No. 23-830

IN THE
Supreme Court of the United States

LONNIE ALLEN BASSETT,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari to the Arizona Supreme Court

BRIEF OF *AMICI CURIAE* 15 CONSTITUTIONAL AND CRIMINAL LAW PROFESSORS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are fifteen law professors who have expertise on the Eighth Amendment, criminal constitutional law, and juvenile justice. They appear in their personal capacities and provide their affiliation for identification purposes only. *Amici curiae* believe that their depth of expertise on issues relating to the constitutionality of criminal punishment and sentencing practices, as well as their familiarity with relevant scholarship and with the practice of criminal procedure in Arizona and nationwide, may be helpful to this Court. They share an interest in seeing that individuals, particularly juveniles, are not subject to unconstitutional criminal punishment.

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[1] Pursuant to Rule 37.2, counsel of record received timely notice of intent to file this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Once again, individuals in Arizona are forced to come to this Court to vindicate firmly established constitutional rights, all because Arizona refuses to follow precedent. This time, absent intervention, individuals sentenced to *mandatory* life without parole for crimes committed as juveniles will continue serving unconstitutional sentences in direct violation of *Miller v. Alabama*, 567 U.S. 460 (2012), and *Jones v. Mississippi*, 141 S. Ct. 1307 (2021). As it has previously done when Arizona refused to abide by binding precedent, the Court should tell Arizona that enough is enough.

In *Jones*, the Court reiterated that "*Miller* required a discretionary sentencing procedure." 141 S. Ct. at 1317. And, as *Miller* itself recognized, Arizona's sentencing scheme that applied to Petitioner Lonnie Bassett's case was not discretionary. 567 U.S. at 486 n.13. To the contrary, it unconstitutionally mandated life without parole. The Decision Below nevertheless reveals that Arizona is not willing to accept that premise. Despite this Court twice reaffirming *Miller*'s discretion requirement in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and again in *Jones*, 141 S. Ct. at 1307, Arizona continues to resist its clear holding and, as a result, Petitioner Bassett and similarly situated individuals continue to serve unconstitutional sentences to this day.

Far from complying with *Miller*, the Decision Below announces a rule—now repeatedly relied on by Arizona courts—that *Miller* does not apply to Petitioner Bassett and similarly situated defendants. That rule is based on a false equivalency between

executive clemency and parole that this Court has rejected not once, but twice. See *Simmons v. South Carolina*, 512 U.S. 154, 166 (1994); *Lynch v. Arizona*, 578 U.S. 613, 615 (2016); see also *Cruz v. Arizona*, 598 U.S. 17, 21-22 (2023). Employing that same rejected logic, Arizona argues here that Petitioner Bassett's sentence complies with *Miller* because the judge had a choice between two life-without-parole sentences: natural life, or life with the possibility of executive clemency. See Pet. App. 23a. In Arizona's view, the fact that the judge in Petitioner Bassett's case faced a choice between two parole-ineligible sentences somehow means that he had meaningful discretion to consider youth and impose a lesser punishment. Pet. App. 19a-21a. Not so. Even ordering a sentence with the possibility of executive clemency does not change the fact that the judge had no discretion to sentence Petitioner Bassett to anything other than life without parole, and that fact alone establishes the *Miller* violation. See *Jones*, 141 S. Ct. at 1311, 1313-14, 1316-18, 1322.

Equally unavailing is Arizona's argument that a post-*Miller* statute, Ariz. Rev. Stat. Ann. § 13-716 (2014), which reinstated parole in Arizona for individuals sentenced to life with the possibility of executive clemency, remedies its *Miller* violations. The constitutionality of the sentence *at the time of sentencing* is all that matters. *Montgomery*, 577 U.S. at 190, 204. Reinstating parole for one class of defendants, who received clemency-eligible sentences, does nothing to change the fact that Petitioner Bassett and similarly situated defendants were sentenced to mandatory life without parole and are still serving those sentences.

