No. 24–6939

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

"*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18." *Jones v. Mississippi*, 593 U.S. 98, 118 (2021); *Miller v. Alabama*, 567 U.S. 460 (2012). "[A] discretionary sentencing procedure," however, "suffices to ensure individualized consideration of a defendant's youth[.]" *Jones*, 593 U.S. at 118.

Petitioners' sentencers made individualized choices between two non-capital sentencing options: (1) natural life, and (2) life with the possibility of "release" after 25 years. Although neither option provided for parole-eligibility, there was at the time of Petitioners' sentencings "pervasive confusion by both bench and bar about parole availability" and a "systemic failure to recognize" that parole was no longer available. *State v. Anderson*, 547 P.3d 345, 348 ¶ 2, 351 ¶ 25 (Ariz. 2024). Thus, all available evidence suggests that Petitioners' sentencers believed that the release-eligible option included parole-eligibility. Given the unique circumstances that existed in Arizona at the time of Petitioners' sentencings, the Arizona Supreme Court has thus explained that natural life sentences like those imposed on Petitioners were not mandatory "within the meaning of *Miller*." *State ex rel. Mitchell v. Cooper (Bassett)*, 535 P.3d 3, 6 ¶ 2 (Ariz. 2023), *cert. denied sub nom. Bassett v. Arizona*, 144 S. Ct. 2494 (2024).

The question presented is:

Whether *Miller* permits a juvenile to be sentenced to a parole-ineligible natural life sentence when (1) a state had multiple non-capital penalties in place at the time of sentencing, (2) judges and attorneys at the time of sentencing operated

under the widespread mistaken belief that one of those penalties carried the possibility of parole, (3) all available evidence suggests that Petitioners' sentencers shared the same mistaken belief and actually considered parole-eligibility; (4) no sentencer ever affirmatively suggested that parole was not available, and (5) subsequent changes in Arizona law make enforceable any parole-eligible sentence imposed.

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INTRODUCTION

Petitioners seek to relitigate *Bassett v. Arizona*, 144 S. Ct. 2494 (2024), which this Court declined to review a year ago. But not even the State disputed that *Bassett* was the ideal vehicle to review this question if the Court was going to review it. Indeed, the Petitioner in *Bassett* noted in his reply that Arizona did "not dispute" that *Bassett* was "an *ideal vehicle* for addressing a 'recurring' question in Arizona," and that Arizona had actually earlier identified *Bassett* as a "'*better vehicle*' for addressing" similar issues raised in four other cases. *Bassett* Reply, at 12–13 (citation omitted; emphasis added). Nonetheless, this Court denied certiorari.[1] *Bassett*, 144 S. Ct. 2494.

Petitioners also seek to relitigate *Petrone-Cabanas v. Arizona*, 145 S. Ct. 1137 (2025), which this Court declined to review just six months ago. Like the present petitioners, Pet. at 2, 17, 28–30, the five *Petrone-Cabanas* petitioners sought to test *Bassett*'s limits and argued that their case was an "ideal" and "excellent" vehicle for review because "even if an unforeseen vehicle problem emerged in a particular case, this Court would still be assured of its ability to resolve the question presented." *Petrone-Cabanas* Pet. at 27. Nonetheless, this Court again denied certiorari. *Petrone-Cabanas*, 145 S. Ct. 1137.

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[1] This Court also denied certiorari in the four other cases, which presented similar arguments in the context of federal habeas review. *See Jessup v. Thornell*, 143 S. Ct. 1755 (2023); *Rue v. Thornell*, 143 S. Ct. 1758 (2023); *Rojas v. Thornell*, 143 S. Ct. 1757 (2023); *Aguilar v. Thornell*, 143 S. Ct. 1757 (2023).

Now, after this Court denied certiorari in *Bassett*—the seminal, published Arizona case on this issue—Petitioners ask for review of the unpublished, mostly summary decisions in their cases, which uniformly follow *Bassett*'s reasoning, just as the five in *Petrone-Cabanas* did. *See* Pet. App. at 142a–143a, 200a–204a, 208a–213a, 251–258a, 282a–284a. In doing so, they urge largely the same arguments urged by Bassett and the five *Petrone-Cabanas* petitioners.

Alternatively, Petitioners attempt to distinguish their cases from *Bassett* and *Petrone-Cabanas* on two fronts. First, they point out that some of them faced death as a possible sentence. But two of the *Petrone-Cabanas* petitioners did as well. *Petrone-Cabanas* Pet. at 19–24. The presence (and rejection) of this third option does not change the fact that Petitioners' sentencers also rejected the option of a release-eligible life sentence in their cases. Nor does it change the widespread, mistaken belief about parole-availability that existed throughout Arizona at the time. Only three of Petitioners' sentencers considered death as a possible penalty at their sentencings, and all eliminated the option before choosing natural life from the two remaining noncapital options.

Second, Petitioners make record-intensive claims that their particular sentencers may have somehow been immune to the widespread, mistaken belief about parole availability—just as the *Petrone-Cabanas* petitioners did. *Compare* Pet. at 2, 29, *with Petrone-Cabanas* Pet. at 24–27. But this ignores the systemic nature of the problem—even the Arizona Supreme Court said unequivocally and repeatedly during the relevant timeframe that parole was available. It also ignores

direct and circumstantial evidence that Petitioners' sentencers actually believed parole-eligibility was available. Nor is there anything in Petitioners' records that affirmatively indicates their sentencers were uniquely aware of the systemic mistake shared by Arizona's entire judiciary.

Moreover, this latter argument amounts to a claim that there is *insufficient evidence* that their sentencers believed parole-eligibility was available, and thus insufficient evidence that their sentencings complied with *Miller*. But examining whether there is sufficient evidence in any particular case—to correct for possible errors—is emphatically *not* the purpose of this Court's review. And there is simply no error to be found.

This Court declined to grant review in six prior Arizona cases involving similar issues, including the seminal Arizona case (*Bassett*), a case testing *Bassett*'s limits in five different factual scenarios (*Petrone-Cabanas*), and four cases raising similar claims in the habeas context (*Jessup, Rue*, *Rojas*, and *Aguilar*). It should do the same here.

STATEMENT OF THE CASE

A. Arizona Statutory Law.

When Petitioners were sentenced, Arizona's first-degree murder statute provided two sentencing options for juveniles convicted of first-degree murder: (1) natural life, meaning that "the defendant 'is not eligible for . . . release[ ] on any basis,'" or (2) "life without eligibility for 'release[ ] on any basis until the completion of the service of twenty-five calendar years[.]'"[2] *Bassett*, 535 P.3d at 8 ¶ 17 (quoting Ariz. Rev. Stat. § 13–703(A) (2003)). Death was also listed as a third statutory option, but it was eliminated for juvenile offenders by *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

As for the types of "release" available to those who received release-eligible sentences, Arizona "eliminated parole for all offenses committed on or after January 1, 1994." *Bassett*, 535 P.3d at 8 ¶ 17. Thus, the only available type of "release" under the statute was executive clemency. *Id.*

However, due to a widespread, mistaken belief among Arizona judges and attorneys that the release-eligible option included parole-eligibility, Arizona judges continued to impose sentences providing for parole-eligibility despite its unavailability under Arizona's statutes.

