No. _____

IN THE

Supreme Court of the United States

FELIPE PETRONE-CABANAS; CHARLES VINCENT WAGNER; JONATHAN ANDREW ARIAS; THOMAS JAMES ODOM; AND CHRISTOPHER LEE MCLEOD,

Petitioners,

v.

STATE OF ARIZONA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

States may not "make life without parole the mandatory (or mandatory minimum) punishment" for juveniles. *Miller* v. *Alabama*, 567 U.S. 460, 482 n.9 (2012). Juvenile homicide offenders may be sentenced to life without parole, but "*only if*" the sentencer "has discretion to impose a lesser punishment." *Jones* v. *Mississippi*, 593 U.S. 98, 100 (2021) (emphasis added).

Arizona abolished parole in 1994. Thus, during the relevant period, the mandatory minimum penalty for juveniles convicted of first-degree murder was life without parole. In the decisions below, the Arizona Court of Appeals nevertheless held that it was bound by the Arizona Supreme Court's earlier decision in *State ex rel. Mitchell* v. *Cooper*, 535 P.3d 3, 11-13 (Ariz. 2023) ("*Bassett*"), which held that "a *choice*" between "sentencing options"—even where no option included parole and the maximum penalty was death—satisfied this Court's precedents.

Over three dissents, this Court denied certiorari in *Bassett* after the State of Arizona urged the Court to deny review. The State did not defend the Arizona Supreme Court's reasoning in *Bassett* but argued that review was unwarranted because, first, the defendant there faced two sentencing options and the sentencer chose the "harshest option," and, second, the sentencer in *Bassett* "mistakenly" believed that parole was available. The question presented in this case is:

Whether juveniles may be sentenced to life without parole under a system that did not afford the sentencing court discretion to choose any lesser option, even where the sentencer did not impose the harshest option and even where the sentencer did not mistakenly believe parole was available.

PARTIES TO THE PROCEEDING

Petitioners in this Court are Felipe Petrone-Cabanas, Charles Vincent Wagner, Jonathan Andrew Arias, Thomas James Odom, and Christopher Lee McLeod. Petrone-Cabanas, Wagner, Arias, and Odom were the petitioners in the proceedings below. McLeod was the real party in interest in the proceedings below.

Respondent is the State of Arizona, which was the respondent in the proceedings below involving Petrone-Cabanas, Wagner, Arias, and Odom, and the petitioner in the proceedings below involving McLeod.

RELATED PROCEEDINGS

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

- *Arias, et al.* v. *Arizona*, No. 24A76 (July 19, 2024) (granting application to extend time to file petition for writ of certiorari)
- *Arias* v. *Arizona*, 580 U.S. 951 (2016) (granting petition, vacating judgment, and remanding for further consideration in light of *Montgomery*)

Arizona Supreme Court (Ariz.):

- *State* v. *Petrone-Cabanas*, No. CR-23-0331-PR (June 3, 2024) (denying review)
- *State* v. *Petrone-Cabanas*, No. CR-22-0185-PR (Sept. 19, 2023) (granting review, vacating, and remanding for further proceedings post-*Bassett*)
- *State* v. *Wagner*, No. CR-24-0013-PR (June 3, 2024) (denying review)
- *State* v. *Wagner*, No. CR-22-0156-PR (Sept. 19, 2023) (granting review, vacating, and remanding for further proceedings post-*Bassett*)
- *State* v. *Wagner*, 982 P.2d 270 (1999) (affirming convictions and sentences)
- *State* v. *Arias*, No. CR-24-0020-PR (June 3, 2024) (denying review)
- *State* v. *Arias*, No. CR-22-0237-PR (Sept. 19, 2023) (granting review, vacating, and remanding for further proceedings post-*Bassett*)
- *State* v. *Odom*, No. CR-23-0265-PR (May 7, 2024) (denying review)
- *State* v. *Odom*, No. CR-23-0265-PR (Sept. 19, 2023) (granting review, vacating, and remanding for further proceedings post-*Bassett*)

- *State* v. *McLeod*, No. CR-23-0285-PR (June 3, 2024) (denying review)

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

- *State* v. *Petrone-Cabanas*, No. 1 CA-CR 21-0534 PRPC (Dec. 6, 2023) (denying postconviction relief)
- *State* v. *Petrone-Cabanas*, No. 1 CA-CR 21-0534 PRPC, 2022 WL 2205273 (June 21, 2022) (granting relief), *vacated*, (Ariz. Sept. 19, 2023)
- *Petrone-Cabanas* v. *Pineda in & for Cnty. of Maricopa*, 433 P.3d 560 (2018)
- *State* v. *Petrone-Cabanas*, No. 1 CA-CR 15-0660 PRPC, 2017 WL 3599595 (Aug. 22, 2017) (ordering evidentiary hearing)
- *State* v. *Wagner*, No. 1 CA-CR 21-0492 PRPC (Dec. 20, 2023) (denying postconviction relief)
- *State* v. *Wagner*, 510 P.3d 1083 (2022) (granting relief), *vacated*, (Ariz. Sept. 19, 2023)
- *State* v. *Wagner*, 976 P.2d 250 (1998) (affirming convictions and sentences), *approved in part, vacated in part*, 982 P.2d 270 (Ariz. 1999)
- *State* v. *Arias*, No. 1 CA-CR 22-0064 PRPC (Sept. 25, 2023) (denying postconviction relief)
- *State* v. *Arias*, No. 1 CA-CR 22-0064 PRPC, 2022 WL 3973488 (Sept. 1, 2022) (granting relief), *vacated*, (Ariz. Sept. 19, 2023)
- *State* v. *Arias*, 1 CA-CR 13-0548 PRPC, 2015 WL 2453175 (May 21, 2015) (denying postconviction relief), *vacated*, 580 U.S. 951 (2016)
- *State* v. *Odom*, No. 1 CA-CR 21-0537 PRPC (Sept. 25, 2023) (denying postconviction relief)