Meanwhile, in the twelve years since *Miller*, all of the other twenty-seven states called out in that decision have taken meaningful action to remedy their unconstitutional schemes—by banning juvenile life without parole entirely, by enacting meaningful legislative reform, or through resentencing. Alone on an island, Arizona provides no such mechanism for relief to individuals like Petitioner Bassett.

Petitioner Bassett's sentence is unconstitutional today, just as it was over a decade ago. *Miller*, 567 U.S. at 486 n.13. This Court should again step in to remind Arizona to follow precedent and to provide a remedy for sentences that dip below the constitutional floor.

The Court should grant the petition and summarily reverse.

ARGUMENT

I. THE DECISION BELOW DEFIES *MILLER*.

In *Miller*, this Court unequivocally held that mandatory life-without-parole sentences for juvenile defendants are unconstitutional. 567 U.S. at 465. It has since twice reaffirmed that holding in *Montgomery*, 577 U.S. at 208-09, and in *Jones*, 141 S. Ct. at 1321. Key to those decisions is the premise that "youth matters," as does "a child's capacity for change," in deciding whether to impose the severe sentence of life without parole on a juvenile. *Miller*, 567 U.S. at 473. But, contrary to that clear command, youth did *not* matter for the trial court's determination that Petitioner Bassett would face a sentence of life without parole—that was the only option available. During the relevant period, Arizona law only gave judges the option of choosing between

two parole-ineligible sentences for any individual (regardless of age) convicted of homicide, thereby dictating mandatory life without parole for juveniles in direct violation of *Miller*, *Montgomery*, and *Jones*.

In *Miller*, the Court held that life-without-parole sentences for juveniles are permissible only if "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." See *Jones*, 141 S. Ct. at 1314 (citing *Miller*, 567 U.S. at 476). In giving *Miller* retroactive force, *Montgomery* underscored the "key assumption" that a sentencing judge's ability to take into account a defendant's "youth and its attendant characteristics" was "necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 1317-18 (citing *Montgomery*, 577 U.S. at 210).

Jones once again affirmed that a discretionary sentencing scheme is critical to "ensur[ing] 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; see *id.* at 1313 (describing a discretionary sentencing scheme as "constitutionally necessary"). Indeed, that was a critical justification for the Court's decision not to require on-the-record fact finding regarding incorrigibility—the Court reasoned that "a discretionary sentencing procedure . . . would itself help make life-without-parole sentences 'relatively rar[e]'" for juvenile homicide defendants. *Id.* at 1318 (citing *Miller*, 567 U.S. at 484 n.10).

Through this line of cases, the Court made one thing perfectly clear: "*Miller* required a discretionary sentencing procedure." *Id.* at 1317. In other words, a

juvenile could be constitutionally sentenced to life without parole only if the sentencer "ha[d] the opportunity to consider the defendant's youth" and "impos[ed] a life-without-parole sentence" despite having "'discretion to impose a different punishment' than life without parole." *Id.* at 1316 (internal quotation marks omitted).

Without a doubt, *Miller*'s constitutional command applies to the mandatory life-without-parole scheme in place in Arizona at the time of Petitioner Bassett's sentencing. In fact, the *Miller* Court expressly identified Arizona as one of the states in direct violation of this rule. *Miller*, 567 U.S. at 486 n.13. That is because, from 1994, when Arizona abolished parole, to 2014, the only choice available to judges sentencing individuals convicted of first-degree murder—including juveniles—was "natural life," or "life" with the remote possibility of executive clemency after twenty-five years (hereinafter, "life with the possibility of release" or "life with the possibility of executive clemency"), regardless of their youth. See Ariz. Rev. Stat. Ann. § 13-752(A) (2010) ("If . . . the defendant is convicted of first-degree murder. . . the court shall determine whether to impose a sentence of life or natural life."); *id.* § 13-751(A) (2010) ("A defendant who is sentenced to natural life is not eligible for . . . release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years."); *id.* § 41-1604.09(I) (1994) (abolishing parole for felony defendants who committed their crimes on or after January 1, 1994); Ariz. Rev. Stat. Ann. § 13-501(A) (2010) (requiring juvenile homicide defendants fifteen years and older to be prosecuted "in the same manner

as an adult"). In sum, contrary to *Miller*, *Montgomery*, and *Jones*, sentencing judges had *zero discretion* to impose a punishment other than life without parole regardless of the offender's age or their capacity for rehabilitation.

