No. _____
(CAPITAL CASE)

IN THE
Supreme Court of the United States

CHRISTOPHER JOHN SPREITZ, PETITIONER,

v.

STATE OF ARIZONA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE
QUESTIONS PRESENTED

Twenty-two-year-old Christopher Spreitz was sentenced to death in 1994 by a trial judge who heard only cursory mitigating evidence and refused to consider or give effect to Mr. Spreitz's lifelong struggle with alcohol because it lacked a causal relationship to his crime. The Arizona Supreme Court, independently reviewing the sentence, similarly excluded that evidence from its review in agreeing a death sentence was appropriate.

The lawyer appointed to represent Mr. Spreitz in post-conviction review (PCR) identified significant mitigation evidence his trial counsel had failed to discover, including dozens of witnesses, but the PCR Court ruled that none of that evidence would have affected the sentence, largely because it, too, lacked a causal nexus with the crime.

In federal habeas proceedings, the Ninth Circuit ruled that the Arizona Supreme Court had unconstitutionally excluded non-nexus evidence from its review and ordered Arizona to resentence Mr. Spreitz or cure the error. The Arizona Supreme Court undertook to cure the error by itself re-weighing the evidence, but in doing so it restricted itself to the facts and the law in the trial record. While the court recited the rule that mitigating evidence need not be causally connected to the crime, it repeatedly stated that non-nexus evidence was inherently entitled to little weight.

This petition presents the following questions:

1. Whether in conducting independent sentencing review to cure a constitutional error in a capital case, a court must consider all of the evidence in the record in light of contemporary knowledge and standards;

2. Whether the constitution forbids creating categories of mitigating evidence entitled only to minimal weight absent an undefined "causal nexus" to the offense.

PARTIES TO THE PROCEEDING

The petitioner is Christopher John Spreitz.

The respondent is the State of Arizona.

RELATED PROCEEDINGS

State v. Spreitz, No. CR-027745, Superior Court, Pima County, Arizona. Judgment entered on December 21, 1994.

State v. Spreitz, No. CR-94-0454, 945 P.2d 1260, Arizona Supreme Court. Judgment entered on September 11, 1997.

Spreitz v. Arizona, No. 97-7560, United States Supreme Court. Petition denied on March 23, 1998. 523 U.S. 1027 (1998).

State v. Spreitz, No. CR-00-0569-PC, 39 P.3d 525, Arizona Supreme Court. Judgment entered on January 30, 2002.

Spreitz v. Ryan, et al., No. CV-02-121-TUC, 617 F. Supp. 2d 887, District of Arizona. Judgment entered on May 12, 2009.

Spreitz v. Ryan, No. 09-99006, 916 F.3d 1262, Ninth Circuit Court of Appeals. Judgment entered March 4, 2019; petition for rehearing and rehearing en banc denied on August 3, 2020.

Spreitz v. Shinn, et al., No. 20-6772, United States Supreme Court. Petition denied on March 8, 2021.

State v. Spreitz, No. CR-94-0454-AP, 561 P.3d 393 (Jan. 6, 2025). Motion for reconsideration denied on February 6, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Christopher John Spreitz respectfully petitions for a writ of certiorari to review the judgment of the Arizona Supreme Court.

INTRODUCTION

Long before Mr. Spreitz was sentenced to die in 1994, this Court recognized that evidence could be powerfully mitigating, even if that same evidence did not directly cause the capital crime in question. At the heart of this Court's capital jurisprudence is individualized consideration—a requirement for a sentencer to take each death-eligible defendant as a unique individual. And the Court has also made clear that when assessing a defendant, a sentencer must be able to consider the totality of the evidence. At the same time, as a matter of law and science, understanding of the mitigating qualities of youth has advanced in very significant ways since Mr. Spreitz sentence to die for a crime he committed when he was just 22 years old.

The Arizona Supreme Court has defied these twin directives, implicating conflicts not only with this Court's and the Ninth Circuit's jurisprudence, but also with at least one other state's supreme court and the circuit in which it sits. This Court should intervene now to eliminate the legal quagmire state courts face when confronting a controlling state supreme court decision that contradicts a decision from the circuit in which it sits.

Doing so will have profound consequences for both Mr. Spreitz and countless others facing capital punishment in Arizona and elsewhere. Indeed, in Mr. Spreitz's case, the Arizona Supreme Court declined to give any significant weight to his mitigating evidence—primarily his youth at the time of the offense—because it lacked, in that court's view, a nexus to the underlying offense. In doing so, the state supreme court reified long-since discredited decisions that categorically dismiss mitigating evidence lacking such a connection to the crime, implicating dozens of capital sentences, including a prior grant of habeas relief in this case.

The Arizona Supreme Court's decision was wrong on the facts and the law. Youth does have a causal nexus to decision-making, including terrible choices that end in a capital crime. And even if it did not, courts are not free to discount it, or any other category of evidence, categorically. Moreover, this Court has long required sentencers to consider and be able to give weight to mitigating evidence that arose after the commission of a crime. The Arizona Supreme Court's contrary decision in this case directly implicates these holdings, and this Court should intervene and reverse.

OPINION BELOW

The January 6, 2025 opinion of the Arizona Supreme Court is published. *See State v. Spreitz*, 561 P.3d 393 (Ariz. 2025); App. 1a–24a.[1] The decision denying reconsideration is unpublished. App. 25a–26a.