- *State* v. *Odom*, No. 1 CA-CR 21-0537 PRPC, 2022 WL 4242815 (Sept. 15, 2022) (granting relief), *vacated*, (Ariz. Sept. 19, 2023)
- *State* v. *Odom*, No. 1 CA-CR 11-0609, 2012 WL 3699485 (Aug. 28, 2012) (affirming convictions and sentences), *review denied*, (Ariz. Feb. 12, 2013)
- *State* v. *Gentry/McLeod*, No. 1 CA-SA 22-0196 (Oct. 13, 2023) (denying postconviction relief)

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

- *State* v. *Petrone-Cabanas*, No. CR 1999-006656 (Oct. 6, 2021) (denying postconviction relief)
- *State* v. *Wagner*, No. CR 1994-092394 (Sept. 29, 2021) (denying postconviction relief)
- *State* v. *Arias*, No. CR 1999-012663 (Nov. 10, 2021) (denying postconviction relief)
- *State* v. *Odom*, No. CR 2010-121445-001 (Sept. 29, 2021) (denying postconviction relief)
- *State* v. *McLeod*, No. CR 1996-090611 (Apr. 29, 2022) (ordering evidentiary hearing)

U.S. District Court for the District of Arizona (D. Ariz):

- *Arias* v. *Thornell*, No. 2:15-cv-01236, 2024 WL 3951979 (Aug. 27, 2024)

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FELIPE PETRONE-CABANAS; CHARLES VINCENT WAGNER; JONATHAN ANDREW ARIAS; THOMAS JAMES ODOM; AND CHRISTOPHER LEE MCLEOD,

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Felipe Petrone-Cabanas, Charles Vincent Wagner, Jonathan Andrew Arias, Thomas James Odom, and Christopher Lee McLeod respectfully petition for a writ of certiorari to review the judgments of the Arizona Court of Appeals.

INTRODUCTION

This joint petition is brought by five Arizona defendants sentenced as juveniles to mandatory life without parole in violation of this Court's precedents. This Court held in *Miller* v. *Alabama* that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 567 U.S. 460, 470 (2012). In *Jones* v. *Mississippi*, this Court again affirmed that

life-without-parole sentences for juveniles are permissible "only if" the sentencer "has discretion to impose a lesser punishment." 593 U.S. 98, 100 (2021). It is undisputed that Arizona's sentencing scheme did not allow the sentencing judges in Petitioners' cases to impose parole-eligible sentences. Under a straightforward application of this Court's precedents, Petitioners' sentences are unconstitutional.

The Arizona courts nonetheless denied relief to all five Petitioners. In a published opinion in an earlier case known as *Bassett*, the Arizona Supreme Court held that Arizona's scheme comported with the Eighth Amendment, maintaining that this Court's precedents "do not specifically require the availability of parole when sentencing a juvenile." *State ex rel. Mitchell* v. *Cooper*, 535 P.3d 3, 11-13 (Ariz. 2023) ("*Bassett*"). Instead, the Arizona Supreme Court believed that "a *choice* between" life sentences—even if neither allowed parole—sufficed. *Id.* at 13. Following *Bassett*, the Arizona Court of Appeals denied relief to all five Petitioners here, and the Arizona Supreme Court denied review.

Three Justices of this Court would have summarily reversed the Arizona Supreme Court's decision in *Bassett* as plainly inconsistent with "this Court's established precedents." *Bassett* v. *Arizona*, 144 S. Ct. 2494, 2499 (2024) (Sotomayor, J., dissenting from denial of certiorari). But this Court denied review at the urging of the State of Arizona. The State's brief in opposition to certiorari in *Bassett* did not defend the Arizona Supreme Court's conclusion that this Court's precedents "do not specifically require the availability of parole when sentencing a juvenile." *Bassett*, 535

P.3d at 11. That conclusion was "plainly inconsistent with *Miller*, *Montgomery*, and *Jones*," and the State therefore appropriately conceded that "parole-eligibility is constitutionally required." *Bassett*, 144 S. Ct. at 2495-96 (Sotomayor, J., dissenting from denial of certiorari) (citation omitted).

Instead, the State urged this Court to deny review principally for two reasons specific to the facts of that case. First, the State noted that the defendant in *Bassett* had been eligible for two different life-without-parole sentences and the sentencing judge imposed the "harshest option," which, according to the State, meant that any resentencing would result in life without parole. Br. in Opp'n 20, *Bassett*, 144 S. Ct. 2494 (No. 23-830) ("*Bassett* BIO"). Second, the State argued that the sentencing judge "mistaken[ly]" believed that parole was available, and therefore "fortuitously complied with *Miller*" by considering whether to grant a parole-eligible sentence before imposing life without parole. *Id*. at 27.

For the reasons explained in detail in the *Bassett* certiorari petition, the Arizona Supreme Court's decision in *Bassett* contravenes this Court's precedents. But regardless of whether *Bassett* was correctly decided on the facts of that case, it cannot justify Petitioners' sentences here. The reasons the State offered this Court for denying review in *Bassett* are wholly inapplicable to Petitioners' cases. Thus, notwithstanding the denial of certiorari in *Bassett*, Petitioners' mandatory life-without-parole sentences raise distinct constitutional problems that call out for this Court's review.

First, unlike in *Bassett*, this joint petition involves defendants who were not sentenced to the "harshest

option" available under Arizona law. Four of the five Petitioners were sentenced to life without parole before *Roper* v. *Simmons*, 543 U.S. 551 (2005), abolished the death penalty for juveniles. The logic of the Arizona Supreme Court's decision in *Bassett* entirely collapses in cases where a juvenile faced the possibility of death.

For death-eligible defendants, Arizona sentencing courts imposed mandatory life-without-parole sentences as *an act of mercy*. In these circumstances, there is no basis to speculate that sentencing judges necessarily deemed the defendant to be among the "relatively rare" children for whom a life-without-parole sentence was appropriate. *Jones*, 593 U.S. at 111-112. There is instead every reason to conclude that sentencing judges, having declined to impose the death penalty, would have awarded a parole-eligible sentence had state law made such a sentence available. Indeed, in one of Petitioners' cases, the sentencing judge spared the defendant from execution after finding that "juvenile impulsivity played an important part" in the crime and noting the defendant's "amenability to rehabilitation." Pet. App. 29a, 32a. Having concluded that the defendant was amenable to rehabilitation, there is every reason to conclude that the sentencing judge would have granted a parole-eligible sentence had state law made it available. *Miller*, 567 U.S. at 479.

