ARIZONA COURT OF APPEALS

DIVISION ONE

STATE OF ARIZONA, Plaintiff/Respondent, v. JOSHUA ASTON, Defendant/Petitioner.	Court of Appeals, Division One No. 1 CA-CR-22-0228-PRPC Maricopa County Superior Court Case No. CR2004-006474-001

BRIEF OF *AMICI CURIAE* ARIZONA JUSTICE PROJECT AND JUVENILE LAW CENTER

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INTERESTS OF AMICI CURIAE

The **Arizona Justice Project** (AJP) is a non-profit organization dedicated to preventing and overturning wrongful convictions and other manifest injustices, such as excessive or unconstitutional sentences. Now in its 24th year, AJP has received several thousands of requests for assistance from Arizona inmates and has represented numerous individuals before courts of law and the Arizona Board of Executive Clemency. AJP has a compelling interest in ensuring affected juvenile defendants receive sentences that comply with the Eighth Amendment's prohibition on cruel and unusual punishment. AJP offers this brief in support of Joshua Aston's Petition for Review of the Maricopa County Superior Court's order vacating the pending resentencing hearing and dismissing his petition for post-conviction relief under *Miller v Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and *State v. Valencia*, 241 Ariz. 206 (2016).

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center

has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Did the Superior Court err in vacating Mr. Aston's resentencing hearing and dismissing Mr. Aston's post-conviction proceeding challenging his natural life sentence for a crime committed when he was a juvenile contrary to the clear mandates of the United States and Arizona Supreme Courts in *Miller v Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016); and *State v. Valencia*, 241 Ariz. 206 (2016)?

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INTRODUCTION

The Arizona Justice Project (AJP) and the Juvenile Law Center (JLC) (collectively, "the Amici") submit this amici curiae brief to encourage this Court to grant review of the Petition, which raises issues of statewide and constitutional importance on matters pending in multiple cases as a result of the United States Supreme Court's recent opinion in *Jones v. Mississippi*, 141 S.Ct. 1307 (2021). The Amici are aware of at least fourteen other cases currently pending in this Court, the Arizona Supreme Court, or the Maricopa County Superior Court that present essentially the same legal issue as that presented in Mr. Aston's case. Different judges of the Superior Court have issued conflicting rulings regarding the same legal issue. And, as explained in more detail below, the Superior Court's decision in Mr. Aston's case conflicts with the recent precedential opinion of this Court in *State v. Wagner*, 510 P.3d 1083, 1088 ¶ 25 (Ariz. Ct. App. 2022). Thus, it is essential that this Court grant review to provide guidance to the superior courts and assure uniformity and fairness in the application of the law to juvenile criminal defendants across Arizona.

Over the past three decades, there has been a dramatic change in the understanding of juvenile offenders resulting in the U.S. Supreme Court issuing a series of rulings providing both substantive limitations on the sentences that can be

imposed on, and requiring increased procedural protections in sentencing proceedings for, individuals who were juveniles when they committed crimes. In 2005, the Court for the first time outlawed the death penalty for all juvenile offenders in *Roper v. Simmons*, recognizing that juveniles have "diminished culpability" and that therefore the "penological justifications" for the most severe penalty "apply to them with lesser force than to adults." 543 U.S. 551, 571 (2005). The Court extended this analysis in *Graham v. Florida*, to hold that life-without-parole (LWOP) sentences are unconstitutional for juveniles who committed a non-homicide offense. 560 U.S. 48, 79 (2010).

Then, in 2012, the Supreme Court held in *Miller v. Alabama* that a mandatory life-without-parole sentence for a juvenile homicide offender violates the Eighth Amendment's prohibition against cruel and unusual punishment. 567 U.S. 460, 465 (2012). The *Miller* Court made clear that a sentencing judge must have discretion to impose a sentence that would provide the juvenile offender with a "'meaningful opportunity to obtain release,'" *id.* at 479 (quoting *Graham*, 560 U.S. at 75), and that in exercising such discretion, a sentencing judge must consider "youth and its attendant characteristics," *id.* at 465. *See also id.* at 476, 483. In 2016, the Court held that *Miller* applied retroactively. *Montgomery v. Louisiana*, 577 U.S. 190 (2016). The *Montgomery* Court held that states could remedy "*Miller* violation[s]"—referring to the juveniles already unconstitutionally

sentenced to LWOP—by extending parole eligibility to such offenders, which would allow "[t]he opportunity for release [to] be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change." *Montgomery*, 577 U.S. at 212.

