No. 24-391

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 Writ of Certiorari to the Court of Appeals of Arizona, Division One

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

Adam Hansen
Counsel of Record
CIVIL RIGHTS APPELLATE CLINIC
UNIVERSITY OF MINNESOTA
LAW SCHOOL
229 19th Avenue South
Minneapolis, MN 55455
(612) 927-2969
adam@apollo-law.com

Counsel for Amici Curiae

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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.

John Blume is the Samuel F. Leibowitz Professor of Trial Techniques and Director of the Cornell Death Penalty Project at Cornell Law School.

Erwin Chemerinsky is the Dean of the University of California Berkeley School of Law and the Jesse H. Choper Distinguished Professor of Law.

Eric M. Freedman is the Siggi B. Wilzig Distinguished Professor of Constitutional Rights at the Maurice A. Deane School of Law at Hofstra University.

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[1] Pursuant to Rule 37.2(a), counsel of record for the parties 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.

Avery Gilbert is a Clinical Lecturer in Law, Associate Research Scholar in Law, and the Director of the Civil Rights Advocacy Clinic at Yale Law School.

Martin Guggenheim is the Fiorello LaGuardia Professor of Clinical Law Emeritus at New York University School of Law.

Randy A. Hertz is the Fiorello LaGuardia Professor of Clinical Law at New York University School of Law.

Sheri Lynn Johnson is the James and Mark Flanagan Professor of Law at Cornell Law School.

Shani M. King is Vice Dean and Professor of Law at Rutgers Law School.

Jeffrey L. Kirchmeier is a Professor of Law at City University of New York School of Law.

Issa Kohler-Hausmann is a Professor of Law and Associate Professor of Sociology at Yale University. She is the faculty sponsor of the Civil Rights Advocacy Clinic at Yale Law School.

Lee Kovarsky holds the Bryant Smith Chair in Law at the University of Texas at Austin School of Law.

Perry Moriearty is an Associate Professor of Law at the University of Minnesota Law School.

Alison Siegler is a Clinical Professor of Law and the Founding Director of the Federal Criminal Justice Clinic at the University of Chicago Law School.

Madalyn K. Wasilczuk is an Assistant Professor of Law and the Director of the Youth Defender Clinic at the Joseph F. Rice School of Law at the University of South Carolina.

Gideon Yaffe is the Wesley Newcomb Hohfeld Professor of Jurisprudence and a Professor of Philosophy and Psychology at Yale University.

INTRODUCTION AND SUMMARY OF ARGUMENT

It has been over twelve years since this Court named Arizona as one of twenty-eight states with "mandatory [juvenile] sentencing schemes . . . [that] violate . . . the Eighth Amendment's ban on cruel and unusual punishment." *Miller* v. *Alabama*, 567 U.S. 460, 489 (2012). Today, Arizona is the *only one* of those states that continues to defy *Miller* and flout this Court's authority.

Because of that defiance, individuals sentenced to mandatory life without parole for crimes they committed as children must ask this Court to vindicate their firmly-established constitutional rights. And, absent intervention, these individuals will continue serving unconstitutional sentences in direct violation of *Miller*, *Montgomery* v. *Louisiana*, 577 U.S. 190 (2016), and *Jones* v. *Mississippi*, 593 U.S. 98 (2021).

Arizona cannot continue to pretend it is above the law. The State concedes, as it must, that Arizona law "did not provide a parole eligible option" for juvenile homicide defendants when Petitioners were sentenced. Brief in Opposition 1, *Bassett* v. *Arizona*, 144 S. Ct. 2494 (No. 23-830) ("*Bassett* BIO"). Because parole was banned in Arizona between 1994 and 2014, Ariz. Rev. Stat. Ann. § 41-1604.09(I) (1994), life without parole was the only available alternative to the death penalty. That's all this Court needs to know to conclude that Petitioners' sentences violated the Eighth Amendment.

Arizona takes a different tack, arguing that a mandatory life sentence complies with *Miller* if: (i) the defendant did not receive the harshest available sentence "by default," and (ii) the sentencing judge con-

sidered, under a mistaken view of Arizona law, the defendant's parole eligibility on the record. *Bassett* BIO 20, 27.