Second, the State in *Bassett* urged this Court to deny review because "Bassett's sentencer actually considered whether he should be parole-eligible" and decided against it. *Bassett* BIO 22. Were it not for the "unusual" fact of the sentencer's "mistaken" belief that parole was available, the State conceded that

relief would be warranted. *Id*. at 14, 17. The State assured this Court that, "[b]ut for" the "actual consideration of parole-eligibility," "there would be a *Miller* violation." *Bassett*, 144 S. Ct. at 2499 (Sotomayor, J., dissenting from denial of certiorari) (quoting *Bassett* BIO 23).

The State's mistake-of-law argument cannot conceivably justify the mandatory life-without-parole sentences imposed on Petitioners here. In none of Petitioners' cases did the sentencing judge ever express any mistaken belief that parole was an available option under state law. Indeed, the Arizona Court of Appeals remarked in one case that "[a]t no point during the sentencing proceedings in this case did the superior court refer to 'parole' or convey that it believed it could sentence [the defendant] to a parole-eligible term." Pet. App. 73a.

In light of the State's own representations to this Court last term in *Bassett*, Petitioners' mandatory life-without-parole sentences cannot stand. Granting relief to Petitioners will not entitle them to parole. It will merely mean that an Arizona judge will, for the first time, consider that they committed their crimes when they were children before deciding whether "life without any possibility of parole [i]s the appropriate penalty." *Miller*, 567 U.S. at 479. This Court should grant the petition.

OPINIONS BELOW

The Arizona Superior Court decisions denying postconviction relief to Petrone-Cabanas, Wagner, Arias, and Odom, and granting relief to McLeod, are unpublished. Pet. App. 34a-39a, 59a-60a, 79a-83a, 93a-97a; *see id.* at 107a.

The Arizona Court of Appeals decision initially granting relief to Wagner is reported at 510 P.3d 1083; *see* Pet. App. 61a-73a, and the decisions initially granting relief to Petrone-Cabanas, Arias, and Odom are unpublished, Pet. App. 40a-43a, 84a-87a, 98a-101a.

The Arizona Supreme Court's decisions reversing the grants of relief post-*Bassett* are unpublished. *Id*. at 44a-45a, 74a-75a, 88a-90a, 102a-103a. The Arizona Court of Appeals decisions subsequently denying postconviction relief to Petitioners are unpublished. *Id*. at 46a, 76a-77a, 91a, 104a, 106a-108a. The Arizona Supreme Court's denials of review are also unpublished. *Id.* at 47a, 78a, 92a, 105a, 109a.

JURISDICTION

The Arizona Court of Appeals entered judgment against Arias and Odom on September 25, 2023, Pet. App. 91a, 104a; against McLeod on October 13, 2023, *id.* at 106a; against Petrone-Cabanas on December 6, 2023, *id.* at 46a; and against Wagner on December 20, 2023, *id.* at 76a. The Arizona Supreme Court denied review in Odom's case on May 7, 2024, *id.* at 105a, and in the remaining Petitioners' cases on June 3, 2024, *id.* at 47a, 78a, 92a, 109a. This Court granted Petitioners' timely application to extend the time to file a petition for a writ of certiorari to October 4, 2024. No. 24A76 (July 19, 2024). 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, cl. 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. 110a-115a.

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. Because "children are constitutionally different from adults for purposes of sentencing," the sentencing authority must have "discretion to impose a different punishment." *Id.* at 465, 471. 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 28 States that had mandatory life-without-parole sentences for juveniles, including Arizona." *Bassett*, 144 S. Ct. at 2498-99 (Sotomayor, J., dissenting from denial of certiorari); *see Miller*, 567 U.S. at 482, 486-487 & nn.9, 13, 15. *Miller* "overrule[d]" those sentencing schemes. 567 U.S. at 514 (Alito, J., dissenting).

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. 190, 195, 206 (2016) (citation and quotation marks omitted). This Court subsequently vacated several Arizona court orders dismissing claims for postconviction relief under *Miller*—including in one Petitioner's case here—ordering further consideration in light of *Montgomery*. *See Tatum* v. *Arizona*, 580 U.S. 952 (2016); *Arias* v. *Arizona*, 580 U.S. 951 (2016); *DeShaw* v. *Arizona*, 580 U.S. 951 (2016); *Najar* v. *Arizona*, 580 U.S. 951 (2016); *Purcell* v. *Arizona*, 580 U.S. 951 (2016).

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." 593 U.S. at 100 (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 103.

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) (citation omitted). 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*, 593 U.S. at 103.

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.* 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 105. This Court's decision "carefully follow[ed] both *Miller* and *Montgomery*" and emphasized repeatedly that it did "not overrule" either case. *Id.* at 118. "*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.*

2. During the period relevant here, Arizona law provided three possible penalties for first-degree

murder: (1) death; (2) "natural life," under which a defendant was categorically ineligible for "release from confinement on any basis," including by "commutation" or "parole"; or (3) "life," which required a defendant to serve at least 25 years before he could be "released on any basis." Ariz. Rev. Stat. § 13-703(A) (1994, 2001, 2002) (renumbered as § 13-751(A) (2009)); *see* Pet. App. 110a-115a.[1] As in Mississippi, a separate provision of Arizona law "completely abolished parole for people convicted of felonies," meaning that "Arizona courts had no discretion to impose parole-eligible sentences." *Bassett*, 144 S. Ct. at 2495 (Sotomayor, J., dissenting from denial of certiorari); *see* Ariz. Rev. Stat. § 41-1604.09(I) (1994). The "only 'release' available under Arizona law [wa]s executive clemency, not parole." *Cruz* v. *Arizona*, 598 U.S. 17, 23 (2023). But even the possibility of clemency was "more theoretical than practical"; the "likelihood" of clemency was "so remote" that a life and natural life sentence were "indistinct." *State* v. *Dansdill*, 443 P.3d 990, 1000 n.10 (Ariz. Ct. App. 2019). No one convicted of first-degree murder has received clemency in the 30 years since Arizona

