No. _____

IN THE

Supreme Court of the United States

SCOTT DESHAW, BOBBY PURCELL, BOBBY TATUM, WILLIAM NAJAR, RALPH CRUZ, JOSEPH CONLEY, JOSE BOSQUEZ, & JERMAINE RUTLEDGE,

Petitioners,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari
To the Arizona Court of Appeals

PETITION FOR 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). While a child homicide offender may be sentenced to life without parole, the sentencer must have "discretion to impose a lesser punishment." *Jones v. Mississippi*, 593 U.S. 98, 100 (2021).

The Arizona Supreme Court ruled that the choice between two versions of life without parole—what Arizona refers to as "natural life" and "life"—satisfied this Court's precedents. *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 11-13 (Ariz. 2023).

But neither option offered a chance at parole during the relevant period. Arizona abolished parole in 1994. Whether "natural life" or "life," the mandatory minimum penalty for juveniles convicted of first-degree murder was life without parole. The only difference was clemency. Moreover, several child offenders faced the death penalty.

Over three dissents, this Court denied certiorari in *Bassett*. After ordering a response, this Court more recently denied certiorari in *Petrone-Cabanas v. Arizona*, No. 24-391.

In the eight joined cases in this Petition, the Arizona Court of Appeals ruled that it was bound by the Arizona Supreme Court's decision in *Bassett*. While there may have been vehicle problems with *Bassett* and *Petrone-Cabanas*, those problems do not exist here.

The question presented is:

Can a juvenile offender be sentenced to life without parole under a system that does not give the sentencing judge discretion to choose a parole-eligible option?

RELATED PROCEEDINGS

Supreme Court of the United States:

- *Jose Bosquez v. Arizona*, No. 24A742 (January 29, 2025) (granting application to extend time to file petition for writ of certiorari).
- *Joseph Conley v. Arizona*, No. 24A743 (January 30, 2025) (granting application to extend time to file petition for writ of certiorari).
- *Jermaine Rutledge v. Arizona*, No. 24A762 (February 5, 2025) (granting application to extend time to file petition for writ of certiorari).
- *Ralph Cruz v. Arizona*, No. 24A845 (March 3, 2025) (granting application to extend time to file petition for writ of certiorari).
- *Bobby Tatum v. Arizona*, No. 15-8850, 137 S. Ct. 11 (October 31, 2016) (granting, vacating, and remanding in light of *Montgomery v. Louisiana*, 577 U.S. 190 (2016)).
- *Bobby Purcell v. Arizona*, No. 15-8842, 137 S. Ct. 369 (October 31, 2016) (same).
- *William Najar v. Arizona*, No. 15-8878, 137 S. Ct. 369 (October 31, 2016) (same).
- *Scott DeShaw v. Arizona*, No. 15-9057, 137 S. Ct. 370 (October 31, 2016) (same).

Arizona Supreme Court:

- *State v. Bosquez*, No. CR-24-0084-PR (November 8, 2024) (denying review) (Pet. Appx. V, Appx. pg. 259a).
- *State v. Conley*, No. CR-24-0075-PR (November 8, 2024) (denying review) (Pet. Appx. R, Appx. pg. 214a).
- *State v. Rutledge*, No. CR-24-0141-PR (November 7, 2024) (denying review) (Pet. Appx. O, Appx. pg. 206a).
- *State v. Cruz*, No. CR-24-0137-PR (December 4, 2024) (denying review) (Pet. Appx. Y, Appx. pg. 285a).
- *State v. DeShaw*, *Purcell*, *Tatum*, & *Najar*, No. CR-24-0175-PR (December 16, 2024) (denying review) (Pet. Appx. K, Appx. pg. 144a).

Arizona Court of Appeals:[1]

- *State v. Bosquez*, No. 1 CA-CR 22-0360 PRPC, 2024 WL 455268 (February 6, 2024) (granting review, denying relief) (Pet. Appx. U, Appx. pg. 256a).

- *State v. Conley*, No. 1 CA-CR 22-0266 PRPC, 2024 WL 455267 (February 6, 2024) (granting review, denying relief) (Pet. Appx. Q, Appx. pg. 211a).

- *State v. Rutledge*, No. 1 CA-CR 22-0169 PRPC, 2024 WL 2208845 (May 16, 2024) (granting review, denying relief) (Pet. Appx. N, Appx. pg. 203a).

- *State v. Cruz*, No. 2 CA-CR 2023-0199-PR, 2024 WL 2164842 (May 14, 2024) (granting review, denying relief) (Pet. Appx. X, Appx. pg. 280a).

- *State v. DeShaw*, No. 1 CA-CR 21-0512, 2024 WL 3160590 (June 25, 2024) (affirming dismissal of resentencing) (Pet. Appx. J, Appx. pg. 144a).

- *State v. Purcell*, No. 1 CA-CR 21-0541, 2024 WL 3160590 (June 25, 2024) (affirming dismissal of resentencing) (Pet. Appx. J, Appx. pg. 144a).

- *State v. Tatum*, No. 1 CA-CR 22-0061, 2024 WL 3160590 (June 25, 2024) (affirming dismissal of resentencing) (Pet. Appx. J, Appx. pg. 144a).

- *State v. Najar*, No. 1 CA-CR 22-0071, 2024 WL 3160590 (June 25, 2024) (affirming dismissal of resentencing) (Pet. Appx. J, Appx. pg. 144a).

Maricopa County Superior Court

- *State v. DeShaw*, Maricopa County Superior Court No. CR 1994-011396 (November 1, 2021) (dismissing resentencing) (Pet. Appx. B, Appx. pg. 14a).

- *State v. Purcell*, Maricopa County Superior Court No. CR 1998-008705 (November 10, 2021) (dismissing resentencing) (Pet. Appx. D, Appx. pg. 29a).

- *State v. Tatum*, Maricopa County Superior Court No. CR 1994-005821 (January 18, 2022) (dismissing resentencing) (Pet. Appx. F, Appx. pg. 67a).

- *State v. Najar*, Maricopa County Superior Court No. CR 1998-093180 (January 24, 2022) (dismissing resentencing) (Pet. Appx. I, Appx. pg. 128a).

- *State v. Rutledge*, Maricopa County Superior Court No. CR 1997-005555 (January 21, 2022) (dismissing post-conviction relief proceedings) (Pet. Appx. M, Appx. pg. 200a).

[1] While the Arizona Court of Appeals is divided into two "divisions," it is a single court. Ariz. Rev. Stat. § 12-120(A); *State v. Patterson*, 218 P.3d 1031, ¶ 8 (Ariz. App. 2009). Joinder is thus appropriate under R. Supreme Ct. U.S. Rule 12.4.

- *State v. Conley*, Maricopa County Superior Court No. CR 2004-035015-001 (September 10, 2021) (dismissing post-conviction relief proceedings) (Pet. Appx. P, Appx. pg. 208a).

- *State v. Bosquez*, Maricopa County Superior Court No. CR 2010-013094-001 (April 13, 2022) (dismissing post-conviction relief proceedings) (Pet. Appx. T, Appx. pg. 251a).

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- *State v. Cruz*, Pima County Superior Court No. CR20002693-001 (June 20, 2023) (denying post-conviction relief) (Pet. Appx. W, Appx. pg. 261a).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Scott DeShaw, Bobby Purcell, Bobby Tatum, William Najar, Ralph Cruz, Joseph Conley, Jose Bosquez, and Jermaine Rutledge petition for a writ of certiorari to review the judgments of the Arizona Court of Appeals.

