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 SUPREME COURT OF ARIZONA

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE, ARIZONA CAPITAL REPRESENTATION PROJECT, ARIZONA JUSTICE PROJECT, AND THE FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF ARIZONA IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*

Amici are[1] the National Association of Criminal Defense Lawyers, Arizona Attorneys for Criminal Justice, the Arizona Capital Representation Project, the Arizona Justice Project, and the Federal Public Defender for the District of Arizona. *Amici* have a strong interest in the consistent and reliable application of the Eighth Amendment's prohibition on disproportionate punishment, as interpreted in *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and *Jones v. Mississippi*, 593 U.S. 98 (2021), and in ensuring that juvenile life-without-parole sentences are imposed only in the rare case where that harsh sentence is constitutional.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, with up to 40,000 more in its affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of

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[1] Pursuant to Rule 37.2, *amici* have informed counsel of record for all parties of their intention to file this brief more than 10 days before its due date. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amici*, their members, and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

justice. NACDL files numerous *amicus* briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

Arizona Attorneys for Criminal Justice (AACJ), the Arizona state affiliate of NACDL, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide non-profit membership organization of criminal defense lawyers, law students, and associated professionals, who are dedicated to protecting the rights of the accused in the courts and in the legislature, to promoting excellence in the practice of criminal law through education, training, and mutual assistance, and to fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

The Arizona Capital Representation Project (ACRP) is a statewide non-profit legal services organization that assists indigent persons facing the death penalty in Arizona through direct representation, pro bono training and consulting services, and education. ACRP tracks and monitors all capital prosecutions in Arizona. ACRP also represents several individuals sentenced to life without parole for offenses committed when juveniles.

The Arizona Justice Project (AJP) is a non-profit organization dedicated to preventing and overturning wrongful convictions and other manifest injustices, such as excessive or unconstitutional sentences. Since its founding in 1998, AJP has received several thousands of requests for assistance from individuals incarcerated in Arizona prisons and has represented numerous individuals before courts of law and the Arizona Board of

Executive Clemency, including many juvenile offenders who have been successfully rehabilitated. AJP has a compelling interest in ensuring affected juvenile defendants receive sentences that comply with the Eighth Amendment's prohibition on cruel and unusual punishment.

The Federal Public Defender for the District of Arizona (FPD) is the organization established under the Criminal Justice Act of 1964, 18 U.S.C. § 3006A(g), to provide representation of indigent criminal defendants before the federal trial and appellate courts covering Arizona. Under 18 U.S.C. §§ 3006A(a)(2)(B) and 3599(a)(2), the FPD also represents Arizona state prisoners seeking relief in federal court under 28 U.S.C. § 2254 from their unconstitutional sentences of either incarceration or death. The FPD has represented numerous individuals in federal habeas proceedings challenging the constitutionality of their life-without-parole sentences following this Court's decisions in *Miller* and *Montgomery*.

Amici have a particular and informed perspective on the operation of Arizona's first-degree murder sentencing scheme and Arizona's response to this Court's decision in *Miller* declaring mandatory life-without-parole sentences for juvenile offenders unconstitutional.

INTRODUCTION AND SUMMARY OF ARGUMENT

Dozens of juvenile offenders in Arizona—like petitioner Lonnie Bassett—were sentenced to life imprisonment without the opportunity for any type of release for crimes they committed as teenagers. Because the Arizona Legislature eliminated parole for all felonies committed after 1993, juvenile offenders sentenced between 1994 and 2014 in Arizona were sentenced under

a scheme in which judges had no discretion to grant a parole-eligible sentence.

Despite this Court's clear directive in *Miller v. Alabama*, 567 U.S. 460 (2012), reaffirmed and made retroactive in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), that a sentencing scheme that requires a sentence of life without the possibility of parole for a juvenile offender constitutes cruel and unusual punishment in violation of the Eighth Amendment, the State of Arizona has repeatedly refused to allow individuals who received these unconstitutional sentences to be resentenced. While this Court recently reaffirmed in *Jones v. Mississippi* 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," 593 U.S. 98, 100 (2021), the State of Arizona interpreted that decision to foreclose any further relief to Arizona juvenile offenders unconstitutionally sentenced to mandatory life without parole.