As a result, Petitioner Bassett—and others who were sentenced during this relevant twenty-year period—was sentenced under a nondiscretionary sentencing scheme for crimes he committed as a juvenile. Yet, unlike other states that had similarly unconstitutional schemes, Arizona has refused to remedy these sentences. See *infra* Section III.B; *cf. Montgomery*, 577 U.S. at 212. As a result, Petitioner Bassett and similarly situated individuals continue to serve unconstitutional sentences to this day.

II. ARIZONA ATTEMPTS TO CREATE AN END RUN AROUND *MILLER* BY IGNORING THIS COURT AND RECYCLING OLD, REJECTED ARGUMENTS.

In trying to circumvent the clear mandate of *Miller*, *Montgomery*, and *Jones*, and allow Petitioner Bassett to serve an unconstitutional mandatory life-without-parole sentence, the Decision Below relies on an incomplete legislative fix and an unavailing (and already rejected) analogy between parole and executive clemency. The Court should again remind Arizona that it is not exempt from the Constitution or the decisions of this Court.

A. The Arizona Legislature Did Not Remedy Arizona's *Miller* Problem with Respect to Juveniles Sentenced to Natural Life from 1994 to 2014.

The Arizona Supreme Court's suggestion that the state's 2014 legislative reform brings it into compliance with *Miller* and *Montgomery*, Pet. App.

22a, is incorrect. Even though Arizona reinstituted parole for individuals sentenced to life with the possibility of executive clemency, the legislature did nothing to make individuals like Petitioner Bassett, who were sentenced to natural life with no possibility of release, parole-eligible. And any post hoc revision to the sentencing scheme does nothing to alter the lack of discretion that judges faced when Petitioner Bassett and similarly situated defendants were sentenced. Their sentences remain unconstitutional.

In *Montgomery*, this Court explained that states could remedy mandatory juvenile life-without-parole sentences by "relitigat[ing] sentences" so that the judge has discretion to impose a parole-eligible sentence, or by directly "permitting juvenile homicide offenders to be considered for parole." 577 U.S. at 212. However, the Arizona legislature reinstated parole eligibility only for individuals who were sentenced to life with the possibility of executive clemency. See Ariz. Rev. Stat. Ann. § 13-716 (2014) ("[A] person who is sentenced to life imprisonment with the possibility of release after serving a minimum number of calendar years for an offense that was committed before the person attained eighteen years of age is eligible for parole on completion of service of the minimum sentence."). The Arizona legislature did not mention, much less address, the fate of defendants who had been sentenced to "natural life," like Petitioner Bassett, even though they were sentenced under the same unconstitutional scheme that allowed only for a sentence of life without parole.

Despite the inapplicability of this legislative reform to the *natural life* sentences imposed under the mandatory life-without-parole scheme from 1994 to 2014, the Decision Below now creatively suggests that

the remedy for individuals sentenced to life with the possibility of executive clemency actually remedies the natural life sentences as well. Pet. App. 22a ("[E]ven if an issue remained with Arizona's sentencing scheme, the Arizona legislature has now remedied that circumstance.") (internal quotation marks omitted). That is because, in its view, the Arizona legislature retroactively making life-with-the-possibility-of-executive-clemency sentences eligible for parole somehow alters the sentencing choices that judges had pre-*Miller*. But the fact that *today* a life-with-the-possibility-of-executive-clemency sentence has been made parole-eligible through the retroactive effect of new legislation does not mean that a judge *back then* had a choice between a life-without-parole and a life-with-parole sentence. At the time Petitioner Bassett was sentenced, the judge in his case had only one choice: life without parole. The contrary argument—seeking to fold in retroactive legislative fixes to life-with-the-possibility-of-executive-clemency (but not natural-life) sentences—flatly contradicts *Montgomery*, which required consideration of the constitutionality of the sentence *at the time of sentencing*. 577 U.S. at 203 ("As a general principle . . . a court has no authority to leave in place a conviction or sentence that violates a substantive rule."). Put simply, "[t]here is no grandfather clause that permits States to enforce punishments the Constitution forbids." *Id.* at 204. But here, Arizona seeks to do just that.

