No. 23-830

IN THE
Supreme Court of the United States

LONNIE ALLEN BASSETT,
Petitioner,

vs.

STATE OF ARIZONA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

BRIEF OF *AMICUS CURIAE* OFFICE OF THE MARICOPA COUNTY PUBLIC DEFENDER

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The Maricopa County Public Defender's Office is dedicated to the fundamental American ideal that justice should never depend on how much money a person has. With more than 200 attorneys, the Maricopa County Public Defender's Office is the largest indigent defense firm in Arizona. Our attorneys and staff strive to provide high quality representation and believe that defending the rights of our clients protects all members of our community.

This case addresses the limits of the Eighth Amendment when juveniles are condemned to die in prison. The Maricopa County Public Defender's Office represents four clients who have sought—for more than a decade—to avail themselves of the protections announced in *Miller v. Alabama*, 567 U.S. 460 (2012). After the Arizona Supreme Court's decision here, these people have lost the opportunity to have their sentences reviewed.

The Maricopa County Public Defender's Office thus offers this brief in support of Mr. Bassett's Petition for Writ of Certiorari.

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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 *Amicus Curiae* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

SUMMARY OF ARGUMENT

In Arizona, the Eighth Amendment confers a right that has no remedy. That's at least the case for several people sentenced for crimes they committed as juveniles.

Before this Court's decision in *Miller v. Alabama*, Arizona had a mandatory life-without-parole scheme. There were two versions of a life sentence: *life* and *natural life*. But neither offered a meaningful opportunity for release. Under a *natural life sentence*, there is no opportunity for release of any sort. The only difference in a *life* sentence is that a person becomes eligible for clemency after 25 years.

After *Miller*, the Arizona legislature passed a law that retroactively provided parole to people who were sentenced to *life*.

People who were sentenced to *natural life* did not benefit from this change.

Recognizing that these *natural life* defendants had no *Miller* remedy, the Arizona Supreme Court created a path for review. *State v. Valencia*, 386 P.3d 392, 396 ¶18 (Ariz. 2016). People sentenced to *natural life* would receive an opportunity to prove that their crimes reflected transient immaturity. If they could meet this burden, their sentences would be disproportionate under the Eighth Amendment, and they would be resentenced to life with the possibility of parole.

This was the only form of relief many defendants had.

In this case, the Arizona Supreme Court eliminated this process. *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 14-15 ¶47 (Ariz. 2023).

As a result, several defendants now have no remedy for *Miller* error. This includes people who were originally facing the death penalty for crimes they committed as juveniles. And includes cases where the sentencing judge made factual findings that amounted to transient immaturity.

In Arizona, the Eighth Amendment confers a right that has no remedy. *Amicus Curiae* the Maricopa County Public Defender's Office thus asks this Court to grant certiorari and reverse the Arizona Supreme Court's decision.

ARGUMENT

1. Under *Miller*, a court cannot sentence a person to life without parole for a juvenile crime that reflects transient immaturity. This is a substantive rule.

In *Miller v. Alabama*, this Court announced two holdings. *Miller v. Alabama*, 567 U.S. 460 (2012).

First, this Court declared mandatory life-without-parole sentencing schemes unconstitutional under the Eighth Amendment. *Id.* at 479.

Second, this Court held that life-without-parole sentences should be reserved for the rarest of juvenile offenders. *Id.* at 479-80. When a juvenile's crimes reflect transient immaturity, they should not be sentenced to life without parole. *Id.* That sentence should be reserved only for the infrequent offender whose crime reflects irreparable corruption. *Id.*

The second holding is key. In *Montgomery v. Louisiana*, this Court explained that a life-without-parole sentence is disproportionate under the Eighth Amendment when a person's crime reflects transient immaturity. *Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016).

It was a substantive holding. "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence." *Id.* at 206. *Miller* is not satisfied simply because a sentencing judge says they considered youth. *Id.* at 208. A life-without-parole "sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Id.* (quotation marks omitted). Because "*Miller* announced a substantive rule of constitutional law," *Miller* was retroactive. *Id.* at 208-09.

Certainly, *Miller* did not require sentencing courts to expressly make a permanent incorrigibility or irreparable corruption finding. *Id.* at 211.

"That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee." *Id.* And it did not leave states "free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.*

2. To address this rule, the Arizona Supreme Court created a hearing during which a person could prove their juvenile crime reflected transient immaturity.