In *Tatum v. Arizona*, 137 S.Ct. 11 (2016), the U.S. Supreme Court vacated the judgment of this Court dismissing a similar claim for post-conviction relief and remanding for further consideration under *Montgomery*. *Tatum v. Arizona*, 137 S.Ct. 11 (2016). In her concurrence, Justice Sotomayor concluded that a remand was necessary because Arizona courts had not properly "'take[n] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Id.* (citing *Miller*, 567 U.S. at 480). Following *Montgomery* and *Tatum*, the Arizona Supreme Court held that individuals who were sentenced to natural life as juveniles are entitled to evidentiary hearings to determine whether their sentences are unconstitutional under *Miller*. *State v. Valencia*, 241 Ariz. 206 (2016).

Finally, in 2021, the U.S. Supreme Court in *Jones v. Mississippi* declined to require sentencing courts to make a finding of permanent incorrigibility before sentencing juvenile offenders to life-without-parole sentences. 141 S.Ct. 1307 (2021). Instead, the Court reiterated the central holdings of both *Miller* and *Montgomery*: "A hearing where youth and its attendant characteristics are

considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not" and "discretionary sentencing" is necessary to "ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." *Jones*, 141 S.Ct. at 1317−18.

The State and the superior court ignore this sea change in the constitutional law regarding juvenile offender sentencing in finding that Mr. Aston's sentencing proceeding complies with the Eighth Amendment, because—according to the superior court and the State—*Jones* implicitly overruled these precedents and supported the superior court's decision to disregard this Court's mandate. But the superior court and the State ignore that the Court in *Jones* went out of its way to say that it was *not* overruling *Miller* and *Montgomery*. Because the superior court's decision ignores the constitutional mandates of the U.S. and Arizona Supreme Courts, this Court should grant review and reverse, remand, and reinstate its 2016 mandate directing the lower court to conduct a constitutionally compliant sentencing.

ARGUMENT

I. MR. ASTON'S SENTENCE IS UNCONSTITUTIONAL UNDER *MILLER* AS HE COULD NOT HAVE BEEN SENTENCED TO ANYTHING LESS SEVERE THAN LIFE WITHOUT THE POSSIBILITY OF PAROLE.

"The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). A mandatory life-without-parole sentence for a juvenile violates the prohibition on cruel and unusual punishment because it "precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477.

Accordingly, the Supreme Court has held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 479 (citing *Graham v. Florida*, 560 U.S. 48, 75 (2010)). The Supreme Court thus commanded that a sentencing judge "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison," in each case where a juvenile is convicted of homicide. *Id.* at 480.

Twice after *Miller* was decided, the Supreme Court has reaffirmed its central holding. First, in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Court held

that *Miller* announced a substantive rule of law that applied retroactively to cases on collateral review. Second, in *Jones v. Mississippi*, 141 S.Ct. 1307 (2021), the Court reiterated that a sentencing court was required to "consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence." *Id*. at 1316. In short, the Supreme Court has never retreated from *Miller*'s core holding from 2012: a sentence of life without parole, imposed on a juvenile convicted of murder under a mandatory sentencing scheme, violates the Eighth Amendment. Arizona had such a sentencing scheme in place when Mr. Aston was sentenced.