[1] Wagner and McLeod were sentenced under the 1994 version of the statute; Petrone-Cabanas was sentenced under the 2001 version, which had been amended in light of *Atkins* v. *Virginia*, 536 U.S. 304 (2002) (execution of mentally disabled individuals violates Eighth Amendment), *see* 2001 Ariz. Sess. Laws Ch. 260; Arias was sentenced under the 2002 version, which had been revised in light of *Ring* v. *Arizona*, 536 U.S. 584 (2002) (imposition of death penalty based on judge-found facts violates Sixth Amendment), *see* 2002 Ariz. Sess. Laws 5th Sp. Sess. Ch. 1; and Odom was sentenced under the 2009 version, which renumbered the relevant statutory provisions, *see* 2008 Ariz. Sess. Laws Ch. 301.

abolished parole. *Bassett*, 144 S. Ct. at 2496 n.1 (Sotomayor, J., dissenting from denial of certiorari).

Although Arizona's sentencing statute "continued to list two alternatives to death," *Cruz*, 598 U.S. at 21, "the State itself represented, in this Court and other courts, that state law made life without parole the minimum sentence," *Bassett*, 144 S. Ct. at 2497 (Sotomayor, J., dissenting from denial of certiorari); *see also, e.g.*, *Lynch* v. *Arizona*, 578 U.S. 613, 614 (2016) (Arizona "acknowledged that [the] only alternative sentence to death was life imprisonment without parole"). Indeed, Arizona joined an amicus brief in *Miller* confirming that it was among the States that "make the punishment mandatory." States Amicus Br. 1, *Miller* v. *Alabama*, Nos. 10-9646, 10-9647, 2012 WL 605831 (Feb. 21, 2012).

After *Miller*, Arizona reinstated parole for only 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 initially acknowledged that these sentences "amount[ed] to sentences of life without the possibility of parole." *State* v. *Valencia*, 386 P.3d 392, 394, 396 (Ariz. 2016); *see also State* v. *Cruz*, 487 P.3d 991, 994 (Ariz. 2021) (noting that "the law in place at the time [juvenile] defendants were sentenced permitted what *Miller* later precluded"), *rev'd sub nom. Cruz* v. *Arizona*, 598 U.S. 17 (2023). The Arizona Supreme Court held that

these defendants were entitled to evidentiary hearings to determine if resentencing was required. Ariz. R. Crim. P. 32.8 (2018).

3. After this Court decided *Jones*, however, the Arizona Supreme Court reversed course. Despite this Court's repeated statements in *Jones* that it was not overruling *Miller* or *Montgomery*, *see* 593 U.S. at 110 n.4, 118, the Arizona Supreme Court concluded that "*Jones* refuted the premise" for its understanding that *Miller* and *Montgomery* required relief, and proclaimed that Arizona's sentencing scheme was "not mandatory under *Miller*." *Bassett*, 535 P.3d at 13. The Arizona Supreme Court acknowledged that defendants sentenced between 1994 and 2014 were "actually ineligible for parole" because the legislature had "eliminated parole," meaning that their "only option would have been 'release' after twenty-five years through the executive clemency process." *Id.* at 8. But the court reasoned that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile." *Id.* at 11. In the Arizona Supreme Court's view, "a *choice* between two sentencing options"—natural life, or life with possible "release" after 25 years—was sufficient under *Miller*, even if neither option included parole. *Id.* at 13.

This Court denied review in *Bassett*. Justice Sotomayor, joined by Justices Kagan and Jackson, dissented and would have summarily reversed because "the Arizona Supreme Court's decision departed from this Court's established precedents." 144 S. Ct. at 2499 (Sotomayor, J., dissenting from denial of certiorari). "This Court's precedents require a 'discretionary sentencing procedure—where the sentencer can consider the defendant's youth and has

discretion to impose a lesser sentence than life without parole,'" but "Arizona's sentencing scheme instead mandated life without parole for juveniles." *Id*. at 2495 (quoting *Jones*, 593 U.S. at 112).

In opposing certiorari, the State of Arizona did not defend the Arizona Supreme Court's conclusion that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile." *Bassett*, 535 P.3d at 11. Rather, the State conceded that "parole-eligibility is constitutionally required" and that "Arizona law did not provide a parole-eligible option" at the relevant time. *Bassett* BIO 1, 24. The State did "*not* argu[e] that the mere existence of its two [life] sentencing options saves it from a *Miller* violation." *Id.* at 22-23. But the State believed that the sentencing judge had "fortuitously complied with *Miller*" because he considered the defendant's youth while operating under a "mistaken belief" in the availability of parole, and nonetheless imposed the harshest sentencing option available under state law. *Id.* at 20, 27. "But for the sentencer's actual consideration of parole-eligibility," the State agreed, "there would be a *Miller* violation." *Id.* at 23.

Since the Arizona Supreme Court's decision in *Bassett*, every court has denied relief, including to Petitioners here.

B. Procedural Background

1. Petitioners were each sentenced as children to life without parole during the period when "Arizona courts had no discretion to impose parole-eligible sentences." *Bassett*, 144 S. Ct. at 2495 (Sotomayor, J., dissenting from denial of certiorari). All were sentenced before this Court's decisions in *Miller* and *Montgomery*. Four were sentenced before *Roper* v.

Simmons, 543 U.S. 551 (2005), abolished the death penalty for juveniles. The circumstances of their convictions differ in significant respects from the circumstances in *Bassett*.

