohibits *mandatory* life-without-parole sentences for murderers under 18").

Although *mandatory* life-without-parole sentences for juveniles violate the Constitution, this Court has also been clear that *discretionary* life-without-parole sentences do not. A "discretionary sentencing procedure" is one "where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole." *Jones*, 141 S. Ct. at 1318. To avoid the constitutional bar on mandatory life-without-parole sentences, the sentencing authority therefore "*must* have 'discretion to impose a different punishment' than life without parole." *Id.* at 1316 (quoting *Miller*, 567 U.S. at 465) (emphasis added).

This Court in *Jones* explained why "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." 141 S. Ct. at 1313. "States with discretionary sentencing regimes" honor the "key

assumption of both *Miller* and *Montgomery*," which "was that discretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." *Id.* at 1318. Indeed, *Miller* "relied on data, not speculation," "in concluding that a discretionary sentencing procedure would help make life-without-parole sentences relatively rare." *Id*. And *Jones* observed that "*Miller*'s discretionary sentencing procedure has resulted in numerous sentences less than life without parole for defendants who otherwise would have received mandatory life-without-parole sentences." *Id.* at 1322. *Jones* highlighted that in Mississippi—which once mandated life-without-parole sentences—"*Miller* resentencings" had "reduced life-without-parole sentences for murderers under 18 by about 75 percent." *Id.* at 1322, 1312.

Because the Constitution "require[s] a discretionary sentencing procedure," *id.* at 1322, this Court held that the two sentencing schemes before it in *Miller*—those of Arkansas and Alabama—were unconstitutional "mandatory-sentencing schemes," 567 U.S. at 466, 469, 489. Those two States were among the "29 jurisdictions mandating life without parole for children"—a list that this Court noted also included Louisiana, Mississippi, and Arizona. *Miller*, 567 U.S. at 482, 486-487 & nn.9, 13, 15; *Miller*, Alabama Br. 17-18. In *Montgomery*, this Court held that *Miller* applied retroactivity to invalidate mandatory life-without-parole sentences in Louisiana. 577 U.S. at 194, 213. The Mississippi Supreme Court, meanwhile, acknowledged that its mandatory-life-without-parole scheme "contravene[d]

the dictates of *Miller*" and ordered resentencing hearings in which the judge was permitted to "enter a sentence of life imprisonment with eligibility for parole." *Parker*, 119 So. 3d at 997, 999 (quotation marks omitted). This Court accordingly upheld a life-without-parole sentence in *Jones* precisely because Mississippi sentencing courts now "had discretion under *Miller* to impose a sentence less than life without parole." *Jones*, 141 S. Ct. at 1313.

This Court's decisions in *Miller*, *Montgomery*, and *Jones* thus establish that discretionary sentencing—the sentencer's ability "to impose a lesser sentence than life without parole"—is "constitutionally necessary" for juvenile homicide defendants. *Id.* at 1313, 1318.

2. During the period relevant here, Arizona law provided two alternatives to a death sentence for defendants convicted of first-degree murder: "natural life," under which a defendant was categorically ineligible for "commutation, parole, *** or release from confinement on any basis," and "life," which required a defendant to serve at least 25 years before he could be eligible for "release[] on any basis." Ariz. Rev. Stat. § 13-703(A) (2003); *see id.* §§ 13-703.01(A) (2003), 13-1105(C) (2002). But because a separate provision of Arizona law abolished parole for felons as of 1994, "the only 'release' available under Arizona law [wa]s executive clemency, not parole." *Cruz*, 598 U.S. at 23.

As a result of these statutes, Arizona "sentencing court[s] did not have discretion to order life with parole because the State abolished parole." Pet. App. 33a-34a n.2. And as this Court has made clear, although Arizona law "[n]evertheless" "continued to

list two alternatives to death," *Cruz*, 598 U.S. at 21, the "*only* alternative sentence to death was life imprisonment without parole," *Lynch*, 578 U.S. at 614 (emphasis added); *see also Cruz*, 487 P.3d at 994 (recognizing that under Arizona law, "defendants were thus essentially sentenced to life without the possibility of parole"). Indeed, Arizona told this Court in an amicus brief filed in *Miller* that its laws made life-without-parole sentences "mandatory" for juveniles convicted of first-degree murder. *See Miller* States Amicus Br. 1; *see also Miller*, Alabama Br. 16-19; *Jackson*, Arkansas Br. App. C. And this Court in *Miller* listed Arizona as among the 29 jurisdictions that subjected juveniles to unconstitutional mandatory life-without-parole sentences. 567 U.S. at 482, 486-487 & nn.9, 13, 15.