As the State noted last year in *Bassett*, "[t]he mistaken belief appears to have been universal." Br. in Opp'n 3, *Bassett*, 144 S. Ct. 2494 (No. 23-830). During the

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[2] Or "thirty-five years if the victim was under fifteen years of age," as was the case for Petitioner Cruz. Ariz. Rev. Stat. § 13–703(A) (2000).

period in which parole was not available, the Arizona Supreme Court repeatedly declared that parole was available. *See, e.g., State v. Wagner*, 982 P.2d 270, 273 ¶ 11 (Ariz. 1999) ("Arizona's statute . . . states with clarity that the punishment for committing first degree murder is either death, natural life, or *life in prison with the possibility of parole*.") (emphasis added); *State v. Fell*, 115 P.3d 594, 597–98 ¶¶ 11, 14–15 (Ariz. 2005) ("[W]e today confirm" the accuracy of an earlier statement in 2001 that the statute included "*life imprisonment with the possibility of parole* or imprisonment for 'natural life' without the possibility of release.") (emphasis added).

Indeed, "[t]he Arizona reporter is full of cases in which the sentencing judge mistakenly thought that he or she had discretion to allow parole. . . . '[P]rosecutors continued to offer parole in plea agreements, and judges continued to accept such agreements and impose sentences of life with the possibility of parole.'" *Jessup v. Shinn*, 31 F.4th 1262, 1268 n.1 (9th Cir. 2022) (internal citations omitted), *cert. denied sub nom. Jessup v. Thornell*, 143 S. Ct. 1755 (2023); *see also* Katherine Puzauskas & Kevin Morrow, *No Indeterminate Sentencing Without Parole*, 44 Ohio N.U. L. Rev. 263, 288 (2018) ("[S]ince 1994 the Arizona judiciary has sentenced more than two hundred defendants to life imprisonment with a *possibility of parole*[.]").

Last year, the Arizona Supreme Court again reiterated that there was "pervasive confusion by both bench and bar about parole availability after it was abolished in Arizona[.]" *Anderson*, 547 P.3d at 348 ¶ 2; *see also id.* at 350 ¶ 17 ("Appellate courts, including this Court, published decisions as late as 2013

indicating parole was still available for those convicted of felonies with the possibility of release after twenty-five years.").

The confusion likely resulted from the indirect way in which the elimination of parole-eligibility was implemented. The legislature left penalties like those in the first-degree murder statute (in Title 13, which governs criminal offenses) totally unchanged when it eliminated parole in 1994. Instead, the critical change here was implemented through the addition of a single sentence in Title 41, which governs how state agencies operate: "This section applies only to persons who commit felony offenses before January 1, 1994." Ariz. Rev. Stat. § 41–1604.09(I) (1994).

Failure to recognize the interplay between Title 13 and the changes in Title 41 resulted in a "systemic failure to recognize the effect of the change in the law regarding parole" that continued for nearly two decades. *Anderson*, 547 P.3d at 350–51 ¶¶ 17, 25. Arizona "trial courts since 1994 have interchangeably used the words 'parole' and 'release' when imposing non-natural-life sentences." *Id.* at 350 ¶ 17.

To remedy the situation, in 2014, Arizona's legislature passed a statute granting parole-eligibility to juvenile offenders who received the release-eligible

option. Ariz. Rev. Stat. § 13–716. The change applied retroactively to juveniles sentenced between 1994 and 2014.[3] *Id.*

B. Factual and Procedural Background.

In 2000, sixteen-year-old Ralph Cruz carjacked victim Lucila. Record on Appeal ("R.O.A.") 18, at 62–63, 86, 88. As Lucila's six-year-old son and seven-year-old daughter watched from the back seat, Cruz shot and killed her. *Id.* at 87–89. He then shot both children in the head at close range and drove over Lucila's body as he fled. *Id.* at 88–90. When he later dumped the children's bodies, he drove over the daughter's arm as well. *Id.* at 62, 90. Cruz pled guilty to three counts of first-degree murder. *Id.* at 35–50, 63. Cruz's plea agreement removed the death penalty from consideration at sentencing. *Id.* at 35. For Lucila's murder, the trial court imposed a parole-eligible sentence. *Id.* at 72–73. For the murders of the children, it imposed natural life sentences. *Id.*

In 1998, sixteen-year-old Bobby Purcell fired his shotgun into a crowd of teenagers based on perceived disrespect and killed two of them. R.O.A. 151, at 3. He acted alone. *Id.* at 3–4. A jury convicted him of two counts of first-degree murder and several counts of attempted first-degree murder. R.O.A. 132, at 1–8. The trial court imposed two natural life sentences, noting that he was "an extreme danger to the community." R.O.A. 151, at 9.

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[3] Arizona also enforces parole-eligible sentences imposed on adult offenders when parole was unavailable. *See Chaparro v. Shinn*, 459 P.3d 50, 55 ¶ 23 (Ariz. 2020) (enforcing such sentences imposed after a trial); *see also* Ariz. Rev. Stat. § 13–718 (enforcing such sentences imposed pursuant to a plea agreement).

In 2004, seventeen-year-old Joseph Conley broke into a home and waited there for five hours for the owner to return. R.O.A. 157, at 4, 17; R.O.A. 167, at 5, 32. When she did, Conley "stabbed her in the back with a butcher knife as she tried to flee out the front door." R.O.A. 157, at 4. He attempted to steal her car but was unable to shift into reverse due to an interlock device. *Id.* He fled and told two friends what he had done. *Id.* at 5. A jury convicted him of first-degree murder. R.O.A. 167, at 41. The trial court found that he posed a significant risk to the community and sentenced him to natural life. *Id.* The death penalty was never alleged or considered by the trial court.

In June 2010, seventeen-year-old Jose Bosquez and two co-defendants lured David E. to a park, where they beat, robbed, and bound him with tape before placing him inside the trunk of his own car. R.O.A. 45, at 6. They drove his vehicle around Phoenix, opening the trunk several times to show him to friends. R.O.A. 47, at 1. Bosquez refused to allow anyone to give him water and later abandoned the vehicle, leaving David to succumb to heat exhaustion or oxygen deprivation in the trunk. Pet. App. at 230a–231a, 234a. His decomposing body was discovered within days due to the extreme summer heat (and consequent stench). R.O.A. 47, at 1; 45, at 1. Bosquez bragged about the murder and told his girlfriend to watch the news. Pet. App. at 235a. He pled guilty, and the court imposed a natural life sentence. *Id.* at 219a–220a, 248a. The death penalty was never alleged or considered by the trial court.

In 1994, seventeen-year-old Scott DeShaw stole a gun so that he and co-defendant could carjack a vehicle and kill its driver. R.O.A. 299, at 6; 255, at 2. They carjacked Crystel C., shot her multiple times, and left her to die in the desert. R.O.A. 255, at 2–3; 299, at 5–6. They were arrested after they crashed her vehicle the next day; DeShaw had her key ring in his pocket. R.O.A. 255, at 4–6; 299, at 4–6. A jury found him guilty of first-degree murder. R.O.A. 189. The trial court imposed a natural life sentence. R.O.A. 256, at 3.