JURISDICTION

The Arizona Supreme Court entered judgment on January 6, 2025 and denied Mr. Spreitz's motion for reconsideration on February 6, 2025. *State* v. *Spreitz*, 561 P.3d 393 (Ariz. 2025); App. 26a. Justice Kagan granted Mr. Spreitz's requests for extension of time until July 6, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

Section One of the Fourteenth Amendment to the United States Constitution provides, in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

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[1] Additional court files from this case are available at https://www.phillipsblack.org/spreitz-v-arizona.

STATEMENT

Chris Spreitz was sentenced to death for a crime committed at age 22 in the grips of severe intoxication by an Arizona judge who never heard from anyone who had even met Mr. Spreitz prior to his arrest, and who refused to consider any mitigating evidence not tied to the crime–in violation of this Court's precedent under *Eddings v. Oklahoma*, 455 U.S. 104 (1982) and *Lockett v. Ohio*, 438 U.S. 586 (1978), but in keeping with longstanding Arizona Supreme Court precedent. *See Spreitz v. Ryan*, 916 F.3d 1262, 1274 (9th Cir. 2019). The judge never heard that throughout his childhood Mr. Spreitz was beaten with various objects including a belt and the tracks for his toy Hot Wheels, suffered damaging head trauma, had struggled with alcohol abuse throughout his young life with no help from his family, and at the time of the offense had not only been drinking, but had also ingested cocaine, leading to a synergistic effect that drastically impacted his behavior. And at the time of the sentence in 1994, nobody, including the sentencing judge, understood the extent to which the brain remains underdeveloped at the age of 22. When it reviewed the case, the Arizona Supreme Court likewise applied the unconstitutional nexus test, as did the PCR court. Finally, in 2019—25 years after the trial—the Ninth Circuit recognized the error and directed Arizona to fix it. It still has not.

A. Trial

On May 22, 1989, the State charged Mr. Spreitz with the first-degree murder, sexual assault, and kidnapping of Ruby Reid. On December 3, 1991, after two and a

half years with privately retained counsel, Marshall Tandy was appointed as trial counsel. There is no evidence Tandy conducted any mitigation investigation.

After a seven-day trial, the jury found Mr. Spreitz guilty of all three offenses. Only then, Tandy hired a psychologist, but he failed to provide the psychologist the minimally adequate background information necessary to perform a valid evaluation. In a one-day hearing on aggravating and mitigating factors, Tandy called only three witnesses: the psychologist and two corrections officers employed at the Pima County Jail. At the conclusion of that hearing, the trial judge found one aggravating factor, and after rejecting non-statutory mitigation that lacked a causal nexus to the offense, sentenced Mr. Spreitz to death on December 21, 1994. *State v. Spreitz*, 945 P.2d 1260, 1266 (Ariz. 1997).

B. Direct Appeal & Independent Review

On appeal, appointed counsel did not raise the trial court's nexus error. After rejecting all asserted claims, the Arizona Supreme Court conducted what it calls "independent review," in which it "examined the entire record to weigh and consider the aggravating and mitigating circumstances." *Spreitz*, 945 P.2d at 1278. As part of that process, the court considers anew whether the sentence is appropriate. That consideration is not about proportionality, but "whether, based on the record before [it], [the Court] believe[s] that the death penalty should be imposed." *State v. Carlson,* 48 P.3d 1180, 1197 (Ariz. 2002).

In agreeing with the sentencing judge, the Arizona Supreme Court, too, applied the unconstitutional nexus test, entirely discounting evidence of Mr. Spreitz's alcohol problems because it found he was not "impaired by alcohol consumption to the extent that it interfered with his 'capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law,'" quoting an Arizona statutory mitigating factor. *Spreitz*, 945 P.2d at 1281.

C. Post-Conviction Review

Mr. Spreitz asserted six claims for relief, including ineffective assistance of counsel (IAC) at both phases of trial and on appeal, and a freestanding claim that the trial court committed a nexus error. In support of the IAC sentencing claim, he submitted a detailed social history narrative, along with affidavits, declarations, and interview materials from 18 life-history witnesses, including Mr. Spreitz's mother, father, step-mother, step-father, sister, uncle, former girlfriend, and childhood friends. These materials and witnesses painted a picture far more dramatic than the simple "sub-normal home" and "disruptive middle childhood" trial counsel had presented to the sentencing judge. For instance, his sister Gretchen described their mother breaking a paddle on Mr. Spreitz's back, and recalled that when he would wet the bed as a child, their mother's solution was to deprive him of fluids in the evening and force him to sleep on a bare rubber sheet, with no sheet or blanket. His step-father, Stephen, recalled Mr. Spreitz being spanked with a belt as punishment for

bedwetting. Stephen also recalled Mr. Spreitz's mother throwing an iron at Mr. Spreitz, among other objects.

His counsel also retained a psychologist to conduct a far more in-depth, informed, and accurate evaluation of Mr. Spreitz based on copious background information and documentation. The psychologist's report included information about multiple head injuries Mr. Spreitz had suffered, including falling down stairs at age four, and spending two days in the hospital at age eight with a concussion from a bike accident. The report also detailed Mr. Spreitz's struggles with alcohol, beginning in high school. Both of his parents came from families with histories of alcoholism, and rather than seeking assistance for Mr. Spreitz as his drinking got out of control, his father simply hid some of the beer so that Mr. Spreitz would not drink it all. When his behavior and drinking grew more erratic after he dropped out of a college program, he tried to escape by moving home with his mother in California, but she did not assist him either, and simply sent him back to Tucson where his father lived. The psychologist diagnosed Spreitz with alcohol dependence and noted that his parents should have sought professional clinical intervention for him as an adolescent. Tandy, the trial lawyer, in the midst of criminal and disbarment proceedings of his own, refused to cooperate with post-conviction counsel.[2]

[2] Tandy was later sentenced to 18 months in prison for money laundering and was disbarred. *See In re Marshall Tandy, Attorney No. 2898,* No. SB-00-00420D (Ariz. S. Ct. May 23, 2000).