Because the only sentence available under Arizona law at the time of Bassett's sentencing was "life imprisonment without parole," *Lynch*, 578 U.S. at 614, sentencing courts in Arizona lacked "discretion to impose a lesser sentence than life without parole," *Jones*, 141 S. Ct. at 1318. That makes Arizona's sentencing scheme "mandatory"—and thus unconstitutional for juvenile defendants.

B. The Arizona Supreme Court Erred In Refusing To Apply *Miller*, *Montgomery*, And *Jones*.

Despite this Court's precedents, and despite acknowledging that juveniles were "actually ineligible for parole" because "the Arizona Legislature eliminated parole," the Arizona Supreme Court nevertheless concluded that the State's sentencing scheme "was not mandatory under *Miller*." Pet. App. 11a, 23a. It reached that conclusion by relying on the

fact that Arizona's sentencing scheme included two nominal alternatives to death: natural life and life with possible "release" after 25 years. According to the Arizona Supreme Court, it was enough that sentencing courts could "ma[ke] a *choice* between two sentencing options"—even though neither "option" included parole. Pet. App. 23a. That Arizona had "eliminated parole" did not matter, the court reasoned, because "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile offender." Pet. App. 11a, 19a.

That conclusion cannot be reconciled with this Court's precedents. As this Court has made clear, a sentencer must have "*discretion to impose a lesser sentence than life without parole*." *Jones*, 141 S. Ct. at 1318 (emphasis added). It is constitutionally irrelevant whether a sentencing statute provides multiple sentencing options if each option dictates life without parole.

The Arizona Supreme Court cited four arguments in support of its conclusion that there was no constitutional defect in Arizona's sentencing scheme. The Arizona Supreme Court is wrong on all four counts.

First, the Arizona Supreme Court concluded that a choice between two life-without-parole sentences was sufficient because, according to the court, "the availability of parole" is "not specifically require[d]" to comply with *Miller*. Pet. App. 19a. The Arizona Supreme Court cited *Jones* for that point, but *Jones* says the opposite. In *Jones*, this Court held that a juvenile homicide offender "*may* be sentenced to life without parole, but *only if* the sentence is not mandatory," meaning that "the sentencer therefore

has discretion to impose a lesser punishment" than life without parole. 141 S. Ct. at 1311 (emphases added). This Court "firmly" reiterated that "*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18" and that "[t]oday's decision does not disturb that holding." *Id.* at 1321. Thus, the *availability of parole* at the time of sentencing is precisely what makes a sentence of life without parole discretionary.

The facts of *Jones* confirm that conclusion. When the defendant in that case was originally sentenced, "[u]nder Mississippi law at the time, murder carried a mandatory sentence of *life without parole*." *Id.* at 1312 (emphases altered). But the defendant was afforded a "*Miller* resentencing[]" in which "the sentencing judge acknowledged that he had discretion under *Miller* to impose a sentence less than *life without parole*." *Id.* at 1313, 1322 (emphasis added). That the sentencing judge had direction to choose a sentence with parole, but nevertheless chose a sentence of life without parole, is "the discretionary sentencing procedure" necessary to satisfy *Miller*. *Id.* at 1311.

The Arizona Court of Appeals understood that premise when it concluded in another case that "*Miller*'s use of 'mandatory'—as well as the understanding of its counterpart, 'discretionary'—must be read in the context of whether a parole-eligible sentence is *available*." *Wagner*, 510 P.3d at 1087 (emphasis added). So did the postconviction trial court in this case when it concluded that Bassett was entitled to relief because "the sentencing court could not have legally imposed a sentence that included the possibility of parole." Pet. App. 39a. The Arizona

Supreme Court's contrary conclusion conflicts with *Miller*, *Montgomery*, and *Jones*.

