No. 25-

IN THE

Supreme Court of the United States

EVAN MCCARRICK JERALD,

Petitioner,

v.

THE STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the Arizona Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

THOMAS JACOBS
217 North Stone Ave.
Tucson, AZ 85701

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611

TOBIAS S. LOSS-EATON
Counsel of Record
KIMBERLY QUICK
SIDLEY AUSTIN LLP
1501 K Street NW
Washington DC, 20015
(202) 736-8427
tlosseaton@sidley.com

MAXWELL B. GORDON
SIDLEY AUSTIN LLP
350 S. Grand Avenue
Los Angeles, CA 90071

Counsel for Petitioner

August 1, 2025

QUESTION PRESENTED

Under *Graham* v. *Florida*, the Eighth Amendment "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 560 U.S. 48, 82 (2010). And *Miller* v. *Alabama* held that, even in homicide cases, "the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders." 567 U.S. 460, 479–80 (2012) (emphasis added). The question presented is:

Whether the Eighth Amendment prohibits consecutive term-of-years sentences—either mandatory or discretionary—that guarantee a juvenile nonhomicide offender will die in prison.

PARTIES TO THE PROCEEDING

Petitioner is Evan McCarrick Jerald, Appellant below.

Respondent is the State of Arizona, Appellee below.

No parties are corporations.

RELATED PROCEEDINGS

This case arises from the following proceedings in the Arizona courts:

State of Arizona v. *Evan McCarrick Jerald*,
Arizona Supreme Court,
No. CR-24-0109-PR;

State of Arizona v. *Evan McCarrick Jerald*,
Arizona Court of Appeals, Division Two,
No. 2 CA-CR 21-0105; and

State of Arizona v. *Evan McCarrick Jerald*,
Pima County Superior Court,
No. CR-2018-0255001.

No other proceedings relate directly to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—continued

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Evan Jerald respectfully petitions for a writ of certiorari to review the judgment of the Arizona Court of Appeals in this case.

OPINIONS BELOW

The Arizona Court of Appeals' opinion is published at 548 P.3d 1110 and reproduced at App. 1a–20a. The Arizona Supreme Court's order denying a timely petition for review is published at 564 P.3d 623 and reproduced at App. 21a–22a. The trial court's unpublished judgment and sentencing documents are reproduced at App. 23a–38a.

JURISDICTION

The Arizona Court of Appeals issued its decision on April 15, 2024. The Supreme Court of Arizona denied petitioner's timely petition for discretionary review on March 4, 2025. Justice Kagan extended the time to file this petition to July 3, 2025, and then to August 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

INTRODUCTION

This case raises an important constitutional question that has produced an open and entrenched split in the lower courts: Whether the Eighth Amendment prohibits consecutive prison sentences, either mandatory or discretionary, that effectively guarantee a ju-

venile offender who did not commit homicide will be imprisoned until he dies.

Together, *Graham* v. *Florida*, 560 U.S. 48 (2010), and *Miller* v. *Alabama*, 567 U.S. 460 (2012), establish that juvenile offenders cannot be sentenced to life without parole for non-homicide offenses, and cannot face *mandatory* life without parole even for homicide. But "courts across the country are split over whether *Graham* bars a court from sentencing a juvenile non-homicide offender to consecutive, fixed terms resulting in an aggregate sentence that exceeds the defendant's life expectancy." *Moore* v. *Biter*, 742 F.3d 917, 920 (9th Cir. 2014) (*Moore II*) (O'Scannlain, J., dissental). "Some have held that *Graham* prohibits aggregate term-of-years sentences that amount to the functional equivalent of life without parole." *Id.* "More have held that *Graham* does not prohibit aggregate term-of-years sentences" like this. *Id.* This split encompasses at least twelve state high courts and at least three federal courts of appeals. It also includes multiple state-federal splits *within* a single jurisdiction—including in Arizona, where the state Supreme Court rejects the Ninth Circuit's approach as "untenable." See *State* v. *Soto-Fong*, 474 P.3d 34, 42 (Ariz. 2020).