The PCR Court found the IAC claims precluded because appellate counsel had included a single IAC claim in the direct appeal (this ruling would later be reversed by the Arizona Supreme Court), and also found the nexus claim waived, but made alternative merits rulings. Regarding the sentencing IAC, the court repeatedly noted that the additional evidence would not have changed the sentence, largely because it lacked a causal nexus to the crime. 7/31/00 ME at 10–11, 17–18. Regarding the non-nexus evidence, it explained, "Without some basis for explaining or defining the individual's behavior at the time of the offense, the Petitioner's history of alcohol or substance abuse would be inconsequential (which is exactly what the trial court and Supreme Court concluded)." App. 13a–16a. The Arizona Supreme Court affirmed these merits rulings without comment. *State v. Spreitz*, 39 P.3d 525, 527 (Ariz. 2002).

D. Federal Habeas Proceedings

The same counsel who filed the state PCR petition also filed a habeas petition in the federal district court in 2003, including a claim that appellate counsel was ineffective for failing to raise the causal nexus issue on direct appeal. The District Court denied that petition in 2009 and denied a certificate of appealability on the IAC nexus claim.

Counsel filed an appeal in the Ninth Circuit, including the uncertified IAC nexus claim, but withdrew from the representation before oral argument. New counsel from the federal public defender's office was appointed and sought to add substantial new information to the IAC claims, asserting ineffectiveness of prior

counsel under *Martinez v. Ryan*, 566 U.S. 1 (2012) to excuse procedural default. New counsel sought remand to the district court to present evidence in support of this claim. The Ninth Circuit ultimately denied the motion to remand. In the interim, though, it ordered briefing on the nexus issue, which the parties submitted, and then ordered further briefing after it issued an *en banc* opinion granting sentencing relief in another case raising the same issue, *McKinney v. Ryan,* 813 F.3d 798 (9th Cir. 2015). On March 4, 2019, the Ninth Circuit published an opinion reversing denial of sentencing relief on the nexus error. While it formally resolved the claim of IAC of appellate counsel for failure to raise the nexus issue (916 F.3d at 1265), it recognized that the trial and PCR courts had committed the same nexus error as the Arizona Supreme Court had in its independent review.[3] It then ordered the State to either resentence Mr. Spreitz or correct the constitutional error.

E. New Independent Review

While Mr. Spreitz's case worked its way through the Ninth Circuit, the *McKinney* case, which had included an identical order for resentencing or curing the error, returned to the Arizona Supreme Court, where the State asked the Court rather than resentencing Mr. McKinney to life or holding a new sentencing to simply conduct a new independent review of the aggravating and mitigating evidence,

[3] It was the PCR Court's rejection of the IAC nexus claim that the Court deemed "contrary to" *Eddings,* allowing it to overcome 28 U.S.C. § 2254(d).

without imposing a nexus requirement. The Arizona Supreme Court agreed.[4] After the Arizona Supreme Court again sentenced Mr. McKinney to death, this Court granted his petition for certiorari in which he argued that he was entitled to a resentencing, and that Arizona had to give him a jury sentencing based on the intervening decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which applied to his case because the new independent review constitute a re-opening of the direct appeal. This Court affirmed, holding in *McKinney v. Arizona*, 589 U.S. 139 (2020), that Arizona had deemed the new independent review to be part of a collateral proceeding, not the direct appeal, meaning *Ring* did not apply, and an appellate re-weighing was a permissible remedy under *Clemons v. Mississippi,* 494 U.S. 738 (1990). *McKinney*, 589 U.S. at 142–43.

Mr. Spreitz then returned to the Arizona courts, where the State once again requested a new independent review at the Arizona Supreme Court, and Mr. Spreitz asked the Arizona Supreme Court to first remand his case to the trial court so he could add to the record new additional mitigating evidence (primarily evidence developed in federal court, after the PCR proceedings), which the Court would be obliged to consider under *Lockett* and *Eddings*. The Court granted the State's request and denied Mr. Spreitz's, declaring its review would be confined to the trial record.

[4] It had used this remedy once before in a previous case where the Ninth Circuit found a nexus error, yielding a published opinion containing its new independent review in *State v. Styers*, 254 P.3d 1132 (Ariz. 2011).

After denying Mr. Spreitz's request for oral argument, on January 6, 2025, it issued a new independent review opinion again sentencing Mr. Spreitz to death. In that opinion, the Court recited the rule that it was required to consider mitigating evidence with no nexus to the crime, but then repeatedly declared that such evidence was categorically entitled to little weight. Mr. Spreitz's motion for reconsideration was denied. This Petition follows.

REASONS FOR GRANTING THE PETITION

I. A DE NOVO ASSESSMENT OF A CAPITAL SENTENCE REQUIRES CONSIDERATION OF ALL MITIGATING EVIDENCE IN THE RECORD IN LIGHT OF CURRENT UNDERSTANDING

A. Courts Are Split on Whether a Court Correcting an Error in Sentencing Must Consider Additional Mitigating Evidence

It is undisputed that the Eighth Amendment's requirements, including *Lockett* and *Eddings*, apply to Arizona's independent review of death sentences. Indeed, it was an error in the independent review, not the trial, that gave rise to the claim in *McKinney v. Arizona*, 589 U.S. 139 (2020). Thus, while the proceeding is not formally denominated a resentencing, because the Arizona Supreme Court is choosing between a life sentence and a death sentence, it is treated as a sentencer for Eighth Amendment purposes. In its role as sentencer, it has once again committed a flagrant violation of *Eddings*: it has refused, in a proceeding where the record is not inherently limited, to consider relevant mitigation evidence proffered by Mr. Spreitz, including both evidence already in the record from the original post-conviction proceeding and

evidence that was developed in federal habeas proceedings that is not already in the state court record. Even further, it has restricted itself to knowledge at the time of the original sentencing in 1994.