The Court should reject Arizona's revisionist history. Petitioner Bassett's sentence was mandatory at the time it was imposed, and legislation that does not apply to him or the type of sentence he received

cannot transform that mandatory sentence into a discretionary one after the fact.[2]

B. Arizona's False Equivalency Between Clemency and Parole Was Foreclosed by *Simmons* and Rejected in *Lynch*.

Arizona also attempts to circumvent *Miller* by arguing that, because the trial judge had the choice of sentencing Petitioner Bassett to natural life or to life with the possibility of executive clemency, the judge in effect had the choice of sentencing him to "natural life" or "life with the possibility of parole." See Pet. App. 23a (classifying Arizona's life-with-the-possibility-of-executive-clemency sentence as a "lesser sentence"). If that argument sounds familiar, it is because this Court already considered—and rejected—this false equivalency between executive clemency and parole.

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[2] To the extent that Arizona is suggesting that future legislation like Arizona Revised Statutes § 13-716 might one day supply a remedy to juveniles sentenced to *natural life*, like Petitioner Bassett, and that the possibility of additional legislation somehow excuses compliance with *Miller*, this Court has already rejected that logic. Specifically, the Court has held that possible "legislative reform" that would transform a life-without-parole sentence into one with parole eligibility was merely another "future exigency"—a "hypothetical future development"—that could not justify denying a parole-eligibility instruction at sentencing in a capital trial. *Simmons v. South Carolina*, 512 U.S. 154, 164, 166 (1994). And when Arizona itself tried to revive that argument in *Lynch v. Arizona*, this Court unambiguously rejected that maneuver, repeating that *Simmons* "foreclose[d]" the argument. 578 U.S. 613, 616 (2016); see also *Cruz v. Arizona*, 598 U.S. 17, 22 (2023) ("*Simmons* foreclosed the State's alternative argument that relied on the potential for future legislative reforms to Arizona's parole statute.").

To start, in *Simmons*, the Court expressly rejected the argument that a remote possibility of executive clemency is equivalent to parole eligibility. See 512 U.S. at 166. *Simmons* held that capital defendants have a right to inform a jury of their parole ineligibility if future dangerousness is put at issue in sentencing. *Id.* at 168-69. In reaching that decision, the Court recognized that sentencers who mistakenly believe a defendant would be parole-eligible are more likely to impose the death penalty. *Id.* at 163. Relevant here, *Simmons* distinguished "future exigencies," including clemency and possible legislative reform, from parole. *Id.* at 166. As a "hypothetical future development," the availability of executive clemency did not affect the defendant's parole eligibility and could not justify denying an instruction to that effect. *Id.*; see also *Solem v. Helm*, 463 U.S. 277, 300 (1983) ("As a matter of law, parole and commutation are different concepts."); *id.* at 300-01, 303 (differentiating parole, "a regular part of the rehabilitative process," from an "*ad hoc* exercise of executive clemency").

Undeterred by the clear holding in *Simmons*, which expressly rejected the notion that executive clemency equated parole, Arizona refused to abide by that precedent, and continued denying defendants' *Simmons* claims on the basis that executive clemency made future release possible in functionally the same way as parole. See *State v. Lynch*, 357 P.3d 119, 138-39 (Ariz. 2015) (denying a *Simmons* claim because "[e]ven if parole remained unavailable, Lynch could have received another form of release such as executive clemency"), *rev'd*, *Lynch v. Arizona*, 578 U.S. 613 (2016). This Court, in turn, summarily reversed the Arizona Supreme Court, holding that

Arizona's sentence of life with the possibility of executive clemency is *not* equivalent to a sentence of life with the possibility of parole. *Lynch*, 578 U.S. at 615. Because Arizona had abolished parole, clemency was "the only kind of release for which Lynch would have been eligible." *Id.* This put Arizona's position in "conflict with [*Simmons*]," which had already "expressly rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility." *Id.*