Arizona's side of this split is wrong. *Graham* and *Miller* rest on the Court's consistent recognition that "children are constitutionally different from adults for purposes of sentencing" because they "have diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471. This "reasoning implicates any life-without-parole sentence imposed on a juvenile," *id.* at 473—whether or not the sentence is formally imposed under that label. A stacked sentence that will keep a juvenile in prison for life lacks "penological justifications"—retribution, incapacitation,

and rehabilitation—in exactly the same way as a single, formal life-without-parole sentence. See *id.* at 472–73. And that is even more obviously true when the stacked, effective life sentence is *mandatory*. As the Court more recently reiterated: In a case involving an individual who was under 18," a "discretionary sentencing system is . . . constitutionally necessary." *Jones* v. *Mississippi*, 593 U.S. 98, 105 (2021). A judge cannot lock up a child and throw away the key, and a state legislature certainly cannot require a judge to do so in every case—regardless of the defendant's prospects for growth and rehabilitation.

This case is an ideal vehicle to address these issues. For non-homicide offenses committed when he was fifteen to sixteen years old, Evan Jerald received stacked sentences requiring him to spend at least 208 years in prison—and the *minimum* mandatory sentence he could have received, when he was sentenced at age 18, was 92 years. He will thus die in prison unless this Court intervenes. And unlike other petitions on this issue, this case involves no vehicle problems like the AEDPA standard or adequate-and-independent state grounds. The petition should be granted.

STATEMENT

A. Factual background.

Evan Jerald faces 208 years in prison for offenses that began when he was fifteen. Under the decision below, Evan will die in prison, despite evidence that he was himself a victim of abuse and faced severe mental health challenges.

In 2013, Evan first met 33-year-old Raeanne Simmons. He was fourteen at the time. Appellant's Opening Br. ¶ 33, *Arizona* v. *Jerald*, No. 2 CA-CR 2021-0105 (Ariz. App. Oct. 24, 2022) ("App. Opening

Br."). After their initial meeting, Evan and Raeanne began to spend long periods of time together, including going on outings to the movies or spending hours on the phone. *Id.* ¶ 37. Raeanne's youngest child testified that he walked in on them naked and kissing in Raeanne's home. *Id.* Evan had also been molested before, when he was a child.

In July 2015, Evan began babysitting Raeanne's children, ES and GS, while she was at work. *Id.* ¶¶ 27–28. That November, Raeanne noticed Skype communications between ES and Evan—who was using an alias—on ES's devices. *Id.* ¶ 30. At the same time, Raeanne discovered that ES would sometimes meet Evan in the alley behind their house. *Id.* In response, Raeanne performed a factory reset on ES's phone, effectively erasing any evidence of their communication and cutting off further contact. *Id.* She then reported the matter to the authorities. *Id.* ¶ 31. During the initial investigation, both ES and GS denied any abuse by Evan. Two years later, however, ES disclosed sexual contact with Evan to investigators. *Id.* ¶ 34. GS also described sexual abuse by Evan.

B. Proceedings below.

1. Evan was indicted on eight counts of sexual conduct with a minor under fifteen and two counts of molestation of a child. App. 3a. His first trial resulted in a mistrial when the jury failed to reach a unanimous verdict on any count. *Id.*

In preparation for his second trial, Evan underwent a psychiatric evaluation, which concluded he was incompetent to undergo trial or to assist with his defense. App. Opening Br. ¶ 12. Evan was then referred to a restoration-to-competency program, where he completed an initial two months' rehabilitation.

Id. Even so, Evan was still found incompetent. *Id.* The trial court mandated Evan's continued participation in the program and stayed trial proceedings until his competency ultimately improved. *Id.* ¶ 13.

At the second trial, a jury convicted Evan of four counts of sexual conduct with a minor and four lesser-included counts of molestation of a child. App. 3a. He was acquitted on the remaining charges, including the allegations related to GS.

For each of the four sexual-conduct convictions, Evan received a life sentence with no possibility of release until 35 years—running consecutively. App. 3a. He was also sentenced to four consecutive seventeen-year terms for the molestation convictions. *Id.* In all, he faces more than 208 years in prison.

2. The Arizona Court of Appeals affirmed. App. 20a. In analyzing Evan's sentence, the appellate court first held that he was properly sentenced under Arizona's dangerous-crimes-against-children statute, as opposed to the more lenient scheme for most first-time felony offenders. *Id.* at 3a. The dangerous-crimes-against-children statute has two prongs. Under subsection (A), "a person who is at least eighteen years of age" faces a mandatory life sentence with no chance of parole until 35 years, while subsection (B) permits such a sentence, but does not require it, for "a person who is at least eighteen years of age or who has been tried as an adult." *Id.* at 4a (emphasis omitted). The appellate court held that Evan was properly sentenced under subsection (B) given his age at the time of his offenses and trial. See *id.* at 4a–7a.