Courts are split—in now two instances between a state's highest court and the Circuit covering that State[5]—on whether, when imposing a sentence anew to correct an error in the original sentencing consideration, a court must consider whatever relevant mitigation evidence a defendant proffers. Decades ago, the Idaho Supreme Court concluded that *Lockett* and *Eddings* required a judge correcting an error in prior capital sentencing proceedings to consider additional mitigation evidence the defendant sought to present on remand, including the defendant's conduct in the interim, even though the defendant had been allowed to present whatever mitigation evidence he chose in the original proceeding. *Sivak v. State,* 731 P.2d 192, 195 (Idaho 1986). The Ninth Circuit has said the same thing. *Creech v. Arave*, 947 F.2d 873, 881–82 (9th Cir. 1991), as amended on denial of reh'g (Oct. 16, 1991), rev'd on other grounds, 507 U.S. 463 (1993).[6] The Sixth Circuit recently joined this contingent in

[5] A conflict between a U.S. Court of Appeals and the highest court of a state within that circuit favors granting certiorari, as lower state courts are otherwise placed in a "legal quagmire" where they are required by their state high court's interpretation to do something the federal courts will deem unconstitutional. *Virginia v. LeBlanc,* 582 U.S. 91, 96 (2017).

[6] Although the Ninth Circuit's decision pre-dates AEDPA, its holding relied exclusively on Supreme Court precedent and explained there would be "no rational basis for distinguishing the evidence of a defendant's good conduct while awaiting trial and sentencing, and evidence of a defendant's good conduct pending a death sentence which is vacated on appeal." *Creech*, 947 F.2d at 881–82. As such, the Ninth Circuit now appears to be in a position to reverse every Arizona resentencing or

Jackson v. Cool, 111 F.4th 689, 702–03 (6th Cir. 2024), holding that a judge newly considering the appropriateness of a death sentence on remand could not refuse to consider additional mitigating evidence, both newly existing evidence and evidence that could have been presented in the original proceeding.

In contrast, the Ohio Supreme Court has taken the same position as the Arizona Supreme Court, that a court reconsidering the imposition of a death sentence can refuse to consider additional mitigating evidence. *State v. Chinn*, 709 N.E.2d 1166, 1180 (Ohio 1999). South Dakota has similarly held that defendants in remand proceedings lack "a categorial constitutional right to introduce new mitigation evidence discovered after a sentencing hearing in which the defendant was given the opportunity to present all mitigation evidence he desired." *State v. Berget*, 853 N.W.2d 45, 56–57 (S.D. 2014). In light of these conflicts, including between Arizona and the Ninth Circuit and between Ohio and the Sixth Circuit, this Court should resolve this split and reaffirm *Lockett* and *Eddings.*

B. Arizona Refused, in a Proceeding Where the Record Is Not Inherently Closed, to Consider Relevant Mitigating Evidence

On remand after the Ninth Circuit found *Eddings* error, the State advocated allowing the Arizona Supreme Court to conduct an independent, de novo review to determine whether the defendant should be sentenced to life or to death, as it does in

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independent review once it reaches that court, making review here all the more pressing.

capital direct appeals.[7] But, it insisted, and the Arizona Supreme Court agreed, this would not be a re-opening of the direct appeal to re-do that review that has always been part of capital direct appeals; rather, it was part of a collateral proceeding that would not be subject to intervening changes in the law, most notably *Ring v. Arizona*, 536 U.S. 584 (2002). This Court had agreed in *McKinney v. Arizona,* 589 U.S. 139 (2020)*,* that the Arizona Supreme Court could cure the error by itself re-weighing the evidence, as it had previously allowed on a direct appeal after an aggravator was invalidated in *Clemons v. Mississippi,* 494 U.S. 738 (1990), and had also ruled Arizona could treat its remedial independent review as collateral (rather than as part of the direct appeal, as in *Clemons*) as a matter of state law if it so chose. *McKinney,* 589 U.S. at 146.

Arriving back in the Arizona Supreme Court for his remedial collateral proceeding, Mr. Spreitz asked for a remand to Superior Court for an evidentiary hearing—a typical feature of Arizona collateral review—where he could introduce into the record extant relevant mitigation evidence for the sentencer to consider. App. 5a. With his request, he submitted an appendix which included additional mitigating evidence, some of it from the state postconviction record and some of it developed in federal habeas proceedings. App. 5a. The Court categorically refused to "consider

[7] After introducing jury sentencing in the wake of Ring, Arizona changed its review—for crimes committed after August 1, 2002—to abuse of discretion, but the Arizona Supreme Court continues to review all death sentences itself. Ariz. Rev. Stat. § 13-756(A).

evidence developed after the original proceedings as part of [its] independent review," App. 6a (quoting *State v. Poyson*, 475 P.3d 293, 296 (Ariz. 2020)), thus treating the procedure exactly like a direct appeal. Declaring the procedure collateral to avoid application of an intervening change in law but then refusing to treat it as collateral in practice not only offends a basic sense of fairness—it violates the Eighth Amendment.