Second, the Arizona Supreme Court suggested that a choice between two life-without-parole sentences suffices to meet *Miller*'s requirements because one of those sentences included the possibility of executive clemency. Pet. App. 11a, 23a.

This Court's decisions in *Miller*, *Montgomery*, and *Jones* all refute the contention that the possibility of executive clemency—without the possibility of parole—satisfies *Miller*. All three States in those cases provided for the possibility of executive clemency for juvenile offenders, yet that possibility did not make their mandatory life-without-parole sentencing schemes any less mandatory (or any less unconstitutional). *See* Ark. Code § 5-4-606 (1975); *Jackson* v. *Norris*, 378 S.W.3d 103, 107 (Ark. 2011) (Brown, J., concurring) (juvenile's "only remedy to avoid spending the rest of his life in prison after the conviction for capital murder is executive clemency from the governor"), *rev'd*, *Miller*, 567 U.S. 460; Ala. Code § 15-22-36(a) (1983); *Miller*, Alabama Br. 61 (arguing that "executive or legislative clemency * * * provide means for the State to account for the defendant's youth" (citation omitted)); Louisiana Br. 2, *Montgomery* v. *Louisiana*, No. 14-280 (Aug. 24, 2015) (juvenile's "mandatory sentence of life without possibility of parole" could be "commuted" (citing La. Rev. Stat. § 15:574.4(B)(1) (1969))).

The same was true in *Jones*. This Court upheld Mississippi's revised sentencing scheme because the Mississippi Supreme Court had ruled, in the wake of *Miller*, that state judges must be afforded "discretion to impose a sentence less than life without parole."

141 S. Ct. at 1312-13. After concluding that Mississippi's revised sentencing scheme complied with the Eighth Amendment because it made life-without-parole sentences discretionary, this Court observed that its decision was "far from the last word" on whether the defendant would obtain relief because other "state avenues for sentencing relief remain open," including petitioning "the state legislature, state courts, or Governor." *Id.* at 1323. If the availability of executive clemency had sufficed, this Court would have started and ended its opinion with that fact.

This Court's precedents thus make clear that the possibility of release by executive clemency does not transform a mandatory life-without-parole sentencing regime into a discretionary system.

Third, the Arizona Supreme Court maintained that *Miller* was satisfied because Arizona's first-degree murder statute lists age as one of several mitigating factors to be considered when choosing between a sentence of natural life (with no possibility of executive clemency) and a sentence of life (with the possibility of executive clemency), and because the court said there was some consideration of Bassett's age in making this choice. Pet. App. 21a-22a. According to the Arizona Supreme Court, that means the sentencing scheme complied with *Miller*, *Montgomery*, and *Jones*. *See id.*

Again, this Court's precedents refute that contention. To comply with *Miller*, the sentencing judge was required to take into account Bassett's age *when deciding whether to impose a lesser punishment than life with parole*—which the sentencing judge could not do here. As this Court explained in *Miller*,

when a State offers no possible penalty other than life without parole, the sentence remains impermissibly mandatory because consideration of age "could not change the sentence; whatever [is] said in mitigation, the mandatory life-without-parole prison term would kick in." *Miller*, 567 U.S. at 488. This Court reiterated the same conclusion in *Jones*, emphasizing that the Eighth Amendment permits life-without-parole sentences "only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to consider the mitigating qualities of youth *and* impose a lesser punishment." 141 S. Ct. at 1314 (citation and quotation marks omitted) (emphasis added).

Under this Court's precedents, it is not sufficient that the sentencer have discretion to consider age as a mitigator; the sentencer must have authority to *implement that discretion* by imposing a lesser, parole-eligible punishment. In this case, the sentencing judge "did not have discretion to order life with parole." Pet. App. 33a-34a n.2. Any consideration of age thus "could not change" Bassett's "mandatory life-without-parole prison term." *See Miller*, 567 U.S. at 488.