INTRODUCTION

This Court held in *Miller v. Alabama* that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller v. Alabama*, 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." *Jones v. Mississippi*, 593 U.S. 98, 100 (2021).

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 eight Petitioners. In *State ex rel. Mitchell v. Cooper (Bassett)*, the Arizona Supreme Court held that Arizona's scheme satisfied 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 (Bassett)*, 535 P.3d 3, 11 ¶ 34 (Ariz. 2023). Instead, the Arizona Supreme Court believed that a choice between life sentences—even if neither allowed parole—sufficed. *Id.* at 13 ¶ 39. Following *Bassett*, the Arizona Court of Appeals denied relief to all eight Petitioners, 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 did not dispute that "Arizona's sentencing scheme left no discretion for a parole-eligible sentence …" *Id.* at 2496. "Arizona also agree[d] that 'parole-eligibility is constitutionally required,' and that 'Arizona law did not provide a parole eligible option'" during the relevant time frame. *Id.* at 2495.

Instead, the State urged this Court to deny review for three reasons—all related to whether *Bassett* was the best vehicle to address the question. First, the sentencing judge in *Bassett* "was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller* …." *Id.* at 2496 (quoting *Bassett* BIO 27). Second, because of this mistake, Mr. Bassett had in fact received "an individualized sentencing hearing at which his youth and attendant characteristics were considered …." *Id.* at 2497 (quoting *Bassett* BIO 14). And third, a legislative fix amended "life" sentences so they were parole eligible. *Id.* at 2498 (citing *Bassett* BIO 21).

Those reasons are why this case presents an ideal vehicle to correct the Arizona Supreme Court's error. First, the State has presented no evidence of actual confusion or mistake for at least three Petitioners—DeShaw, Tatum, and Najar. More than that, the eight Petitioners represent the gamut of sentencing possibilities. Six were sentenced before *Roper v. Simmons*, and three—DeShaw, Purcell, and Tatum—actively fought for their lives at sentencing. In these six, death loomed over their cases and affected the sentencing assessment. Second, the sentencing hearings for many of the Petitioners prove that youth was not considered in the way *Miller* requires. The sentencing judges for DeShaw, Purcell, and Tatum, for example, all gave significant weight to youth. But the judges were operating under a sentencing scheme that started at death and forced the defendants to prove they deserved leniency. And Rutledge's judge

expressly stated his role was not to look at Rutledge as an individual. Third, seven of the Petitioners received no benefit from the legislative fix. And while one of Cruz's sentences was modified to parole-eligible, his two "natural life" sentences remain unchanged.

DECISIONS BELOW

This Petition primarily addresses the Arizona Supreme Court's decision in *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3 (Ariz. 2023).

The Arizona Court of Appeals' decision denying the combined appeal for Scott DeShaw, Bobby Purcell, Bobby Tatum, and William Najar is unpublished, but available at *State v. DeShaw*, 2024 WL 3160590 (Ariz. App. 2024, Memo.) (Pet. Appx. 133a).

The Arizona Court of Appeals' decision denying Ralph Cruz's Petition for Review is unpublished, but available at *State v. Cruz*, 2024 WL 2164842 (Ariz. App. 2024, Memo.) (Pet. Appx. 280a).

The Arizona Court of Appeals' decision denying Jermaine Rutledge's Petition for Review is unpublished, but available at *State v. Rutledge*, 2024 WL 2208845 (Ariz. App. 2024, Memo.) (Pet. Appx. 203a).

The Arizona Court of Appeals' decision denying Joseph Conley's Petition for Review is unpublished, but available at *State v. Conley*, 2024 WL 455267 (Ariz. App. 2024, Memo.) (Pet. Appx. 211a).

The Arizona Court of Appeals' decision denying Jose Bosquez's Petition for Review is unpublished, but available at *State v. Bosquez*, 2024 WL 455268 (Ariz. App. 2024, Memo.) (Pet. Appx. 256a).

While these decisions are unpublished, Arizona allows parties to cite unpublished decisions for persuasive value. Ariz. R. Supreme Ct. R. 111(c)(1)(C).

JURISDICTION

This Petition is timely. The Arizona Supreme Court denied review for Petitioners DeShaw, Purcell, Tatum, and Najar on December 16, 2024. This created a deadline of March 17, 2024. R. Supreme Ct. U.S. Rules 13.1 & 30.1. This Court granted requests to extend the deadline to file a Petition for Bosquez, Conley, Rutledge, and Cruz. *See Bosquez v. Arizona*, 24A742 (granting extension to April 5, 2025); *Conley v. Arizona*, 24A743 (same); *Rutledge v. Arizona*, 24A762 (same); *Cruz v. Arizona*, 24A845 (granting extension to May 2, 2025). All eight Petitioners timely filed a Petition on March 14, 2024. The Clerk rejected this filing, concluding that the cases were not from the same court. R. Supreme Ct. U.S. Rule 12.4. But in Arizona the court of appeals "constitutes a single court," even though there are two "divisions." Ariz. Rev. Stat. § 12-120(A). As the Arizona Court of Appeals has itself recognized, these "divisions" do not make decisions; the single court does. *State v. Patterson*, 218 P.3d 1031, ¶ 8 (Ariz. App. 2009). After discussions explaining this, the Clerk has since communicated with undersigned counsel and advised counsel to resubmit the Petition as originally joined.

This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend. 8.

The Fourteenth Amendment provides:

> No state shall … deprive any person of life, liberty, or property, without due process of law.

U.S. Const. Amend. 14.

STATEMENT

When the eight joined Petitioners committed their crimes, they were between 15 and 17 years old. Because Arizona had abolished parole in 1994 and each was convicted of first-degree murder, all eight were sentenced under a scheme that mandated a life-without-parole sentence. Six of the Petitioners were sentenced when death was still an available option. And three faced death during their sentencing proceedings.

Legal Background

1. From 1994 to 2005, juvenile offenders convicted of first-degree murder faced the death penalty, and no sentence offered a chance for parole.

Arizona abolished parole in 1994. *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 8 ¶ 17 (Ariz. 2023); Ariz. Rev. Stat. § 41-1604.09(I) (1994).

From 1994 to 2005, any person convicted of first-degree murder would face one of three sentences: (1) death, (2) natural life, or (3) life. *See* Ariz. Rev. Stat. § 13-703(A) (1994); Ariz. Rev. Stat. § 13-703(A) (2005). Even juveniles faced all three penalties. *See State v. Jackson*, 918 P.2d 1038, 1042-43 (Ariz. 1996) (upholding death penalty for 16-year-old defendant).

None of the three penalties offered an opportunity for parole. *Bassett*, 535 P.3d at 8 ¶ 17. A person sentenced to death would lose their life. A person sentenced to "natural life" was not eligible for "release from confinement on any basis." *Id.* A person sentenced to "life" had to serve at least 25 years before they could be "released." *Id.* But parole was impossible. *Id.* The only form of "release" available was clemency. *Id.* And clemency was "more theoretical than practical." *State v. Dansdill*, 443 P.3d 990, 1000 ¶ 37 n.10 (Ariz. App. 2019). No one convicted of first-degree murder has received clemency in the 30 years since Arizona abolished parole. *Bassett v. Arizona*, 144 S. Ct. 2494, 2496 n.1 (Sotomayor dissenting from denial of certiorari).