Many states responded to *Miller* by ordering resentencings or implementing statutory fixes that applied to all people sentenced to life without parole for juvenile crimes. The Petition sets out several examples of how state legislatures and courts created parole systems or ordered resentencings. *See* Cert. Pet. 32-33 nn.3-7. These fixes applied to all juvenile offenders in the jurisdictions.

Arizona did not. Instead, the Arizona legislature created a partial fix.

In Arizona, there are two possible life sentences: *natural life* and *life*. *See* Ariz. Rev. Stat. § 13-751(A)(2). A person sentenced to natural life cannot be released on any basis. *Id.* A person sentenced to life is eligible for "release" after 25 years (or 35 years in specific circumstances). *Id.*

Before *Miller*, neither sentence offered parole. The Arizona legislature abolished parole in 1994. As the Arizona Supreme Court recognized, the only form of "release" available before *Miller* was clemency. *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 8 ¶17 (2023). Call it *life* or call it *natural life*, the result was the same: life without parole. This Court acknowledged just that in *Lynch v. Arizona*, 578 U.S. 613, 616 (2016), and *Cruz v. Arizona*, 598 U.S. 17, 21-22 (2023).

The legislature changed that—for some people. The legislature passed Ariz. Rev. Stat. § 13-716, which gave parole eligibility to people who had

received a *life* sentence for crimes they committed as a juvenile. In effect, the legislature expanded the types of available release to include parole.

But the legislature did not address people who were sentenced to natural life.

In *State v. Valencia*, the Arizona Supreme Court addressed natural-life defendants by creating a hearing for as-applied challenges. *State v. Valencia*, 386 P.3d 392, 396 ¶18 (Ariz. 2016). As its starting point, the court recognized that *Miller*'s substantive holding precludes a life-without-parole sentence for juveniles whose crimes reflect transient immaturity. *Id.* at ¶14. But the court did not grant defendants sentenced to natural life an automatic resentencing. *Id.* at ¶18. Rather, the court allowed these defendants to bring as-applied challenges to their sentences. *Id.* At a hearing, the defendants would have a chance to prove by a preponderance of the evidence that their crimes reflected transient immaturity. *Id.* If they were successful, their sentences would be disproportionate, and they would be entitled to resentencing. *Id.*

For most people sentenced to natural life before *Miller*, this was the only way to secure a review of their sentences. Indeed, this was the process Bassett was going through. *See Bassett*, 535 P.3d at 9 ¶21. Natural-life defendants did not benefit from the legislative fix. The only option they had was to make an as-applied challenge and prove their sentences were disproportionate.

3. In the decision below, the Arizona Supreme Court eliminated this hearing—based on a misreading of *Miller* and its progeny.

In this case, the Arizona Supreme Court eliminated the only process that let a person raise an as-applied challenge to the proportionality of their life sentences for juvenile crimes. *See Bassett*, 535 P.3d at 14-15 ¶47.

As a result, people sentenced under Arizona's mandatory life-without-parole scheme—including people sentenced while death was still an option—have no means by which they can have their life-without-parole sentences reviewed.

The lower court's decision clashed with this Court's jurisprudence for two reasons. First, the lower court believed that any consideration of youth satisfied *Miller*. But *Miller* demands more. It is not enough that a judge addressed youth years before the importance of transient immaturity was clear. Second, the lower court claimed transient immaturity is not a substantive component of *Miller*. Both logic and the law reject that conclusion.

a. The lower court incorrectly believed any consideration of youth was constitutionally adequate.

In the decision below, the Arizona Supreme Court eliminated the only procedure through which people sentenced to life without parole could argue their juvenile crimes reflected transient immaturity.

The rationale for depriving people of the opportunity was that Arizona law already required

sentencing judges to consider youth. The court explained it this way: "As pertinent here, the trial court was required to consider Bassett's age and the qualities of youth as mitigating factors in sentencing." *Bassett*, 535 P.3d at 12 ¶35. A few paragraphs later, the court reiterated the point, noting "that Arizona currently requires (and did so when these sentences were issued) trial courts to consider age as a mitigating factor in determining punishment for first-degree murder." *Id.* at 12 ¶38 (internal quotation marks omitted).

This justification ignores two key problems. First, the rationale ignores the people who were sentenced while death was still an available alternative. Second, the decision ignores that none of the sentencing judges understood the constitutional significance of youth.

