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IN THE

Supreme Court of the United States

October Term 2024

EVAN MCCARRICK JERALD,

Applicant,

v.

STATE OF ARIZONA,

Respondent.

Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Arizona Court of Appeals

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APPLICATION TO THE HONORABLE JUSTICE ELENA KAGAN AS CIRCUIT JUSTICE

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May 21, 2025

APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Evan McCarrick Jerald respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including July 3, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *State* v. *Jerald*, No. 2 CA-CR 21-0105, 2024 WL 5458655 (Ariz. Ct. App. Apr. 15, 2024), attached as Exhibit 1. The Arizona Supreme Court's decision denying discretionary review, *State* v. *Jerald*, No. CR-24-0109-PR, 534 P.3d 623 (Ariz. Mar. 5, 2025), is attached as Exhibit 2.

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1257(a). The Arizona Supreme Court denied a timely petition for discretionary review on March 5, 2025. Thus, under Rule 13.1, a petition to this Court is currently due by June 3, 2025. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case involves an important question of constitutional law that has split state high courts and federal appellate courts: Does the Eighth Amendment's bar on mandatory life-without-parole sentences for non-homicide juvenile offenders apply equally to mandatory consecutive sentences that *effectively guarantee* a juvenile offender will be imprisoned until he dies?

After initially being found incompetent, Evan Jerald was ultimately convicted of four counts of sexual contact with a minor under fifteen and four counts of molestation of a child. Ex. 1 at 3. The offenses occurred when Evan was a minor himself. *Id*. at 2.

For each of the four sexual-contact convictions, Evan received consecutive life sentences with the possibility of parole only after thirty-five years. *Id.* at 3. The judge also imposed four consecutive seventeen-year prison terms for the molestation convictions—each running consecutive to the life sentences. *Id*. Thus, "the minimum possible prison term is 208 years." *Id.* There was some debate below about precisely how much of this multi-century sentence was mandatory, but at a minimum, Evan "faced ninety-two years in prison," which obviously "would exceed his life expectancy." *Id.* at 9.

The Arizona Court of Appeals affirmed Evan's sentence, holding that it did not violate the Eighth Amendment despite his age. The court acknowledged that Evan's cumulative "mandatory sentences were lengthy, flat, and consecutive," and did not dispute that they amount to a *de facto* life sentence. *Id.* at 9, 13. But it relied on state-court precedent holding—with no apparent basis in this Court's decisions—that cumulative sentences are considered together for Eighth Amendment purposes only if the defendant's conduct was at the "periphery," not "the core," of the "proscribed conduct." *Id.* at 9. It also relied on state-court precedent to hold that "aggregated sentences for multiple crimes," *id.* at 13, do not violate *Graham* v. *Florida*, 560 U.S. 48 (2010), even if they amount to "a de facto life sentence for [a] juvenile[]" offender.

Ex. 1 at 13 (citing *State* v. *Soto-Fong*, 250 Ariz. 1, ¶ 31 (2020)). The Court of Appeals thus brushed aside Evan's showing that its reasoning "squarely contradicts" the Ninth Circuit's approach to the same questions. *Id.* (citing *Moore* v. *Biter*, 725 F.3d 1184 (9th Cir. 2013)).

The Arizona Supreme Court denied discretionary review. Chief Justice Timmer voted to grant review of whether Evan's "individual life sentences are grossly disproportionate to the non-homicide offenses that [he] committed as a juvenile, and thus in violation of the Eighth Amendment, considering the specific facts and circumstances of this case." Ex. 2 at 1.

The decision below violates the principle that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller* v. *Alabama*, 567 U.S. 460, 470 (2012). It does not matter that Evan's cumulative, mandatory sentences—requiring decades or centuries in prison—are a *de facto* life sentence rather than a formal one. Multiple circuits and state high courts recognize as much. But others agree with Arizona.

The Seventh, Ninth, and Tenth Circuits and the Washington and Alaska courts recognize that *Graham* applies to term-of-years sentences. See, *e.g.*, *McKinley* v. *Butler*, 809 F.3d 908, 911 (7th Cir. 2016) (two consecutive 50-year sentences for juvenile homicide defendant were unconstitutional); *Moore*, 725 F.3d at 1193–94 (state court violated clearly established law by upholding a 254-year sentence); *Budder* v. *Addison*, 851 F.3d 1047, 1059–60 (10th Cir. 2017) (stacked 131-year sentence for a seventeen-year-old offender violated *Graham*); *State* v. *Ramos*, 387

P.3d 650, 660–61 (Wash. 2017) ("[M]ost courts that have considered the issue agree that a lengthy term of years for a juvenile offender will become a de facto life sentence"); *Fletcher* v. *State*, 532 P.3d 286, 311–12 (Alaska Ct. App. 2023) ("[W]e agree with the vast majority of state courts that have held that the constitutional principles underlying *Miller* apply equally to sentences that are the functional equivalent of a life without parole sentence.").

But several states—along with the Third, Fifth, and Sixth Circuits—agree with Arizona that functional life sentences for juveniles are constitutional. *See, e.g.*, *State* v. *Slocumb*, 827 S.E.2d 148, 158–66 (S.C. 2019) (listing jurisdictions that do not apply *Graham* or *Miller* to de facto life sentences); *Vasquez* v. *Commonwealth*, 781 S.E.2d 920, 928 (Va. 2016) ("*Graham* does not apply to aggregate term-of-years sentences involving multiple crimes."); *United States* v. *Grant*, 9 F.4th 186, 197–98 (3d Cir. 2021) (de facto life-without-parole sentence did not violate Eighth Amendment); *United States* v. *Sparks*, 941 F.3d 748, 754 (5th Cir. 2019) (rejecting defendant's argument that de facto, term-of-years life sentence violates the Eighth Amendment); cf. *Bunch* v. *Smith*, 685 F.3d 546, 550–52 (6th Cir. 2012) (state court reasonably determined that juvenile petitioner's 89-year sentence did not violate Eighth Amendment).

2. An extension is also warranted to allow counsel time to coordinate and prepare a petition that will aid the Court's review of these issues. Applicant has asked the Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker School of Law to help prepare the petition. Because the

academic year has ended, the Clinic has no enrolled students and is thus short-staffed. In addition, the Clinic is responsible for forthcoming petitions for writs of certiorari in *Abouammo* v. *United States*, No. 22-10348 (9th Cir.) (currently due June 16), *Clay* v. *United States*, No. 23-2335 (3d Cir.) (currently due June 17), and *Zielinski* v. *United States*, No. 23-3575 (8th Cir.) (currently due July 8), and a forthcoming petition for rehearing *en banc* in *United States* v. *Pheasant*, No. 23-991 (9th Cir.) (currently due June 3). An extension will thus help the Clinic faculty work with co-counsel to complete a cogent and well-researched petition while also discharging these other obligations.

CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including July 3, 2025.

Respectfully submitted,

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