In 1994, seventeen-year-old Bobby Tatum and four co-defendants planned to rob a woman at an ATM in order to obtain new rims for the vehicle Tatum was driving, but as they approached, she drove off. R.O.A. 1, at 1; 519, at 23; 557, at 4–5. They got back into the vehicle and noticed a Monte Carlo that Tatum wanted to steal for its rims; they began to follow it. R.O.A. 557, at 4–5. When it parked, a co-defendant fired shots at one of its occupants, killing her. *Id.* As they drove off, Tatum leaned out the window and fired a round from a handgun at the Monte Carlo. *Id.* A jury convicted Tatum of first-degree murder. R.O.A. 519, at 17. The trial court imposed a natural life sentence. *Id.* at 28.

In 1997, two young adults, Chase C. and Ryan H., were celebrating their birthdays in Chase's new Ford Explorer. *State v. Rutledge*, 4 P.3d 444, 445 ¶¶ 2–5. (Ariz. App. 2000). Fifteen-year-old Jermaine Rutledge and his brother, Sherman, rode in the back seat. *Id.* When Chase stopped at a park, Rutledge held a knife to his throat. *Id.* They struggled over the knife, and Chase was able to push Rutledge away and get out of the vehicle. *Id.* Sherman shot Chase in the back as he ran. *Id.*

He also shot Ryan, who died. *Id.* Sherman and Rutledge drove away in the vehicle. *Id.* A jury found Rutledge guilty of first-degree murder; the trial court imposed a natural life sentence. *Id.*; Pet. App. 184a. The death penalty was never alleged or considered by the trial court. R.O.A. 136.

In 1998, sixteen-year-old William Najar and four co-defendants approached Michael D.'s campsite. R.O.A. 499, at 4–7. Michael welcomed the group, shared his marijuana with them, and allowed them to shoot targets with his guns. *Id.* Najar pointed a rifle at the back of Michael's head several times when he was not looking before eventually pulling the trigger and killing him. *Id.* The group buried Michael in a shallow grave nearby and divided up his belongings. *Id.* Najar took Michael's drug stash and later told a friend that he had obtained methamphetamine by shooting a hiker in the back of his head. R.O.A. 484, at 122–27. A jury found Najar guilty of first-degree murder. R.O.A. 499, at 7–8. The trial court imposed a natural life sentence. *Id.* It did not consider the death penalty at sentencing after the State withdrew this allegation. R.O.A. 375, at 6.

All petitioners raised *Miller* claims in post-conviction proceedings and argued that Arizona's sentencing scheme violated *Miller*. Pet. App. at 133a–143a, 200a–214a, 251a–255a, 261a–284a. Conley, Bosquez, and Rutledge argued that they were entitled to an evidentiary hearing to prove that they had been transiently immature, but after *Jones* the state superior courts found that such a hearing was unnecessary. *Id.* at 201a–202a, 209a–210a, 252a–255a. Their *Miller* claims were summarily rejected by the Arizona Court of Appeals. *Id.* at 205a, 213a, 258a. Cruz

received a 10-day evidentiary hearing where he attempted but failed to prove that he was transiently immature.[4] *Id.* at 262a–279a. The Arizona Court of Appeals rejected his claim that this was an abuse of discretion, explaining that no evidentiary hearing or specific finding regarding transient immaturity was required after *Jones*. *Id.* at 281a–284a. In 2016, this Court remanded DeShaw, Tatum, Purcell, and Najar's cases for reconsideration in light of *Montgomery v. Louisiana,* 577 U.S. 190, 206 (2016). *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). After the remand, the State initially stipulated to resentencing in each case. Pet. App. at 137a. The superior court later vacated the resentencings at the State's request based on *Jones*, which held that no finding regarding permanent incorrigibility was necessary. *Id.* The Arizona Court of Appeals affirmed. *Id.* at 136a–143a.[5] The Arizona Supreme Court summarily denied review in every case. *Id.* at 145a, 207a, 215a, 260a, 286a.

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[4] Prior to *Jones*, the Arizona Supreme Court had held that some juveniles were entitled to evidentiary hearings to prove they were not permanently incorrigible. *State v. Valencia*, 386 P.3d 392 (Ariz. 2016), *overruled by Bassett*, 535 P.3d at 14–15 ¶ 47.

[5] Although the State argued on appeal that their original sentences complied with *Miller*, it conceded that the stipulations to resentencing should have been enforced based on state law regarding the enforceability of stipulations. Pet. App. at 139a, 142a. The Arizona Court of Appeals rejected this concession, and the Arizona Supreme Court summarily denied review. Pet. App. at 134a–146a.

REASONS FOR NOT GRANTING THE WRIT

I. This case is a poor vehicle for this Court's review.

Petitioners do not dispute that the issues presented here affect only a handful of Arizona defendants, and no defendant in any other state. As for the specific arguments now raised by Petitioners, they are either recycled from *Bassett* or *Petrone-Cabanas* (or both), inapplicable to the majority of Petitioners, or dependent on purported peculiarities in individual records. At bottom, these eight cases present a significantly *worse* vehicle than *Bassett*, in which this Court denied certiorari a year ago, and *Petrone-Cabanas*, in which this Court denied certiorari six months ago.

A. *Bassett* already clearly presented the core legal dispute at issue here, and this Court denied review.

Put simply, the core legal dispute here and in *Bassett* has been whether the systemic mistake of law made by Arizona judges on the topic of parole eligibility matters in a *Miller* analysis. The State has not disputed that—absent unusual circumstances like those present in Arizona during the relevant timeframe—the unavailability of a parole-eligible option would typically lead to a violation of *Miller*. But in the unusual situation where judges believed that parole was available, acted as if parole was available, and parole-eligible sentences that were imposed are enforced, the State has contended that *Miller* is satisfied. In *Bassett*, the Arizona Supreme Court agreed, and this Court denied review.

Because Bassett committed two murders and received different sentences for each, *Bassett* presented a crystal-clear illustration of what Arizona's judiciary

believed its sentencing options to be during the period of pervasive confusion. For one murder, his sentencer imposed a sentence of "life with the possibility of parole after 25 years." *Bassett*, 535 P.3d at 13 ¶ 39. For the other murder, Bassett's sentencer rejected his pleas for parole-eligibility and imposed a natural life sentence. *Id*. Consequently, the Arizona Supreme Court found that his natural life sentence was not mandatory "within the meaning of *Miller*." *Id*. at 6 ¶ 2.

The court observed that the state statutes at issue in *Miller* provided only a single sentencing option for juvenile homicide offenders. *Id*. at 12 ¶ 36. Thus, those trial courts were "automatically precluded from considering whether youth and its attendant characteristics might justify a lesser sentence." *Id*.

In "stark contrast" to the state statutes at issue in *Miller*, Arizona's sentencing scheme provided "two sentencing options." *Id*. at 12 ¶¶ 36, 38–39. Thus, Bassett's sentencer made "an affirmative choice between types of sentences for Bassett's murder convictions[.]" *Id*. at 16 ¶ 52. Moreover, his sentencer "genuinely, if mistakenly, thought that he was considering a sentence of life with the possibility of *parole*." *Id*. at 12 ¶ 37. And "[r]egardless of whether parole was available at that time, Bassett would now be eligible for parole had the court imposed the lesser sentence" due to a subsequently enacted statute. *Id*. at 13 ¶ 38 (referencing Ariz. Rev. Stat. § 13–716). Thus, Bassett's sentencer was not required to sentence him to natural life, "as evidenced by its decision to sentence him to "life with the possibility of parole after 25 years" for the other murder. *Id*. at 13 ¶ 39. As a result, his "natural life sentence was not mandatory under *Miller*." *Id*.