In the wake of *Montgomery*, the Arizona Supreme Court held that individuals like Mr. Bassett were entitled to postconviction evidentiary hearings at which they could prove that their sentences did not reflect "irreparable corruption" so as to warrant a life-without-parole sentence. *State v. Valencia*, 386 P.3d 392, 395–96 (Ariz. 2016) (quoting *Miller*, 567 U.S. at 479–80). But here, the Arizona Supreme Court reversed course, holding that juvenile offenders in Arizona are not eligible for such hearings even though their life-without-parole sentences were mandatory at the time they were imposed.[2] The

[2] The *Valencia* court resisted characterizing the sentences as mandatory, even as it acknowledged a sentencing judge's lack of discretion to impose a parole-eligible sentence. Against the backdrop of the aggravating and mitigating factors for first-degree murder, *see*

Arizona Supreme Court once again has demonstrated its unique inability to follow this Court's straightforward holdings. As a result of the Arizona Supreme Court's decision in Mr. Bassett's case, dozens of juvenile offenders who were unconstitutionally sentenced to mandatory life-without-parole sentences will lose their chance to ever have a *Miller*-compliant re-sentencing hearing.

ARGUMENT

1. At the time of Mr. Bassett's trial and sentencing hearing, Arizona had a mandatory life-without-parole sentencing scheme, which is unconstitutional as applied to juveniles under *Miller*.

A. At the time Mr. Bassett was sentenced, Arizona law did not allow him to be sentenced to anything other than life without the possibility of parole.

In *Miller*, this Court properly identified Arizona as a jurisdiction with a mandatory life-without-parole sentencing scheme. *See* 567 U.S. at 482, 486–487 & nn.9, 13, 15. Effective January 1, 1994, the Arizona legislature prospectively eliminated the state's parole scheme. Ariz. Rev. Stat. § 41-1604.09; *see also State v. Vera*, 334 P.3d 754, 758 (Ariz. App. 2014) ("Because the Arizona legislature had eliminated parole for all offenders who committed offenses after January 1, 1994…, [a defendant's] only possibilities for release would be

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Ariz. Rev. Stat. § 13-752(F), (G), the court said that the "natural life sentences at issue… were not mandatory but did amount to sentences of life without parole" because the "system of 'earned release credits,'" which replaced the parole scheme, "did not by its terms apply to natural life sentences." 386 P.3d at 394 (citing *State v. Vera*, 334 P.3d 754, 758–59 (Ariz. Ct. App. 2014)).

through a pardon or commutation by the governor.") (cleaned up). Accordingly, when Mr. Bassett was sentenced in 2006, no sentence the judge could have legally imposed would have allowed for the possibility of parole. *See Lynch v. Arizona*, 578 U.S. 613, 615 (2016) (per curiam) ("But under state law, the only kind of release for which Lynch would have been eligible—as the State does not contest—is executive clemency.").

The state argued below that some Arizona courts' mistaken belief that parole was still available after 1994 somehow converts Arizona's sentencing scheme into one that did not mandatorily impose life without parole for first-degree murder. But the Arizona Supreme Court itself has explained that a parole-eligible sentence was not legally available when Mr. Bassett was sentenced. *See Chaparro v. Shinn*, 459 P.3d 50, 52, 54 (Ariz. 2020) (characterizing a sentence that "include[s] parole eligibility after he has served 25 years," as "illegally lenient"). As Mr. Bassett explains in his petition, the state previously argued that Arizona did have mandatory life-without-parole sentencing before *Miller*. (Pet. 8.) And the state has continued to argue in other cases, as recently as 2022, that Arizona's sentencing scheme unambiguously barred parole eligibility and that judges understood that parole was not available, even where, as in Mr. Bassett's case, parole was referenced during sentencing proceedings. *See* Defendant's Motion for Certification or Dismissal at 2, 12–13, *Chaparro v. Ryan*, No. 2:19-cv-650-DWL (D. Ariz. Mar. 27, 2019); Supplemental Merits Brief of Plaintiff-Appellant at 5, *Shinn v. Board of Executive Clemency*, No. CV-21-0275-PR (Ariz. May 24, 2022) ("[I]n 1994, first-degree murderers… were not statutorily eligible for parole; they were eligible only for 'release,' i.e. commutation or pardon.").