Jones makes clear that a State's compliance with the Eighth Amendment turns on whether a State's "sentencing regime[]" imposes "mandatory life-without-parole sentences," 141 S. Ct. at 1312, 1318 (emphasis omitted), not on the nature of a state judge's "on-the-record sentencing explanation" in a particular case, *id*. at 1320-21. It is "a State's discretionary sentencing *system*" that "is both constitutionally necessary and constitutionally sufficient." *Id.* at 1313 (emphasis added). Otherwise,

the constitutionality of a state's sentencing regime would shift and spring depending on how much a sentencing judge said about youth in each case—exactly the result this Court in *Jones* sought to avoid.

Fourth, the Arizona Supreme Court concluded that the possibility of some subsequent legal change excused it from complying with *Miller* and *Montgomery*. The Arizona legislature reinstated parole in 2014 for certain juveniles, which the Arizona Supreme Court concluded "remedied" any "issue * * * with Arizona's sentencing scheme," "[r]egardless of whether parole was available at th[e] time" Bassett was sentenced. Pet. App. 22a.

But the Arizona Supreme Court did not dispute—and in fact *agreed*—that "Bassett was actually ineligible for parole" at the time he was sentenced because "[i]n 1993, the Arizona Legislature eliminated parole for all offenses committed on or after January 1, 1994." Pet. App. 11a. The court likewise agreed that Bassett's natural life sentence meant that the Arizona Legislature's 2014 amendments to its sentencing scheme did not apply to him. *Id.* at 22a. Because the 2014 statutory amendments do not provide relief to Bassett, this subsequent legal change could not possibly cure the constitutional violation in Bassett's sentence.

C. The Arizona Supreme Court Made The Same Error This Court Reversed In *Lynch*.

The decision below is not the first time the Arizona Supreme Court has attempted to evade a constitutional right that turns on the availability of parole.

In a "series of cases," the Arizona Supreme Court held that "Arizona's sentencing and parole scheme did

not trigger application" of this Court's decision in *Simmons* v. *South Carolina*, 512 U.S. 154 (1994). *Cruz*, 598 U.S. at 20. Under *Simmons*, when "a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole, due process entitles the defendant to inform the jury of his parole ineligibility." *Id.* at 21 (citation, quotation marks, and brackets omitted).

In *Lynch*, this Court reviewed a decision of the Arizona Supreme Court refusing to apply *Simmons* on the ground that the defendant "could have received a life sentence that would have made him eligible for 'release' after 25 years," even though "the only kind of release for which [the defendant] would have been eligible—as the State does not contest—is executive clemency." *Lynch*, 578 U.S. at 615. This Court summarily reversed. The Court held that "it was fundamental error to conclude that *Simmons* 'did not apply' in Arizona." *Cruz*, 598 U.S. at 20 (quoting *Lynch*, 578 U.S. at 615). In *Lynch*, this Court flatly "rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility." 578 U.S. at 615. And this Court squarely rejected the State's argument that "the potential for future 'legislative reform' " could justify refusing to inform the jury that a defendant was parole ineligible. *Id.* at 616. "If it were otherwise," this Court explained, "a State could always argue that its legislature might pass a law rendering the defendant parole eligible" and thus evade *Simmons*. *Id*.

The Arizona Supreme Court's decision in this case involves the same basic error—just in the context of a

different constitutional right. Like the due process right in *Simmons*, the Eighth Amendment right in *Miller* is triggered when the only available sentence is life without parole. In both *Lynch* and the decision below, "the Arizona Supreme Court confirmed that parole was unavailable to [the defendant] under its law." *Id*.; *see* Pet. App. 11a, 33a-34a & nn.1-2. In both contexts, a nominal choice between two life-without-parole sentences does not render "Arizona's sentencing law sufficiently different from the others this Court ha[s] considered" such that the constitutional right at issue does "not apply." *Lynch*, 578 U.S. at 615.

II. THE ARIZONA SUPREME COURT'S DECISION SPLITS WITH OTHER STATE HIGH COURTS.

In *Miller*, this Court identified "29 jurisdictions" that unconstitutionally "mandat[ed] life without parole for children." 567 U.S. at 482, 486-487 & nn.9, 13, 15. Many of these States have since acknowledged that their sentencing schemes were unconstitutional and remedied the defect. The Arizona Supreme Court's refusal to do the same conflicts with those decisions.