But even if this reasoning had merit—and it does not—it simply does not apply to Petitioners. Four of the five Petitioners were sentenced under a scheme that included the death penalty for juveniles as the harshest sentencing option. Pet. 4, 10 n.1. And because none of Petitioners' sentencing judges were laboring under the mistaken belief that parole was available, no "actual consideration of parole-eligibility" was given. Pet. 25–26. Arizona has conceded that "[b]ut for the sentencers actual consideration of parole-eligibility . . . there would be a *Miller* violation." *Bassett* BIO 23. By Arizona's own logic, Petitioners' sentences are unconstitutional.

The Arizona Supreme Court's suggestion that a post-*Miller* statute restoring parole eligibility, Ariz. Rev. Stat. Ann. § 13-716 (2014), remedies these *Miller* violations defies precedent and common sense. Arizona's legislative fix does not even apply to the type of sentences Petitioners received. What's more, only the options available to the court *at the time of sentencing* determine whether a sentence complies with *Miller*. *Montgomery*, 577 U.S. at 203. Although the State has purported to distance itself from the Arizona Supreme Court's reasoning before this Court, its argument regarding mistaken belief makes the same fundamental error. Because there was no legal parole-eligible option at the time Petitioners were sentenced, their sentences are unconstitutional mandatory life sentences under *Miller*, *Montgomery*, and *Jones*.

This Petition is the last possible chance for Petitioners to obtain *Miller* relief. More fundamentally, it is one of the last remaining opportunities for this

Court to protect the integrity of its judgments. Because Arizona "has again done precisely what [this Court] held that it lacked the power to do," *Gen. Atomic v. Felter*, 436 U.S. 493, 496 (1978), the Court should intervene now to ensure that *Miller* is, finally, the law of the land.

The Court should grant the petition and summarily reverse.

ARGUMENT

I. PETITIONERS' SENTENCES VIOLATE *MILLER*.

Arizona courts have repeatedly refused to remedy unconstitutional mandatory life-without-parole sentences imposed on juvenile defendants. Yet even while acknowledging that "parole-eligibility is constitutionally required" under *Miller*, the State continues to insist that after-the-fact legislative reform and the idiosyncratic, mistaken beliefs of individual sentencing judges save a sentencing scheme that "did not provide a parole eligible option." *Bassett* BIO 1, 24. As this Court's precedents make clear, that is wrong.

A. *Miller*, *Montgomery* and *Jones* Require a Discretionary Sentencing System.

In *Miller*, this Court unequivocally held that mandatory life-without-parole sentences for juvenile defendants are unconstitutional. 567 U.S. 460 (2012). It has twice reaffirmed that holding in *Montgomery* v. *Louisiana*, 577 U.S. 190 (2016), and in *Jones* v. *Mississippi*, 593 U.S. 98 (2021). Those decisions rest on this Court's fundamental recognition that "youth matters" in sentencing: "a child's capacity for change" must be considered before a court may impose the severe sentence of life without parole on a juvenile defendant. *Miller*, 567 U.S. at 473. That's why the

Miller Court emphasized 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*, 593 U.S. at 106 (citing *Miller*, 567 U.S. at 476); *Montgomery*, 277 U.S. at 208 (holding that *Miller* "*require[d]* a sentencer to *consider* a juvenile offender's youth before imposing life without parole") (emphases added).

Jones once again affirmed that the availability of a lesser sentence is "constitutionally necessary:" a discretionary sentencing scheme is essential 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." 593 U.S. at 105, 111–12.

Through this line of cases, the Court made one thing perfectly clear: "*Miller* required a discretionary sentencing procedure." *Id.* at 110. In other words, a juvenile could be constitutionally sentenced to life without parole only if the sentencer "ha[d] discretion to consider youth" and "impos[ed] a life-without-parole sentence" despite having "'discretion to impose a different punishment' than life without parole." *Id.* at 108–09 (internal citation omitted).

B. Arizona's Sentencing Scheme Imposed Mandatory Life Without Parole on Juveniles, as *Miller* Itself Recognized.

Arizona's sentencing scheme during the relevant period—1994 through 2014—violated *Miller* because the only available (non-death) sentence for juvenile homicide defendants was life without parole.