B. The availability of clemency—the only type of "release" that was legally available at the time Mr. Bassett was sentenced—is not constitutionally equivalent to the possibility of parole.

If an Arizona defendant convicted of first-degree murder after 1993 received a sentence carrying the possibility of "release after 25 years," the "only kind of release" for which that defendant was statutorily eligible was executive clemency. *Lynch*, 578 U.S. at 615. Yet in the decision below, the Arizona Supreme Court ignored this Court's directive in *Lynch*: executive clemency is not constitutionally equivalent to parole. 578 U.S. at 615–16; *see also Solem v. Helm*, 463 U.S. 277, 303 (1983) ("Recognition of such a bare possibility [of executive clemency] would make judicial review under the Eighth Amendment meaningless.").

In *Graham v. Florida*, this Court explicitly held that "the remote possibility" of executive clemency is not a constitutionally adequate substitute for parole. 560 U.S. 48, 70 (2010). *Graham* considered a scheme analogous to Arizona's: Florida had abolished its parole system, leaving executive clemency as the only available form of release. *Id.* at 57 ("Because Florida has abolished its parole system… a life sentence gives a defendant no possibility of release unless he is granted executive clemency."). This Court concluded that, in the case of juveniles, Florida's sentencing scheme providing for executive clemency was not constitutionally interchangeable with one providing for parole. *Id.* at 70.

The Eighth Amendment distinguishes parole, which represents a meaningful opportunity for release, from executive clemency, which—in Arizona especially—amounts to a de facto natural life sentence. *See Viramontes v. Att'y Gen. of Arizona*, No. 4:16-cv-151-

TUC-RM, 2021 WL 977170, at *2 (D. Ariz. March 16, 2021) ("Unlike parole, the chances of obtaining release through executive clemency are slim."); *id.* at *2 n.2 (citing statistics from 2013 in which parole was granted in approximately 24% of cases, while commutation was granted in only 0.005% of cases); *see also State v. Dansdill*, 443 P.3d 990, 1000 n.10 (Ariz. Ct. App. 2019) ("[I]n Arizona, the possibility that a life sentence may allow for release after twenty-five years is more theoretical than practical. Parole was eliminated for all offenses committed after January 1, 1994, leaving commutation or pardon as the only possibilities for release…. The likelihood of either is so remote that the mandatory noncapital life sentence for felony murder is constitutionally indistinct from the mandatory noncapital natural life sentence for premeditated murder.") (cleaned up). The possibility of clemency is particularly illusory in Arizona: *amici* who track clemency proceedings in Arizona are not aware of a single instance in which an individual convicted of first-degree murder since Arizona eliminated parole in 1994 has received a grant of executive clemency (i.e., commutation of sentence or pardon), which requires a recommendation from the Board of Executive Clemency and approval by the Governor.

As in *Lynch*, the Arizona Supreme Court in the decision below has once again failed to acknowledge the constitutionally significant difference between the only type of release Mr. Bassett's sentencing judge could lawfully permit—executive clemency—and the type of release *Miller* requires a judge to have discretion to impose—parole.

2. Mr. Bassett and other similarly situated juvenile offenders in Arizona sentenced to life without parole have never received a *Miller*-compliant sentencing, and the court's decision below will prevent them from ever having their capacity for rehabilitation reviewed.

A. Because Arizona's sentencing scheme did not allow for a parole-eligible sentence, juvenile offenders in Arizona like Mr. Bassett did not have *Miller*-compliant sentencing hearings.

This Court has repeatedly held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479; *see also Jones*, 593 U.S. at 118 ("Today's decision does not disturb [the] holding" of *Miller* "that a State may not impose a mandatory life-without-parole sentence on a murderer under 18."). Despite these clear precedents, the court below held that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile offender." (Pet. App. 19a.) That is the opposite of what this Court held in *Miller*, *Montgomery*, and, most recently, *Jones*: "[A]n 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." *Jones*, 593 U.S. at 100 (emphasis added).