Indeed, "the State itself represented, in this Court and other courts, that state law made life without parole the minimum sentence." *Id.* at 2497.

2. After *Roper v. Simmons*, death was no longer available, but juvenile offenders still had no chance at parole.

Death was still a possible sentence in Arizona—even for juveniles—until this Court's 2005 decision in *Roper v. Simmons*, 543 U.S. 551 (2005).

In *Roper*, this Court ruled that, under the Eighth Amendment, "the death penalty is a disproportionate punishment for offenders under 18 …." *Id.* at 575. This Court observed that "it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. *Id.* at 570. That possibility for reform touched on the main issue: transient immaturity. *Id.* Youth is a relevant mitigator because "the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).

After *Roper*, juveniles convicted of first-degree murder in Arizona no longer faced the death penalty. But the scheme still mandated a sentence to either "natural life" or "life." Ariz. Rev. Stat. § 13-703(A) (2006); Ariz. Rev. Stat. § 13-751(A)(2) (2012). And neither option offered parole eligibility. *Bassett*, 535 P.3d at 8 ¶ 17.

3. In *Miller v. Alabama*, this Court struck down mandatory life-without-parole schemes for juvenile offenders. Arizona made parole available—for a subclass of child offenders.

In *Miller v. Alabama*, this Court held that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller v. Alabama*, 567 U.S. 460, 470 (2012). This

was because "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471.

This Court recognized three differences between adult and child offenders.

- "First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Id.* (cleaned up).
- "Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* (cleaned up).
- "And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Id.* (cleaned up).

With these three differences in mind, this Court concluded it was improper to make youth irrelevant. *Id.* at 479. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id.* While a sentencer need not impose a parole-eligible sentence, the scheme must provide "some meaningful opportunity to obtain release." *Id.* at 479 (citation omitted).

This Court also identified in *Miller* that "29 jurisdictions," including Arizona, "make a life-without-parole term mandatory for some juveniles convicted of murder in adult court." *Id.* at 482, 486-87 nn.13 & 15.

After *Miller*, Arizona reinstated parole for 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).

4. This Court ruled *Miller* was retroactive in *Montgomery v. Louisiana*, and the Arizona Supreme Court authorized hearings so child offenders could challenge their sentences.

In *Montgomery v. Louisiana*, this Court held that *Miller* applied retroactively. *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016). 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." *Id.* at 195 (quotation marks omitted). But it was *Miller*'s substantive rule that made the case retroactive. *Id.* at 206. "The 'foundation stone' for *Miller*'s analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles." *Id.* And *Miller*'s underlying premise was that "children are constitutionally different from adults for the purposes of sentencing." *Id.* (quoting *Miller*, 567 U.S. at 471). *Miller* thus "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth." *Id.* at 208 (quotation marks omitted). Regardless of whether a court "considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Id.* (quotation marks omitted). Rather, a life-without-parole sentence must be reserved for "the rare juvenile offender whose crime reflects irreparable corruption …." *Id.* (quotation marks omitted).

Shortly after, this Court vacated several Arizona court orders dismissing claims for postconviction relief under *Miller*—including in four Petitioners' cases—and ordered further consideration in light of *Montgomery*. *See Tatum v. Arizona*, 580 U.S. 952 (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 the wake of *Montgomery*, the Arizona Supreme Court initially acknowledged that "natural life" sentences imposed on child offenders "did amount to sentences of life without the possibility of parole." *State v. Valencia*, 386 P.3d 392, 394 ¶ 11 (Ariz. 2016). The Arizona Supreme Court thus gave these defendants an opportunity to challenge their sentences. *Id.* at 396 ¶ 18. At these hearings, these defendants were to have the "opportunity to establish, by a preponderance of the evidence, that their crimes did not reflect irreparable corruption but instead transient immaturity." *Id.* "Only if they meet this burden will they establish that their natural life sentences are unconstitutional, thus entitling them to resentencing." *Id.* The court also encouraged the State to stipulate to resentencing if they "did not contest that the crime reflected transient immaturity …." *Id.*

5. This Court addressed a procedural question in *Jones v. Mississippi*, and the Arizona Supreme Court seized the opportunity to ignore *Miller* and its progeny.

In *Jones v. Mississippi*, this Court confronted a narrow question: whether a trial court had to make express findings about permanent incorrigibility before imposing a life-without-parole sentence. *Jones v. Mississippi*, 593 U.S. 98, 101 (2021). This Court held that no express findings were required—a ruling in line with *Miller* and *Montgomery*. *Id.*

Nonetheless, this Court 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." *Id.* at 100. 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 (emphasis original).

In concluding that there was no requirement for express factfinding, this Court noted that it "carefully follow[ed] both *Miller* and *Montgomery*." *Id.* at 118. "*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18. Today's decision does not disturb that holding. *Montgomery* later held that *Miller* applies retroactively on collateral review. Today's decision likewise does not disturb that holding." *Id.*

Because *Jones* dealt with process, *Miller*'s substantive holding was not at issue.

Still, this Court reiterated the substantive holding by quoting the "key paragraph from *Montgomery*" in footnote 2: "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* at 106 n.2 (quoting *Montgomery*, 577 U.S. at 211).

Despite this Court's statements in *Jones* that it did not overrule *Miller* or *Montgomery*, the Arizona Supreme Court reversed course. In *State ex rel. Mitchell v. Cooper (Bassett)*, the Arizona Supreme Court concluded that "*Jones* refuted the premise for *Valencia*'s mandate for an evidentiary hearing to address whether a crime reflected 'irreparable corruption' versus 'transient immaturity.'" *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 13 ¶ 42 (Ariz. 2023).

The Arizona Supreme Court acknowledged that "the Arizona Legislature eliminated parole for all offenses committed on or after January 1, 1994." *Id.* at 8 ¶ 17. And it agreed that at the relevant times defendants were "actually ineligible for parole." *Id.*

But the court believed that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile." *Id.* at 11 ¶ 34. Rather, a scheme satisfies *Miller* if the sentencer has a choice between two sentencing options—even if neither option offers the possibility of parole. *Id.* at 13 ¶ 39.

This Court denied review in *Bassett v. Arizona*, 603 U.S. __, 144 S. Ct. 2494 (2024).

Justice Sotomayor—joined by Justices Kagan and Jackson—dissented and would have summarily reversed. *Id.* at 2494-95 (Sotomayor, J., dissenting from denial of certiorari). Justice Sotomayor would have reversed because "the Arizona Supreme Court's decision departed from this Court's established precedents." *Id.* at 2499. "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.* at 2495 (quoting *Jones*, 593 U.S. at 112). But "Arizona's sentencing scheme instead mandated life without parole for juveniles." *Id.* This Court also denied certiorari in *Petrone-Cabanas v. Arizona*, No. 24-391.

Factual Background

This Petition joins eight child offenders. This Court has addressed four of them: Bobby Tatum, Scott DeShaw, Bobby Purcell, and William Najar. After *Montgomery*, this Court granted review, vacated the decisions below, and remanded for reconsideration in light of *Montgomery*. *Tatum v. Arizona*, 580 U.S. 952 (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). Four of the Petitioners have not been before this Court: Jermaine Rutledge, Joseph Conley, Jose Bosquez, and Ralph Cruz. These cases—individually and jointly—illustrate the error in the Arizona Supreme Court's decision in *Bassett*.