Yet, despite the clear holdings in *Simmons* and in *Lynch*, Arizona somehow finds itself again before this Court making the *same* argument that the possibility of executive clemency is equivalent to parole eligibility. To rephrase Andre Gide, "Everything has been said already; but as [Arizona refuses to] listen[], we must always begin again." See *Guardado v. Jones*, 138 S. Ct. 1131, 1134 n.4 (2018) (Sotomayor, J., dissenting from denial of certiorari). A sentence with the remote possibility of executive clemency has never been, and will never be, the equivalent of a sentence with the possibility of parole. It was not in *Simmons*. It was not in *Lynch*. And it is not here. This Court should reject this false equivalency once more.

C. As *Miller* Itself Noted, Its Mandate Applies to Arizona's Sentencing Scheme in Place from 1994 to 2014.

The Decision Below has no leg to stand on in implying that *Miller* had no effect in Arizona during the relevant time because "Arizona's sentencing scheme stands in stark contrast with the state statutes at issue in *Miller*." Pet. App. 21a. After all, the *Miller* Court specifically pointed to Arizona as an

example of a state with an unconstitutional mandatory life-without-parole scheme. 567 U.S. at 486 n.13. And Arizona itself conceded in *Miller* that its sentencing scheme mandated life-without-parole for juveniles convicted of homicide. See Brief of *Amici Curiae* State of Michigan et al. for Respondents at 1, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647) ("26 states make [life-without-parole sentences] mandatory in at least some cases."); Pet. 8.

Unphased, the Decision Below tries to circumvent *Miller* by incorrectly claiming that: (1) judges in Arizona had the choice between two kinds of mandatory life without parole (natural life and a "lesser sentence" of life with the possibility of executive clemency), Pet. App. 21a; and (2) judges in Arizona were required to consider age as a mitigating factor at sentencing, see, e.g., Pet. App. 13a-14a. The first argument relies on the same false equivalency discussed *supra* in Section II.B. A sentence of life with the possibility of executive clemency was still a mandatory life-without-parole sentence. It cannot substitute for discretion to sentence a youth to life with the possibility of parole.

The second purported distinction fails because consideration of age alone is not enough to comport with *Miller*, *Montgomery*, and *Jones*. Sentencing laws must also allow judges discretion to impose a sentence other than life without parole after considering the defendant's age and capacity for rehabilitation. See *supra* Section I. This Court made that clear in *Jones*: the sentencer must be able to consider age "*and impose a lesser punishment*" than life without parole. 141 S. Ct. at 1314 (citing *Miller*, 567 U.S. at 476) (emphasis added). With respect to defendants in Petitioner Bassett's position, however, there was no

such discretion: the only possible sentence was still life without parole, rendering the consideration of age irrelevant. Age could not and did not have any impact on the eventual sentence to life without parole and is therefore insufficient for purposes of *Miller*.

At bottom, the Decision Below defies the clear statement in *Miller* that Arizona's sentencing scheme "mandat[ed] life without parole for children" and did so "by virtue of generally applicable penalty provisions, imposing the sentence without regard to age." 567 U.S. at 486 & n.13 (citing Ariz. Rev. Stat. Ann. § 13-752 (2010); *id.* § 41-1604.09(I) (2011)). Nothing in Arizona's sentencing laws, even if they allowed judges to consider age as a mitigating factor in deciding whether to impose a different kind of life-without-parole sentence, changed the basic conclusion in *Miller* that Arizona's scheme withheld judges' discretion to sentence juvenile homicide defendants to anything but mandatory life without parole.

III. THIS COURT SHOULD STEP IN TO ENSURE ARIZONA'S COMPLIANCE WITH FEDERAL CONSTITUTIONAL LAW.

Make no mistake, the Decision Below creates a rule that individuals sentenced to natural life between 1994 to 2014 for offenses they committed as juveniles are unable to vindicate their constitutional rights established in *Miller* and *Montgomery*. Arizona's lower courts have taken note and denied relief to individuals similarly situated to Petitioner Bassett, making Arizona an extreme outlier. It is the *only* state the *Miller* Court identified as having an unconstitutional scheme that has not provided some mechanism for relief for an entire class of individuals to this day.