During the relevant period for most Petitioners, Arizona law provided three possible sentences regardless of the offender's age: (1) death; (2) "natural life," where the defendant was ineligible for release "on any basis;" and (3) "life," which required the defendant to serve at least twenty-five years in prison before becoming eligible for any form of release. Ariz. Rev. Stat. Ann. § 13-703(A) (1994, 2001, 2002); see also *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.* § 13-501(A) (2010) (requiring juvenile homicide defendants to be prosecuted "in the same manner as an adult.").

But because the Arizona legislature abolished parole in 1994, *id.* § 41-1604.09(1) (1994), the only form of "'release' available under Arizona law [wa]s executive clemency, not parole." *Cruz* v. *Arizona*, 598 U.S. 17, 23 (2023). For that reason, this Court has repeatedly acknowledged that the "only alternative sentence to death was life imprisonment without parole." *Lynch* v. *Arizona*, 578 U.S. 613, 614 (2016). Because "state law made life without parole the minimum sentence," *Bassett* v. *Arizona*, 144 S. Ct. 2494, 2497 (2024) (Sotomayor, J., dissenting from denial of certiorari), sentencing judges had *no discretion whatsoever* to impose a lesser punishment *regardless* of the offender's age or capacity for rehabilitation.

The Arizona Supreme Court's insistence that "Arizona's sentencing scheme stands in stark contrast with the state statutes at issue in *Miller*," *State ex rel. Mitchell* v. *Cooper*, 535 P.3d 3, 12 (Ariz. 2023)

("*Bassett*") is out of touch with reality. The *Miller* Court specifically noted that Arizona's mandatory life-without-parole sentencing scheme was unconstitutional. 567 U.S. at 486 n.13. What's more, 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) (identifying Arizona as one of "26 states [that] make [life-without-parole sentences] mandatory in at least some cases.").

Contrary to the Arizona Supreme Court's view, nothing distinguishes Petitioners' cases from *Miller*. To comply with *Miller*, the sentencer must be able to consider age *"and impose a lesser punishment"* than life without parole. 593 U.S. at 106 (citing *Miller*, 567 U.S. at 476) (emphasis added). Arizona law deprived its judges of such discretion with respect to Petitioners and similarly-situated criminal defendants; the only possible sentence was still life without parole. The absence of an available lesser sentence rendered any consideration of age the sentencing judge *did* undertake irrelevant. Age could not and did not impact any eventual sentence because the only option other than death was life without parole.

At bottom, Arizona continues to defy 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)). The Arizona judges who sentenced Petitioners lacked the

discretion that *Miller* requires, full stop. For this reason alone, this Court should correct Arizona's unlawful treatment of juvenile defendants.

II. ARIZONA'S JUSTIFICATIONS FOR PETITIONERS' SENTENCES IGNORE THIS COURT'S PRECEDENTS AND RECYCLE REJECTED REASONING.

Petitioners are serving mandatory life-without-parole sentences in violation of *Miller*, *Montgomery* and *Jones*. Unlike other states that had similarly unconstitutional schemes, Arizona continually refuses to remedy Petitioners' sentences based on reasoning this Court has repeatedly rejected. Defending its unconstitutional scheme before this Court, Arizona backed itself into a corner, insisting that "natural life" sentences imposed during the relevant period comply with *Miller* because (1) trial judges had two non-death sentencing options; (2) some sentencing courts mistakenly believed parole was available and imposed illegally lenient sentences; and (3) subsequent legislative reform made defendants sentenced to "life" parole-eligible. But for "the combination of all three factors," Arizona argued, "there would be a *Miller* violation." *Bassett* BIO 23.

For two reasons, these features of Arizona's sentencing scheme "do not save [it]." *Bassett* v. *Arizona*, 144 S. Ct. 2494, 2499 (Sotomayor, J., dissenting from denial of certiorari). It's undeniable that Arizona sentencing judges had no lawful authority to consider age and impose a sentence less than life. And Arizona's other justifications either do not apply to Petitioners' sentences, have no meaningful bearing on the constitutional analysis, or both.

A. Post-Hoc Legislative Reform Does Not Remedy *Miller* Violations for Juveniles Sentenced to Natural Life Between 1994 and 2014.