As this Court recognized in its 2016 Memorandum Decision in this case, effective January 1, 1994, the Arizona legislature prospectively abolished the state's parole scheme. *See State v. Aston*, No. 2 CA-CR 2016-0201-PR, 2016 WL 3950677, at *1 ¶ 3 (Ariz. Ct. App. July 20, 2016); A.R.S. § 41-1604.09; *see also Chaparro v. Shinn*, 248 Ariz. 138, 140 ¶ 3 (2020). Therefore, when Mr. Aston was sentenced for his 2004 offenses that he committed when he was just 16 years old, no sentence the judge could legally have imposed would have allowed for the possibility of parole. *See Lynch v. Arizona*, 578 U.S. 613, 615 (2016) (per curiam) (recognizing that under Arizona Law, the only type of release available to

individuals convicted of first-degree murder was executive clemency).[1] This sentencing scheme violated *Miller v. Alabama*, 567 U.S. 460 (2012), because at the time Mr. Aston was sentenced, Arizona law did not allow a court to impose a parole-eligible sentence. The Supreme Court recognized this lack of discretion when it listed Arizona as one of the 29 jurisdictions "mandating life without parole for children." *Miller*, 567 U.S. at 486 n.13; *see also Jones*, 141 S.Ct. at 1318 n.5. Indeed, in other cases, even the State has acknowledged that a defendant could not receive a parole-eligible sentence for an offense committed after 1993, calling such a sentence "unambiguously illegal under Arizona statutory law." *Chaparro v. Shinn*, Ariz. Sup. Ct. No. CV-19-0205-CQ, Supplemental Brief of Respondent David C. Shinn (filed Oct. 25, 2019), at 8 (emphasis added), a view consistent with this Court's finding in *Wagner*, 510 P.3d at 1088 ¶ 25, that imposition of parole-eligible life terms during the relevant period were "in violation of state law."

The Supreme Court was correct in designating Arizona as a jurisdiction with a mandatory life-without-parole sentence for juveniles. When Mr. Aston was sentenced, Arizona law provided two potential sentences for first-degree murder:

[1] Although the Arizona Supreme Court held in *Chaparro v. Shinn* that Mr. Chaparro was eligible for parole after serving twenty-five years for a post-1993 offense, it also clearly held that this was an "an illegally lenient sentence" that became "final and enforceable" only because the State failed to appeal within the statutorily allotted time. 248 Ariz. 138 ¶ 18 (2020).

(1) imprisonment for natural life without ever having the possibility of "release[] on any basis," including commutation or parole; or

(2) life imprisonment without the possibility of "release[] on any basis" until after a minimum of 25 or 35 years had been served.

Ariz. Rev. Stat. § 13-703(A) (1994); *Wagner*, 510 P.3d at 1084 ¶ 3.

But, in 1993 the Arizona legislature had eliminated the parole system "for all offenses committed on or after January 1,1994." *Chaparro*, 248 Ariz. at140 ¶ 3.[2] Therefore, if an Arizona defendant convicted of first-degree murder after 1993 receives a sentence carrying the possibility of "release after 25 years," the "only kind of release" for which that defendant is statutorily eligible "is executive clemency" which is not the same as parole for Eighth Amendment purposes. *Lynch*, 578 U.S. at 615. The State does not dispute this fact. (State's Brief at 15 n.3.) The Supreme Court has held that "the remote possibility" of executive clemency is not equivalent to parole. *Graham v. Florida*, 560 U.S. 48, 70 (2010); *Chaparro*, 248 Ariz. at 142, ¶ 16 ("[T]he United States Supreme Court has rejected the idea that parole is the same as executive clemency.") (collecting cases); *see*

[2] Following the Supreme Court's decision in *Miller*, in 2014 Arizona reestablished the possibility of parole for juvenile offenders who received sentences of life imprisonment with the possibility of release. A.R.S. § 13-716. As this Court previously found, Section 13-716 provides no relief for individuals like Mr. Aston, who received a natural life sentence on Count 1. *Aston*, 2016 WL 3950677 at *3 ¶ 8. And the enactment of § 13-716 does not change the fact that at the time of Mr. Aston's sentencing, the only legal sentences available under Arizona law were death or life without the possibility parole.

also Wagner, 510 P.3d at 1087, ⁋ 23 ("Nor can an argument be made that a life sentence with the possibility of 'release' by executive clemency equals a life sentence with the possibility of parole."). Under Arizona's penalty scheme, no matter what arguments or evidence Mr. Aston presented at his sentencing, he could not legally have received a life sentence that included the possibility of parole.