1. **Bobby Purcell, Scott DeShaw, and Bobby Tatum were sentenced to "natural life," rather than death, because of their youth. But they were stripped of the resentencing the State agreed to.**

Bobby Purcell was just 16 years old when he committed his crimes. Pet. Appx. 22a. The prosecution sought the death penalty. The trial court, however, rejected the death penalty as a

sentence. *Id.* at 27a-28a. Most important to the judge was Bobby's age and lack of meaningful family support. "By virtue of his upbringing, defendant had no one to turn to for help and by virtue of his age, he had no reason to know how troubled he was or how to deal with his enormous psychological problems. Virtually no sixteen year old could cope with such problems on his own." *Id.* at 26a-27a. And while Bobby had not proved he would be rehabilitated, the judge found "that defendant is likely to do well in the structured environment of a prison and that he possesses the capacity to be meaningfully rehabilitated." *Id.* at 25a. The judge thus deviated down to a "natural life" sentence. *Id.* at 27a-28a. "Upon weighing these aggravating and mitigating circumstances, the court finds that two of the mitigating factors—defendant's age and his lack of family support—are sufficiently substantial to call for leniency." *Id.* at 26a.

Scott DeShaw was 17 when he committed his crimes. The state sought the death penalty for Scott as well. The sentencing judge found Scott's age, immaturity, and dysfunctional childhood compelling. Pet. Appx. 5a. "I have given great weight to the defendant's youthful age, his emotional and moral immaturity. I have given significant weight to the defendant's difficult childhood and dysfunctional family experiences …." *Id.* And the court also gave weight "to the influence of the co-defendant Aaron Hoskins upon this defendant, Scott DeShaw." *Id.* Considering Scott's youth, dysfunctional childhood, good behavior during incarceration, and the influence of his co-defendant, the court deviated down to a "natural life" sentence. *Id.* at 5a-6a. "The Court finds that the mitigating circumstances in this case are sufficiently substantial to outweigh the aggravating circumstances proved by the State and to call for leniency." *Id.* at 5a.

Bobby Tatum also committed his crimes when he was 17. Pet. Appx. 59a. And the State of Arizona again sought the death penalty. But the sentencing judge rejected death and deviated down to a "natural life" sentence. *Id.* at 64a. In reaching this decision, the court heavily relied on

Bobby's youth. *Id.* at 59a. The court was also motivated by Bobby's lack of criminal history. *Id.* at 60a. Bobby had never been arrested, much less convicted of a crime. *Id.*

Arizona's courts denied relief for Purcell, DeShaw, and Tatum. *State v. DeShaw*, 2024 WL 3160590, ¶ 4 (Ariz. App. 2024, Memo.) (Pet. Appx. 134a). But this Court granted certiorari, vacated the earlier decisions, and remanded each for reconsideration in light of *Montgomery*. *Tatum*, 580 U.S. 952; *DeShaw*, 580 U.S. 951; *Purcell*, 580 U.S. 951.

On remand, the State of Arizona agreed that Tatum, DeShaw, and Purcell should be resentenced. *DeShaw*, 2024 WL 3160590, ¶ 5 (Pet. Appx. 136a-137a).

But in the wake of *Jones*, the prosecution reneged on their agreement. *Id.* at ¶ 7 (Pet. Appx. 137a). The trial court dismissed the resentencings. *Id.* After the Arizona Supreme Court's decision in *Bassett*, the Arizona Court of Appeals affirmed the decision. *Id.* at ¶ 22 (Pet. Appx. 143a). And the Arizona Supreme Court denied review. Pet. Appx. 145a.

2. William Najar received a "natural life" sentence because of his youth and dysfunctional childhood. He also lost the resentencing the State agreed to.

William Najar had "just turned 16" when he committed his crime. Pet. Appx. 103a. Arizona initially sought the death penalty. That sentence loomed over William's case throughout the trial. After trial, though, the prosecution withdrew their request for the death penalty. *Id.* at 73a. They did this because of William's "age as well as psychological history." *Id.* William had a "very dysfunctional family experience as a young child and teenager" resulting in "psychological and emotional problems." *Id.* at 111a. As a teenager, William became addicted, homeless, and suicidal. *Id.* at 88a, 91a. He suffered from untreated mental illness. *Id.* at 99a. The court found William's youth compelling and imposed a "natural life" sentence. *Id.* at 114a.

Although Arizona courts denied relief, this Court granted certiorari, vacated those decisions, and remanded for reconsideration in light of *Montgomery*. *Najar*, 580 U.S. 951.

On remand, the State agreed Najar should be resentenced. *DeShaw*, 2024 WL 3160590, ¶ 5 (Pet. Appx. 137a).

But after *Jones*, the prosecution changed course. *Id.* at ¶ 7 (Pet. Appx. 137a). The trial court dismissed Najar's resentencing. *Id.* The Arizona Court of Appeals then affirmed, and the Arizona Supreme Court denied review. *Id.* at ¶ 22 (Pet. Appx. 143a); Pet. Appx. 145a.

3. Ralph Cruz was deprived of a meaningful appellate review of the court's decision rejecting his evidence that his crime was the result of transient immaturity.

Ralph Cruz committed his crimes when he was 16 years old. *State v. Cruz*, 2024 WL 2164842, ¶ 2 (Ariz. App. 2024, Memo.) (Pet. Appx. 282a). To avoid the death penalty, Ralph entered a plea agreement that allowed the court to sentence him to either "life" or "natural life" for three murders. *Id.* The court sentenced Cruz to "life" on one count and "natural life" on the other two. *Id.*

After *Montgomery*, Ralph petitioned for post-conviction relief and received an evidentiary hearing. *Id.* at ¶ 4 (Pet. Appx. 282a-283a).

The judge, however, denied relief. *Id.* at ¶ 5 (Pet. Appx. 283a). Despite significant and uncontested evidence about Ralph's youth, drug use, and abusive childhood, the court concluded that Cruz's crimes were not the product of transient immaturity. *See id.*

Ralph asked the Arizona Court of Appeals to review the findings. *Id.* at ¶ 6 (Pet. Appx. 283a). Of concern, it appeared the judge came in with a preconceived idea of the case, and then only found evidence credible if it conformed with that notion while rejecting all evidence inconsistent with his notion. *See id.*

But the appellate court refused. *Id.* at ¶ 8 (Pet. Appx. 284a). Relying on *Bassett*, the court of appeals ruled that it could not "conclude the trial court erred by denying Cruz relief after an evidentiary hearing held to address a question our supreme court has since clarified the trial court was not required to address." *Id.* The Arizona Supreme Court declined review. Pet. Appx. 286a.

4. Jermaine Rutledge, Joseph Conley, and Jose Bosquez never had the chance to prove their crimes were the result of transient immaturity.

Jermaine Rutledge was just 15 when he committed his offense. Pet. Appx. 194a. The trial court recognized that Jermaine was not the "prime mover" in his crimes. *Id.* Rather, the main participant was Sherman Rutledge, Jermaine's older brother—by ten years. *Id.* at 185a, 194a. The judge imposed a "natural life" sentence. *Id.* at 196a. This was because of the judge's view that the "sentencing function is a vindication of the community's interest; it is not a vindication of the individuals; and my job is not to do what is best for the defendant." *Id.* at 192a. In this way, the court diminished age as a mitigating factor and recast many of the transient characteristics of youth as aggravating circumstances. *See id.* at 194a-196a.