Arizona's suggestion that the State's 2014 legislative reform retroactively brings it into compliance with *Miller* and *Montgomery* is incorrect. The state has advanced two versions of this unsuccessful argument. First, Arizona claimed that "natural life" sentences imposed on juveniles during the relevant time period are constitutional because the offender's sentence would *now* be parole eligible had the judge instead imposed a "life" sentence *back then*. See, e.g., *Bassett*, 535 P.3d at 12. And then, Arizona insisted that the 2014 statute would apply even to illegally lenient sentences from judges who mistakenly believed that "life" sentences carried parole eligibility. *Bassett* BIO 23–24. The basic retroactivity principles set forth in *Montgomery* foreclose both points. "Any post hoc revision to the sentencing scheme does nothing to alter the lack of discretion that judges faced when [Petitioners] . . . were sentenced. Their sentences remain unconstitutional." *Bassett*, 144 S. Ct. at 2498 (Sotomayor, J., dissenting from denial of certiorari); see *infra* Part II.C.

Arizona's 2014 legislative reform cannot possibly meet this Court's standards for remedying sentences that violate *Miller*. In *Montgomery*, this Court explained that states could cure mandatory juvenile life-without-parole sentences either by "relitigat[ing] sentences" so that the judge has discretion *in the present* to impose a parole-eligible sentence, or by directly "permitting juvenile homicide offenders to be considered for parole" notwithstanding the sentence

they received. 577 U.S. at 212. For offenders sentenced to "natural life," the 2014 statute accomplishes neither, and Arizona courts have refused to provide a *Miller*-compliant remedy. Even though Arizona reinstituted parole for individuals sentenced to "life", Petitioners and others sentenced to "natural life" are truly without recourse: they're ineligible for release *and* can't challenge their mandatory sentences. In this way, Arizona's legislative "fix" is incomplete; the legislature reinstated parole eligibility *only* for individuals who were sentenced to life with the possibility of release—a distinction that was meaningless under Arizona law when Petitioners were sentenced. 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.") (emphasis added). The statute is inapplicable on its face to the "natural life" sentences Petitioners *actually received* even though Arizona's scheme "did not provide a parole eligible option," as the State readily admits. *Bassett* BIO 1, 23.

Even so, the Arizona Supreme Court has creatively suggested that the remedy for individuals sentenced to "life" actually cures the defects with natural life sentences as well. *Bassett*, 535 P.3d at 12 ("[E]ven if an issue remained with Arizona's sentencing scheme, the Arizona legislature has now remedied that circumstance.") (internal quotations omitted). That's wrong too; "the relevant question is the constitutionality of the sentencing scheme at the time of sentencing[.]" *Bassett*, 144 S. Ct. at 2498

(Sotomayor, J., dissenting from denial of certiorari). The Arizona legislature cannot go back in time to alter the sentencing choices that judges had before 2014. Just because *today* a "life" 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 sentence and a parole-eligible sentence. When Petitioners were sentenced, the sentencing judges had only one choice: life without parole. The Arizona Supreme Court's conclusion—which folds in retroactive legislative fixes to "life" (but not "natural life") sentences—flatly contradicts *Montgomery*, which requires that the sentence in question be constitutional *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.").

The Court should reject Arizona's revisionist history. Petitioners' sentences were mandatory when they were imposed, and legislation that does not apply to them or the type of sentence they received cannot transform those mandatory sentences into discretionary ones after the fact.

B. Arizona's "Life" Sentence Did Not Comply with *Miller* at the Time of Petitioners' Sentencing.

Although the "only alternative sentence to death was life imprisonment without parole" when Petitioners were sentenced, *Lynch*, 578 U.S. at 614, the Arizona Supreme Court has repeatedly and incorrectly suggested that the availability of Arizona's "life" sentence rendered the State's sentencing scheme discretionary. See, e.g., *Bassett*, 535 P.3d at 13

(characterizing Arizona's "life" sentence, which carried only the possibility of release through executive clemency as a "lesser sentence"). That argument fails. *Miller*'s constitutional inquiry depends on the options available at the time of sentencing and whether any of those options allowed for meaningful discretion. *Supra* Part II.A. "Arizona law did not provide a parole eligible option" for Petitioners' sentences. *Bassett* BIO 1. Therefore, those sentences violate *Miller*.