Contrary to Petitioners' characterization, *Bassett* did not hold that the choice between sentencing options alone satisfied this Court's precedents. Pet. at ii, 1, 10, 20; *see Bassett*, 144 S. Ct. at 2496 n.1 (Sotomayor, J., dissenting) ("The State does not argue, *nor did the Arizona Supreme Court clearly hold*, that executive clemency qualifies as the equivalent of a parole-eligible sentence under *Miller*.") (emphasis added). Crucial to the Arizona Supreme Court's analysis were the two additional factors mentioned above: (1) the actual consideration of parole-eligibility and (2) the subsequent statute implementing parole procedures. It was the combination of all three factors—not just one—that rendered Bassett's sentence *Miller*-compliant.[6]

B. Petitioners' attempts to distinguish *Bassett* based on the records in their individual cases fail, and do not merit this Court's review in any event.

Petitioners argue that because some of their sentencers did not impose *both* non-capital sentencing options (as Bassett's sentencer did), *Bassett*'s reasoning is inapplicable to their cases. Pet. at 11, 29–30, 35. But, like Bassett, Petitioners received natural life sentences only after their sentencers considered their age and attendant characteristics and found that a parole-eligible sentence was inappropriate. And had their sentencers chosen the lesser sentence, they would presently be serving parole-eligible sentences, just as Bassett is for one of his two

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[6] Petitioners suggest that *Miller*'s inclusion of Arizona on a list of mandatory life-without-parole jurisdictions is conclusive. *See* Pet. at 7, 18. But *Miller* could not possibly have accounted for all three factors, given that it was decided two years prior to Arizona's 2014 statute effectuating parole-eligibility for release-eligible sentences. Nor is there any indication in *Miller* that this Court was aware of the "pervasive confusion" regarding parole-eligibility in Arizona. *Anderson*, 547 P.3d at 348 ¶ 2.

murders. And, in any event, Cruz *did* receive both types of sentences. R.O.A. 18, at 72–73.

Unlike in *Miller*, Petitioners' sentencers did not automatically impose their natural life sentences. Instead, they made a meaningful choice between two apparently available sentences while considering Petitioners' youth and attendant characteristics. The defendants in *Miller* came to this Court seeking a new sentencing proceeding at which their sentencers could consider, for the first time, whether parole-eligibility was appropriate and, if they concluded it was, could impose a parole-eligible sentence that would actually grant parole-eligibility. All available evidence suggests that Petitioners already received exactly what the *Miller* defendants sought.

To be sure, Arizona law did not provide a parole-eligible option at the time of Petitioners' sentencings (as was also true for Bassett and the *Petrone-Cabanas* petitioners). But their sentencers and countless others operated under a widespread misunderstanding of Arizona law, and thus wrongly believed that the *release*-eligible sentencing option in Arizona law included *parole*-eligibility. Dozens of other juveniles (and adults, for that matter) received parole-eligible sentences that were not legally available at the time, but which subsequent developments in Arizona law have made clear are completely enforceable. In this case, for example, the parole-eligible sentence imposed for one of Cruz's murders is, in fact, parole-eligible. *See* Pet. App. at 283a n.2.

Petitioners argue that Arizona's statutory system alone entitles them to relief under *Miller*, and that it is simply irrelevant if their sentencers rejected a parole-eligible sentence that would have actually granted parole-eligibility. Pet. at ii, 19–20, 25–26. But the same statutory system also governed Bassett, the five *Petrone-Cabanas* petitioners, and four prior habeas petitioners who raised similar claims. *See Jessup v. Thornell*, 143 S. Ct. 1755 (2023) (unanimously denying petition for writ of certiorari); *Rue v. Thornell*, 143 S. Ct. 1758 (2023) (same); *Rojas v. Thornell*, 143 S. Ct. 1757 (2023) (same); *Aguilar v. Thornell*, 143 S. Ct. 1757 (2023) (same).

Likewise, the same widespread mistaken belief that was present in *Bassett* was also present in Petitioners' cases. The misunderstanding is perhaps less plain in some cases than it was in *Bassett* and is in *Cruz* here, where the sentencer actually *imposed* a parole-eligible sentence for one murder. But the "pervasive confusion by both bench and bar about parole availability" and the "systemic failure to recognize" that parole was no longer available likewise existed at the time of Petitioners' sentencings. *Anderson*, 547 P.3d at 348 ¶ 2, 351 ¶ 25.

There is also direct and circumstantial evidence of that pervasive confusion present in the records of the present eight cases, and nothing suggests that Petitioners' sentencers were uniquely immune to the mistake that was shared by Arizona's entire judiciary. *See infra* at 35–38. Moreover, to the extent there is any dispute about that, it is not the proper subject of this Court's review. Even assuming Petitioners are right that some sentencers might have uniquely understood what their colleagues throughout the Arizona judiciary did not, the

question of what they understood would be record-intensive and case-specific. That is not the type of issue this Court typically reviews.

C. *Petrone-Cabanas* already tested the limits of *Bassett* in five factual scenarios analogous to the ones raised here.

The *Petrone-Cabanas* petitioners argued—just as the present petitioners do—that the availability of the death penalty distinguished their cases from *Bassett*. *Compare Petrone-Cabanas* Pet. at 19–24 (arguing that the death penalty "distorted the consideration of youth") *with* Pet. at 27 ("[D]eath threw the weighing askew."). Like the present petitioners, they raised similar arguments about Arizona's pre-*Roper* statutory scheme. *Compare Petrone-Cabanas* Pet. at 20–23 (arguing that once an aggravating factor had been proven, the defendant had the burden to prove sufficient mitigating circumstances to justify imposing a sentence less than death) *with* Pet. at 32–33 ("Once an aggravating factor is proved, judges assess the mitigation to determine whether they should deviate *down* from death.").

They further argued—just like the present petitioners—that their sentencers did not actually consider parole-eligible sentences. *Compare Petrone-Cabanas* Pet. at 24–27 (arguing that none of their sentencers considered parole-eligibility based on a mistaken interpretation of state law) *with* Pet. at 2, 27–30 (arguing that there is no evidence "of actual confusion" or "that the sentencer mistakenly believed parole was available"). And when presented with these arguments in *Petrone-Cabanas*, this Court appropriately denied review. *See also infra* at 35–38.

D. Petitioners are not similarly situated; they seek review of disparate aspects of *Miller*.

While all Petitioners argue that the Arizona Supreme Court has "flouted" this Court's precedent, they lack cohesiveness in arguing why this is so. Pet. at 17. This is especially apparent with regard to the remedy they seek. Three seek an evidentiary hearing (Conley, Bosquez, and Rutledge); four seek resentencing (DeShaw, Purcell, Tatum, and Najar); and one seeks "meaningful appellate review" of his 10-day evidentiary hearing (Cruz). *Id*. at 34–35. Petitioners gloss over these and other significant differences.

Four cases were consolidated below, while four others have never been consolidated—either to each other or to the other four. *Id.* at 11.

While Petitioners collectively argue that the death penalty "threw the weighing askew" at sentencing, only three actually faced the death penalty at sentencing (DeShaw, Purcell, and Tatum). *Id*. at 27.