C. The Eighth Amendment Requires Any Court Considering Whether to Impose a Death Sentence to Consider Any Relevant Mitigating Evidence a Defendant Offers

A primary difference between direct and collateral review is the record. A direct appeal examines the trial record; collateral review encompasses extra-record evidence. *See, e.g.*, *Massaro v. United States*, 538 U.S. 500, 505 (2003) (in federal criminal cases, IAC claims need not be raised on direct appeal because the trial record is "often incomplete or inadequate for this purpose," but belong instead in federal collateral review). Indeed, in an earlier stage of this very case, the Arizona Supreme Court said the same thing. *See State v. Spreitz*, 39 P.3d 525, 527 (Ariz. 2002) (*Spreitz II*). Arizona post-conviction proceedings,[8] like collateral review proceedings everywhere, are by their nature not limited to the trial record. If this review is

[8] Arizona recognizes just one form of collateral review of convictions and sentences: a petition for post-conviction relief ("PCR") under Arizona Rule of Criminal Procedure 32. *See* Ariz. Rev. Stat. § 13-4233 (PCR petition "displaces and incorporates all trial court post-trial remedies except post-trial motions and habeas corpus" and habeas corpus petitions "attacking the validity of [a] conviction or sentence" treated as PCR Petitions).

occurring in a collateral proceeding, then under Arizona's own rules, the court can consider evidence outside the trial record. Because Arizona has chosen to remedy these errors in a type of proceeding that is amenable to extra-record evidence,[9] its closing its eyes and ears to relevant mitigating evidence directly contravenes the requirement that "the sentencer may not refuse to consider or be precluded from considering any relevant mitigating evidence." *Skipper v. South Carolina*, 476 U.S. 1, 4 (1986) (cleaned up) (quoting *Eddings*, 455 U.S. at 110).

Worse, the Court is refusing to consider mitigating evidence that is already in the state court record. In his 2000 PCR petition, Mr. Spreitz presented his claim that both the trial court and Arizona Supreme Court committed *Eddings* error, along with several other claims, including ineffective assistance of counsel at sentencing. App. 4a. It was the trial court's resolution of this petition that was under review in the federal habeas proceeding requiring the relief at issue now, and the Ninth Circuit found the PCR court's resolution of the *Eddings* claim was "contrary to" clearly established federal law. *Spreitz*, 916 F.3d at 1272. Mr. Spreitz submitted evidence to the state court with that petition, including 17 affidavits and declarations and the report of an expert psychologist who was able to use those materials in evaluating Mr. Spreitz. App. 5a. In rejecting that IAC claim, the PCR court repeatedly relied on

[9] If the Arizona Supreme Court prefers not to take evidence itself in the first instance, it has the statutory authority to remand to the trial court to add to the record as part of independent review, Ariz. Rev. Stat. § 13-755(C), which is what Mr. Spreitz originally requested.

the same faulty nexus logic to conclude that there was no prejudice from any penalty-phase IAC,[10] *see* App. 5a, and the Arizona Supreme Court affirmed those findings without further comment. *Spreitz II*, 39 P.3d at 527. In other words, in denying the sentencing-phase IAC claim without a hearing, the Court relied on the same forbidden nexus test.

The evidence Mr. Spreitz submitted in his state PCR petition is already in the record, and the Arizona courts previously improperly limited their assessment of its effect. Now, the Arizona Supreme Court, in conducting this new independent review, has arbitrarily limited the mitigating evidence it will consider to the portion of the record that covers the trial, excluding the rest of the state court record. Even if it were constitutional to refuse, at this juncture, to add to the record, there is no excuse for refusing to consider mitigating evidence that is already in the record. That is flatly inconsistent with *Lockett* and *Eddings*.

Finally, the Arizona Supreme Court has done more than limit the evidence; it has insisted on pretending, when imposing a death sentence, that it knows nothing more than it knew in 1994. Mr. Spreitz presented it with authorities—both case law and published research—supporting giving increased weight to youth as a mitigating factor, compared to what was known in 1994, citing, for instance, this Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577

[10] The Court did not make separate findings regarding deficient performance.

U.S 190 (2016). App. 8a–9a. He did not request the retroactive application of any new rule of law; rather, he urged that the Court consider present-day understanding of youth when making a present-day decision how much weight to give it. The Arizona Supreme Court swept aside all that information—mitigating as it is—with a footnote repeating that its "review is limited to what was presented at sentencing." App. 10a n.3. But the Court was not making a decision on a sentence in 1994; it was deciding the sentence in 2025. It is the height of arbitrariness for a court charged with the weighty decision of choosing between a life and death to insist on using outdated knowledge and understanding when weighing the mitigating factors simply because it made an error in its first attempt.

For over thirty years, the Arizona Supreme Court accepted the use of new scientific understanding as an exception to the general rule of fixing the factual record as what was developed in the trial court, even on direct appeal. In *State v. Bible*, 858 P.2d 1152, 1189 n.33 (Ariz. 1993), it explained that "neither logic nor authority support confining ourselves to a snapshot, rather than viewing the motion picture, of technological advancement. If the result obtained is the product of invalid scientific theory, there is no good reason to accept it simply because we were fooled at the inception of the inquiry." *Id.; see also State v. Bigger*, 254 P.3d 1142, 1152 n.13 (Ariz. Ct. App. 2011) (relying on *Bible* for same approach in PCR).