1. Five of these 29 jurisdictions argued after *Miller* that their sentencing schemes were not unconstitutionally mandatory because they contained some elements of discretion, even though judges lacked discretion to impose parole-eligible sentences. The high courts in all five of these States—Mississippi, Wyoming, Nebraska, North Carolina, and Iowa—rejected this argument. The Arizona Supreme Court's refusal to reach the same conclusion makes it an extreme outlier.

Mississippi: In *Parker* v. *State*, the Mississippi Supreme Court held that the state sentencing scheme "contravene[d] the dictates of *Miller*." 119 So. 3d at 997. Mississippi law provided two alternative sentences to death for capital murder: "imprisonment for life * * * without parole," or "imprisonment for life * * * with eligibility for parole." Miss. Code § 97-3-21(3) (2006). For non-capital first-degree murder, the penalty was "imprisonment for life." *Id.* § 97-3-21(1) (2007). As in Arizona, a separate provision of Mississippi law eliminated parole for those convicted of both capital and first-degree homicide, although certain homicide offenders were permitted to apply for conditional release at age 65. *Parker*, 119 So. 3d at 997.

The Mississippi Supreme Court concluded that these "legislative mandates, when read together, are tantamount to life without parole" and thus "contravene[] the dictates of *Miller*." *Id.* The court rejected the State's argument that the sentencing scheme was not "mandatory" under *Miller* because defendants convicted of first-degree murder were eligible for conditional release. *Id.* at 995, 997. The court explained that under state law, "[c]onditional release is more akin to clemency, which the Supreme Court has held '[a]s a matter of law' to be different from parole 'despite some surface similarities.'" *Id.* at 997 (quoting *Solem* v. *Helm*, 463 U.S. 277, 300 (1983)). Because juvenile defendants "would not be eligible for parole" under state law, the court concluded that the state's sentencing scheme violated *Miller*. *Id.*

The Mississippi Supreme Court accordingly vacated the defendant's sentence and remanded for resentencing. *Id.* at 998. The court specified that "if

the trial court should determine, after consideration of all circumstances set forth in *Miller*, that [the defendant] should be eligible for parole, the court shall enter a sentence of 'life imprisonment with eligibility for parole.'" *Id.* at 999. Such discretion thus "allow[ed] the trial courts of [Mississippi] to comport with the requirements established by the United States Supreme Court." *Id*.

In *Jones*, the defendant appealed from a court-ordered "*Miller* resentencing[ ]" in Mississippi, in which "the sentencing judge * * * had discretion under *Miller* to impose a sentence less than life without parole." *Jones*, 141 S. Ct. at 1313, 1322. This Court held that Mississippi's approach was permissible under *Miller*. Although "[u]nder Mississippi law at the time, murder carried a *mandatory* sentence of life without parole," the Mississippi Supreme Court's judicial fix meant that Mississippi had since joined the States with "discretionary sentencing system[s]," which this Court held was "both constitutionally necessary and constitutionally sufficient." *Id.* at 1312-13; *see also id.* at 1318, 1322.

Wyoming: In *Bear Cloud* v. *State*, the Wyoming Supreme Court likewise held that its first-degree murder statute violated *Miller*. 294 P.3d 36, 44-45 (Wyo. 2013). Like Arizona, Wyoming law offered two alternatives to death for first-degree murder: "life imprisonment without parole" or "life imprisonment according to law." Wyo. Stat. § 6-2-101(b) (2009). And like Arizona law, separate provisions of Wyoming law "prohibit[ed] parole for any person serving a life sentence of either sort." *Bear Cloud*, 294 P.3d at 44.