Petitioner Felipe Petrone-Cabanas, for example, was "raised in grinding poverty"—a "fifth grade dropout, with no job skills, no English language skills, no adult supervision and no prospects." Pet. App. 22a-23a. He was 17 years old when he killed a police officer in 1999. Petrone-Cabanas pled guilty, and the State sought the death penalty. Under Arizona law at the time, the "death penalty [wa]s mandatory" if the judge found an aggravating factor—here, murder of a police officer—absent "sufficiently mitigating factors." *Id.* at 3a. The sentencing court found that "juvenile impulsivity played an important part" in Petrone-Cabanas's crime and afforded his youth "very substantial weight in mitigation." *Id*. at 29a. When considered with Petrone-Cabanas's "genuine remorse" and his "amenability to rehabilitation," the court found these factors "sufficiently substantial to call for leniency," sparing Petrone-Cabanas from execution. *Id.* at 32a. The court sentenced him to life without parole, without addressing any distinction between life and natural life sentences.

Charles Vincent Wagner was abused by his parents and repeatedly ran away from home. He was 16 years old when he killed a woman during a robbery in 1994. After the jury deadlocked in his first trial, Wagner was convicted of first-degree murder in a second trial, and the State sought the death penalty. The sentencing court found that Wagner's age and "difficult family background" were mitigating factors "sufficiently substantial to call for life imprisonment

instead of death," and sentenced Wagner to natural life. *Id.* at 57a-58a.

Petitioner Jonathan Andrew Arias was abandoned by his parents, molested by a relative, and twice attempted suicide. He was 16 years old and intoxicated when he killed two people during a robbery in 1999, and participated in another robbery in which an accomplice committed murder. Arias pled guilty in exchange for the State's agreement not to pursue the death penalty and was sentenced to consecutive natural life sentences.

Petitioner Thomas James Odom was kidnapped as a young child by his mother, who "took him to a crack house and turned tricks while she put him under the bed." 8/19/11 Sentencing Tr. at 15, *State* v. *Odom*, No. CR 2010-121445-001 (Ariz. Super. Ct.). Odom was 16 years old and suffering from untreated schizophrenia when he killed a girl in 2010. Odom was convicted of first-degree murder and sentenced to life without parole.

Petitioner Christopher Lee McLeod was abused by his mother, who broke both his legs as a toddler. He was 15 years old and hearing voices in his head when he killed his sister in 1995. McLeod pled guilty and was sentenced to life without parole.

2. Two Petitioners' convictions and sentences were affirmed on appeal; the other three did not appeal. Petitioners each later sought postconviction relief on the ground that *Miller* was a "significant change in the law" entitling them to relief and resentencing. Ariz. R. Crim. P. 32.1(g); *see* Pet. App. 41a, 66a, 85a, 99a, 107a. After *Montgomery*, the State of Arizona stipulated that Arias was entitled to resentencing, Pet. App. 86a, and that two other Petitioners were

entitled to hearings to determine whether resentencing was necessary, *id.* at 66a (Wagner), 99a-100a (Odom). Arizona courts ordered hearings for the remaining two Petitioners. *See id.* at 41a-42a (Petrone-Cabanas), 107a (McLeod).

Before any hearing or resentencing occurred, however, this Court decided *Jones*, and the State reversed course. The State argued that the scheme under which Petitioners were sentenced was not "mandatory" under *Miller* because at the time Petitioners were sentenced, "A.R.S. § 13-703 provided sentencing options of death or life, and life could be natural life or life without eligibility for release [for 25 years]," 7/12/21 State Mot. to Vacate at 18, *State* v. *Wagner*, No. CR 1994-092394 (Ariz. Super. Ct.), even though none of those options included parole, and the only form of "release" available was executive clemency.

The Arizona Court of Appeals initially rejected the State's argument with respect to all five Petitioners here. In *Wagner*, the lead case, the Arizona Court of Appeals held that it would be "error" to conclude that Arizona defendants "did not receive a mandatory life-without-parole sentence." Pet. App. 71a. The court explained that "[t]he crux of *Miller* is two-part: (1) a sentencing court must have the option of imposing a parole-eligible sentence to a juvenile offender who is required to serve a life term, and (2) the court must consider the offender's youth in determining whether to impose a parole-eligible sentence." *Id*. But in Arizona, sentencing courts "had no discretion to sentence [defendants] to a parole-eligible term." *Id.* "It 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." *Id.*

The Court of Appeals specifically rejected the State's argument that *Miller* was inapplicable because sentencing courts may have mistakenly believed parole was available and could have imposed "illegal, parole eligible" sentences. *Id.* at 72a. "If a court's theoretical ability to impose a parole-eligible sentence in violation of state law were an exception to *Miller,* the exception would swallow the rule." *Id*. The court also found that "the record negates the State's argument": "At no point during the sentencing proceedings in this case did the superior court refer to 'parole' or convey that it believed it could sentence Wagner to a parole-eligible term." *Id.* at 72a-73a.

The Arizona Supreme Court subsequently issued its decision in *Bassett*. It also granted the State's petitions for review in Petitioners' cases, vacated the Court of Appeals' decisions, and remanded for further proceedings consistent with *Bassett*. *Id*. at 44a-45a, 74a-75a, 88a-90a, 102a-103a.

On remand, the Arizona Court of Appeals denied relief to all Petitioners. It summarily denied relief in three cases, citing *Bassett*. *Id*. at 46a, 91a, 104a. In the other two cases, the Court of Appeals held it was compelled by *Bassett* to conclude that the sentences were "not mandatory under *Miller*" because the sentencer had a choice between two life sentences, neither of which afforded parole. *Id.* at 77a, 107a.

Petitioners sought review in the Arizona Supreme Court, which the court summarily denied. *Id*. at 47a, 78a, 92a, 105a, 109a.

This petition follows.