Foremost, several defendants affected by the decision below were sentenced before this Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper*, this Court declared death an unconstitutional sentence for people who committed their crimes as juveniles. *Id.* at 573. But that's the sentence many people faced—including people represented by *Amicus*.

Consider Felipe Petrone Cabanas.[2] He was 17 when he committed his crime. But he was sentenced in 2002, three years before *Roper*. The sentencing judge decided that death was inappropriate—because of Felipe's youth. His crime arose from a significant lack of judgment, a characteristic the

[2] Mr. Petrone Cabanas's case is pending before the Arizona Supreme Court in CR-23-0331-PR.

sentencing judge recognized "is one of the often-present vagaries of youth." The judge sentenced Felipe to a life sentence because of Felipe's youth, impulsivity, acceptance of responsibility, and amenability to rehabilitation—factors that reflect transient immaturity.

Scott DeShaw was also 17 when he committed his crime.[3] He was sentenced eight years before *Roper* and faced the death penalty. The sentencing judge gave substantial weight to Scott's youth and neglectful childhood. The judge also found Scott had been influenced by his co-defendant and that Scott's good behavior in jail showed Scott would succeed in prison. The judge imposed a life sentence because of Scott's youth, traumatic childhood, impressionable nature, and likelihood for rehabilitation.

Bobby Purcell was just 16 when he committed his crime.[4] He was sentenced in 1999, six years before *Roper*. And he too faced death. But the judge imposed a life sentence—because of Bobby's youth. The sentencing judge concluded that Bobby's upbringing meant he had nobody to rely on. And because of his youth, Bobby had no way to deal with his psychological problems. "Virtually no sixteen year old could cope with such problems on his own." The judge also found Bobby was amenable to rehabilitation and that he was likely to succeed in the structured environment of prison.

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[3] Mr. DeShaw's case is pending in Division 1 of the Arizona Court of Appeals in 1 CA-CR 21-0512.

[4] Mr. Purcell's case is also pending in Division 1 of the Arizona Court of Appeals in 1 CA-CR 21-0541.

In cases like these, the sentencing judge found age to be compelling mitigation—enough to justify a more lenient sentence. In function, the judges found transient immaturity.

But death threw the weighing askew. The judges weren't choosing between life with parole and life without parole; the judges were choosing between death and life. Any decision to impose life was already an exercise of leniency.

The judges' ability to weigh youth was thrown further askew by a scheme that did not give constitutionally sufficient weight to youth.

In Arizona, there are no guidelines for imposing a sentence of life or natural life. *State v. Wagner*, 982 P.2d 270, 273 ¶16 (Ariz. 1999). Between natural life and life, there is no presumption. *State v. Fell*, 115 P.3d 594, 598 ¶15 (Ariz. 2005).

When Bassett was sentenced—as well as Petrone Cabanas, DeShaw, and Purcell—the courts had no guidance in the decision between life and natural life. A court could consider youth, find it compelling, make findings that amounted to transient immaturity, and still impose a natural life sentence.

Even assuming youth was important in Arizona, the significance of youth was unclear until *Miller* and *Montgomery*. People sentenced under Arizona's unconstitutional scheme should have the opportunity to argue they are entitled to relief. They should be resentenced. At a minimum, they should have the opportunity to raise an as-applied challenge and prove their sentences are disproportionate under the Eighth Amendment. Otherwise, they are deprived of any chance to enforce *Miller* and

Montgomery. Otherwise, the Eighth Amendment establishes a right without a remedy.

b. The lower court incorrectly believed transient immaturity was not a substantive component of *Miller*.

As noted above, *Miller* announced a substantive rule. That was the reason *Miller* was retroactive. And that substantive rule was that life-without-parole sentences are disproportionate for juvenile offenders whose crimes reflect transient immaturity.

This Court reiterated the importance of the substantive rule in *Jones v. Mississippi*, 593 U.S. 98, 106 n.2 (2021). This Court noted that neither *Miller* nor *Montgomery* required a court to expressly find permanent incorrigibility before sentencing a juvenile offender to life without parole. *Id.* at 106. In footnote 2, however, this Court reiterated what it had said in *Montgomery*: the lack of a formal factfinding requirement did not "leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* at 106 n.2. That sentence is disproportionate. *Id.*

The lower court, however, concluded that a "review of *Miller* and its progeny demonstrates that 'transient immaturity' is not a substantive component of *Miller*." *Bassett*, 535 P.3d at 14 ¶43. A key basis for this decision was that, according to the lower court, *Miller* mentioned "transient immaturity" only once. *Id.* at 14 ¶44.