A. The Decision Below Announced a Rule on Which Arizona Courts Now Rely to Deny Relief to Similarly Situated Defendants.

The Decision Below establishes a rule that *Miller* does not apply to juveniles convicted of first-degree murder and sentenced to natural life in Arizona between 1994 and 2014. Specifically, it held that Bassett's "natural life sentence was not mandatory within the meaning of *Miller*," because Bassett's sentencing process was a "discretionary" one where the trial court "decided whether to impose a natural life sentence or a lesser punishment." Pet. App. 3a, 23a. That same reasoning applies to every other juvenile sentenced to natural life in the relevant time period, and Arizona's lower courts have adhered to the holding.

Since the Decision Below issued, lower Arizona courts have cited it to deny post-conviction relief to multiple similarly situated defendants invoking *Miller*. See, e.g., *State v. Pierce*, No. 2 CA-CR 2022-0160-PR, 2023 WL 7899193, at *2 n.1 (Ariz. Ct. App. Nov. 16, 2023) (relying on the Decision Below for the proposition that any consideration of the defendant's youth, despite a lack of discretion at time of sentencing, complies with *Miller*, and thus rejecting the defendant's factual comparison to Bassett's sentencing as "not material to whether his sentencing procedure was constitutional"); *State v. Aston*, No. 2 CA-CR 2022-0167-PR, 2023 WL 8016694, at *2 (Ariz. Ct. App. Nov. 20, 2023) (stating that the Decision Below abrogated any requirement to grant evidentiary post-conviction hearings to individuals sentenced to natural life pre-*Miller*); see also Pet. 12 n.1 (citing additional cases).

Although the Decision Below *purports* to conduct an analysis of the facts in Petitioner Bassett's case, see Pet. App. 23a n.3 (noting that the Decision Below does not "foreclose resentencing" when the trial court did not consider "an offender's youth and attendant characteristics"); *id.* at 4a-10a (discussing the consideration of age throughout Petitioner Bassett's sentencing proceedings), ultimately there is no escaping that the Arizona Supreme Court announced a blanket rule for juveniles sentenced during this period of parole unavailability. The factual basis of Petitioner Bassett's case did nothing to limit the holding of the Decision Below—that, contrary to this Court's precedent, Petitioner Bassett's "natural life sentence was not mandatory under *Miller*." Pet. App. 3a.

The subsequent decisions of the Arizona courts of appeals confirm that *Miller* no longer applies to the category of individuals sentenced to natural life between 1994 and 2014 in Arizona. If left uncorrected, the Decision Below will continue to misguide Arizona's lower courts and permit unconstitutional mandatory juvenile life-without-parole sentences to stand.

B. Arizona's Refusal to Abide by This Court's Holdings Makes It an Extreme Outlier.

Over a decade has passed since this Court in *Miller* named Arizona as one of twenty-eight states that sentenced juveniles to life without parole under a nondiscretionary scheme. Today, Arizona remains *the only one* of those states that has neither made individuals like Petitioner Bassett eligible for parole nor allowed them to be resentenced under a

constitutional scheme. See *Montgomery*, 577 U.S. at 212. The failure to abide by this Court's holdings in *Miller*, *Montgomery*, and *Jones* on post-conviction review makes Arizona an extreme outlier.

Following *Miller*, all other twenty-seven states called out in the decision have taken meaningful action to comply with federal constitutional law. Sixteen of those states have banned juvenile life without parole entirely.[3] Six others have passed legislative reforms that remedy unconstitutional pre-*Miller* juvenile sentences.[4] The remaining five states

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[3] As of 2023, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, New Jersey, Ohio, South Dakota, Texas, Vermont, Virginia, Washington, and Wyoming have banned juvenile life without parole. See Campaign for the Fair Sentencing of Youth, *States that Ban Life Without Parole for Children* (last visited Feb. 19, 2024), https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole.