As explained above—and as acknowledged by the court below—Arizona courts sentencing offenders like Mr. Bassett between 1994 and 2014 did not have discretion to impose a life sentence that carried the possibility of parole. Sentences that are *more* severe were available, including natural life with no eligibility for any

kind of executive clemency, and death. But *Miller*'s prohibition on mandatory sentencing requires a sentencer to have discretion to impose a sentence of life with the possibility of parole or a *less* severe sentence than those two. *See* 567 U.S. at 474–76.

Indeed, many of the individuals now sentenced to natural life for crimes committed as juveniles were sentenced at a time when death was an available sentence. While Mr. Bassett's case was pending trial, this Court held in *Roper v. Simmons* that executing a person for a crime committed during childhood violates the Eighth Amendment. 543 U.S. 551 (2005). Prior to *Simmons*, Arizona law allowed certain offenders younger than 18 to be sentenced to death. Of the 29 individuals throughout Arizona currently serving natural life for crimes committed when they were children, 19 were sentenced before *Simmons* was decided. This timing matters for two reasons. First, *Simmons* marked the beginning of a paradigm shift—continued in this Court's later jurisprudence through *Miller* and its progeny—in how juvenile crime and punishment are understood under the Eighth Amendment. While judges may have considered youth as a chronological fact in pre-*Simmons* cases, they could not have appreciated the constitutional significance of "youth and its attendant characteristics" that this Court has since held must factor into sentencing. *Jones*, 593 U.S. at 111 (quoting *Montgomery*, 577 U.S. at 210). Second, because death was an alternative available punishment, the fact that these individuals received a less severe sentence—natural life—indicates that they are not among the "rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 577 U.S. at 195 (quoting *Miller*, 567 U.S. at 479–80).

Under Arizona's pre-*Simmons* scheme, a natural-life sentence does not reliably indicate that an individual falls

within the class of juveniles for whom a life-without-parole sentence is constitutionally permissible. To the contrary, in these cases, a natural life sentence reflects either a prosecutorial or judicial determination that an individual is not one of the "worst of the worst" for whom the harshest possible penalty—life without the possibility of parole—is appropriate.

B. Arizona's sentencing procedures did not sufficiently narrow the class of juvenile offenders for whom natural life is an appropriate sentence.

Simmons marked the beginning of a dramatic shift in how juvenile offenders are treated under the Eighth Amendment—a shift that this Court has continued to bear out and expand in the two decades since. *Simmons* described the meaningful differences between child and adult offenders and acknowledged that these differences are of constitutional import. 543 U.S. at 569–71. In *Simmons* the Court concluded that, given juveniles' "diminished culpability," the "penological justifications" for the most severe penalty "apply to them with lesser force than to adults." *Id.* at 571. Accordingly, in *Miller*, this Court stated that "given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty [*i.e.*, life without the possibility of parole] will be uncommon." 567 U.S. at 479. While the Court stopped short of outlawing life-without-parole sentences for juveniles, it mandated that sentencers "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480.

A few years later in *Montgomery*, this Court explained that under *Miller*, "a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption." 577 U.S. at 195 (cleaned up). This Court then affirmed in *Jones* the outcome-driven policy behind *Montgomery* and *Miller* that a discretionary sentencing scheme in which youth and its attendant characteristics must be considered will "help[] ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age," 593 U.S. at 111–12, and that these procedures themselves "would make life-without-parole sentences 'relatively rare' for juvenile offenders." *Id.* at 112–13. In *Jones*, this Court assumed that *Miller*'s promise had come true, and that "when given the choice, sentencers impose life without parole on children relatively rarely." *Id.* (quoting *Miller*, 567 U.S. at 483 n.10).