Mr. Spreitz presented this authority to the court. *See* Response to State's Motion to Conduct New Independent Review of Death Sentence, pp. 41-42; Opening

Brief, pp. 35-36; Reply Brief, pp. 23-24. Yet, when reviewing Mr. Spreitz's 1994 sentencing, despite significant scientific advancement on several fronts (including this Court's decisional law), the court decided to ignore its own law and apply a new rule that ignores scientific advancement and this Court's precedents.[11]

In this case, that unwarranted limitation was highly prejudicial. The Arizona Supreme Court refused to consider the opinions of four highly qualified experts in psychology, psychiatry, and psychopharmacology, one of whose report was already in the state-court PCR record, all providing a clear understanding of how, in light of his history, the combined use of alcohol and cocaine impacted Mr. Spreitz's behavior while leaving him in a state not outwardly intoxicated on the night of the crime, as well as how he was impacted by childhood trauma, including violence by his own mother. It also closed its eyes to the reality, now widely understood, that the brain of a 22-year-old is not fully developed. *See* App. 9a–10a (limiting consideration to general "immaturity"); *cf. Graham,* 560 U.S. at 68 (noting "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."); *Miller*, 567 U.S. at 472 ("The evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger."); American

[11] This is the second time in recent years the court has arbitrarily departed from its prior rules to avoid reversing a death sentence. *See Cruz v. Arizona*, 598 U.S. 17 (2023).

Psychological Association, Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20 (August, 2022) ("There is clear evidence of prolonged development far beyond the age of 17 and into the mid-20s."). Consideration of these factors significantly changes the mitigation picture in this case.

II. ARIZONA CONTINUES TO IMPOSE A CAUSAL NEXUS REQUIREMENT

In 2015, the *en banc* Ninth Circuit observed that for "a period of a little over 15 years in capital cases, in clear violation of *Eddings*, the Supreme Court of Arizona articulated and applied a 'causal nexus' test for nonstatutory mitigation that forbade as a matter of law giving weight to mitigating evidence, such as family background or mental condition, unless the background or mental condition was causally connected to the crime." *McKinney*, 813 F.3d at 802. There is no dispute that this causal nexus requirement violates this Court's precedents.

Yet remarkably, even in purporting to cure identified nexus errors post-*McKinney,* the Arizona Supreme Court continues to categorically discount nonstatutory mitigating evidence unless, in its view, there is a causal nexus to the offense. The court below went so far as to rely on its pre-*McKinney* nexus jurisprudence as authority for discounting the evidence before it while ostensibly conducting a review to cure the precise error recognized in *McKinney.* App. 10a–11a. That error was exacerbated by the court's separate refusal to consider the years of intervening case law and science that would have explained the profoundly mitigating impact of Mr. Spreitz's age at the time of the offense. App. 10a–11a.

Indeed, Mr. Spreitz's youthfulness, as courts now recognize, does closely relate to the offenses because he was more impulsive, and less able to weigh and deliberate before making decisions, including those with catastrophic consequences. *See infra* § II.B.

The Arizona Supreme Court's decision will ensure its unlawful nexus requirement lives on. It will recur for the class of capital defendants who had their unconstitutionally nexus-based sentences affirmed during the 15 years predating *McKinney* and who seek to cure that error. Beyond that, by reaffirming its pre-*McKinney* precedents, the Arizona Supreme Court has created an unlawful regime where even if sentencers do not impose an impermissible nexus requirement in the first instance, it will hold all types of sentencing errors harmless unless they include a "causal nexus" to the offense. App. 10a. Thus, the Arizona Supreme Court's refusal to embrace *Eddings* will reverberate throughout its capital jurisprudence even beyond those defendants sentenced before *McKinney*.

A. Arizona Gives Mitigating Evidence Lacking a Causal Nexus to the Crime Minimal Weight as a Matter of Law

Throughout its opinion purporting to cure its prior nexus error, the Arizona Supreme Court returned to its longstanding causal nexus requirement, holding that mitigating evidence without a causal connection to the crime must, based on prior decisions, be given minimal weight.

As part of its new independent review, the Arizona Supreme Court considered eight categories of mitigating evidence:

> (1) [A]ge at the time of the murder; (2) impaired capacity to appreciate the wrongfulness of his conduct; (3) history of alcohol and drug abuse; (4) dysfunctional family life and lack of socialization; (5) expressions of remorse; (6) lack of adult convictions; (7) no prior record of violent tendencies; and (8) record while incarcerated.

App. 8a (internal citations omitted).

Before addressing these categories, the Arizona Supreme Court made two clarifications. First, it noted that it was conducting the review because it had erred in requiring any proffered mitigation to have a "causal nexus to the underlying murder" when it conducted its required review during the direct appeal in 1997. App. 9a (cleaned up) (quoting *State v. McKinney*, 426 P.3d 1204, 1206 (Ariz. 2018)). Second, it explained that in reviewing the weight of the proffered mitigating evidence now, it would consider whether there was a causal nexus to the crime: "When assessing the weight and quality of a mitigating factor we take into account how the mitigating factor relates to the commission of the offense." App. 9a (quoting *State v. Hedlund*, 431 P.3d 181, 185 (Ariz. 2018)).

This in and of itself is not incorrect. However, in implementing the second clarification, the court below proceeded not just to *consider* the relationship of the mitigating evidence to the crime, but to repeatedly discount the weight of that evidence due to its lack of causal nexus to the commission of the offense. It did so not because it found the evidence to lack value in this particular case, but because its prior case law dictated that non-nexus evidence was, categorically, essentially worthless. App. 9a–11a (citing decisions pre-dating *McKinney v. Ryan,* 813 F.3d 798

(9th Cir. 2015)). It did so with regards to age. App. 9a–11a. Again, regarding his alcohol and drug abuse. App. 11a, 13a–14a. And again, regarding Mr. Spreitz's dysfunctional family life and lack of socialization in childhood. App. 16a–17a. And yet again, regarding his "personal fragmentation/disorganized thought process." App. 21a–22a. In each instance, the Court relied on its own precedents articulating a nexus requirement.