[4] Those states are Florida, Michigan, Missouri, Louisiana, Nebraska, and North Carolina. For Florida's reforms, see Fla. Stat. §§ 775.082, 921.1401, 921.1402 (2015) and *Horsley v. State*, 160 So. 3d 393, 395 (Fla. 2015) (giving those statutes retroactive effect). For Louisiana's reforms, see La. Code Crim. Proc. Ann. art. 878.1 (2017) (allowing all individuals serving juvenile life sentences to be considered for parole eligibility regardless of when their offenses were committed). For Michigan's reforms, see Mich. Comp. Laws § 769.25a (2014) (allowing resentencing in light of *Miller* and giving retroactive effect after *Montgomery*). For Missouri's reforms, see Mo. Ann. Stat. § 558.047 (2016) (allowing retroactive parole eligibility after a fixed term of twenty-five years for juveniles sentenced to life without parole pre-*Montgomery*). For Nebraska's reforms, see Neb. Rev. Stat. § 83-1,110.04 (2013) (allowing annual parole-eligibility consideration for all juvenile defendants). For North Carolina's reforms, see N.C. Gen. Stat. § 15A-1340.19B (2012) (giving judges discretion to sentence defendants to life with parole) and N.C. S.B. 635, ch. 148, sec. 3 (2011) ("[T]his act also applies to

have addressed unconstitutional pre-*Miller* sentences via their state courts. See *Ex parte Williams*, 244 So. 3d 100, 101 (Ala. 2017) (holding that, in light of *Miller* and *Montgomery*, "Williams is entitled to a new sentencing hearing"); *Windom v. State*, 398 P.3d 150, 155 (Idaho 2017) (recognizing that, under *Miller*, "mandatory life-without-parole sentences for children" are unconstitutional);[5] *Parker v. State*, 119 So. 3d 987, 998 (Miss. 2013) (vacating Parker's mandatory life-without-parole sentence and "remand[ing] for hearing where the trial court, as the sentencing authority, is required to consider the *Miller* factors before determining sentence"); *In re State*, 103 A.3d 227, 230, 233 (N.H. 2014) (holding that individuals sentenced to mandatory life without parole pre-*Miller* are entitled to post-conviction relief); *Commonwealth v. Batts*, 163 A.3d 410, 459 (Pa.

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any resentencing hearings required by law for a defendant who was under the age of 18 years at the time of the offense, was sentenced to life imprisonment without parole prior to the effective date of this act, and for whom a resentencing hearing has been ordered.").

[5] The defendant in *Windom* was not serving a mandatory life without parole sentence, but the Idaho Supreme Court nonetheless applied *Miller* because the sentencing judge did not consider age before imposing life without parole. *Windom v. State*, 398 P.3d 150, 158 (Idaho 2017). To *amici*'s knowledge, Idaho (unlike Arizona) does not presently have anyone serving *mandatory* life without parole for offenses they committed as a juvenile. Moreover, after *Roper v. Simmons* outlawed imposition of the death penalty on minors, 543 U.S. 551 (2005), there is no longer a statutory mechanism for imposing a mandatory life-without-parole sentence on a juvenile, because a life-without-parole sentence is only an available option if the state seeks the death penalty and fails to prove a statutory aggravating circumstance beyond a reasonable doubt. Idaho Code §§ 18-4004, 19-2515(7)(b) (2003).

2017) (holding that pre-*Miller* mandatory juvenile life-without-parole sentences are illegal and devising a procedure for resentencing individuals serving mandatory life sentences).

Arizona thus remains the only state where juvenile homicide defendants are still serving unconstitutional sentences of mandatory life without parole with no meaningful mechanism to challenge their sentences. And the Arizona Supreme Court's reasoning puts it, and it alone, in conflict with all the other state high courts that have rejected similar arguments and remedied their *Miller* violations. This Court should not tolerate that result.

CONCLUSION

The Court should grant the Petition and summarily reverse the Decision Below.

Respectfully submitted,

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