The State argues that Mr. Aston's sentencing judge could have sentenced Mr. Aston to life *with* the possibility of parole after 25 years, and that he thus did not face a mandatory life-without-parole sentence. (State's Brief at 10−17.) But as the Arizona Supreme Court has recently stated, life without parole was not a legally available sentence under then-prevailing law. *See Chaparro* 248 Ariz. at 140−42 ¶¶ 3, 10, 18. Consistent with this understanding, this Court recently granted relief to a defendant similarly situated to Mr. Aston, finding that defendant's natural life sentence violates *Miller* because Arizona had a mandatory LWOP sentencing scheme at the time the juvenile offender was sentenced, vacating the superior court's dismissal of his petition for post-conviction relief, remanding for an evidentiary hearing consistent with *Valencia*. *Wagner*, 510 P.3d at 1087, ⁋ 22 ("*Miller*'s use of 'mandatory' – as well as the understanding of its counterpart, 'discretionary' – must be read in the context of whether a parole-eligible sentence is available. Here, because the superior court had no discretion to sentence Wagner to a parole-eligible term, his sentence is encompassed by

Miller."); *see also State v. Cabanas*, No. 1 CA-CR 21-0534 PRPC, 2022 WL 2205273, at *1, ¶ 6 (Ariz. Ct. App. June 21, 2022).

The State also argues that even if parole was not technically available at the time of Mr. Aston's sentencing, had the trial court imposed such a sentence, it would have become viable as of 2014, when the legislature passed A.R.S. § 13-716, which implemented parole for such sentences. As support for this contention, the State points to Mr. Aston's sentence on Count 2. The potential for future "legislative reform," however does not change that at the time of Mr. Aston's sentencing in 2007, parole was unavailable to Mr. Aston under Arizona law. *See Lynch*, 578 U.S. at 616 (holding that capital defendants tried for crimes after 1994 in Arizona have a Due Process right to a *Simmons* instruction because they were ineligible for parole even though the legislature could modify the parole system in the future to make defendants eligible for parole).

Thus, the scheme under which Mr. Aston was sentenced violated *Miller's* procedural rule, affirmed in *Jones*, that mandatory life-without-parole sentences for juveniles are unconstitutional. Accordingly, Mr. Aston has a viable claim for post-conviction relief under *Miller*, a finding this Court already made in 2016, and this Court should grant review, reverse the superior court on this basis, and remand for a resentencing.

II. *JONES* DOES NOT AFFECT THE UNCONSTITUTIONALITY OF MR. ASTON'S NATURAL LIFE SENTENCE UNDER *MILLER*.

Jones does not overrule either *Miller* or *Montgomery*. 141 S.Ct. at 1321−22. Nor does *Jones* disturb the fundamental holding of *Miller* that sentencing courts must make certain considerations before sentencing a juvenile defendant to life without parole. *See Jones*, 141 S.Ct. at 1311 (upholding *Miller*'s mandate "'that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence" (quoting *Miller*, 567 U.S. at 483)).

In *Jones*, the Court merely held that a judge who imposes a life-without-parole sentence on a defendant who was under the age of 18 when he or she committed the crime in question is not constitutionally required to make a particular factual finding that the defendant is permanently incorrigible (or to provide "an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible"). *Jones*, 141 S.Ct. at 1311−1312, 1313, 1319−1321. According to *Jones*, *Miller* still "insist[s]" that "a sentencer have the ability to consider the mitigating qualities of youth," including that "youth is more than a chronological fact," and all the "hallmark features [of youth]—among them immaturity, impetuosity, and failure to appreciate risks and consequences." 567 U.S at 476−77 (internal citations omitted).

The Supreme Court's decision in *Jones* recognizes, and does not alter, the purely procedural rule from *Miller* that the Eighth Amendment "prohibits

mandatory life-without-parole sentences for murderers under 18." *Jones*, 141 S.Ct. at 1312 (emphasis in original). That rule was not at issue in *Jones* because the defendant's original life-without-parole sentence had been reversed in light of *Miller*, and the judge at the resentencing hearing had discretion to impose a sentence that was less harsh than life without parole. Unlike the situation in *Jones*, at the time of Mr. Aston's sentencing, however, the only legal sentences available for first-degree murder were: (1) life without the possibility of any form of release (natural life); and (2) and life with the possibility of commutation. *See Lynch*, 578 U.S. at 615 (recognizing that under Arizona Law, the only type of release available to individuals convicted of first-degree murder was executive clemency); *Wagner*, 510 P.3d at 1084 ¶ 3.