REASONS FOR GRANTING THE PETITION

Three Justices of this Court would have summarily reversed the Arizona Supreme Court's decision in *Bassett* as "plainly inconsistent with *Miller*, *Montgomery*, and *Jones*." 144 S. Ct. at 2496 (Sotomayor, J., dissenting from denial of certiorari). That is because from 1994—when Arizona "completely abolished parole for people convicted of felonies"—and 2014—when Arizona reinstated parole for some juveniles—"Arizona courts had no discretion to impose parole-eligible sentences." *Id.* at 2495. "This Court's precedents require a 'discretionary sentencing procedure—where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole.'" *Id.* (quoting *Jones*, 593 U.S. at 112). But "Arizona's sentencing scheme instead mandated life without parole for juveniles." *Id.* The mere "discretion to consider youth as a mitigating factor" in choosing between parole-ineligible sentences is not enough to satisfy the Eighth Amendment, because "[s]entencing courts must have the authority to actually 'impose a lesser sentence than life without parole.'" *Id.* at 2497 (quoting *Jones*, 593 U.S. at 112); *see Bassett* Pet. 17-20, 22-24.

For the reasons described in detail in the petition for certiorari in *Bassett*, the Arizona Supreme Court's decision in *Bassett* contravened this Court's precedents, while splitting from the consensus among other state courts that provided relief to juveniles sentenced to mandatory life-without-parole sentences in materially indistinguishable circumstances. But this joint petition does not seek to relitigate *Bassett*. Instead, Petitioners' mandatory life-without-parole

sentences raise distinct problems that this Court did not consider in *Bassett* and that independently call out for review. Indeed, the State's representations to this Court in *Bassett* reveal that Petitioners' mandatory life-without-parole sentences cannot stand.

I. THIS PETITION WARRANTS REVIEW NOTWITHSTANDING THE CERT DENIAL IN *BASSETT*.

Petitioners' cases differ from *Bassett* in two key respects. Given these differences, the State's arguments for denying review in *Bassett* are entirely inapplicable here.

First, unlike in *Bassett*, several Petitioners were eligible for the death penalty—meaning that the sentencing judge did not impose life without parole as the "harshest option" available. The sentencing judge instead decided to impose life without parole as an act of mercy. The logic of *Bassett*, and the State's arguments to this Court in *Bassett*, collapse in that context.

Second, the State argued in *Bassett* that the sentencing court there had "fortuitously complied with *Miller*" based on a mistaken belief that parole was available under state law. The State further represented that, "but for" that mistaken belief, the life-without-parole sentence would be unlawful. But Petitioners here were all sentenced without any indication that their sentencers mistakenly believed parole was available.

A. The Death Penalty Distorted Any Consideration Of Youth.

The State in *Bassett* urged this Court to deny review because the sentencing court in that case,

presented with two sentencing options, selected "[t]he harshest option." *Bassett* BIO 20. According to the State, the sentencer's deliberate choice of the harshest option meant that any resentencing "would be functionally identical to the first sentencing." *Id*. at 2. That logic, however, completely collapses in cases—like some of Petitioners' cases here—where the death penalty was available.

The sentencing in *Bassett* occurred after this Court in *Roper* ruled the death penalty unconstitutional for juveniles. The defendant in *Bassett* was therefore not eligible for the death penalty and was instead eligible only for Arizona's two life-without-parole sentences. Bassett was found guilty on two counts of murder, and the sentencing court chose to impose the less harsh sentence on one count and the harshest sentence on the other.

By contrast, four Petitioners here were sentenced years before *Roper*, when Arizona law made juveniles death-eligible. Under that scheme, the State was first required to prove an aggravating factor, after which the defendant had "the burden of proving sufficient mitigating circumstances to overcome the aggravating circumstances and that a sentence less than death is therefore warranted." *Kansas* v. *Marsh*, 548 U.S. 163, 172-173 (2006) (discussing Arizona law). The death penalty was therefore "mandatory"—even for juveniles—if the sentencing judge found "one or more statutory aggravating factors and no sufficiently mitigating factors." Pet. App. 3a (citing *State* v. *Williams*, 800 P.2d 1240, 1249 (Ariz. 1987)). In all death-penalty cases, "[t]he defendant's age" was one of the mitigating factors Arizona sentencing courts considered in deciding whether to impose the death

penalty. Ariz. Rev. Stat. § 13-703(H)(5) (2001); *see Stanford* v. *Kentucky*, 492 U.S. 361, 375 & n.5 (1989) (noting that 29 States, including Arizona, had codified the "constitutional requirement" that sentencers be permitted to consider "the defendant's age as a mitigating factor in capital cases"), *abrogated on other grounds*, *Roper* v. *Simmons*, 543 U.S. 551 (2005).

The logic of *Bassett*, and the State's attempts to defend it, fall apart in cases where a juvenile defendant was eligible for the death penalty and the sentencing court instead imposed a sentence of life without parole. For defendants who were death-eligible, sentencing courts imposed life-without-parole sentences *as an act of mercy*. The sentencing court's decision to impose a life-without-parole sentence says nothing about whether the sentencing court necessarily understood the defendant to be one of the "relatively rare" children for whom a life-without-parole sentence was appropriate. *Jones*, 593 U.S. at 111-112. To the contrary, imposition of a life-without-parole sentence is strong evidence that the sentencing court would have imposed a parole-eligible sentence had Arizona law made such an option available.

Petitioners' cases illustrate why. In Petrone-Cabanas's case, in deciding whether to impose the death penalty, the sentencing court found that "juvenile impulsivity played an important part" in the crime and afforded his youth "very substantial weight in mitigation." Pet. App. 29a. His youth, his "genuine remorse," and his "amenability to rehabilitation" were mitigating factors "sufficiently substantial to call for leniency," sparing Petrone-Cabanas from execution. *Id.* at 32a. The court found that Petrone-Cabanas

committed his crime "impulsively, or in a quick lapse of judgment," and that his "young age helps explain why a young man who had never before been in trouble, who knew right from wrong and who had been provided a strong moral foundation during his formative years by his parents, family and community, became unhinged from his strong moral underpinnings." *Id.* at 23a-24a, 29a (citation omitted). Such a "lack of substantial judgment," the court concluded, is "one of the often-present vagaries of youth." *Id.* at 24a. The court further credited his "recognition of the horrific nature of his crimes," his "acceptance of responsibility," his recognition "that he deserved to be punished and that he wanted to be punished," and his decision to plead guilty "knowing that his guilty pleas would not save him from execution." *Id.* at 22a, 29a-31a. Those facts led the court to find that Petrone-Cabanas was "amenable to rehabilitation." *Id.* at 31a.