Unfortunately, in Arizona, *Miller*'s promise has not proven true. Even assuming there was a meaningful difference between life with the possibility of release and natural life sentences, Arizona sentencing courts impose natural life on juvenile offenders at an alarmingly high rate. *See* Brief of Amicus Curiae Arizona Attorneys for Criminal Justice at 11 and Appx. A, *State v. Valencia*, No. CR-16-0156-PR (Ariz. July 15, 2016) (collecting data demonstrating that more than 30% of juvenile offenders convicted of first-degree murder in Arizona are sentenced to natural life). This is hardly reconcilable with *Jones*'s assumption that "when given the choice, sentencers impose life without parole on children relatively rarely," 593 U.S. at 112, and thus is more evidence that Arizona's scheme at the time of Mr. Bassett's sentencing did not comply with *Miller*'s directives.

C. The vast majority of juveniles in Arizona unconstitutionally sentenced to life without parole have not received any type of relief since *Miller*.

In *Jones*, this Court assumed 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*." *Jones*, 593 U.S. at 110 n.4. But this assumption also has not proven true in Arizona. The State of Arizona has successfully fought to prevent re-sentencing hearings from occurring in almost all cases. Immediately after *Miller*, the state argued that *Miller* was not retroactive and did not provide a basis for postconviction relief under Arizona law—a position this Court rejected in *Montgomery*. Following *Montgomery*, this Court vacated and remanded several Arizona cases, finding that the Arizona courts had not properly "take[n] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Tatum v. Arizona*, 580 U.S. 952, 952 (2016) (Sotomayor, J., concurring) (quoting *Miller*, 567 U.S. at 480). While a handful of defendants were resentenced following *Montgomery* and *Tatum*, most were not. In Maricopa County—Arizona's most populous county, where the vast majority of natural life sentences in Arizona were imposed—not a single one of the 25 juvenile offenders who received natural life sentences has been resentenced since *Miller*. This was not consistent with the Court's assumption when it decided *Jones*. Yet the State of Arizona has continued to argue juveniles are not entitled to any hearings on the constitutionality of their life-without-parole sentences, most recently relying on this Court's decision in *Jones* to argue to Arizona courts that *Miller* is meaningless in Arizona and to convince them to

vacate pending re-sentencing and postconviction proceedings.

Unlike the defendant in *Jones*, whose life-without-parole sentence was upheld following a post-*Miller* re-sentencing hearing, Mr. Bassett and similarly situated juveniles sentenced to mandatory life without parole in Arizona have never received a re-sentencing hearing. These individuals have never had the discretionary sentencing at which a judge would consider a child's "'diminished culpability and heightened capacity for change' before condemning him or her to die in prison." *Montgomery*, 577 U.S. at 195 (quoting *Miller*, 567 U.S at 479). As a result, Arizona's procedures have failed to distinguish between the "rarest" children whose crimes reflect permanent incorrigibility—for whom life without parole may be a permissible sentence—and the majority of children whose crimes reflect transient immaturity—for whom such a sentence is disproportionate under the Eighth Amendment. *Jones*, 593 U.S. at 106 n.2 (quoting *Montgomery*, 577 U.S. at 211).

D. The lower Arizona courts are relying on the decision below to permanently deny relief and any possibility of release to other similarly situated defendants.

Despite the faulty logic of the Arizona Supreme Court's decision below, lower courts have found their hands tied by the decision. Bound by the decision below, lower courts in Arizona have denied review to all other juvenile offenders in Arizona who had pending claims that they are entitled to postconviction relief because *Miller* is a change in the law that would likely make their sentences unconstitutional. Notably, such claims arose under Arizona Rule of Criminal Procedure 32.1(g), the same state rule at issue in *Cruz v. Arizona*, 598 U.S. 17 (2023).