The *Jones* Court explicitly recognized its prior precedents and reaffirmed that under the Eighth Amendment's Cruel and Unusual Punishments Clause, "youth matters in sentencing." 141 S.Ct. at 1314. *Jones* upheld *Miller* and *Montgomery*'s requirement that "[a] hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." 141 S.Ct. at 1317−18 (citing *Montgomery*, 577 U.S. at 210).

The resentencing at issue in *Jones* occurred *after*—and because of—the Supreme Court's decision in *Miller*. *Jones*, 141 S.Ct. at 1312−1313. Consequently,

the resentencing judge in *Jones* certainly was aware that he was required to *consider* Jones's "diminished culpability and heightened capacity for change," *Miller*, 567 U.S. at 479, and that he was not free to "sentence a child whose crime reflect[ed] transient immaturity to life without parole," *Montgomery*, 577 U.S. at 211 (describing what *Miller* established). *See also Jones*, 141 S.Ct. at 1315 n.2. That was especially clear after Jones's attorney referred to *Miller* and its requirements at the resentencing hearing, including that "Jones's 'chronological age and its hallmark features' diminished the 'penological justifications for imposing the harshest sentences" and later "nothing in this record . . . would support a finding that the offense reflects irreparable corruption." *Jones*, 141 S.Ct. at 1313 (quoting *Miller*, 567 U.S. at 472, 477).

In contrast to the defendant in *Jones*, Mr. Aston's sentencing proceeding occurred five years before *Miller* was decided. It strains credulity to believe the sentencing court was considering the factors *Miller* outlined in determining a life-without-parole sentence was appropriate for a juvenile offender at the 2003 sentencing hearing. *See Miller*, 567 U.S. at 474, 477 (A juvenile offender must be allowed an individualized sentencing at which "consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences" shall be considered by the court before "imprisoning an offender until he dies."). While Mr. Aston's sentencing judge

stated that he considered Mr. Aston's chronological age and was also presented with mitigating evidence by the defense, there is no record that the judge considered whether the crime was one of transient immaturity, whether Mr. Aston was capable of rehabilitation, or how the evidence considered in the context of Mr. Aston's youth diminished his culpability. Nevertheless, the State contends that the original sentencing in Mr. Aston's case satisfies *Miller*, an argument that Arizona courts, including this Court in Mr. Aston's case, have previously found unavailing. *See, e.g.*, *Wagner*, 510 P.3d at 1085, ¶ 10 ("The [*Valencia*] court rejected the State's argument that the superior court's consideration of the defendants' youth before imposing a sentence met the requirements of *Miller*."); *Aston*, 2016 WL 3950677, at *3−*4 ¶¶ 10, 12−13. And, the U.S. Supreme Court has already found that similar Arizona sentencing proceedings do not comply with *Miller*'s requirements. *Tatum*, 137 S.Ct. at 11−12 (Sotomayor, J. concurring in the decision to grant, vacate, and remand); *see also Jones*, 141 S.Ct. at 1314, n.2 (identifying "transient immaturity" standard as "the key paragraph from *Montgomery*").

Moreover, *Jones* affirmed the outcome-driven policy behind *Montgomery* and *Miller* that a discretionary sentencing where youth and its attendant characteristics are considered will "help[] ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the

defendant's age," 141 S.Ct. at 1318, and that these procedures "would [themselves] help make life-without-parole sentences 'relatively rare' for murderers under 18." *Id.* (quoting *Miller*, 567 U.S. at 484 n.10). The *Jones* Court assumed that *Miller*'s promise had come true, and that "when given the choice, sentencers impose life without parole on children relatively rarely." 141 S.Ct. at 1318 (quoting *Miller*, 567 U.S. at 484 n.10).