Formally assigning specific weight to an entire category of mitigating evidence regardless of the facts of the case violates the Eighth Amendment, no matter the Court's reason for doing so. But here, the issue is stark: most of its own precedents the Arizona Supreme Court cited in categorically assigning minimal weight to these factors were from the era where, as the Ninth Circuit has held, Arizona routinely imposed an unconstitutional causal nexus requirement. In other words, the Court's position was dictated by opinions predating the Ninth Circuit holding that provided the basis for Mr. Spreitz's federal habeas relief, necessitating this new review to begin with. App. 5a; *see also McKinney*, 813 F.3d at 802. Arizona has continued to apply the same nexus law it applied all along.

B. The Constitution Requires a Sentencer to Determine What Weight to Give Mitigating Evidence on an Individual Basis

The Arizona Supreme Court's categorical discounting of any evidence lacking a causal nexus to the crime, no matter the other circumstances of the defendant or the case, flatly contradicts this Court's precedents. That on its own is troubling. But

its inclusion of the youth of defendants in this category of evidence discounted as unrelated to a defendant's decision-making is unmoored from law, science, and reality.

In death penalty sentencing hearings, "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). That consideration has long included a requirement that the sentencer consider the "compassionate or mitigating factors stemming from the diverse frailties of humankind." *Id.* at 303. Underlying that requirement is a prohibition on treating "all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death." *Id.* at 304.

In keeping with the requirement to provide individualized consideration in capital sentencing, this Court has repeatedly rejected categorical treatment of defendants' proffered bases for a sentence less than death. It has insisted on individualized consideration for all sentences for first-degree murder, *id.* (quoting *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937)), including when that murder is committed by a person serving a life sentence. *Sumner v. Shuman*, 483 U.S. 66, 85 (1987) ("any legitimate state interests can be satisfied fully through the

use of a guided-discretion statute that ensures adherence to the *constitutional mandate* of heightened reliability in death-penalty determinations through *individualized-sentencing* procedures." (emphasis added)). It has also rejected structural limitations on the consideration of mitigating evidence, including, for example, intellectual disability. *Penry v. Lynaugh*, 492 U.S. 302, 318 (1989). Indeed, the Court has invalidated capital sentencing schemes that prevent a sentencer from "considering and giving effect to evidence relevant to the defendant's background or character or to the circumstances of the offense that mitigate against imposing the death penalty." *Id.* at 318–19. A capital sentencing regime that categorically discounts mitigating evidence that lacks a causal connection to the offense—like the one the Arizona Supreme Court has created here—runs contrary to the Courts long-standing requirement of individualized consideration in capital sentencing decisions.

Just as problematically, the Arizona Supreme Court's approach includes youth as a mitigating circumstance categorically discounted absent a scantly defined "causal connection" to the offense. Whatever consideration the Court might properly give to the presence or absence of causal connection of particular mitigating evidence in a particular case, it could never appropriately discount a defendant's youth as somehow unconnected to the offense. Both science and this Court's jurisprudence confirm that youth necessarily affects the decision-making surrounding an offense. In fact, this Court, recognizing advanced scientific understanding of youth, has explained that the rationales for punishing youth "apply . . . with lesser force than to

adults." *Roper*, 543 U.S. at 571; *see also Jones v. Mississippi*, 593 U.S. 98, 131 (2021) (Sotomayor, J., dissenting) ("Weighed against these 'signature qualities of youth,' the penological justifications for the death penalty collapse." (quoting *Roper*, 543 U.S. at 570–71)).

Indeed, the current scientific consensus is that youth—including, for males, persons well beyond Mr. Spreitz's age—affects decision-making, providing a causal nexus to any tragic and inexcusable decision to take the life of another. *See Roper*, 543 U.S. at 571–72 (noting lack of "evidence of deterrent effects" of a potential death sentence on juveniles); *Thompson v. Oklahoma*, 487 U.S. 815, 837 (1988) ("The likelihood that the [youthful] offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually non-existent."). Even as this Court has recognized that those under age eighteen can never be sentenced to death, there is also a scientific consensus that males of Mr. Spreitz's age at the time of the offense lack the culpability of their more mature counterparts. *See Commonwealth v. Mattis*, 224 N.E.3d 410, 420–21 (Mass. 2024) ("the scientific record strongly supports the contention that emerging adults have the same core neurological characteristics as juveniles have."); *People v. Taylor*, Nos. 166428, 166654, 2025 Mich. LEXIS 603, *18–19 (Mich. 2025) ("[A]s a class, 19- and 20-year-old late adolescents are more similar to juveniles in neurological terms than they are to older adults"); *In re Pers. Restraint of Monschke*, 482 P.3d 276, 322 (Wash. 2020) ("the overarching conclusion compelled by [the scientific literature] is clear: biological

and psychological development continues into the early twenties, well beyond the age of majority." (internal quotation omitted)); *see also* § I.B, *supra*.

The Arizona Supreme Court has historically given age little mitigating weight so long as the defendant had any life experience demonstrating any degree of maturity. In 1996 alone, it upheld three death sentences for juvenile murderers. *See State v. Jackson*, 918 P.2d 1038, 1051 (Ariz. 1996) (explaining psychological issues related to impulsivity not mitigating because not reflected in crimes); *State v. Laird*, 920 P.2d 769, 775 (Ariz. 1996) (same); *State v. Soto-Fong*, 928 P.2d 610, 634 (Ariz. 1996) (explaining defendant's "maturity and intelligence, as evidenced by his ability to live on his own with his own family, and his major participation in this offense . . . substantially reduce any mitigating weight his age might have."). The law and science have evolved since then; Arizona's approach has not. *See* App. 10a ("[B]ecause of his average intelligence, ability to make decisions, and his involvement in Reid's murder, we do not find age to be a mitigating circumstance . . .").