The *Jones* Court framed the issue this way: to satisfy *Miller*, Arizona *must* establish that the judges who sentenced Petitioners "impos[ed] a life without parole sentence" despite having "'discretion to impose a *different punishment*' than life without parole." *Jones*, 593 U.S. at 108 (emphasis added). That discretion didn't exist for the judges who sentenced Petitioners. The only non-death sentence available at the time of Petitioners' sentencing was life imprisonment. Neither eligibility for executive clemency nor the potential for future legislative reform satisfies *Miller*'s basic parole-eligibility requirement. Judges faced with a choice between "natural life" and "life" therefore lacked the necessary discretion to impose a "different punishment." *Jones*, 593 U.S. at 108.

This Court's precedent drives home the point. In *Simmons* and *Lynch*, the Court expressly rejected the argument that "future exigencies"—including a remote possibility of executive clemency or possible legislative reform—are constitutionally equivalent to parole eligibility. See *Simmons* v. *South Carolina*, 512 U.S. 154, 166 (1994); *Lynch*, 578 U.S. at 615. *Simmons* held that a capital defendant had a right to instruct the jury on parole ineligibility when future

dangerousness is put at issue during sentencing, since, 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. *Simmons*, 512 U.S. at 166*;* 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 ho*c exercise of executive clemency"). *Lynch* reinforced this Court's conclusion in *Simmons*. In summarily reversing the Arizona Supreme Court's denial of *Simmons* relief, the *Lynch* Court specifically rejected the State's argument that Arizona's "life" sentence was equivalent to life with the possibility of parole. *Lynch*, 578 U.S. at 615. This Court has been crystal clear: the mere possibility of (i) release through executive clemency *or* (ii) future legislation making the offender parole-eligible doesn't render Arizona's "life" sentence during the relevant period any different than life without parole. See *Cruz*, 598 U.S. at 22 ("*Simmons* foreclosed the State's alternative argument [in *Lynch*] that relied on the potential for future legislative reforms to Arizona's parole statute."); *supra* Part II.A.

Defending Petitioner's sentence in *Bassett*, Arizona conceded that "clemency-eligibility alone would have been insufficient" to satisfy *Miller*. *Bassett* BIO 22–23. However true, that position marked a stark reversal; for years, Arizona courts (at the State's urging) have denied post-conviction relief based on the false equivalency between clemency and parole. See, e.g., *Lynch*, 578 U.S. at 615; *Cruz*, 598 U.S. at 21; *Bassett*, 535 P.3d at 13; Pet. App. 77a. But Arizona cannot so easily distance itself from its original

position. The Arizona Supreme Court implicitly relied on it in *Bassett*. See *Bassett*, 535 P.3d at 11, 13 (referring to a "*choice* between two [life] sentenc[es]" and characterizing "life" as a "lesser sentence" despite release being available only through executive clemency). Citing *Bassett*, Arizona's lower courts categorically deny relief to similarly situated defendants. See *infra*, Part III.A. And, crucially here, the Arizona Court of Appeals has explicitly endorsed this reasoning to summarily deny relief to Petitioners. Pet. App. 77a (concluding that the trial court's choice between "natural life" and "life with no possibility of release for 25 years" complied with *Miller*).

In *Bassett*, the State all but conceded the *Miller* violations at issue here: when Petitioners were sentenced, there was no meaningful difference between the only two available legal, non-death sentences. This Court should intervene to correct the widespread misapplication of its precedents in Arizona's courts.

C. Individual Sentencing Judges' Mistaken Beliefs Around Parole Eligibility Cannot Justify Petitioners' Sentences.

Despite repeatedly acknowledging that Arizona law "did not provide a parole eligible option," the State insisted in *Bassett* that trial judges' mistaken belief that "life" was a parole-eligible sentence "fortuitously" renders even "natural life" sentences *Miller*-compliant. See *Bassett* BIO 1, 27. The argument appears to be that a judge's subjective—but incorrect—belief that she could impose a parole-eligible sentence is enough to comply with *Miller* and *Montgomery* because Arizona's later legislative reform *would have* made even juveniles sentenced to

"natural life" parole-eligible had the judge *instead* chosen to impose the "life" sentence. This convoluted argument crumbles under its own weight. First, Arizona's time-bending reasoning merely recycles the Arizona Supreme Court's incorrect assertion in *Bassett* that the 2014 legislation renders earlier "natural life" sentences parole-eligible as well. *Bassett*, 535 P.3d at 12–13. For the reasons discussed *supra*, Part II.A, this argument fails. Second, Arizona's focus on mistaken belief contradicts *Jones*'s admonition that compliance with *Miller* depends on the nature of the available lawful sentencing options, not the subjective considerations of individual judges.