Unfortunately, in Arizona, *Miller*'s promise has not proven true. Unlike many other states, neither the courts nor the legislature have taken action to reduce the prevalence of natural life sentences for juvenile offenders, which in Arizona are not "relatively rare." While many states legislatively eliminated life-without-parole sentences for juvenile offenders following *Miller* and *Montgomery*, Arizona did not.

Arizona is now one of only 19 states that still has juveniles serving life-without-parole and continues to impose such sentences. *See* The Campaign for the Fair Sentencing of Youth, *States that Ban Life without Parole for Children* (updated April 12, 2021);[3] *see also* Josh Rovner, *Juvenile Life without Parole: An Overview*, The Sentencing Project (updated May 2021).[4] Moreover, even assuming there was a meaningful difference between life with the possibility of release and

[3] https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/

[4] https://www.sentencingproject.org/publications/juvenile-life-without-parole/

natural life sentences, Arizona sentencing courts impose natural life on juvenile offenders at an alarmingly high rate. *See State v. Valencia*, Ariz. Sup. Ct. No. CR-16-0156-PR, Brief of Amicus Curiae Arizona Attorneys for Criminal Justice (filed July 15, 2016), at 11 and Appx. A (collecting data demonstrating that more than 30% of juvenile offenders convicted of first-degree murder in Arizona are sentenced to natural life). This is hardly reconcilable with the Court's assumption in *Jones* that "when given the choice, sentencers impose life without parole on children relatively rarely." 141 S.Ct. at 1318 (quoting *Miller*, 567 U.S. at 484 n.10).

Moreover, Justice Kavanaugh assumed in *Jones* that "[b]y now, most offenders who could seek collateral review as a result of *Montgomery* have done so and, if eligible, have received new discretionary sentences under *Miller*." *Jones*, 141 S.Ct. at 1317 n.4. But this assumption also has not proven true in Arizona. In Maricopa County, where the vast majority of natural life sentences in Arizona were imposed, juvenile offenders like Mr. Aston who were sentenced well before *Miller* have not been provided the opportunity of a re-sentencing hearing where the judge is clearly aware of *Miller*'s requirements. Of the twenty-five juvenile offenders the Amici are aware of in Maricopa County who received natural life sentences, not a *single* defendant has yet received a resentencing hearing since *Miller*. This was

clearly not the situation the Court was contemplating when it issued its decision in *Jones*.

Finally, Justice Kavanaugh concluded his analysis in *Jones* by stating that the Court's decision was "far from the last word on whether Jones will receive relief from his sentence" because the Court's decision allows Jones to present his "moral and policy arguments for why he should not be forced to spend the rest of his life in prison" to "the state officials authorized to act on them." *Jones*, 141 S.Ct. at 1323. Unfortunately, no such opportunity exists for Mr. Aston. In Arizona, a natural life sentence like Mr. Aston's prevents an individual from ever seeking review of his sentence through any form of executive clemency and denies him any opportunity to present evidence of his rehabilitation. Once again, this language in *Jones* makes clear that the Court did not contemplate or implicitly rule that such a sentencing scheme complies with the Court's clear directive in *Miller* that children's capacity for rehabilitation must be considered. *See Miller*, 567 U.S. at 478−79 (quoting *Graham*, 560 U.S. at 75 ("'A State is not required to guarantee eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'")).

In sum, nothing in Jones affects the legal conclusion that Mr. Aston—and the approximately two dozen other juvenile offenders in Maricopa County who have not received either a resentencing or an evidentiary hearing since *Miller* was

decided—was unconstitutionally sentenced to a mandatory life-without-parole sentence in violation of *Miller*.

III. *JONES* DOES NOT REFLECT A CHANGE IN CONTROLLING LAW.

This Court should grant review due to the problematic nature of the superior court's ruling, which undertook to not only find *Jones* a material change in the law such that rulings of both the Arizona Supreme Court and the U.S. Supreme Court were "implicitly overruled" but also that it permitted the superior court to ignore this Court's 2016 mandate.