One Petitioner—uniquely—received a 10-day evidentiary hearing where he tried but failed to prove that he was only transiently immature. Pet. App. at 262a–279a (Cruz). Another—also uniquely—argues that he received a natural life sentence *because* of his dysfunctional childhood. Pet. at 13 (Najar).

Quite simply, they are not similarly situated. The arguments in these eight cases have often been case-specific and record-intensive, have differed from each other over time, and have even differed over time within individual cases.

E. The issues raised involve only eight Arizona defendants and are unlikely to recur.

The systemic misunderstanding of law that led many Arizona judges to impose parole-eligible sentences that were not at the time authorized by statute is obviously unlikely to find many parallels in other states. There is no conflict among the states on the questions Petitioners raise. They do not argue that this issue involves any other state or federal court. *See* Supreme Court Rule 10. Even within Arizona, the issues raised would not affect any post-2014 offense. *See* Ariz. Rev. Stat. § 13–716 (enacted in 2014 and authorizing parole-eligibility for juvenile offenders who receive release-eligible sentences). Petitioners' unpublished, mostly summary decisions pose little danger of leading other courts astray. Even assuming the cases were wrongly decided (they were not), Petitioners ask for pure error correction and nothing else.

As the State has said before, "Arizona alone was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller*." Br. in Opp'n 27, *Bassett*, 144 S. Ct. 2494 (No. 23-830); *cf.* Pet. at 2, 28, 35. Within Arizona, the unique issue decided by *Bassett* affects only a handful of remaining defendants. And if this case were decided on the arguments that Petitioners now raise to distinguish their cases from *Bassett*, it would affect only a limited subset of those individuals on a case-by-case basis. This Court's review is not warranted.

II. The presence of death as an option at three sentencings did not create a *Miller* violation.

Petitioners make much of the fact that Purcell, DeShaw, and Tatum's sentencers considered the death penalty. Pet. at 27. While death sentences are no longer constitutionally permitted for juvenile offenders, *Roper v. Simmons*, 543 U.S. 551 (2005), this Court has never held that the mere act of considering and rejecting a death sentence for a juvenile offender renders secondary sentencing decisions unconstitutional.

If a sentencer found that death was an inappropriate penalty, it is immaterial that it was one of the three possibilities listed in Arizona's first-degree murder statute at the time the juvenile committed the crime. Merely eliminating one option did not relieve the sentencer of the need to distinguish between the other two options.

Nor was the death penalty "mandatory," as evidenced by the fact that no petitioner received it. For the presumption in favor of death to arise, the court had to find an aggravating factor with no sufficiently substantial mitigating factors. *See* Ariz. Rev. Stat. § 13–703(E) (1994) (stating that sentencing court "shall impose a sentence of death if the court finds one or more of the [enumerated] aggravating circumstances . . . and that there are no mitigating circumstances sufficiently substantial to call for leniency").

In all cases, the sentencers chose between natural life and life with the possibility of release, and chose to impose a natural life sentence.

For example, at Purcell's sentencing hearing, after his sentencer ruled out death as an appropriate sentence, defense counsel requested that Purcell be given the opportunity for parole in the future, while the State requested that a natural life sentence be imposed. R.O.A. 196, at 12, 14. Choosing between the two non-capital options, the trial court elected to sentence Purcell to natural life because he was "an extreme danger to the community," and while he had "the *capacity* to be rehabilitated," it was not "*likely*" that he would be rehabilitated. R.O.A. 151, at 10–11 (emphasis added).

In *DeShaw*, the state's sentencing memorandum and presentence investigation report identified the three available sentences. R.O.A. 226, at 3; 253, at 6. His sentencer acknowledged having considered the information in his presentence report. R.O.A. 255, at 2. While his sentencer did not explicitly discuss the release-eligible sentence, it did reference the statute in which the distinct penalties were listed multiple times and weigh the aggravating and mitigating circumstances at length. R.O.A. 255, at 1–2 (referencing Ariz. Rev. Stat. § 13–703 in the special verdict); 289 at 10 (referencing the same statute at sentencing).

Although the judge found "that the mitigating circumstances" were "sufficiently substantial to outweigh the aggravating circumstances proved by the State and to call for leniency," R.O.A. 289, at 4, this did not mean the lowest possible sentence had to be imposed. Indeed, the sentencer's language simply tracked the death-penalty statute and thus explained why death was not imposed. *See* A.R.S. § 13–703(E) (1994) (stating that the sentencing court 'shall impose a

sentence of death if the court finds one or more of the [enumerated] aggravating circumstances . . . and that there are no mitigating circumstances sufficiently substantial to call for leniency").

The sentencer's other comments reveal why it chose the natural life sentence rather than the release-eligible sentence. Although it found DeShaw's age mitigating, it did not believe that DeShaw had committed the murder impulsively or due to his age and immaturity because he had "planned the murder several weeks in advance" and "deliberately followed through with the plan." R.O.A. 255, at 7–9. It further found that the decision to drive 30 minutes into the desert before killing the victim showed "an ability to delay gratification that refutes any claim of impulsiveness." *Id.* It also rejected the assertion that DeShaw had been under duress or that he was not a principal involved in the murder. *Id.* at 5–6.

Likewise, it is clear that Tatum's sentencer considered the three sentencing options. The presentencing report listed the three sentencing options, and Tatum's counsel argued for a parole-eligible sentence. R.O.A. 420, at 7; 519, at 10 (acknowledging that the state wanted to protect society "from parole hearings"), 14 (arguing that the best the trial court can do is a 25-year sentence), 16 (arguing that at "[t]he very minimum he will be in prison for more years than he's been alive today").

Tatum's sentencer expressly found his age (17 years and 9 months) to be mitigating. R.O.A. 519, at 25. However, a psychologist had noted that Tatum was capable of controlling his impulses despite his age but had chosen not to do so.

R.O.A. 420, at 57–58. The same psychologist opined that Tatum presented an ongoing "significant threat to the community," although he may have been amenable to treatment. R.O.A. 420, at 58, 99. Having heard counsel's arguments and this information, the trial court imposed a natural life sentence. R.O.A. 519, at 28.

No other sentencer considered the death penalty during sentencing.

III. Petitioners received all that *Miller* requires.

As was true for Bassett, *Miller*'s requirements were satisfied here because Petitioners received individualized sentencing hearings at which their youth and attendant characteristics were considered before their sentencers decided that they should be sentenced to natural life without the possibility of parole. Although everyone was mistaken about the actual availability of parole at the time of sentencing, Petitioners would now be eligible for parole if their sentencers had chosen the lesser sentence.

A. *Miller* requires a discretionary sentencing process that allows for individualized sentencing and the consideration of youth and attendant circumstances.

Miller prohibits mandatory life-without-parole sentences for murders committed while the defendant is under 18. *Jones*, 593 U.S. at 103. Before sentencing a juvenile offender to a parole-ineligible sentence, *Miller* requires sentencers to conduct an individualized sentencing hearing at which they "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480.

The core problem with the mandatory sentencing schemes at issue in *Miller* was that they precluded sentencers "from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 476. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory sentencing schemes pose "too great a risk of disproportionate punishment." *Id.* at 479.