Yet Jermaine was stripped of the opportunity to prove that his crime reflected transient immaturity and that his sentence was disproportionate. *Id.* at 201a-202a. After *Jones*, the trial court dismissed his post-conviction relief petition. *Id.* The Arizona Court of Appeals summarily affirmed the decision. *State v. Rutledge*, 2024 WL 2208845 (Ariz. App. 2024, Memo.) (Pet. Appx. 204a). And the Arizona Supreme Court denied review. Pet. Appx. 207a.

The same thing happened to Jose Bosquez. Jose was 17 at the time of his crime. Pet. Appx. 236a, 243a. At sentencing, Jose's attorney explained that Jose's struggles started when he was still in the womb. *Id.* at 243a. While pregnant, Jose's mother "was using a number of illegal substances and being beat pretty badly by his father at the time." *Id.* When born, he was placed

into child protective services. *Id.* To address mental health problems, Jose started using drugs at just 6 years old. *Id.* He became homeless at 9 years old when his grandmother died. *Id.* The sentencing judge agreed Jose's background was mitigating. But the court then framed its inquiry in a manner that flipped that mitigation: "I think, is this man damaged goods? Is this man somebody who's going to continue to terrorize society like you did in this case?" *Id.* at 245a. The court sentenced Jose to "natural life." *Id.* at 248a.

After *Montgomery* and *Valencia*, Jose was set to have a hearing during which he could prove his crime reflected transient immaturity and his "natural life" sentence was disproportionate. But the trial court dismissed the proceedings after *Jones*, the appellate court summarily affirmed the dismissal after *Bassett*, and the Arizona Supreme Court denied review. *Id.* at 252a-260a.

And the same thing happened again to Joseph Conley. Joseph was 17 when he committed his crimes. After *Montgomery* and *Valencia*, Joseph was going to have an evidentiary hearing during which he could present evidence to prove that his "natural life" sentence was disproportionate and that his crime reflected transient immaturity. But the trial court dismissed his post-conviction relief petition. Pet. Appx. 209a-210a. The Arizona Court of Appeals summarily affirmed the ruling after *Bassett*. *Id.* at 213a. And the Arizona Supreme Court denied review. *Id.* at 215a.

REASONS FOR GRANTING THIS PETITION

At its most basic level, this Court should grant review because the Arizona Supreme Court has ignored this Court's holdings in *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016); and *Jones v. Mississippi*, 593 U.S. 98, 103 (2021). Two other cases have brought this issue to this Court's attention. In those cases, the State of Arizona did not even defend the Arizona Supreme Court's basic failings. Instead, Arizona raised vehicle problems. But this case—which includes 8 joined defendants—provides an ideal vehicle to correct the Arizona Supreme Court's disregard for this Court's case law.

1. The Arizona Supreme Court has flouted this Court's decisions in *Miller*, *Montgomery*, and *Jones*.

In *Miller v. Alabama*, this Court announced two holdings. *Miller v. Alabama*, 567 U.S. 460 (2012). First, this Court declared mandatory life-without-parole sentencing schemes unconstitutional under the Eighth Amendment. *Id.* at 479. Second, this Court held that life-without-parole sentences should be reserved for the rarest of juvenile offenders. *Id.* at 479-80. When a juvenile's crimes reflect transient immaturity, they should not be sentenced to life without parole. *Id.* That sentence should be reserved only for the infrequent offender whose crime reflects irreparable corruption. *Id.*

The Arizona Supreme Court discarded both decisions in *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3 (Ariz. 2023).

a. The Arizona Supreme Court has ignored this Court's holding in *Miller* that mandatory life-without-parole sentencing schemes are unconstitutional when applied to juveniles.

In *Miller* and its progeny, this Court has repeatedly held that mandatory life-without-parole sentencing schemes are unconstitutional. This Court was clear in *Miller* itself: "mandatory

life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller v. Alabama*, 567 U.S. 460, 470 (2012). This Court reaffirmed that holding in *Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016). This Court ruled, "mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on cruel and unusual punishments." *Id.* (quotation marks omitted). And this Court again reaffirmed the principle in *Jones v. Mississippi*, 593 U.S. 98, 103 (2021). This Court held, "the Eighth Amendment prohibits mandatory life-without-parole sentences for murderers under 18 …." *Id.* (emphasis removed).

Arizona has three possible sentences for murder: death, natural life, and life. Death did not offer parole eligibility. Under a "natural life" sentence, "the defendant is not eligible for release from confinement on any basis." *Bassett*, 535 P.3d at 8 ¶ 17 (cleaned up). With a "life" sentence, the person was not eligible "for release on any basis until the completion of the service of" a specific term of years depending on the victim's age. *Id.* (cleaned up).

Although there was a choice between "natural life" and "life," neither offered a parole-eligible sentence when Petitioners committed their offenses. Arizona "eliminated parole for all offenses committed on or after January 1, 1994." *Id.*

As a result, this Court recognized Arizona as one of "the 29 jurisdictions mandating life without parole for children …." *Miller*, 567 U.S. at 486 n.13. This inclusion didn't come from nowhere. As Justice Sotomayor recognized in her dissent to the denial of certiorari in *Bassett v. Arizona*, "the State [of Arizona] itself represented, in this Court and other courts, that state law made life without parole the minimum sentence." *Bassett v. Arizona*, 603 U.S. __, 144 S. Ct. 2494, 2497 (2024) (Sotomayor, J., dissenting from denial of certiorari).

Although none of Arizona's three sentencing options made parole possible, the Arizona Supreme Court found Arizona's scheme constitutional under *Miller*.

It reached this conclusion by flipping *Miller* on its head. The court held: "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile offender." *Bassett*, 535 P.3d at 11 ¶ 34.

But in *Miller* and its progeny, this Court required just that when it struck down mandatory juvenile life-without-parole sentencing schemes. *Miller*, 567 U.S. at 470; *Montgomery*, 577 U.S. at 195; *Jones*, 593 U.S. at 103.[1]

This inverted reading set the stage for the Arizona Supreme Court's conclusion that the sentences imposed in Arizona were not mandatory.

To be constitutional, a juvenile sentencing scheme must allow the trial court the discretion to impose a parole-eligible sentence. This Court explained in *Jones* that a discretionary sentencing system is one "where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole …." *Id.* at 112. The sentencer "must have the opportunity to consider the defendant's youth and must have the discretion to impose a different punishment than life without parole." *Id.* at 108 (quotation marks omitted).

This "discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Id.* at 105. "The key assumption of both *Miller* and *Montgomery* was that discretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." *Id.* at 111-12. Indeed, data proved that a discretionary sentencing system "would help make life-without-parole sentences relatively rare

[1] Certainly, a state could exceed that constitutional minimum and provide trial courts with the discretion to impose a term-of-years sentence without parole. But Arizona courts have not stated such a nuanced reading of *Miller*. In Arizona, judges could sentence a juvenile convicted of first-degree murder to death, natural life, or life. No option included the possibility of parole, let alone a term of years.