Arizona's arguments on this score are also beside the point. Unlike the petitioner in *Bassett*, there is absolutely no evidence that any of Petitioners' sentencing judges mistakenly believed parole was available. Pet. 25–26. But even if there was, Arizona never explains the constitutional significance of individual judge's subjective beliefs regarding parole eligibility at sentencing. Indeed, Arizona's legislative fix does most, if not all, of the work in the State's argument. See *Bassett* BIO 20–21 ("Arizona is not contending here that *Miller* would have been satisfied based on the mistaken beliefs of judges and parties alone. If parole truly was illusory and forever remained unavailable, a *Miller* violation might result."). That is for good reason. Even if a judge mentions parole at sentencing, it is impossible to know whether the judge actually believed he was imposing a parole-eligible sentence. As the State explained elsewhere, some judges "continued to use pre-1993 formulation of words even after parole was abolished." ECF No. 8, State Mot. to Dismiss at 13, *Chaparro* v. *Ryan*, No. 2:19-cv-00650 (D. Ariz. Mar.

27, 2019). But "the superior courts were not engaged in hundreds of acts of outright and lawless defiance of the Arizona Legislature; they were simply continuing to use the same, albeit somewhat-imprecise, language they had long used before." *Id.*

The difficulty of divining the subjective intentions of sentencing judges is exactly why *Jones* focused on the *actual sentences available under the law*, not whether the judge's fact-finding evidenced a particular consideration of age. See 593 U.S. at 114–15. It is impossible to determine just how widespread mistaken beliefs about parole eligibility were among Arizona's sentencing judges. It's also irrelevant. The fact that some sentencing judges may have mistakenly considered parole to be available does not change that *Petitioners'* judges did not. All of this illustrates why *Jones* deemed a "discretionary sentencing *system*," in which judges can impose a punishment other than life without parole, "constitutionally necessary" to ensure that judges can consider age *in every case*. *Id.* at 105; see Pet. App. 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."). And during the relevant period, Arizona trial judges had no meaningful discretion to impose a parole-eligible sentence—parole was made categorically illegal by statute. See *Judicial Discretion*, *Black's Law Dictionary* (12th ed. 2024) (defining discretion as "a court's *power* to act or not act when a litigant is not entitled to demand the act as a matter of right") (emphasis added). "Sentencing courts must have the *authority* to actually 'impose a lesser sentence than life without parole.'" *Bassett* v. *Arizona*, 144 S. Ct. 2494, 2497 (Sotomayor, J.,

dissenting from denial of certiorari) (quoting *Jones*, 593 U.S. at 112) (emphasis added). "[S]peculati[on], based on no evidence, about the possibility of [judges'] two-decade-old mistaken belief about state law" does nothing to change the fact that "Arizona's sentencing *regime*" did not allow for a parole-eligible sentence at the time. *Id.* (emphasis added).

At day's end, any argument about the mistaken beliefs of sentencing judges does not apply to Petitioners. Pet. 24–25. The sentencer's subjective consideration of parole eligibility is irrelevant under *Jones*. Because Arizona did not provide a parole-eligible option at the time of Petitioners' sentencing, and because the 2014 legislation does not apply to juveniles sentenced to "natural life," Petitioners' sentences remain as unconstitutional today as they were the day they were handed down. *Supra* Part II.A.

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

Our brief in support of Petitioner in *Bassett* warned that Arizona courts interpreted *Bassett* categorically—relying on the Decision to deny relief across the board to individuals sentenced to natural life between 1994 to 2014 for offenses they committed as juveniles. That warning has since proven correct. Since this Court's denial of certiorari in *Bassett*, Arizona's lower courts have repeatedly treated the Decision as a banket license to deny relief. This not only makes Arizona an extreme outlier—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—it reinforces a scheme that may soon be beyond this Court's power to review.