Under the decision below, lower courts are dismissing pending postconviction proceedings and finding that all juvenile lifers in Arizona are categorically not entitled to relief, without individualized consideration of each case. *See, e.g.*, *State v. Wagner*, No. 1 CA-CR 21-0492 PRPC (Ariz. Ct. App. Dec. 20, 2023) (denying relief because "under the Arizona Supreme Court's holding in [*State ex rel. Mitchell v. Cooper (Bassett)*, 256 Ariz. 1 (2023)]," *Miller* is not a "significant change in the law that, if applied to Wagner's case, would probably overturn his sentence, [and therefore] Wagner is not entitled to relief under Arizona Criminal Rule of Procedure 32.1(g)"); *see also State v. Arias*, No. 1 CA-CR 22-0064 PRPC (Ariz. Ct. App. Sept. 25, 2023) (denying relief to defendant following the Arizona Supreme Court's decision in *State v. Hon. Cooper/Bassett*); *State v. Odom*, No. 1 CA-CR 21-0537 PRPC (Ariz. Ct. App. Sept. 25, 2023) (same); *State v. McLeod*, No. 1 CA-SA 22-0196 (Ariz. Ct. App. Oct. 13, 2023) (same); *State v. Pierce*, No. 2 CA-CR 22-0160 PR (Ariz. Ct. App. Nov. 16, 2023) (same); *State v. Cabanas*, No. 1 CA-CR 21-0534 PRPC (Ariz. Ct. App. Dec. 6, 2023) (same); *State v. Aston*, No. 1 CA-SA 22-0068 (Ariz. Ct. App. Jan. 3, 2024) (same); *State v. Conley*, No. 1 CA-CR 22-0266 PRPC (Ariz. Ct. App. Feb. 6, 2024) (same); *State v. Bosquez*, No. 1 CA-CR 22-0360 PRPC (Ariz. Ct. App. Feb. 6, 2024) (same). While several other cases are still pending in the Arizona courts, these results furnish no reason to believe that they will depart from the Arizona Supreme Court's holding here. Thus, the decision below represents a bar to all Arizona juveniles challenging their mandatory life-without-parole sentences as unconstitutional under *Miller*—a perverse result given this Court's rulings in *Montgomery*, *Tatum*, *Jones*, and *Cruz*.

This Court should grant review to correct the Arizona Supreme Court's error and allow these cases to proceed to litigation on the merits of the individuals' constitutional

claims challenging their sentences in the Arizona state courts. The Arizona Attorney General's Office has previously asked this Court to deny review in similar cases seeking certiorari review from the Ninth Circuit, requesting this Court to delay review while Mr. Bassett's case was pending in the Arizona Supreme Court because it was possible that there would be a state remedy that would moot any federal claims. *See, e.g.*, Brief in Opposition at 27–28, *Rue v. Thornell*, No. 22-6027 (Mar. 7, 2023). The State further argued that instead of using a habeas case subject to the limitation on relief in 28 U.S.C. § 2254(d), "the better vehicle [for this Court] to address the constitutionality of Arizona [sentencing] statutes would be a decision from the Arizona Supreme Court interpreting and analyzing those statutes." *Id.* at 28. The opportunity the State of Arizona asked this Court to wait for in *Rue* is now here. The Court should not allow the State of Arizona to continue to ignore this Court's precedents, to disavow its own previous arguments, and to deny individuals with potentially meritorious constitutional claims their day in court.

Finally, this Court in *Jones* concluded its analysis by stating that the Court's decision was "far from the last word on whether Jones will receive relief from his sentence" because the Court's decision allowed him to present his "moral and policy arguments for why he should not be forced to spend the rest of his life in prison" to "the state officials authorized to act on them." *Jones*, 593 U.S. at 121. Unfortunately, no such opportunity exists for juveniles like Mr. Bassett sentenced to natural life in Arizona. Under Arizona law, a natural life sentence prevents an individual from ever seeking review of his sentence through any form of executive clemency and denies him any opportunity to present evidence of his rehabilitation. *See* Ariz. Rev. Stat. § 13-751(A)(1) ("A defendant who is sentenced to natural life is not eligible

for commutation, parole, work furlough, work release or release from confinement on any basis."). As explained above, the natural life sentence imposed on Mr. Bassett and other juvenile offenders in Arizona is even harsher than the life-without-parole sentences this Court considered in *Miller* and *Jones*. If the Court allows the decision of the Arizona Supreme Court below to stand, it will truly shut the prison gates forever for impacted juvenile offenders in Arizona.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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