…." *Id.* at 112. And the result of *Miller* and *Montgomery* was "numerous sentences less than life without parole for defendants who otherwise would have received mandatory life-without-parole sentences." *Id.* at 119. In Mississippi, for example, *Miller* "reduced life-without-parole sentences for murderers under 18 by about 75 percent." *Id.*

The Arizona Supreme Court ruled that the sentencer's discretionary choice between "natural life" and "life" comported with *Miller* and its progeny. *Bassett*, 535 P.3d at 13 ¶ 39. The sentencer in that case considered the defendant's age and then "decided whether to impose a natural life sentence or a lesser punishment." *Id.*

But parole was not the distinction between "natural life" and "life"; clemency was. As the Arizona Supreme Court acknowledged, the only form of "release" available to a person sentenced to "life" was "through the executive clemency process." *Bassett*, 535 P.3d at 8 ¶ 17.

This Court has already explained that clemency does nothing to change the constitutionality of a sentencing scheme. Clemency is too infrequent to be of constitutional import. "Recognition of such a bare possibility would make judicial review under the Eighth Amendment meaningless." *Solem v. Helm*, 463 U.S. 277, 303 (1983); *accord Lynch v. Arizona*, 578 U.S. 613, 615-16 (2016). And in the context of juvenile sentencing, such a scheme would deprive "the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence." *See Graham v. Florida*, 560 U.S. 48, 70 (2010).

Yet the Arizona Supreme Court has repeatedly relied on clemency to disregard this Court's holdings, particularly in death cases. This Court held in *Simmons v. South Carolina* that, when applicable, a defendant must be allowed to tell the jury that the only alternative to death is life without parole. *Simmons v. South Carolina*, 512 U.S. 154, 161-62 (1994) (plurality opinion);

id. at 178 (O'Connor, J., concurring in judgment). Although Arizona had abolished parole, the Arizona Supreme Court refused to apply *Simmons* in several death cases. *Cruz v. Arizona*, 598 U.S. 17, 20 (2023). This Court thus summarily reversed an Arizona Supreme Court decision in *Lynch v. Arizona*, 578 U.S. 613, 616-17 (2016). Although the Arizona Supreme Court had found parole was not available in that case, it nevertheless ruled that failing to give an instruction under *Simmons* was not error. *Id.* at 614-15. To justify its departure, the Arizona Supreme Court "relied on the fact that, under state law, Lynch could have received a life sentence that would have made him eligible for 'release' after 25 years." *Id.* But that "release" was executive clemency. *Id.* "And *Simmons* expressly rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility." *Id.* This Court thus reversed. *Id.* at 616-17. This Court then had to again intervene when the Arizona Supreme Court refused to acknowledge *Lynch*'s impact in *Cruz*, 598 U.S. at 20-21.

Arizona's system was not discretionary. It was not a system in which "the sentencer [could] consider the defendant's youth and [had] discretion to impose a lesser sentence than life without parole …." *Jones*, 593 U.S. at 112. While an Arizona sentencer may have had a choice between "natural life" and "life," no choice gave the sentencer the option to impose a parole-eligible sentence. The difference between the two sentences was insignificant.

b. The Arizona Supreme Court has ignored this Court's holding in *Miller* that life-without-parole is an unconstitutionally disproportionate sentence for juvenile offenders when the crime reflects transient immaturity.

This Court's second holding in *Miller* had to do with the oft-disproportionate nature of life-without-parole sentences for juvenile offenders. *Miller*, 567 U.S. at 479-80. In *Montgomery*, this Court explained that a life-without-parole sentence is disproportionate under the Eighth Amendment when a person's crime reflects transient immaturity. *Montgomery*, 577 U.S. at 195.

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

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

"That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee." *Id.* And it did not leave states "free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* This Court reiterated that very holding in *Jones*, 593 U.S. at 106 n.2.

The Arizona Supreme Court's decision in *Bassett* clashed with this Court's jurisprudence for two reasons. First, the lower court claimed transient immaturity is not a substantive component of *Miller*. Both logic and law reject that conclusion. Second, the lower court believed that any consideration of youth satisfied *Miller*. But *Miller* demands more. It is not enough that a judge addressed youth before the importance of transient immaturity was clear. *Miller* demands a meaningful hearing where a judge has a real option to consider transient immaturity and apply it.

i. The Arizona Supreme Court incorrectly believed transient immaturity was not a substantive component of *Miller*.

As noted above, *Miller* announced a substantive rule: life-without-parole sentences are disproportionate for juvenile offenders whose crimes reflect transient immaturity. *Miller*, 567 U.S. at 479; *Montgomery*, 577 U.S. at 195. This Court emphasized this substantive rule in *Jones*, 593 U.S. at 106 n.2. This Court noted that neither *Miller* nor *Montgomery* required a court to expressly find permanent incorrigibility before sentencing a juvenile offender to life without parole. *Id.* at 106. In footnote 2, however, this Court reiterated that the lack of a formal factfinding requirement did not "leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* at 106 n.2. That sentence is disproportionate. *Id.*

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

While the phrase "transient immaturity" may have appeared just once in *Miller*, the importance of transient immaturity permeated the opinion. When discussing *Roper v. Simmons*[2] and *Graham v. Florida*,[3] this Court referenced the importance of "transient rashness, proclivity for risk, and inability to assess consequences." *Miller*, 567 U.S. at 472. Evaluating *Johnson v. Texas*[4] and *Eddings v. Oklahoma*,[5] this Court noted that the signature qualities of youth—including immaturity, irresponsibility, impetuousness, and recklessness—are all transient. *Id.* at 476. This Court also acknowledged the significant difficulty "of distinguishing at this early age

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

between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80 (internal quotation marks omitted).

Transient immaturity was the foundation of *Miller*. And transient immaturity has been at the core of this Court's juvenile Eighth Amendment jurisprudence for more than 20 years. *See Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982); *Johnson v. Texas*, 509 U.S. 350, 368 (1993); *Roper v. Simmons*, 543 U.S. 551, 573 (2005); *Graham v. Florida*, 560 U.S. 48, 72-73 (2010); *Montgomery v. Louisiana*, 577 U.S. 190, 209 (2016).

ii. The Arizona Supreme Court incorrectly believed any consideration of youth was constitutionally adequate.

Because of this Court's substantive ruling in *Miller*, mere consideration of youth is inadequate. When a juvenile defendant's crime reflects transient immaturity, a life-without-parole sentence is unconstitutional. *Miller*, 567 U.S. at 479; *Montgomery*, 577 U.S. at 195; *Jones*, 593 U.S. at 106 n.2.

The Arizona Supreme Court initially created a hearing that would allow natural-life defendants to raise as-applied challenges to their sentences and prove that their crimes were the product of transient immaturity. *State v. Valencia*, 386 P.3d 392, 396 ¶ 18 (Ariz. 2016).

Three Petitioners here were pursuing that hearing: Conley, Bosquez, and Rutledge. Petitioner Cruz had the hearing at the trial court and was seeking appellate review of the merits of the decision. For the other four Petitioners—DeShaw, Purcell, Tatum, and Najar—the state stipulated to resentencings.

But the Arizona Supreme Court eliminated that hearing in *Bassett*, 535 P.3d at 12 ¶ 35.

Applying *Bassett*, Arizona courts have denied Conley, Bosquez, and Rutledge any hearing to determine whether their sentences were constitutional. The Arizona Court of Appeals has denied Cruz of any meaningful review of the merits of hearing that did take place. And the courts have dismissed the resentencings for DeShaw, Purcell, Tatum, and Najar.