Thus, the court acknowledged, Evan's "mandatory sentences were lengthy, flat, and consecutive." App. 9a. Indeed, "[e]ven if the trial court had imposed the minimum sentence for each conviction, [Evan] faced

ninety-two years in prison" starting at age eighteen, which "would exceed his life expectancy." *Id.*

Even so, the appellate court rejected Evan's Eighth Amendment arguments. It relied on state-court precedent holding 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." App. 8a (citing *State* v. *Berger*, 134 P.3d 378, 386 (Ariz. 2006)). It also relied on state-court precedent to hold that "aggregated sentences for multiple crimes" do not violate *Graham* even if they amount to "a de facto life sentence for [a] juvenile[]" offender. App. 13a (citing *State* v. *Soto-Fong*, 474 P.3d 34, 41–42 (Ariz. 2020)). The appellate court thus brushed aside Evan's showing that Arizona's rule "squarely contradicts" the Ninth Circuit's approach to the same questions. *Id.* (citing *Moore* v. *Biter*, 725 F.3d 1184 (9th Cir. 2013) (*Moore I*)).

3. Evan timely petitioned for discretionary review in the Arizona Supreme Court. He was supported by *amicus* Center for Law, Brain and Behavior at Massachusetts General Hospital, Harvard Medical School, which wrote to emphasize that Evan's sentence was excessive "given his age and developmental stage at the time of his offenses, minimal likelihood of sexual recidivism, and the responsiveness of sexually abusive youth to evidence-based interventions." Amicus Curiae Pet. for Rev. of the Ctr. for Law, Brain and Behavior 8, *Arizona* v. *Jerald*, No. CR-24-0109-PR (Ariz. June 2024). And more broadly, science shows that "[o]ur youthful selves simply neither determine nor predict our adult lives." *Id.* at 9.

The Arizona Supreme Court denied review. In doing so, it ordered that part of the appellate court's statutory sentencing analysis (but not its Eighth

Amendment analysis) be depublished. App. 21a; see *id.* at 6a–7a. 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." *Id.* at 21a.

REASONS FOR GRANTING THE PETITION

The Court should grant review to decide whether *Graham*'s holding that "the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender," 560 U.S. at 75, applies equally to consecutive term-of-years sentences that effect the same result.

I. Courts are intractably split on how *Graham* applies to aggregate effective life sentences for juveniles.

The question presented has generated a wide, acknowledged, and entrenched split among the lower courts. This split emerged almost immediately after *Graham*. See *Moore II*, 742 F.3d at 920 (O'Scannlain, J., dissental). By 2017, fifteen states were already urging this Court to "grant review to resolve the conflict" over "the proper analysis for consecutive term-of-years sentences" under *Graham* and *Miller*.[1] Since then, the conflict has only widened. See, *e.g.*, *State* v. *Gulley*, 505 P.3d 354, 374 (Kan. 2022) (per curiam) (Standridge, J., dissenting) (collecting cases showing the "split of authority among the states and the federal circuits").

---

[1] *See* Br. of *Amici Curiae* State of Utah & Thirteen Other States 1–2, *New Jersey* v. *Zuber*, 583 U.S. 826 (2017) (No. 16-1496), 2017 WL 3085071. Prior petitions on this subject, however, were poor vehicles. *See infra* § IV.

This split includes multiple disagreements between state and federal courts in the same jurisdiction. For example, Arizona disagrees with the Ninth Circuit, while Colorado disagrees with the Tenth. "Such disagreement not only creates confusion for lower courts attempting to properly apply the law, but also prevents States from ensuring the finality of their criminal judgments," since federal habeas courts will apply different law than state courts on direct appeal.[2] See *infra* § I.C. This Court's review is needed.

A. At least six state high courts apply *Graham*'s rule.

To start, there is a deep, wide, and open split among state high courts. At least six state high courts have applied *Graham*, *Miller*, or both to overturn aggregate effective life sentences for juvenile offenders.

The California Supreme Court held that *Graham* and *Miller* prohibit sentencing a juvenile nonhomicide offender to "consecutive mandatory terms exceeding his or her life expectancy." See *People* v. *Caballero*, 282 P.3d 291, 294 n.3 (Cal. 2012). The court thus overturned a 110-year total sentence for a sixteen-year-old convicted on three counts of attempted murder. See *id.* at 293 see also *id.* at 297 (Werdegar, J., concurring) (finding "unpersuasive" the "purported distinction between a single sentence of life without parole and one of component parts adding up to 110 years to life").