Even if defendants such as Mr. Spreitz are not, under the Court's current jurisprudence, entitled to a categorical exemption from execution,[12] the limitations associated with their youth necessarily bear on—and have a nexus to—the offense. *Moore v. Texas*, 581 U.S. 1, 13 (2017) (explaining this Court's precedent does not "license disregard of current medical standards" in assessing whether a person should

[12] Mr. Spreitz does not waive a categorical exemption from punishment in light of his age or on any other basis.

be sentenced to death). Even if they did not, a sentencer in a capital case must be able to individually consider and give effect to the defendant's youth as a mitigating factor. The Arizona Supreme Court's decision is contrary to science, violates this Court's precedent, and must be reversed.

C. This Error Presents a Conflict of Authority on a Recurring Question

The Arizona Supreme Court has created a regime whereby it discounts any mitigating evidence lacking a causal nexus to the crime, no matter the strength of that evidence and regardless of the other circumstances of the case. App. 16a. The way it addressed this issue will present problems far beyond "de novo resentencing" cases, although those alone are numerous. App. 6a.

This question will continue to plague Arizona capital cases until this Court intervenes. The cases decided after *Eddings* and before *McKinney* are only the tip of the iceberg. The implications for these cases during the fifteen years predating *McKinney* are, on their own, sufficient reason to intervene. But the problems from the decision below will only multiply with time. Beyond the de novo resentencing cases, the Arizona courts will time and again assess the impact of mitigating evidence that was never presented at trial. It will do so in the context of claims of ineffective assistance of counsel. *See Wiggins v. Smith*, 539 U.S. 510, 534–38 (2003) (concluding trial counsel's failure to uncover mitigating social history evidence similar to the evidence here prejudiced the defendant at sentencing). But it will also have to assess

the importance of suppressed mitigating evidence in the context of *Brady* claims. *See, e.g.*, *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment . . . ."); *State v. Lukezic*, 691 P.2d 1088, 1092 (Ariz. 1984) (noting same). These issues are in no way limited to the remands in light of *McKinney*.

Arizona's approach also conflicts with the approach of at least two other states, each of which, like Arizona used to, engages in judicial sentencing.[13] In Florida, the state supreme court has made clear that even where mitigating evidence lacks a causal connection to the commission of the offense, the sentencer may "assign weight [to it] based on the context of the mitigating circumstance." *Fletcher v. State*, 168 So. 3d 186, 219 (Fla. 2015); *see also Cox v. State*, 819 So. 2d 705, 723 (Fla. 2002) (explaining Florida law does not require that a proffered mitigating circumstance have any specific nexus to a defendant's actions for the mitigator to be given weight."). Likewise, Alabama leaves the weight of any mitigating circumstance to the sentencer. *See Smith v. State*, 908 So. 2d 273, 298 (Ala. Crim. App. 2000) ("The weight to be attached to the . . . mitigating evidence is strictly within the discretion of the sentencing authority."). In neither state do the courts create categories of mitigating

[13] Prior to *Ring v. Arizona*, 536 U.S. 584 (2002) the Arizona Supreme Court conducted an independent review of the trial court's sentencing decision de novo. *See State v. Lynch*, 357 P.3d 119, 141 (Ariz. 2015). After *Ring*, the court assessed instead whether the sentencer "abused its discretion in finding aggravating circumstances and imposing a sentence of death." Ariz. Rev. Stat. § 13-756(A).

evidence that are, as a matter of law, afforded de minimis weight. Doing so, as the Arizona Supreme Court has, is contrary to the individualized sentencing required by fundamental fairness and this Court's precedents.

III. THE COURT SHOULD ADDRESS THESE QUESTIONS NOW

The Court should grant review now and not await litigation of this claim after further proceedings in the state and federal courts. The relative infrequency of this Court's review of state court decisions in criminal cases has, historically, stymied the development of the law in an area—constitutional regulation of state criminal cases—that consumes a huge portion of the courts' dockets nationwide. Jeffrey S. Sutton & Brittany Jones, *The Certiorari Process and State Court Decisions*, 131 HARV. L. REV. 167, 169, 176(2018). And the important claims here need not be subjected to the "maze of obstacles to federal habeas review."[14] Eve Primus, *Equitable Gateways: Toward Expanded Federal Habeas Corpus Review of State Court Criminal Convictions*, 61 ARIZ. L. REV. 291, 296 (2019).

More importantly, neither Mr. Spreitz nor the State of Arizona should be made to wait the years, and perhaps decades, it will take to have this issue—with this 1994 death sentence—return to this Court in later proceedings. In its opinion, the Arizona Supreme Court held open the possibility of further post-conviction review proceedings. App. 6a. And capital cases in state and federal courts alike often take

[14] Those obstacles present additional potential sources of error, which often require this Court's intervention on purely procedural questions. *See, e.g.*, *Andrew v. White*, 145 S. Ct. 75, 81–82 (2025) (per curiam).

years to adjudicate. James N.G. Cauthen & Barry Latzer, *Why So Long? Explaining Processing Time in Capital Appeals*, 29 JUST. SYS. J. 298, 300 (2008). Indeed, Mr. Spreitz spent nearly three decades pursuing the claim that ultimately led to his case being returned to the Arizona Supreme Court. App. 3a. The Court should act now to bring a final resolution to the important issues presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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