In the years following *Miller*, this Court crystallized its requirements. In *Montgomery*, this Court held that *Miller* was retroactive. 577 U.S. 190, 206. And in *Jones*, it held that "*Miller* mandated '*only* that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence." 593 U.S. at 98, 101, 106, 108 (emphasis added) (repeating this or a near-identical phrase three times) (quoting *Miller*, 567 U.S. at 476). Thus, *Jones* made clear that neither *Miller* nor *Montgomery* imposed a requirement that sentencers make a finding of permanent incorrigibility before imposing a natural life sentence (as the Arizona Supreme Court and several other state courts had incorrectly held before *Jones*). *Id.* at 118.

Jones also "explicit[ly] reject[ed]" the argument that a trial court must "at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible." *Id.* at 101. Neither an explicit nor an implicit "'finding of fact regarding a child's incorrigibility'" is required. *Id.* (quoting *Montgomery*, 577 U.S. 190). According to *Jones*, *Miller* required only that "a sentencer must have discretion to consider youth as a mitigating factor" before

imposing a life-without-parole sentence. *Id.* at 109. And "*Montgomery* did not purport to add to *Miller*'s requirements." *Id.* It follows that there is no need for a hearing in any case here to address whether the crime reflected irreparable corruption as opposed to transient immaturity, despite Petitioners' claim to the contrary. *See* Pet. at 15–16, 22–25.

Jones repeatedly emphasized that a discretionary *process* was most important:

- "Miller required a discretionary sentencing procedure." *Id.* at 110 (emphasis added).
- "*Miller* and *Montgomery* squarely rejected" the argument "that *Miller* requires more than just a discretionary sentencing *procedure*." *Id.* at 106 (emphasis added).
- "[A] discretionary sentencing *procedure* suffices to ensure individualized consideration of a defendant's youth[.]" *Id.* at 118 (emphasis added).
- "The Court's precedents require a discretionary sentencing *procedure* in a case of this kind." *Id.* at 120 (emphasis added).

There are several reasons a discretionary sentencing *process* might not occur. A state statute might allow for only a single sentencing option (as was the case for the two defendants in *Miller*). Or, perhaps, a sentencer might mistakenly believe that only a single option is available. Despite *Jones*'s statement that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient," *id.* at 105, a trial court that mistakenly believes it must impose a natural life sentence might create a *Miller* violation even where a discretionary *system* exists. Put differently, while *Jones*'s statement holds true in

all but the rarest of circumstances, there is no reason to believe that it contemplates cases in which sentencers mistakenly misapply state law.

Thus, there is no reason to believe that *Jones* contemplated the unusual situation here—in which there was a "systemic failure to recognize the effect of the change in [state] law regarding parole," leading Arizona sentencers to impose (and appellate courts to uphold) parole-eligible sentences for nearly two decades. *Anderson*, 547 P.3d at 351 ¶ 25. In Petitioners' cases and countless others, Arizona judges engaged in the discretionary process of determining whether a parole-eligible sentence was appropriate. *See* Puzauskas, 44 Ohio N.U. L. Rev. 263, at 288 ("[S]ince 1994 the Arizona judiciary has sentenced more than two hundred defendants to life imprisonment with a *possibility of parole*[.]"). And any parole-eligible sentences imposed are given effect. *See supra* at 6–7 & n. 3 (citing Ariz. Rev. Stat. §§ 13–716, 13–718; *Chaparro*, 459 P.3d at 55 ¶ 23).

Nothing in *Jones* indicates that a *Miller* violation results from this unique constellation of facts.

B. Petitioners' sentencers did exactly what *Miller* mandated: consider their youth and attendant characteristics before sentencing them to life in prison without the possibility of parole.

Petitioners' sentencers followed the discretionary sentencing process required by *Miller*. They considered age to be a mitigating factor. *See Miller*, 567 U.S. at 480; Ariz. Rev. Stat. §§ 13–703(G)(5), 13–702(D)(1) (1994). Only after hearing the evidence and weighing the aggravating and mitigating factors did the sentencers determine that natural life sentences were appropriate. *Miller*, 567 U.S. at 480.

Cruz's sentencer was presented with arguments that he was "a child lacking in judgment" who had "little chance to formulate the patterns of thought which permit the maturation of judgment" and "awareness of consequences" due to his young age and difficult family background, including a mentally ill mother and an incarcerated father. R.O.A. 18, at 96–98. Due to the lack of a home and family structure, Cruz's counsel argued that he had been "left to the streets and the gangs who run those streets," and reported that he had consulted with a psychologist who opined that "a boy barely 16" with a family history like Cruz's would have "little awareness of consequences" and would lack "mature judgment." *Id.* at 96–98. He also argued that Cruz had committed the murders while "high on drugs." *Id.* at 93, 98. Nonetheless, due to the senseless, heinous, and depraved manner in which Cruz murdered the two children (who saw their mother killed "in cold blood" and "knew that they faced their own death" based on their defensive wounds), the trial court found that natural life sentences "without the possibility of parole" were appropriate for two of Cruz's three murders. *Id.* at 89, 100.

Conley's sentencer was presented with evidence about Conley's age (17 years and 10 months); his dysfunctional family background, including that his mother was an addict and a prostitute and his father was possibly physically abusive; his lack of family support after both parents abandoned him and his grandmother and aunt died; that he had been in the care of the State since the age of 9; his psychological evaluations and diagnoses, including bipolar and PTSD; his five prior juvenile offenses; the fact that he was on juvenile probation for another violent

offense when he committed the murder; his attempt to manipulate the competency proceedings earlier in the case and "criminal sophistication"; his escalating conduct and threats of violence, including after he was incarcerated; and the possibility that he might change as he matured. R.O.A. 139, at 2–5, 13–14, 16; R.O.A. 146, at 2–3; R.O.A. 167, at 5–6, 8–13, 32, 36.[7] After considering "all the factors that had been presented," Conley's sentencer found that he was a violent person who posed a significant threat to the community. R.O.A. 167, at 2, 40–41 (noting that before the murder, Conley set "either a warning system or a trap for [the] victim by putting wires throughout the house, similar to what a spider does when putting a web out waiting for its prey to come"). It concluded that "natural life without the possibility of parole" was appropriate. *Id.* at 41.

Bosquez's sentencer confirmed that it had considered Bosquez's "age, lack of maturity, and all of the other mitigation proffered by" him when it imposed a natural life sentence. R.O.A. 67, at 1. Specifically, it considered his "age at the time of the crime, his addiction and mental health issues that began at a young age, and his turbulent upbringing," including being beaten by his father in utero, being born addicted to drugs, having a mentally ill mother, and being diagnosed with ADHD, bipolar disorder, depression, and auditory hallucinations. Pet. App. at

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[7] Conley is mistaken when he argues that he "never had the chance to prove that his crimes were the result of transient immaturity." *See* Pet. at 15–16. At sentencing, Conley's counsel argued that it was unfair to assume that Conley was "a bad seed, that he can't change, nothing can change him." R.O.A. 167, at 35–36. He asserted that Conley "has the possibility to redeem himself," in effect arguing that he might change as he matured. *Id.*

243a, 252a.[8] However, because his sentencer could imagine "no greater horror" than being "locked in a trunk for a long period of time, to die from the elements," it imposed a natural life sentence so that Bosquez would "never be released." *Id.* at 245a, 248a.