---

[2] *See* Br. of Indiana & 13 Other States as *Amici Curiae* in Support of Pet'r 12, *Washington* v. *Domingo-Cornelio*, 141 S. Ct. 1753 (Mem) (No. 20-831), 2021 WL 240716 (pointing to the Arizona–Ninth Circuit split over Graham as an example of this problem).

The Maryland Supreme Court has held that "a sentence stated as a term of years for a juvenile offender"—including "an aggregate sentence comprised of consecutive sentences imposed for multiple crimes"—"can … be regarded as a sentence of life without parole for purposes of the Eighth Amendment." *Carter* v. *State*, 192 A.3d 695, 725, 730 (Md. 2018). "Most of the decisions in other jurisdictions applying *Graham* and *Miller* to sentences expressed in a term of years," the court noted, "have actually involved stacked sentences." *Id.* at 732–33. "Only Louisiana and Missouri have held *Graham* applies to sentences expressed in terms of years but not to aggregate sentences that are the result of multiple convictions." *Id.* (citing cases). The Maryland court thus held that a juvenile offender's 100-year total sentence for four counts of first-degree assault, with parole available only after 50 years, should be viewed "no differently than a single sentence for purposes of *Graham*." *Id.* at 716, 735.

The New Jersey Supreme Court has applied *Graham* and *Miller* to strike down an aggregate sentence of "150 years in prison with a 75–year period of parole ineligibility" for ten non-homicide offenses committed by a seventeen-year-old. See *State* v. *Zuber*, 152 A.3d 197, 202 (N.J. 2017). The "force and logic of *Miller*'s concerns," the court explained, apply equally "to cases in which a defendant commits multiple offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases." *Id.* at 212. Thus, "judges must do an individualized assessment of the juvenile about to be sentenced"—"with the principles of *Graham* and *Miller* in mind"—"when they consider a lengthy, aggregate sentence that amounts to life without parole." *Id.* at 214.

The North Carolina Supreme Court applied the same logic to overturn consecutive life sentences, with no parole eligibility until 50 years, for "various charges[,] including two counts of first-degree murder," against a seventeen-year-old. *State* v. *Kelliher*, 873 S.E.2d 366, 370 (N.C. 2022). The court noted that "whether to recognize lengthy and aggregate sentences as de facto life without parole . . . has divided state and federal courts." *Id.* at 381. But "the principles enunciated in the Supreme Court's juvenile sentencing cases" like *Miller* and *Graham* showed that this sentence "triggers the substantive constitutional rule" against life sentences for juveniles. *Id.*

The Ohio Supreme Court has likewise held that *Graham* "prohibits the imposition of a term-of-years prison sentence that exceeds the offender's life expectancy on a juvenile nonhomicide offender." *State* v. *Moore*, 76 N.E.3d 1127, 1128 (Ohio 2016). The court agreed with "other state high courts" that, "for purposes of applying the Eighth Amendment protections discussed in *Graham* and *Miller,* there is no distinction between life-without-parole sentences for juveniles and term-of-years sentences that leave a juvenile offender without a meaningful opportunity to demonstrate rehabilitation and growth" and thus to earn possible release. See *id.* at 1146. The court thus invalidated an aggregate "minimum 77–year sentence" for "a 15-year-old nonhomicide offender." *Id.* at 1134. "Whether the sentence is the product of a discrete offense or multiple offenses," the court explained, "the fact remains that it was a *juvenile* who committed the one offense or several offenses and who has diminished moral culpability." *Id.* at 1142.

The Wyoming Supreme Court, too, has held that "a lengthy aggregate sentence for closely-related crimes whose practical effect is that the juvenile of-

fender will spend his lifetime in prison triggers the Eighth Amendment." *Bear Cloud* v. *State*, 334 P.3d 132, 141 (Wyo. 2014). Although courts "have come down on both sides of the issue," the "teachings of the *Roper/Graham/Miller* trilogy require sentencing courts to provide an individualized sentencing hearing to weigh the factors for determining a juvenile's 'diminished culpability and greater prospects for reform' when . . . the aggregate sentences result in the functional equivalent of life without parole." *Id.* at 141–43. Thus, the court said, "we will focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id.* (cleaned up). The Wyoming court therefore vacated an aggregate life sentence with parole only after 45 years for "first-degree murder, aggravated burglary, and conspiracy to commit aggravated burglary." *Id.* at 135–36.