As an initial point, the lower court mischaracterized the importance of transient

immaturity in *Miller*. While the phrase "transient immaturity" may have appeared just once in *Miller*, the importance of transient immaturity permeated the entire opinion. When discussing *Roper v. Simmons*[5] and *Graham v. Florida*,[6] this Court referenced the importance of "transient rashness, proclivity for risk, and inability to assess consequences." *Id.* at 472. Evaluating *Johnson v. Texas*[7] and *Eddings v. Oklahoma*,[8] this Court noted that the signature qualities of youth—including immaturity, irresponsibility, impetuousness, and recklessness—are all transient. *Id.* at 476. This Court also acknowledged the significant difficulty "of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80 (internal quotation marks omitted). Transient immaturity was the foundation of *Miller*.

And transient immaturity has been at the core of this Court's juvenile Eighth Amendment jurisprudence for more than 20 years.

For example, in *Eddings v. Oklahoma*, this Court noted that "[o]ur history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults." *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). This was especially true during a child's formative years. *Id.* at 116. "Even the

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[5] *Roper v. Simmons*, 543 U.S. 551 (2005).
[6] *Graham v. Florida*, 560 U.S. 48 (2010).
[7] *Johnson v. Texas*, 509 U.S. 350 (1993).
[8] *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

normal 16-year-old customarily lacks the maturity of an adult." *Id.*

This Court then recognized the transient nature of that immaturity in *Johnson v. Texas*, 509 U.S. 350, 368 (1993). This Court held that youth was relevant as a mitigating factor in death cases because "the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Id.* at 368.

The phrase "transient immaturity" appeared in *Roper v. Simmons* "to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper v. Simmons*, 543 U.S. 551, 573 (2005). Transient immaturity was the reason this Court declared the death penalty unconstitutional for juvenile offenders. *Id.* at 573-75.

Transient immaturity was equally important when this Court ruled that the Eighth Amendment prohibited life-without-parole sentences for juvenile offenders who did not commit a homicide in *Graham v. Florida*, 560 U.S. 48, 72-73 (2010).

And transient immaturity has remained crucial since *Miller*. In *Montgomery*, this Court explained, "*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Montgomery*, 577 U.S. at 209. When a juvenile offender's "crime reflects transient immaturity," life without parole is improper—"*Miller* established that

this punishment is disproportionate under the Eighth Amendment." *Id.* at 211.

Transient immaturity has been at the core of this Court's juvenile Eighth Amendment jurisprudence for more than two decades. It was the foundation of *Miller*. And it is a substantive rule that demands defendants have some way to enforce it. But Arizona has left defendants like Bassett, Petrone Cabanas, DeShaw, and Purcell with no way to have their sentences reviewed.

4. This has left people sentenced to natural life with a right, but no remedy.

When Mr. Bassett was sentenced, Arizona's scheme was unconstitutional. The same is true for several others, including people represented by *Amicus*.

As the Arizona Supreme Court acknowledged here, parole was not available. "Although the parties and court used the term 'parole' at sentencing, Bassett was actually ineligible for parole. In 1993, the Arizona Legislature eliminated parole for all offenses committed on or after January 1, 1994. Accordingly, Bassett's only option would have been 'release' after twenty-five years through the executive clemency process." *Bassett*, 535 P.3d at 8 ¶17 (citations omitted).

While there were two possible life sentences, neither offered parole. Neither offered a meaningful opportunity to earn release based on rehabilitation and growth. Both options deprived these defendants "of the most basic liberties without giving hope of

restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence." *Graham v. Florida*, 560 U.S. 48, 70 (2010).

Many cases are still pending in Arizona. Bassett's case was one. *Amicus* has four more.

In these cases, the Arizona Supreme Court has rendered *Miller* and the Eighth Amendment meaningless. There is no procedure through which natural-life defendants can have their cases reviewed in light of *Miller*. For these defendants, the Eighth Amendment is illusory.

CONCLUSION

Because the decision below has stripped several defendants of any avenue for relief, *Amicus* asks this Court to grant Mr. Bassett's petition.

Respectfully submitted,

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