A. The Arizona Courts are Relying on *Bassett* to Deny Relief to Similarly Situated Defendants.

The Arizona Supreme Court Decision in *Bassett* 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, the *Bassett* Decision 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." *Bassett*, 535 P.3d at 13. That same faulty reasoning applies to every other juvenile sentenced to natural life in the relevant period, and Arizona's lower courts have adhered to the holding.

The logic of the Arizona Supreme Court in *Bassett* was fatally flawed even when confined to the record in that case. Although that Court *purported* to conduct an analysis of the sentencing judge's specific considerations of age and parole-eligibility, see *Bassett*, 535 P.3d at 13 n.3 (noting that the court does not "foreclose resentencing" when the trial court did not consider "an offender's youth and attendant characteristics" [2]); *id.* at 6–8 (discussing the

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[2] The circumstances where the Arizona Supreme Court has not foreclosed resentencing are incredibly narrow—this footnote limits resentencing to instances where the sentencing judge thought that a "natural life sentence [wa]s mandatory" instead of life with the possibility of executive clemency after 25 years. *Bassett*, 535

consideration of age throughout Bassett's sentencing proceedings), ultimately there is no escaping that the Arizona Supreme Court announced a blanket rule that juveniles sentenced during this period are not and cannot become parole-eligible. But more to the point for present purposes, *Bassett*'s already faulty reasoning collapses completely when applied to defendants who received no parole consideration based on a mistaken view of the law.

Before this Court denied certiorari in *Bassett*, Arizona's lower courts had relied on *Bassett* 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 *Bassett* 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 *Bassett* abrogated any requirement to grant evidentiary post-conviction hearings to individuals sentenced to

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P.3d at 13 n.3. No defendant will be able to establish that their youth was not considered because age was a statutory sentencing factor, Ariz. Rev. Stat. Ann. § 13-703(H)(5) (2001), and Arizona courts presume that judges consider sentencing factors even without an on-the-record explanation. See *Stanford* v. *Kentucky*, 492 U.S. 361, 375 & n.5 (1989) (noting that state sentencing statutes, like Arizona's, that list age as a mitigating factor "ensure individualized consideration of the maturity and moral responsibility" of juvenile offenders), *abrogated on other grounds*, *Roper* v. *Simmons*, 543 U.S. 551 (2005).

natural life pre-*Miller*); *State v. Cruz*, No. 2 CA-CR 2023-0199-PR, 2024 WL 2164842, at *2 (Ariz. Ct. App. May 14, 2024) (using *Bassett* to deny relief as the court found "age to be a mitigating factor" and "had discretion to impose a sentence other than natural life."); *State v. Deshaw*, No. 1 CA-CR 21-0512, 2024 WL 3160590, at *5 (Ariz. Ct. App. June 25, 2024) (denying relief on the grounds that "[w]hether [*Bassett*] was wrongly decided is not a question for us to decide because we lack the 'power to overturn a decision of the supreme court.'"). These sentences remain unremedied.

Subsequent decisions of Arizona courts confirm that the State and Arizona courts both believe *Miller* no longer applies to the category of individuals sentenced to natural life between 1994 and 2014 in Arizona. If left uncorrected, the decisions below will permit unconstitutional mandatory juvenile life-without-parole sentences to stand. Soon this issue may be beyond this Court's ability to correct, as the pool of potential petitioners who can seek relief from this Court dwindles.

B. Arizona is the Only State That Continues to Defy *Miller*.

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 Petitioners 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 states that had mandatory-life-sentencing regimes 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 have addressed

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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 Oct. 27, 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 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.").

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

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[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).

Arizona thus remains the only state where juvenile defendants are still serving unconstitutional mandatory life sentences without parole. Only Arizona denies these defendants any meaningful mechanism to challenge their unlawful 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 for review and summarily reverse the decisions below.

Respectfully submitted,

Adam Hansen
CIVIL RIGHTS APPELLATE CLINIC
UNIVERSITY OF MINNESOTA LAW SCHOOL
229 19th Avenue South
Minneapolis, MN 55455
(612) 927-2969
adam@apollo-law.com

Counsel for Amici Curiae

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