"Taking these * * * statutes together," the Wyoming Supreme Court concluded that "both

possible sentences for first-degree murder in Wyoming violate[d] *Miller*'s prohibition against mandatory sentences of life without the possibility of parole for juveniles." *Id.* at 45. Because "both exclude[d] any real possibility of parole," they "fail[ed] to provide a sentencing court the discretion to determine whether a juvenile homicide offender should be eligible for parole at some point in the future." *Id.* at 45-46. The fact that trial courts had a nominal choice between two sentences—one of which left open the "the possibility of executive clemency"—did not address the constitutional flaw in the defendant's sentence, because the "hope of executive clemency" was no substitute for "the realistic possibility of parole." *Id*. And because neither of the two non-death sentences permitted parole, Wyoming's sentencing regime "effectively mandate[d] a sentence of life in prison without the possibility of parole for juvenile offenders." *Id.*

The Wyoming Supreme Court accordingly vacated the defendant's sentence and remanded for resentencing, in which the sentencing court would be afforded discretion "to order a sentence that includes the possibility of parole." *Id.* at 47.

Nebraska: In *State* v. *Castaneda*, the Nebraska Supreme Court held that a sentence of life imprisonment was "effectively life imprisonment without parole" and thus unconstitutional under *Miller*. 842 N.W.2d 740, 758 (Neb. 2014). Although Nebraska's sentencing statute imposing "life imprisonment" for first-degree murder "did not expressly contain the qualifier 'without parole,'" a separate provision of Nebraska law made clear that "an offender sentenced to life imprisonment in

Nebraska for first degree murder is not eligible for parole." *Id*. at 757. The State argued that Nebraska's scheme did "not violate *Miller*" because defendants could apply for "executive clemency in the form of sentence commutation," and "parole is possible in Nebraska if the sentence is commuted to a term of years." *Id*. at 757-758.

The Nebraska Supreme Court rejected the State's argument that "the mere existence of a remote possibility of parole"—one that hinged entirely on "the availability of executive clemency"—could "keep Nebraska's sentencing scheme from falling within the dictates of *Miller*." *Id*. Rather, it sufficed that a "sentence of life imprisonment is effectively life imprisonment without parole." *Id.* at 758. The Nebraska Supreme Court ordered resentencing to allow consideration of a parole-eligible sentence. *Id.* at 762; *see also State* v. *Thieszen*, 887 N.W.2d 871, 876 (2016) (applying *Castaneda* on state collateral review).

North Carolina: In *State* v. *Young*, the North Carolina Supreme Court rejected a similar argument that the possibility of executive clemency could save a mandatory life-without-parole sentencing scheme. 794 S.E.2d 274, 276-280 (N.C. 2016). At the time of the juvenile defendant's conviction, "North Carolina law required the mandatory imposition of life imprisonment without parole for all offenders convicted of first-degree murder." *Id*. at 275-276 (citation omitted). "Nevertheless, the State contend[ed] that defendant [wa]s not entitled to resentencing based upon *Miller* and *Montgomery*" because, according to the State, the defendant's sentence was "not really life imprisonment without

parole because defendant may be able to obtain release" through commutation. *Id*. at 276, 278 (citation and quotations marks omitted).

The North Carolina Supreme Court rejected this "possibility of alteration or commutation" as sufficient under *Miller*, concluding that it did "not reduce to any meaningful degree the severity of a sentence of life imprisonment without the possibility of parole." *Id*. at 279. Rather, because the juvenile defendant was sentenced to "life without parole pursuant to a North Carolina statute that did not permit the sentencing court to consider a lesser punishment," the sentence was "prohibited by the Eighth Amendment." *Id.* (citation and quotation marks omitted). The North Carolina Supreme Court ordered that the case be remanded for resentencing. *Id*. at 279-280.

Iowa: In *State* v. *Ragland*, the Iowa Supreme Court likewise confirmed that the State's sentencing scheme violated *Miller*, despite the possibility of commutation. 836 N.W.2d 107, 118-122 (Iowa 2013). Before *Miller*, the "only sentence" for first-degree murder under Iowa law was for "the offender to be committed to the department of corrections 'for the rest of the defendant's life'"; the "sentencing court ha[d] no power to defer the judgment, defer the sentence, suspend the sentence, or reconsider the sentence." *Id*. at 118-119. "Clearly, the original sentence imposed * * * was a mandatory sentence," the Iowa Supreme Court concluded, despite the possibility that the Governor could "commute[] the sentence to a term of years." *Id*. at 119. "The mere possibility of commutation or clemency is fundamentally distinct from the eligibility for parole and does not leave a juvenile offender a meaningful

opportunity to avoid a lifetime of incarceration." *Id*. at 120. The Iowa Supreme Court accordingly ordered resentencing in which the trial court could choose between "a life-without-parole sentence" and "a sentence far less than life without parole." *Id*. at 122.