Rutledge's sentencer considered "first and foremost" his age, referencing defense counsel's arguments based on *Thompson v. Oklahoma*, 487 U.S. 815 (1998), to the effect that he had "less capacity to control his conduct" and think in long-term consequences due to his youth while having an increased susceptibility to peer pressure and a tendency to act emotionally. Pet. App. at 193a–194a; R.O.A. 731, at 194–97. Rutledge's sentencer also considered his family background and lack of adult role models; his extensive juvenile criminal history; the previous intensive efforts to rehabilitate him that had failed; the escalating nature of his "progressively more aggressive behavior" and weapons offenses; and Dr. Angulo's opinion that he was "largely unamenable to treatment" due to his "narcissistic and

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[8] Bosquez is mistaken when he argues that he "never had the chance to prove that his crimes were the result of transient immaturity." *See* Pet. at 15–16. Bosquez told his sentencer that he believed he could change and wanted to use his mistakes to help others if given a chance to enter society, in effect arguing that he could change as he matured. Pet. App. at 244a.

antisocial" personality traits. Pet. App. at 151a–171a, 194a–195a; R.O.A. 731, at 88–89, 153–55.[9] It imposed a natural life sentence. Pet. App. 196a.

The trial court expressly found Tatum's age was a mitigating factor. R.O.A. 519, at 25. And, although a psychologist opined that Tatum might be "amenable to treatment and rehabilitation services," that psychologist also noted Tatum was capable of controlling his impulses despite his age and that Tatum presented an "ongoing significant threat to the community." R.O.A. 420, at 57–58, 99. Tatum was only three months short of adulthood and had been raised by both parents; he had a "high average" IQ of 118. R.O.A. 420, at 55, 57. After considering that evidence, as well as evidence presented at trial and by the state, the court determined a natural life sentence was appropriate. R.O.A. 519, at 28.

DeShaw's sentencer acknowledged that it had "given great weight" to his "youthful age, his emotional and moral immaturity," "difficult childhood and dysfunctional family experiences," and the "influences of the co-defendant." R.O.A. 289, at 4. Nonetheless, it did not believe that DeShaw had committed the murder impulsively or due to his age and immaturity because he had "planned the murder several weeks in advance" and "deliberately followed through with the plan."

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[9] Rutledge is mistaken when he argues that he "never had the chance to prove that his crimes were the result of transient immaturity." *See* Pet. at 15–16. Rutledge's counsel argued that his "very young age should dictate leniency" and submitted almost three pages of excerpts from *Thompson v. Oklahoma*, 487 U.S. 815 (1998), which explained that young offenders have less capacity to control their conduct, think in long-term consequences, or resist peer pressure and their emotional reactions. R.O.A. 731, at 194–98. He also argued that Rutledge had "a larcenous heart rather than a murderous heart." *Id.* at 200.

R.O.A. 255, at 8–9. It further found that the decision to drive 30 minutes into the desert before killing the victim showed "an ability to delay gratification that refutes any claim of impulsiveness." *Id.* Thus, although his age was mitigating, his "level of maturity, involvement in the crime, and past experience" lessened the weight of that mitigator. *Id.* The sentencer imposed a natural life sentence. R.O.A. 256, at 3

Purcell's sentencer considered his lack of family support, his "significant emotional and psychiatric problems," and the opinions of four experts regarding his amenability to rehabilitation. R.O.A. 151, at 5–7. Although it found that his age and lack of family support called for leniency, it weighed this against the fact that he was "extremely dangerous to the community" according to three of the four experts. *Id.* at 6, 8; R.O.A. 193, at 62. His sentencer further found that while he probably had the *capacity* for rehabilitation, he had not shown that he was *likely* to be rehabilitated. R.O.A. 151, at 7 (emphasis added). One expert had testified that while he had intelligence and the ability to better himself, "the missing ingredient seems to be any commitment to do so." *Id.* Another had testified that although he would theoretically have the ability to take advantage of and profit from rehabilitation services, he did not know how "salvageable" he was. *Id.*; *cf.* R.O.A. 193, at 55. His sentencer thus found that a natural life sentence was appropriate. R.O.A. 151, at 9–10.

Najar's sentencer considered his age; his history of neglect and abuse; his "very dysfunctional family experience" and resulting "psychological and emotional problems," such as bipolar disorder according to a psychiatrist; and his history of

drug abuse. R.O.A. 369, at 2–13; 465, at 13, 18, 24–25, 35–38. It further found that his age and underdeveloped prefrontal cortex did not prevent him from recognizing the wrongfulness of what he was doing because he planned the killing and had "ample time" to think about it beforehand—and in fact did so. R.O.A. 465, at 36–38. Because the aggravating circumstances of the murder outweighed the mitigation, it found that a natural life sentence was appropriate. *Id.* at 39.

At no time during any sentencing proceeding did any sentencer suggest that a natural life sentence was being imposed automatically because no other sentence existed. Petitioners thus received the very individualized consideration of their youth and attendant circumstances that *Miller* demands. In all cases, Petitioners had the opportunity to argue that they were only transiently immature, and most did so.

C. If Petitioners' sentencers had selected the lesser sentence, Petitioners would now be serving parole-eligible sentences.

Petitioners overlook the above and claim that their sentences violated *Miller* because Arizona allegedly had a mandatory sentencing scheme just like the state schemes at issue in *Miller*. *See* Pet. at ii, 1, 6–8, 17–20.

But unlike defendants in Arizona, the two *Miller* defendants received automatic life-without-parole sentences because their state statutory schemes provided only one option for juvenile homicide offenders. *See* 567 U.S. at 474 ("[T]he mandatory penalty schemes at issue here *prevent* the sentencer from taking account" of the characteristics of youth.) (emphasis added). *Miller* made a point of highlighting that the sentencers in question imposed the sentences automatically

and by necessity. For example, the Arkansas sentencing judge noted "that 'in view of the verdict, there's only one possible punishment.'" *Id*. at 466 (brackets omitted); *see id.* at 469 (discussing the Alabama sentencing proceeding: "[A] jury found Miller guilty. He was therefore sentenced to life without the possibility of parole.").

This is a far cry from the lengthy, individualized sentencings that Petitioners received. "Because of the pervasive confusion by both bench and bar about parole availability," significant efforts were expended in deciding between the two options. *Anderson*, 547 P.3d at 348 ¶ 2. For Conley, Bosquez, Rutledge, Cruz, and Najar, their entire sentencing hearing concerned the choice between the two sentences. And after eliminating the death penalty, Purcell, DeShaw, and Tatum's sentencers still had to decide between the two remaining options.

Petitioners' natural life sentences were thus not imposed automatically, by default. Unlike the sentences at issue in *Miller*, they were not the only available choice because of the unique circumstances in Arizona. *Compare Miller*, 567 U.S. at 477 (under mandatory sentencing schemes "every juvenile will receive the same sentence as every other") *with Petrone-Cabanas* Resp. App. at 28a–34a (documenting 28 Arizona juvenile homicide offenders who received release-eligible sentences while parole was legally unavailable; many of their sentencers used the word "parole" at sentencing, and all 28 juveniles are now serving parole-eligible sentences).