It is impossible on a record like this to maintain, as the State maintained in *Bassett*, that any resentencing with an option for parole "would be functionally identical to the first sentencing." *Bassett* BIO 2. To the contrary, the sentencing judge's conclusion that Petrone-Cabanas was "amenable to rehabilitation" strongly indicates that the judge would have allowed for parole had such an option been available. *See Greenholtz* v. *Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 8 (1979) (describing "rehabilitation" as one of the main purposes of a "state-created parole system"). "Life without parole forswears altogether the rehabilitative ideal" and "reflects an irrevocable judgment about an offender's value and place in society, at odds with a child's capacity for change." *Miller*, 567 U.S. at 473

(citations, quotation marks, and brackets omitted). A judge who deemed a defendant capable of rehabilitation would not sentence the defendant to life without parole.

The death penalty likewise distorted the consideration of youth in other Petitioners' cases. The sentencing court in Wagner's case found that he was "an immature 16-year-old with extremely poor judgment when he committed the offense," which, along with his "difficult family background," was "sufficiently substantial to call for life imprisonment instead of death." Pet. App. 53a, 57a. Arias gave up his trial rights and pled guilty in exchange for the State's agreement to withdraw the death-penalty charge. The State therefore urged the judge to disregard Arias's youth at sentencing because "Defendant has already been given leniency due to his young age, and other reasons in withdrawing the death penalty." 1/10/2003 State Revised Sentencing Mem. at 8, *State* v. *Arias*, No. CR 99-12663 (Ariz. Super. Ct.). And in McLeod's case, the State emphasized that it "did not pursue the death penalty" only "[b]ecause of defendant's age at the time of the offense," *see* 1/27/1998 State Sentencing Mem. at 6, *State* v. *McLeod*, No. CR 96-90611 (Ariz. Super. Ct.), thus likewise urging that McLeod had already been afforded leniency on account of his youth. Because these defendants were sentenced before both *Miller* and *Roper*, "the sentencing court could not have adequately considered [their] youth, [their] capacity for rehabilitation, or the necessity of a parole-eligible sentence." *Bassett*, 144 S. Ct. at 2497 (Sotomayor, J., dissenting from denial of certiorari).

The State argued in *Bassett* that the sentencing judge's decision to impose the "harshest option" was a "functional outcome" "no different than if parole-eligibility had been on the books all along." *Bassett* BIO 20-21. The same cannot be said in cases where juveniles were death-eligible. The judges in those cases could have imposed the death penalty. They instead chose leniency. Had parole been available, there is every reason to think these judges would have imposed a parole-eligible sentence.

B. There Was No "Actual Consideration Of Parole-Eligibility" In Petitioners' Cases.

In its brief in opposition in *Bassett*, the State did not defend the Arizona Supreme Court's conclusion that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile." *Bassett*, 535 P.3d at 11. The State conceded that "parole-eligibility is constitutionally required" and agreed that "Arizona law did not provide a parole-eligible option" at the time. *Bassett*, 144 S. Ct. at 2496 (Sotomayor, J., dissenting from denial of certiorari) (quoting *Bassett* BIO 1, 24). The State did "*not* argu[e] that the mere existence of its two [life] sentencing options saves it from a *Miller* violation." *Id.* at 2496 (quoting *Bassett* BIO 1, 22-23).

Nevertheless, the State maintained that the sentencing court in *Bassett* had "fortuitously complied with *Miller*" because it considered Bassett's youth while operating under a "mistaken belief" in the availability of parole. *Id.* (quoting *Bassett* BIO 3, 27). The State pointed to the fact that Bassett was sentenced to natural life on one count but "life *with the possibility of parole* after 25 years" on the second. *Bassett* BIO 13 (quoting *Bassett*, 535 P.3d at 13)

(emphasis added and citation omitted). "But for the sentencer's actual consideration of parole-eligibility," the State represented, "there would be a *Miller* violation." *Id.* at 23.

That rationale cannot conceivably justify Petitioners' sentences here. None of the sentencing judges in any of Petitioners' cases gave any indication they "fortuitously" complied with *Miller* or gave "actual consideration of parole-eligibility" based on a mistaken interpretation of state law.

In Wagner's case, the Arizona Court of Appeals expressly rejected any such contention, finding that "the record negates" any argument that the sentencing court "understood the life sentencing alternatives as natural life and life with the possibility of parole after 25 years." Pet. App. 72a-73a. The Arizona Court of Appeals added that "[a]t no point during the sentencing proceedings in this case did the superior court refer to 'parole' or convey that it believed it could sentence Wagner to a parole-eligible term." *Id.* at 73a.

The record for the other Petitioners is similarly devoid of any evidence that the sentencer mistakenly gave "actual consideration of parole-eligibility"—and indicates the opposite. Odom's trial counsel understood that the only release available was executive clemency—*and explained as much* to the judge: Odom was "getting life," and although the statute listed the "option" of "life with the possibility of parole at 25 [years]," "[o]bviously that's got to be a decision from an executive officer," and "there has never been someone released on parole since the statute was put in place." 8/19/2011 Sentencing Tr. at 4, 17-18, *Odom*, No. CR 2010-121445-001 (Ariz. Super

Ct.). The sentencing transcripts in McLeod's case have been lost to time, making it impossible to speculate whether the sentencer may have mistakenly believed parole was available. And in none of the other cases did the sentencing court discuss or reference parole or suggest any mistaken belief that parole was available.

The difficulty of parsing the records in these cases illustrates why this Court in *Jones* reaffirmed that a State's compliance with the Eighth Amendment turns on whether a State's "sentencing regime[]" imposes "mandatory life-without-parole sentences," not on the nature of a state judge's "on-the-record sentencing explanation" in a particular case. 593 U.S. at 114-115, 119. The constitutionality of a State's sentencing regime should not shift and spring depending on how much a sentencing judge said about youth in each case, or based on speculation that a judge may have misunderstood state law in sentencing a defendant years ago. Instead, it is "a State's discretionary sentencing *system*" that "is both constitutionally necessary and constitutionally sufficient." *Id.* at 105 (emphasis added).