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

But the constitutional significance of youth was not clear until this Court issued *Miller*.

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

This was sentencing scheme that the Arizona Supreme Court approved in *Bassett*, 535 P.3d at 12 ¶ 35. The court concluded the sentencer had issued a *Miller*-compliant sentence because the trial court had the discretion to choose between two versions of life-without-parole and "was required to consider [the defendant's] age and the qualities of youth as mitigating factors in sentencing." *Id.*

But this is also the error. With no guidelines or presumptions for the decision between "life" and "natural life," a defendant's youth could be meaningless. A court could consider

youth, find it compelling, make findings that amounted to transient immaturity, and still impose a natural life sentence.

We see the problem in Petitioners' cases.

For example, the judge who sentenced Scott DeShaw concluded, "the mitigating circumstances in this case are sufficiently substantial to outweigh the aggravating circumstances proved by the State and to call for leniency." Pet. Appx. 5a. The court found age and its transient characteristics mitigating: "I have given great weight to the defendant's youthful age, his emotional and moral immaturity. I have given significant weight to the defendant's difficult childhood and dysfunctional family experiences, and given some weight to the influence of the co-defendant Aaron Hoskins upon this defendant, Scott DeShaw." *Id.* The court also found DeShaw had "demonstrated good behavior while incarcerated since his arrest" three years earlier. *Id.* at 4a.

And the judge who sentenced Bobby Purcell found "that two of the mitigating factors—defendant's age and his lack of family support—are sufficiently substantial to call for leniency." Pet. Appx. 26a. The judge further believed that Purcell would "do well in the structured environment of a prison and that he possesses the capacity to be meaningfully rehabilitated." *Id.* Purcell just hadn't proved that he *would* be rehabilitated. *Id.*

These judges focused on the transient qualities of youth—immaturity, rashness, susceptibility to influence, incomplete moral development, and the capacity to change.

But because there was no guidance between "natural life" and "life," the judges imposed "natural life" sentences despite age and transient immaturity.

Miller provided the guidance that was lacking in Arizona. After *Miller* and *Montgomery*, a "natural life" sentence is disproportionate under the Eighth Amendment if the crime reflects

transient immaturity. Rather, "natural life" should be reserved for only the rare child offender. This means that judges in Arizona now know that when the person before them committed their offense when they were under 18, the strong presumption is "life."

And this guidance is even more important when the child offender faced the death penalty. Six Petitioners were sentenced before this Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper*, this Court declared death an unconstitutional sentence for people who committed their crimes as juveniles. *Id.* at 573. But that's the sentence many people faced—including six of the Petitioners.

Scott DeShaw, Bobby Purcell, and Bobby Tatum had to fight for their lives during sentencing. William Najar, Jermaine Rutledge, and Ralph Cruz entered plea agreements to avoid a possible death sentence. But the statutory availability of death still loomed over their cases.

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

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

Miller provided the guidance Arizona sentencers needed. Contrary to the Arizona Supreme Court's rationale, mere consideration of youth is not enough. If a child offender's crime reflects transient immaturity, the judge must sentence them to life with the possibility of parole. A harsher penalty is disproportionate under the Eighth Amendment.

2. This case is an ideal vehicle to resolve the Arizona Supreme Court's error and prevent further disregard for this Court's case law.

This issue has twice come before this Court. The issue first came before this Court in *Bassett v. Arizona*, No. 23-830. After this Court denied certiorari, the issue was more recently presented to this Court in the combined petition of five defendants in *Petrone-Cabanas v. Arizona*, No. 24-391.[6]

In both cases, the State of Arizona did not defend the Arizona Supreme Court's decision.

Instead, Arizona offered three arguments for why this Court should decline certiorari. First, the judges in the prior cases in fact believed parole was available, and thus "fortuitously complied with *Miller*." *Bassett v. Arizona*, BIO 14-21, 27; *Petrone-Cabanas v. Arizona*, BIO 14-15, 17, 21-26; *accord Bassett v. Arizona*, 603 U.S. __, 144 S. Ct. 2494, 2496-97 (2024) (Sotomayor, J., dissenting from denial of certiorari). Second, the prior petitioners received an individualized sentencing during which youth was properly considered. *Bassett* BIO 17-18; *Petrone-Cabanas* BIO 21-26; *accord Bassett*, 144 S. Ct. at 2497-98 (Sotomayor, J., dissenting from denial of certiorari). Third, legislative and judicial fixes resolved the issue. *Bassett* BIO 17, 20-21, 23-24; *Petrone-Cabanas* BIO 6 n.4, 12, 23, 28; *accord Bassett*, 144 S. Ct. at 2498 (Sotomayor, J., dissenting from denial of certiorari).

Each argument supports granting this Petition.

a. The Petitioners represent the gamut of possible sentences.

Arizona's first contention has been "that the sentencing court 'was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller*' because of a 'widespread mistaken belief among Arizona judges and attorneys that the release-eligible option included

[6] Felipe Petrone-Cabanas was the lead case. He was joined by Charles Wagner, Jonathan Arias, Thomas Odom, and Christopher McLeod.

parole eligibility.'" *Bassett*, 144 S. Ct. at 2496 (Sotomayor, J., dissenting from denial of certiorari).

But Arizona courts acknowledged the elimination of parole shortly after the legislature eliminated it. *See State v. Rosario*, 987 P.2d 226, 230 (Ariz. App. 1999).

And "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). As Justice Sotomayor recognized in her *Bassett* dissent, the state even argued in another case that "Arizona statutory law at all relevant times unambiguously forbade parole to anyone convicted of first-degree murder after 1993." *Id.* (quoting Arizona's Motion to Dismiss in *Chaparro v. Ryan*, No. 2:19-cv-00650 (D. Ariz. Mar. 27, 2019), p.3).

The State's argument is thus speculative and "inconsistent with the presumption that state courts know and follow the law." *Id.* at 2496-97 (quoting *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002)); *see also State v. Ramirez*, 871 P.2d 237, 249 (Ariz. 1994) ("Moreover, the trial court is presumed to know and follow the law.").

In *Bassett*, the strongest evidence of a mistake was that the sentencer imposed a parole-eligible sentence. "Bassett's sentencer actually considered whether he should be parole-eligible for Tapia's murder and imposed what it believed was a parole-eligible sentence for Pedroza's murder." *Bassett* BIO 22. The state conceded this actual consideration was necessary for the sentence to be constitutional: "But for the sentencer's actual consideration of parole-eligibility and the subsequent statute effectuating this sentence, there would be a *Miller* violation." *Bassett* BIO 23.

But this case presents the broadest gamut of possible sentences—including cases in which there is no evidence of confusion.

For example, DeShaw, Purcell, Tatum, and Najar were all sentenced to life without parole. *State v. DeShaw*, 2024 WL 3160590, ¶ 2 (Ariz. App. 2024, Memo.).

More than that, in at least two cases—DeShaw and Tatum—there is no evidence that the sentencer mistakenly believed parole was available. Below, the State repeated its argument that there was a widespread mistaken belief. But the state provided no evidence to suggest that the sentencer mistakenly believed parole was available for DeShaw or Tatum.