In arguing that *Miller* was nonetheless violated, Petitioners argue that the sentencers' mistaken belief in the availability of parole is irrelevant. Pet. at 1, 11,

17–21, 30. According to Petitioners, the statutorily available options at the time of sentencing are the beginning and end of the analysis. Although this may typically be the case, it cannot be that simple in the unusual circumstance where sentencing judges misunderstand the law. Surely they would not contend, for example, that a sentencer imposing a natural life sentence under the mistaken belief that parole was *not* available would nonetheless comply with *Miller* because the relevant statutes provided a parole-eligible option.

Moreover, 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. But here, sentencing judges not only believed they were choosing between natural life and parole-eligible sentences, the juveniles who received parole-eligible sentences will all receive parole-eligibility within 25 (or 35) years by virtue of the 2014 legislative fix. *See* Ariz. Rev. Stat. § 13–716. Indeed, Cruz is serving a parole-eligible sentence for one of his three murders. The functional outcome is no different than if parole-eligibility had been on the books all along.

Additionally, it would make no sense to conclude that Arizona's sentencing scheme was "mandatory" as that term is used in *Miller* for some (those who received natural life sentences) and not for others (those who received parole-eligible sentences). If this Court were to conclude that the scheme was mandatory for Petitioners' natural life sentences, it might likewise have to conclude the scheme was mandatory for those defendants who received release-eligible sentences that

are now eligible for parole. Setting aside the question of prejudice for a moment, the Court could thus reach a nonsensical result by which a juvenile serving a parole-eligible sentence has a *Miller* claim.

Again, the sentencing scheme here produced a result where many juveniles received release-eligible sentences that the sentencing judges believed were parole-eligible and that are, in the end, in fact parole-eligible. *See Petrone-Cabanas* Resp. App. at 28a–34a. No "mandatory" scheme could produce this result.

D. All available evidence suggests that Petitioners' sentencers actually considered parole-eligibility.

Seeking to distinguish the above (and *Bassett*), Petitioners argue that their sentencers did not actually consider parole-eligibility at sentencing. *See* Pet. at 2, 29. But for any of Petitioners' sentencers to learn that parole-eligibility was not available, a series of improbable events would have had to occur.

First, the sentencer would have had to conduct further research on this issue—without urging from either party—despite it having been well-settled throughout the State.

Second, the sentencer would have had to determine that parole was in fact unavailable, and then decide to follow its own independent conclusion on this front rather than contrary authority, including Arizona Supreme Court precedent. *See supra* at 5 (citing Arizona Supreme Court cases from 1999 and 2005); *see also Anderson*, 547 P.3d at 355 ¶ 41 (Beene, J., dissenting) (detailing how parole was "obliquely abolished" by "negative inference" in Title 41 rather than "affirmative statement" in Title 13, and thus how individuals researching the issue during the

relevant timeframe "would have reasonably concluded that [defendants were] eligible for parole"); *Jessup*, 31 F.4th at 1268 n.1 ("The Arizona reporter is full of cases in which the sentencing judge mistakenly thought that he or she had discretion to allow parole.").

Third, and perhaps most improbably, the sentencer would then have had to remain inexplicably silent about the discovery—instead of alerting the rest of Arizona's judiciary—for years.

Given the improbable nature of such a scenario, it is far more likely than not that Petitioner's sentencers—like everyone else in Arizona—believed that release-eligibility included parole-eligibility, even if they did not always affirmatively say so. *Anderson*, 547 P.3d at 351 ¶ 25 (documenting the "systemic failure to recognize" that parole was not available).

At the very least, one would expect a sentencer who uniquely understood the law to refrain from suggesting that parole was available, to abstain from imposing "parole-eligible" sentences in future cases, and to correct others in their presence who suggest that parole-eligibility was available. Petitioners' sentencers defy all such expectations.

In Cruz's case, for example, the sentencer actually imposed a parole-eligible sentence for one of the three murders. R.O.A. 18, at 99–100.

At Bosquez's change-of-plea hearing, his sentencer explained that a life sentence "leaves open the possibility that you could *be paroled* after 25 years." R.O.A. 58, at 7 (emphasis added).

Several of Petitioners' sentencers heard arguments in favor of parole-eligibility at Petitioners' sentencings without suggesting that it was unavailable (as a judge who correctly understood the law surely would have done on such a critical point). Najar's counsel asked the court to impose life "with the possibility of *parole*." R.O.A. 465, at 26 (emphasis added); *see id.* (asking that he be "eligible for *parole*" and for a sentence "not mandating *parole*"). Conley's counsel mentioned the "*parole board*" at sentencing and in his sentencing memorandum. R.O.A. 167, at 34–35, 39 (emphasis added); R.O.A. 139, at 8. Purcell's counsel argued that he should be "eligible for *parole*" at sentencing and mentioned the "*parole board*" in his sentencing memorandum. R.O.A. 196, at 14 (emphasis added); 193, at 77–78 (emphasis added). Both Rutledge's counsel and the prosecutor referenced "the possibility of *parole*" at his sentencing. R.O.A. 731, at 71, 75 (emphasis added). Tatum's counsel acknowledged that the State was seeking a sentence where "society will be protected from *parole* hearings." R.O.A. 519, at 10 (emphasis added). In addition, the state's sentencing memorandum noted that imposing the maximum sentence would mean that the victims "need not fear sitting at a *parole board hearing*[.]" R.O.A. 418, at 10 (emphasis added).

DeShaw's sentencer, Judge Hotham, subsequently accepted a plea agreement in which the parties agreed to a sentence of "life imprisonment with the possibility of parole in 25 years" for another defendant.[10]

In sum, there is direct and circumstantial evidence that Petitioners' sentencers—like the rest of Arizona's judiciary—believed that release-eligibility included parole-eligibility. Petitioners have failed to identify any instance where any of their sentencers ever suggested that parole-eligibility was unavailable.

Finally, even assuming that any particular sentencer uniquely recognized that parole was not available, and only considered clemency eligibility, there is no reason to think that a sentencer would have imposed a parole-eligible sentence rather than a clemency-eligible one, if one had been available. All of Petitioners' sentencers rejected the release-eligible option, and if Petitioners are correct that their sentencers uniquely and correctly understood the available options, those sentencers would have known that the release-eligible option included only clemency-eligibility. *See* Pet. at 5. And as Petitioners themselves have noted, any grant of clemency would have been exceedingly unlikely. *See id.* (noting that "clemency was 'more theoretical than practical'" and that "[n]o one convicted of first-degree murder has received clemency in the 30 years since Arizona abolished

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[10] *See* Pet. App. at 2a; *Joyce v. Larson*, CV–18–01311–PHX–RCC–DTF, 2019 WL 4419010, at *1 (D. Ariz. Aug. 1, 2019) (noting the trial court "imposed a life sentence with the possibility of parole after Petitioner served 25 calendar years"); Exhibits to Limited Answer, *Joyce v. Larson*, CV–18–01311–PHX–RCC–DTF, Doc. No. 12-1, at 5, 8 (Aug. 21, 2018) (identifying Judge Hotham and providing a copy of the plea agreement).

parole") (citations omitted). But their sentencers nonetheless rejected the release-eligible option as too lenient. Put simply, a sentencer who rejected clemency-eligibility as too lenient would not have chosen an option that was even more lenient—parole-eligibility.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 14th day of July, 2025.

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