2. In addition to the five state high courts that have rejected arguments much like the position adopted by the Arizona Supreme Court below, many of the other 29 jurisdictions identified in *Miller* as mandating life without parole for juveniles have adopted judicial or legislative fixes to remedy their mandatory life-without-parole sentencing regimes.

Many state high courts responded to *Miller* and *Montgomery* by ordering resentencing in which the sentencer was afforded discretion to choose a lesser sentence than life without parole.[3] Other state high courts ordered that juveniles sentenced to mandatory life without parole be considered for parole.[4] Other state legislatures established a retroactive parole system[5] or required resentencing.[6] And other state high courts applied similar legislative fixes

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[3] *See, e.g.*, *Ex parte Williams*, 244 So. 3d 100, 101 (Ala. 2017); *Jackson* v. *Norris*, 426 S.W.3d 906, 909-911 (Ark. 2013); *People* v. *Davis*, 6 N.E.3d 709, 723 (Ill. 2014); *State ex rel. Carr* v. *Wallace*, 527 S.W.3d 55, 62-63 (Mo. 2017) (en banc); *Petition of State*, 103 A.3d 227, 230, 233 (N.H. 2014); *State* v. *Jensen*, 894 N.W.2d 397, 399 (S.D. 2017).

[4] *See, e.g.*, *Diatchenko* v. *Dist. Att'y for Suffolk Dist.*, 1 N.E.3d 270, 282, 285-287 (Mass. 2013); *Jackson* v. *State*, 883 N.W.2d 272, 275 (Minn. 2016).

[5] *See, e.g.*, *State* v. *McCleese*, 215 A.3d 1154, 1161 (Conn. 2019) (statute "retroactively provided parole eligibility to juvenile offenders sentenced to more than ten years in prison").

[6] *See, e.g.*, *People* v. *Boykin*, 987 N.W.2d 58, 62 n.2 (Mich. 2022).

retroactively.[7] As this Court observed in *Jones*, these changes mean that, "[b]y now, most offenders" have already "received new discretionary sentences under *Miller*." 141 S. Ct. at 1317 n.4. These States underscore Arizona's position as an extreme outlier in refusing to grant relief to defendants like Bassett sentenced to life without parole as juveniles.

III. THIS PETITION PROVIDES AN IDEAL VEHICLE TO ADDRESS THIS IMPORTANT QUESTION.

In *Jones*, this Court observed that "[b]y now, most offenders who could seek collateral review as a result of *Montgomery* have done so and, if eligible, have received new discretionary sentences under *Miller*." 141 S. Ct. at 1317 n.4. While that may be true for most of the country, Arizona remains steadfast in its refusal to correct mandatory life-without-parole sentences, warranting this Court's intervention.

1. This petition is an excellent vehicle to address the Arizona Supreme Court's refusal to grant the relief required by *Miller*, *Montgomery*, and *Jones*. The question presented was preserved in the proceedings below and conclusively resolved by the Arizona Supreme Court in a published opinion. Because the Arizona Supreme Court's review is discretionary, the court is unlikely to revisit the issue in future cases, making this case the ideal vehicle for addressing the important question posed by this petition.

This Court has declined to review other petitions raising the question presented on federal habeas review. *See, e.g.*, *Jessup* v. *Shinn*, 31 F.4th 1262 (9th

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[7] *See, e.g.*, *Horsley* v. *State*, 160 So. 3d 393, 396, 405, 408 (Fla. 2015); *State* v. *Montgomery*, 194 So. 3d 606, 606-609 (La. 2016) (per curiam).