B. At least six state high courts refuse to apply *Graham*'s rule.

By contrast, at least six state high courts have refused to apply *Graham* to aggregate sentences that effectively guarantee a juvenile will die in prison—though these courts have largely declined to engage with the merits, instead punting to this Court.

The Arizona Supreme Court—in the ruling underlying the decision below—has "reject[ed] the notion that *Graham* and *Miller* implicate a juvenile's de facto life term resulting from multiple consecutive sentences." *Soto-Fong*, 474 P.3d at 41. "State courts and federal circuits have reached disparate resolutions of these cases," the Arizona court acknowledged, but "*Graham* and its progeny did not involve contested consecutive sentences arising from multiple crimes." *Id.* at 40–41. The court deemed the Ninth

Circuit's application of *Graham* to such sentences "untenable," agreeing instead "with the dissent from rehearing en banc which concluded that *Graham* did not apply" in such cases. *Id.* at 42 (citing *Moore II*, 742 F.3d at 920 (O'Scannlain, J., dissental)); see *infra* § I.C. The court thus rejected Eighth Amendment challenges where each defendant "received multiple sentences for multiple crimes which, in the aggregate, resulted in terms of incarceration that will or may exceed their life expectancy." 474 P.3d at 41.

The Colorado Supreme Court similarly holds that "*Graham* and *Miller* apply only where a juvenile is sentenced to the specific sentence of life without the possibility of parole *for one offense*." *Lucero* v. *People*, 394 P.3d 1128, 1132 (Colo. 2017) (Eid, J.) (emphasis added). "Multiple sentences imposed for multiple offenses do not become a sentence of life without parole," the court said, "even though they may result in a lengthy term of incarceration." *Id.* at 1133. "Life without parole is a specific sentence, imposed as punishment for a single crime, which remains distinct from aggregate term-of-years sentences resulting from multiple convictions." *Id.*

The Georgia Supreme Court has held that this Court's precedents do not address "the imposition of aggregate life-with-parole sentences for multiple convictions." *Veal* v. *State*, 810 S.E.2d 127, 128 (Ga. 2018). The court thus rejected the defendant's *Graham* challenge even though his "aggregate sentence . . . mandate[d] 60 years of prison service before the first opportunity for paroled release." *Id.* at 128–29.

The Minnesota Supreme Court has likewise refused, "absent further guidance" from this Court, to "extend" *Graham* and *Miller* to reach "juvenile offenders who are being sentenced for multiple crimes."

State v. *Ali*, 895 N.W.2d 237, 246 (Minn. 2017). The court noted that other courts "have split on the issue of whether the *Miller*/*Montgomery* rule applies to consecutive sentences that are, in the aggregate, the 'functional equivalent' of a life imprisonment without the possibility of parole sentence." *Id.* at 245 (citing cases). Because this Court "has not squarely addressed the issue of whether consecutive sentences should be viewed separately when conducting a proportionality analysis under the Eighth Amendment," the Minnesota court would not do so either. *Id.* at 246.

The South Carolina Supreme Court has also considered "whether an aggregate sentence imposed for multiple nonhomicide offenses committed while [the defendant] was a juvenile was the equivalent of a sentence of life without the possibility of parole, and if so, whether the aggregate sentence violated the Eighth Amendment as interpreted by *Graham*." *State* v. *Slocumb*, 827 S.E.2d 148, 151 (S.C. 2019). The court noted "an approximately even split of authority on whether the Eighth Amendment, as interpreted in *Graham* and *Miller*, prohibits *de facto* life sentences." *Id.* at 156; see *id.* at 158–166 (collecting cases). But, the court concluded, "[n]either *Graham* nor the Eighth Amendment, as interpreted by the Supreme Court, currently prohibits the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile nonhomicide offender." *Id.* at 157; but see *id.* at 165 (Hearn, J., dissenting) ("the justification underpinning *Graham* equally applies to a term-of-years sentence").