The State in *Bassett* represented to this Court that it was "*not* argu[ing] that the mere existence of its two sentencing options saves it from a *Miller* violation." *Bassett*, 144 S. Ct. at 2496 (Sotomayor, J., dissenting from denial of certiorari) (quoting *Bassett* BIO 22). Instead, the State agreed that "there would be a *Miller* violation" "[b]ut for the sentencer's actual consideration of parole-eligibility." *Id.* at 2499 (quoting *Bassett* BIO 23). The State prevailed in Petitioners' cases below on the basis of the very logic it has now disclaimed. In each of these cases, the

Arizona Court of Appeals denied relief not due to any sentencing judge's mistaken belief in parole eligibility, but because Petitioners' sentencing courts had a choice between "impos[ing] a sentence of life with no possibility of release for 25 years" or "natural life." Pet. App. 77a. The Arizona Court of Appeals thus adhered to the Arizona Supreme Court's reasoning in *Bassett* that a "*choice* between two [life] sentencing options" satisfied the Eighth Amendment, 535 P.3d at 11, 13, which is the exact reasoning the State has now forsworn. The State's representations to this Court in *Bassett* mean that Petitioners' sentences cannot stand.

II. THIS PETITION IS AN IDEAL VEHICLE TO ADDRESS THIS IMPORTANT QUESTION.

This joint petition is an excellent vehicle to address Arizona's refusal to apply *Miller*, *Montgomery*, and *Jones*. The lower courts in Arizona granted relief in each case, and the Arizona Court of Appeals held in a published opinion that the abolition of parole made Arizona's sentencing scheme unconstitutional. Following *Bassett*, the Arizona Supreme Court reversed those decisions, and the Arizona Court of Appeals concluded that *Bassett* compelled it to deny relief. In summarily denying review in each case, the Arizona Supreme Court has confirmed it will not revisit the issue. Because this is a joint petition brought by five different Petitioners, even if an unforeseen vehicle problem emerged in a particular case, this Court would still be assured of its ability to resolve the question presented.

Although this Court declined to review the petition in *Bassett*, the State in that case pointed to potential vehicle problems not present here. The sentencing

court in *Bassett* purported to impose one natural life sentence and a separate sentence of "life with the possibility of parole after 25 years," which the Arizona Supreme Court suggested was due to the sentencer's mistaken belief that parole was available under state law. *Bassett*, 535 P.3d at 12-13. Here, by contrast, Petitioners were each sentenced to natural life, and there is no evidence that any of their sentencing courts mistakenly believed they had the option to impose parole-eligible sentences.

This petition presents a question of profound importance—for Petitioners and all other Arizona defendants sentenced to natural life as juveniles. 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 lesser option. "Arizona's sentencing scheme is actually harsher than what the states in *Miller*, *Montgomery*, and *Jones* had," and it "defies the underlying principle * * * that it is cruel and unusual to deny juvenile offenders at least some meaningful chance to show that they can be rehabilitated."[2] "*Miller* identified 28 States that had mandatory life-without-parole sentences for juveniles, including Arizona," but "Arizona remains the only one of those states" that has refused to remedy those unconstitutional sentences. *Bassett*, 144 S. Ct. at 2498-99 (Sotomayor, J., dissenting from denial of certiorari) (citation and quotation marks omitted). Other States with similar mandatory-sentencing regimes have long since implemented discretionary

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[2] Matt Ford, *He Committed a Double Murder at 16. Does He Deserve to Die in Prison?*, The New Republic (May 15, 2024), https://perma.cc/KQH4-D5WX.

resentencing, reinstituted parole, or adopted some other remedy to comply with this Court's precedents. Arizona's solo refusal to do the same "run[s] headlong into * * * Supreme Court precedent."[3]

There is no prospect that the Arizona courts will correct this error absent this Court's intervention. Since the Arizona Supreme Court's decision in *Bassett*, every Arizona court to consider the issue has concluded that *Bassett* forecloses relief, including in four cases that this Court granted, vacated, and remanded post-*Montgomery*—and even where the State conceded error and stipulated to resentencing. *See State* v. *Deshaw*, No. 1-CA-CR 21-0512, 2024 WL 3160590, at *3-5 (Ariz. Ct. App. June 25, 2024) (rejecting the argument that "the presence of a death penalty option rendered any non-death sentence unconstitutional" based on the erroneous conclusion that "each sentencing court had the discretion to sentence the Defendants to less than life without parole"). A joint petition on behalf of a group of defendants—each denied relief regardless of the particular facts of his case—is an appropriate vehicle for addressing whether Arizona's 1994-2014 juvenile sentencing scheme is unconstitutional.

* * *

If this Court rules in Petitioners' favor, it will not be deciding whether they are entitled to be released from prison, nor would it prevent Petitioners from being resentenced to life without parole. As this Court explained in *Jones*, it is for "state sentencing judges

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[3] Adam Liptak, *In Arizona, Life Sentences for Juveniles Test Supreme Court Precedents*, N.Y. Times (June 10, 2024) https://www.nytimes.com/2024/06/10/us/supreme-court-arizona-life-sentence-juveniles.html.

and juries" to "determine the proper sentence in individual cases." 593 U.S. at 119-120. But *it is* "this Court's role" to "ensure that the trial judge had 'discretion to impose a lesser punishment in light of [the defendant's] youth.'" *Bassett*, 144 S. Ct. at 2498 (Sotomayor, J., dissenting from denial of certiorari) (quoting *Jones*, 593 U.S. at 120). This Court's review is urgently needed to bring to Arizona defendants what this Court and every other State have long recognized as "constitutionally necessary": the "discretion to impose a lesser sentence than life without parole." *Jones*, 593 U.S. at 105, 112.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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