Cir. 2022), *cert. denied sub. nom.*, *Jessup* v. *Thornell*, No. 22-5889, 143 S. Ct. 1755 (2023); *Rojas* v. *Thornell*, No. 22-5961, 143 S. Ct. 1757 (2023); *Rue* v. *Thornell*, No. 22-6027, 143 S. Ct. 1758 (2023); *Aguilar* v. *Thornell*, No. 22-6023, 143 S. Ct. 1757 (2023). Unlike those petitions, this Court's review would not be complicated by application of AEDPA's deferential standard. Indeed, this Court in recent years has repeatedly granted certiorari to review the decisions of state high courts on collateral review rather than awaiting those cases on federal habeas. Both *Montgomery* and one of the consolidated cases in *Miller* arose in this posture, and *Jones* addressed a resentencing granted on collateral review. This Court's decision last Term in *Cruz* likewise arose on collateral review from the Arizona Supreme Court.

2. This petition presents a question of profound importance—for Bassett, for the defendants whose *Miller* and *Montgomery* claims Arizona courts have since rejected, and for other defendants with similar claims pending in Arizona. As the Arizona Supreme Court acknowledged below, "this case presents recurring issues of statewide importance." *See* Pet. App. 14a.

From 1994 to 2014, juveniles convicted of first-degree murder in Arizona were sentenced to life without parole under a sentencing scheme that offered no other option. Other States with similar mandatory-sentencing regimes have long since implemented discretionary resentencing or reinstituted parole to comply with this Court's decisions in *Miller*, *Montgomery*, and *Jones*. Arizona stands alone among its peer States in concluding that

Miller and *Montgomery* simply do not apply to mandatory life-without-parole sentences.

After deciding Bassett's case, the Arizona Supreme Court reversed and remanded numerous cases presenting the same issue. And, citing *Bassett*, the Arizona Court of Appeals has since denied relief. *See supra* nn.1 & 2. There are at least 15 other defendants with comparable claims pending in Arizona on collateral review. Because the Arizona Supreme Court issued a published opinion in Bassett's case, Bassett's case is the most appropriate vehicle for addressing the question presented.

3. In addition to the immense importance of this issue for Bassett, this case presents exceptionally significant questions about gamesmanship and the supremacy of federal law. When Arizona was among the States urging this Court to permit mandatory life-without-parole sentences for juveniles convicted of homicide, Arizona freely admitted in a filing with this Court that its sentencing scheme made life without parole mandatory. *See supra* pp. 8, 18. Only after Arizona found itself on the losing side of that argument did it adopt the position that the same sentencing scheme was not mandatory. And while most of the 29 jurisdictions imposing mandatory life-without-parole sentences on juveniles have since ordered discretionary resentencing or adopted other mechanisms to implement this Court's decision in *Miller*, Arizona stands alone in its refusal to apply *Miller*, *Montgomery*, and *Jones*. Instead, more than two dozen defendants sentenced as juveniles remain in prison in Arizona under mandatory life-without-parole sentences. Arizona's disagreement with the

decisions of this Court cannot excuse the State's compliance with those precedents.

Granting relief would not extend this Court's precedents one bit. The question presented requires straightforward application of this Court's repeated admonition that mandatory life-without-parole sentences for juveniles are unconstitutional. And because other state high courts have applied *Miller* and *Montgomery* in comparable circumstances, granting relief would not affect collateral review procedures outside of Arizona.

* * *

If this Court rules in Bassett's favor, it will not be deciding whether Bassett is entitled to be released from prison. As this Court explained in *Jones*, "[d]etermining the proper sentence in such a case raises profound questions of morality and social policy," and it is for "state sentencing judges and juries" to "determine the proper sentence in individual cases in light of the facts and circumstances of the offense, and the background of the offender." 141 S. Ct. at 1322. Ruling for Bassett would not prevent him from being resentenced to life without parole.

Bassett instead seeks only what *Miller*, *Montgomery*, and *Jones* guarantee: a resentencing proceeding in which the sentencer has "discretion to impose a sentence less than life without parole." *Jones*, 141 S. Ct. at 1311. Bassett seeks the very same relief that Mississippi implemented in *Jones*, and which this Court described as "both constitutionally necessary and constitutionally sufficient." *Id*. at 1313. This Court's review is urgently needed to ensure that Bassett is entitled to the same.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2024