The Virginia Supreme Court also holds that "*Graham* does not apply to aggregate term-of-years sentences involving multiple crimes, and we should not declare that it does." *Vasquez* v. *Commonwealth*,

781 S.E.2d 920, 928 (Va. 2016). "Neither [defendant before the court] was convicted of a single crime accompanied by a life-without-parole sentence"; rather, the court said, the "only reason that the aggregate sentences exceeded their life expectancies was because they committed so many separate crimes." *Id.* at 926. Like the Arizona high court, the Virginia court relied heavily on federal-court opinions arguing that *Graham* does not *clearly* apply to such sentences under AEDPA. See *id.*

C. Federal habeas courts are split too.

The federal courts of appeals have likewise split on this question in habeas proceedings governed by AEDPA. Two circuits hold that aggregate effective life sentences for juvenile non-homicide offenders violate clearly established law under *Graham*, while at least one circuit holds the opposite.

The Ninth Circuit has held that a 254-year sentence for non-homicide crimes committed when the defendant was sixteen, with no chance of parole for 127 years, violated clearly established law under *Graham*. See *Moore I*, 725 F.3d at 1186. This sentence was "materially indistinguishable from a life sentence without parole because Moore will not be eligible for parole within his lifetime." *Id.* at 1191.

The Ninth Circuit then denied the state's rehearing petition over a dissent by Judge O'Scannlain, joined by six other judges. See *Moore II*, 742 F.3d 917. Judge O'Scannlain argued that *Graham* "did not squarely address aggregate term-of-years sentences" as opposed to sentences for single non-homicide offenses. See *id.* at 919 (dissental). And he explained that "courts across the country are split over" this question. *Id.* at 920 (citing cases).

The Tenth Circuit similarly granted habeas relief under AEDPA to a defendant who received "three life sentences and an additional sentence of twenty years, all to run consecutively"—with no chance of parole until 131.75 years—for "several violent nonhomicide crimes committed when he was sixteen years old." *Budder* v. *Addison*, 851 F.3d 1047, 1049 (10th Cir. 2017). The court acknowledged that "the circuit courts do not agree" on *Graham*'s application in this situation, *id.* at 1053 n.4, but concluded that "*Graham*'s categorical holding" applies just as much to "three consecutive life sentences" with no true chance of parole as it does to one life sentence with no formal chance of parole. See *id.* at 1053.

The Sixth Circuit, by contrast, held that Ohio did not violate clearly established law by imposing "consecutive, fixed terms totaling 89 years' imprisonment" for non-homicide crimes committed when the defendant was sixteen. See *Bunch* v. *Smith*, 685 F.3d 546, 547 (6th Cir. 2012). Although the "89–year aggregate sentence may end up being the functional equivalent of life without parole," *Graham* "did not encompass consecutive, fixed-term sentences," so it could not clearly establish that such sentences are unconstitutional. *Id.* at 551. The Sixth Circuit, too, noted that "courts across the country are split" on this question. *Id.* at 552.

* * *

This split is deep, widely acknowledged, and entrenched. Courts on both sides have had ample chances to consider each other's positions. State courts disagree with each other and with federal courts in the same jurisdiction. In at least six states, this case would have come out the other way. This disuniformity warrants the Court's review.

II. The decision below is wrong.

The Arizona courts erred by refusing to apply *Graham* to stacked sentences that effectively ensure imprisonment for life without parole. *Graham*'s and *Miller*'s principles apply equally to such sentences. The Arizona courts' contrary reasoning is badly flawed.

1. *Graham* made clear that "the Eighth Amendment does not permit" a sentence that "guarantees" a juvenile non-homicide offender "will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes." 560 U.S. at 79. That is, a state cannot deny such a juvenile defendant "any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law." *Id.*

Miller then underscored *Graham*'s reasoning. *Graham*, the *Miller* Court explained, "likened life without parole for juveniles to the death penalty itself," and thus "concluded that the [Eighth] Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense." 567 U.S. at 470. *Miller* then applied the same reasoning to hold that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment," even in homicide cases. *Id.*

That is so, *Miller* explained, because "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471. "Because juveniles have diminished culpability and greater prospects for re-

form . . . they are less deserving of the most severe punishments." *Id.* (cleaned up). Both "common sense" and "science and social science" show that children are more reckless, more susceptible to pressure from others, and less fixed in their character. See *id.* In turn, these "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 472. "[T]he case for retribution is not as strong with a minor as with an adult"; "the same characteristics that render juveniles less culpable than adults" also make them less deterrable; incapacitation cannot justify a permanent punishment because "incorrigibility is inconsistent with youth"; and such a sentence forecloses any chance of rehabilitation, which is "at odds with a child's capacity for change." *Id.* at 472–73.