Cruz, on the other hand, was sentenced to both "natural life" and "life." *State v. Cruz*, 2024 WL 2164842, ¶ 5 n.2 (Ariz. App. 2024, Memo.). And the Arizona Court of Appeals has acknowledged that his "life" sentence is now parole-eligible. *Id.*

If the sentencer's mistaken belief that parole was available was reason to deny certiorari in *Bassett*, this case is the ideal vehicle to grant review. It includes at least two cases where the sentencers did not mistakenly believe parole was available.

But even if such evidence were presented for the first time before this Court, the argument evades the fundamental issue. At its core, "*Miller* required a discretionary sentencing procedure." *Jones*, 593 U.S. at 110. That discretionary sentencing procedure required the option "to impose a different punishment than life without parole." *Id.* at 108 (quotation marks omitted). Arizona's sentencing regime did not allow that discretion when the Petitioners were sentenced.

b. No Petitioner was sentenced under a scheme that authorized a parole-eligible sentence.

Arizona next argued that the prior petitioners "did, in fact, receive 'an individualized sentencing hearing at which his youth and attendant characteristics were considered' as mitigation evidence." *Bassett*, 144 S. Ct. at 2497 (Sotomayor, J., dissenting from denial of certiorari)

But *Miller* and its progeny require the ability to "impose a lesser sentence than life without parole …." *Jones*, 593 U.S. at 112. Consideration of youth on its own is not sufficient. A scheme is constitutional "only so long as 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." *Jones*, 593 U.S. at 106.

To the extent an Arizona judge could consider youth, the sentencing scheme still mandated a life-without-parole sentence. While there were two versions of life without parole, life without parole was the only option.

But there's a more fundamental problem with Arizona's argument: it ignores the substantive side of *Miller* and its progeny.

When each Petitioner was sentenced, Arizona provided no guidance on choosing between a "life" or "natural life" sentence. *State v. Wagner*, 982 P.2d 270, 273 ¶ 16 (Ariz. 1999). There wasn't even a presumption in favor of "life." *State v. Fell*, 115 P.3d 594, 598 ¶ 15 (Ariz. 2005). Under Arizona's system, a sentencer could be fully convinced that the crime resulted from transient immaturity and still impose a "natural life" sentence.

The importance of youth did not become clear until this Court issued *Miller*. As Justice Sotomayor explained: "Because Bassett was sentenced well before *Miller*, the sentencing court could not have adequately considered Bassett's youth, his capacity for rehabilitation, or the necessity of a parole-eligible sentence." *Bassett*, 144 S. Ct. at 2497 (Sotomayor, J., dissenting from denial of certiorari).

Sure, Arizona courts generally understood that youth was mitigating.

But it wasn't until *Miller* that Arizona courts understood that parole was constitutionally required when a juvenile's crime reflected transient immaturity.

c. Most Petitioners were sentenced under a scheme that allowed death for a minor—which affected how the sentencer considered youth.

More troubling still, six of the Petitioners here—DeShaw, Purcell, Tatum, Najar, Rutledge, and Cruz—were sentenced before this Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). That means all six were sentenced when death was still a viable sentence for juvenile offenders.

In three cases—DeShaw, Purcell, and Tatum—the prosecution actively pursued death. The sentencer thus had to decide whether death was an appropriate sentence. In the other three—Najar, Rutledge, and Cruz—the state dismissed its requests for the death penalty. But statutory eligibility still existed.

This fundamentally changed how the judges considered the sentences.

In Arizona, once the prosecution proves a single aggravating factor, death becomes the starting point. Ariz. Rev. Stat. § 13-751(E) (2025); Ariz. Rev. Stat. § 13-703(E) (2005). "The trier of fact shall impose a sentence of death if the trier of fact finds one or more of the aggravating circumstances enumerated in subsection F of this section and then determines that there are no mitigating circumstances sufficiently substantial to call for leniency." Ariz. Rev. Stat. § 13-751(E) (2025); Ariz. Rev. Stat. § 13-703(E) (2005).

To avoid death, the defense must present mitigation that is substantial enough to call for leniency. *Walton v. Arizona*, 497 U.S. 639, 649-51 (1990); *see also State v. Brewer*, 826 P.2d 783, 794-95 (Ariz. 1992) (citing *Walton*); *State v. Salazar*, 844 P.2d 566, 578 (Ariz. 1992) (citing *Walton* and *Brewer*); *State v. Miles*, 918 P.2d 1028, 1037 (Ariz. 1996) (citing *Salazar*); *State v. Glassel*, 116 P.3d 1193, 1219 ¶ 117 (Ariz. 2005) (citing *Miles*).

Once an aggravating factor is proved, judges assess the mitigation to determine whether they should deviate *down* from death.

Here, each judge found youth sufficiently substantial to warrant a sentence less than death. For DeShaw, Purcell, and Tatum, each sentencing judge relied on youth to explain why the mitigation was substantial enough to warrant leniency—a sentence less than death.

But *Miller* requires that the sentencer work in the other direction. The starting point must be a sentence of life with the possibility of parole. It is then only the rare child offender—the one who is permanently incorrigible—who can be sentenced to life without parole.

d. Most of the Petitioners did not benefit from Arizona's legislative "fix."

Finally, the State of Arizona has argued "that 'the juveniles who received parole-eligible sentences will all receive parole eligibility within 25 years by virtue of the 2014 legislative fix,' so the 'functional outcome is no different than if parole-eligibility had been on the books all along.'" *Bassett*, 144 S. Ct. at 2498 (Sotomayor, J., dissenting from denial of certiorari).

As Justice Sotomayor said, "That is wrong." *Id.*

The legislative fix only applies to "life" sentences, not "natural life" sentences. *See id.*

Here, all eight Petitioners were sentenced to "natural life." For most of the Petitioners, "natural life" was the only relevant sentence. Cruz was also sentenced to a "life" sentence for one of his offenses. But his two "natural life" sentences remain untouched.

In four of the cases—DeShaw, Purcell, Tatum, and Najar—Arizona had agreed to resentencing. But the Arizona Supreme Court's decision ultimately deprived them of that resentencing. In three of them—Conley, Bosquez, and Rutledge—the Petitioners were seeking a hearing to challenge their sentences as disproportionate. But the Arizona Supreme Court's decision deprived them of that opportunity. And in one—Cruz—the Petitioner had the hearing and sought to challenge the merits of the decision before an appellate court. But the Arizona Supreme Court's decision deprived him of any meaningful appellate review.

None of the Petitioners benefited from the legislative fix.

As a result, the Arizona Supreme Court's decision to ignore this Court's precedent has deprived each of either resentencing or a meaningful review of their sentence.

CONCLUSION

The Arizona Supreme Court defied this Court's precedent when it decided *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3 (Ariz. 2023). *Bassett* presented a unique factual scenario under which the trial court may have, as Arizona has argued, "fortuitously complied with *Miller*." But Arizona's appellate courts have since applied *Bassett* to all cases seeking to challenge sentences under *Miller*.

As a result, Petitioners DeShaw, Purcell, Tatum, and Najar were stripped of resentencings that the State of Arizona had agreed to. Conley, Bosquez, and Rutledge were divested of their ability to challenge their sentences during an evidentiary hearing. And Cruz has lost his ability to secure meaningful appellate review of his hearing.

This Court should grant this Petition for Writ of Certiorari.

Respectfully submitted this 1st day of April, 2025.

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