2. This reasoning applies with equal force to aggregate term-of-years sentences that effectively guarantee a juvenile will die in prison. As *Miller* emphasized, "none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." 567 U.S. at 473. "Those features are evident in the same way, and to the same degree," when a juvenile commits a homicide or non-homicide crime. *Id.* And they are equally evident when a juvenile commits two crimes instead of one. In turn, each penological justifications for imprisonment is limited in the same way here as in *Graham* and *Miller*.

First, retribution cannot support aggregate effective life sentences for children. "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Graham*, 560 U.S. at 71. To be sure, the law generally attributes greater culpability

to a person who commits more offenses. But *Graham* and *Miller*'s basic insight is that children's actions do not reflect the same culpability as adults'. The developmental features that produce poor judgment and reckless behavior in juveniles are not limited to single, specific situations; they are just as likely to produce multiple harmful acts.

Second, deterrence also fails to justify such a sentence. The Court has consistently emphasized that juveniles' "immaturity, recklessness, and impetuosity . . . make them less likely to consider potential punishment," and thus less capable of being deterred. *Miller*, 567 U.S. at 472; accord *Roper* v. *Simmons*, 543 U.S. 551, 571 (2005). Again, the same is true here. A juvenile who is undeterred by the prospect of life in prison for one offense is no more likely to be deterred by the same potential punishment for two offenses.

Third, incapacitation likewise fails to justify the sentence. "[W]hile incapacitation may be a legitimate penological goal sufficient to justify life without parole in other contexts, it is inadequate to justify that punishment for juveniles who did not commit homicide." *Graham*, 560 U.S. at 72. Just as it is impossible to tell whether one juvenile offense reflects "unfortunate yet transient immaturity" or "irreparable corruption," *id.* at 73, it is equally impossible to discern the reason for multiple offenses.

Finally, rehabilitation does not justify such a sentence. By definition, life imprisonment forecloses any possibility of rehabilitation. Such a sentence reflects "an irrevocable judgment about that person's value and place in society"—and "juvenile offenders . . . are most in need of and receptive to rehabilitation." *Id.* at 74. That is no less true for a child who commits multiple non-homicide offenses.

All these points have special force for *mandatory* effective life sentences. As *Miller* held, "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id.* A sentencer must be able to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. That is, as the Court more recently reiterated, a "discretionary sentencing system is . . . constitutionally necessary" for all juvenile offenders. See *Jones*, 593 U.S. at 105.

3. Under the correct rule, Evan's sentence is unconstitutional. As the court below acknowledged, Evan's "mandatory sentences were lengthy, flat, and consecutive." App. 9a. "Even if the trial court had imposed the minimum sentence for each conviction, [Evan] faced ninety-two years in prison," which "would exceed his life expectancy." *Id.* Indeed, his mandatory sentence would foreclose his release until age 110—an age that just 0.003% of males can expect to reach, even when not imprisoned.[3] Evan's actual sentence is even more draconian. His "minimum possible prison term is 208 years," eight decades longer than a human being has ever lived. App. 3a. There is no serious question that, under this sentence, Evan will die in prison, for non-homicide offenses he committed as a troubled teenager who himself experienced sexual abuse. The Eighth Amendment prohibits this.

---

[3] *See* Boston Univ., Chobanian & Avedisian Sch. of Med., Centenarian Statistics (updated Jan. 1, 2023), https://www.bumc.bu.edu/centenarian/statistics/.

In holding otherwise, the court below relied on pre-*Graham* state-court precedent allowing reviewing courts to consider cumulative sentences for Eighth Amendment purposes only if the defendant's conduct was at "the periphery," not "the core," of "a criminal statute's prohibition." App. 8a. Since Evan's conduct supposedly was "was at the core" of his offenses of conviction, the court below refused to consider his aggregate sentence. See *id.*

The Arizona high court made no effort to ground its core/periphery rule in the Constitution's text or original meaning, in historical practice, or in this Court's precedents. And the rule conflicts with this Court's more recent decisions—again, Graham's rule is "categorical," not "crime-specific." *Miller*, 567 U.S. at 473. The precise nature of a juvenile's non-homicide offense conduct is not relevant.

Beyond that, the court below rejected Evan's *Graham* argument by relying on the Arizona Supreme Court's *Soto-Fong* decision, described above. App. 13a. But *Soto-Fong* barely analyzed the merits of this question. *Soto-Fong* declared that the Eighth Amendment does not apply to "aggregated sentences for multiple crimes" simply because *Graham* and *Miller* did not themselves address such sentences. 474 P.3d at 41–42. The most charitable reading of this discussion is that the court was asking merely whether *Graham* and *Miller* overruled existing Arizona precedent holding that courts "will not consider the imposition of consecutive sentences in a proportionality inquiry." *Id.* at 41 (citation omitted). Whatever the answer to that question, it reveals little about the Eighth Amendment's meaning.

Nor does the Arizona high court's rule find support in Judge O'Scannlain's *Moore II* dissent from the denial of rehearing en banc. See *Soto-Fong*, 474 P.3d at

42 ("concur[ring] with the dissent from rehearing en banc" in *Moore*). As explained, *Moore* was a habeas case. Thus, Judge O'Scannlain's argument was simply that, because this Court "has not squarely addressed the constitutionality of aggregate term-of-years sentences," such a sentence "cannot be contrary to *clearly established* federal law" under AEDPA. *Moore II*, 742 F.3d at 920 (emphasis added). Again, even if that were true, it would not help the Arizona court resolve the underlying question of "constitutional interpretation" that it supposedly "review[ed] de novo." See *Soto-Fong*, 474 P.3d at 37.

Because Evan's sentence "guarantees he will die in prison without any meaningful opportunity to obtain release," it violates the Eighth Amendment. *Graham*, 560 U.S. at 79. The decision below was wrong to hold otherwise.

III. The question presented is important.

The constitutional question presented is nationally important. Obviously, it has profound implications for any children who potentially face life in prison, and for their loved ones. Thousands or tens of thousands of juveniles are "held as adults" in jail or arrested for violent crimes each year. Indiana Br. 13, *Domingo-Cornelio*, 2021 WL 240716. "Indeed, each year sees thousands of serious juvenile offenders transferred into the adult criminal justice system." *Id.*

The unresolved split on this question also prevents all actors in the criminal justice system from properly tackling this issue. State legislatures must necessarily determine, in the first instance, what penalties to prescribe for what offenses. Cf. *Soto-Fong*, 474 P.3d at 42–43. They cannot intelligently do so without knowing the background rules imposed by the

Constitution. Likewise, sentencing judges face uncertainty because they do not know whether this Court (or a federal habeas court) will uphold or strike down this sentencing practice on a categorical basis.

IV. This case is an ideal vehicle.

The question presented was preserved at each level, and was pressed and passed upon below. The Arizona high court has squarely addressed this question, as have many other courts. This case arrives here on direct review. And the case's facts cleanly present the issue: Evan's 208-year "minimum possible prison term," App. 3a, is not an edge case that raises any difficult line-drawing questions about life expectancy. Cf. *Moore II*, 742 F.3d at 922. Evan *will* die in prison unless this Court intervenes. Indeed, the state so mandated—even Evan's 92-year mandatory minimum sentence would ensure that he is incarcerated until he expires.

Other petitions raising this question, by contrast, have been poor vehicles. Petitions by losing states have often had to grapple with adequate-and-independent state grounds for decision.[4] A conditional cross-petition filed by Tennessee in 2023 was denied after the underlying petition was voluntarily dismissed.[5] And cases arising from the federal courts generally involve habeas review under AEDPA, which can prevent reaching the underlying merits question. This case involves no such obstacles.

CONCLUSION

For these reasons, the petition should be granted.

---

[4] *See*, *e.g.*, Br. in Opp. 6, *New Jersey* v. *Zuber*, 583 U.S. 826 (2017) (No. 16-1496), 2017 WL 3085072.

[5] *See* Order, *Booker* v. *Tennessee*, No. 22-7180 (June 2, 2023).

Respectfully submitted,

THOMAS JACOBS
217 North Stone Ave.
Tucson, AZ 85701

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611

TOBIAS S. LOSS-EATON
Counsel of Record
KIMBERLY QUICK
SIDLEY AUSTIN LLP
1501 K Street NW
Washington DC, 20015
(202) 736-8427
tlosseaton@sidley.com

MAXWELL B. GORDON
SIDLEY AUSTIN LLP
350 S. Grand Avenue
Los Angeles, CA 90071

Counsel for Petitioner

August 1, 2025