As explained above, the U.S. Supreme Court on multiple occasions has held that the first-degree murder sentencing scheme in effect at the time of Mr. Aston's sentencing amounted to a mandatory life-without-parole scheme for constitutional purposes because Arizona had abolished parole, and thus the only form of "release" available to convicted first-degree murderers was "the remote possibility" executive clemency. *Lynch*, 578 U.S. at 615; *Miller*, 567 U.S. at 486 n.13 (listing Arizona as one of 29 jurisdictions "mandating life without parole for children"). The superior court ignored these clear holdings of the United States Supreme Court in finding that Mr. Aston's "natural life sentence was not mandatory." This is contradicted by the Arizona Supreme Court, which clarified that the United States Supreme Court was correct in finding Arizona law did not

make parole a legally available form of "release" available in cases like Mr. Aston's. *Chaparro*, 248 Ariz. 138.

Perhaps even more troubling, the superior court, at the urging of the State, found that "the basis for [the Arizona Supreme Court's decision in *State v. Valencia*] no longer exists after *Jones*," and that "*Jones* disavowed [*Valencia's*] interpretation of *Montgomery*." (Minute Entry filed February 24, 2022, at 3.) In *Valencia*, the Arizona Supreme Court addressed the burden of proof in a postconviction proceeding for a juvenile to make a successful collateral attack on a LWOP sentence. The *Valencia* Court explicitly stated that defendants "are entitled to evidentiary hearings on their Rule 32.1(g) petitions because they have made colorable claims for relief based on *Miller*." *Valencia*, 241 at 210 ¶ 18. The *Valencia* Court also found that *Miller* constituted a "significant change in the law for purposes of Rule 32.1(g)" and recognized that the U.S. Supreme Court in *Tatum v. Arizona,* 137 S.Ct. 11, 12 (2016), had summarily vacated and remanded several of this Court's decisions rejecting claims for post-conviction relief on the exact basis that the State now, again, advances. *Id.* at 209 ¶ 7. *Valencia* recognized that in *Miller* and *Montgomery*, the U.S. Supreme Court had already held that a specific finding of incorrigibility was not required, but nevertheless held that in postconviction proceedings an evidentiary hearing was required to determine whether a defendant's crime reflected "transient immaturity," in which case a

natural life sentence would be unconstitutional. *Valencia* did not mandate a finding of fact regarding a child's incorrigibility, and instead, offered the same understanding of *Montgomery* and *Miller* as provided for in *Jones* -- "*Montgomery* noted that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. . .'". *Id.* at 210 ¶ 17.

Not surprisingly, the United States Supreme Court in *Jones* did not address *Valencia* at all, let alone overrule it. Even if *Jones* could in some way be read to undermine some of the reasoning of *Valencia*, which is at best arguable, it is not for the superior court—or, respectfully, for this Court—to find that a precedent of the Arizona Supreme Court has been overruled. The Arizona Supreme Court has made clear that "lower courts are bound by [its] decisions, and [the Arizona Supreme] Court alone is responsible for modifying that precedent." *Sell v. Gama*, 231 Ariz. 323, 330 ¶ 31 (2013) (citing *State v. Smyers*, 207 Ariz. 314, 318 ¶ 15 n.4 (2004)). The Court has specifically admonished lower courts not to "depart from binding precedent anticipating that [the Arizona Supreme Court] will overrule existing case law," and held that "[t]rial courts are required to follow the decisions of a higher court." *Id.* Here, the superior court "failed to abide by that fundamental principle," in accepting the State's argument that *Jones* implicitly overruled *Valencia*. It is only for the Arizona Supreme Court to announce when its own decisions have been overruled.

Indeed, this Court has on multiple occasions found an identical determination by a superior court— that *Jones* implicitly overruled *Valencia*— "erroneous." *Wagner*, 510 P.3d at 1087 ¶ 20; *see also Cabanas*, 2022 WL 2205273, at *6 ("*Jones* neither modified nor implicitly overruled *Valencia*'s application of *Miller*."). The *Wagner* court reasoned:

> *Valencia* was based on *Miller* and *Montgomery*—decisions that *Jones* explicitly stated it was not overruling. Nor was *Jones*' interpretation of *Miller* and *Montgomery*—that a sentencing judge is not obligated to specifically find a juvenile offender "permanently incorrigible" before declining to impose a parole-eligible sentence—incompatible with *Valencia*. Consistent with Jones, our supreme court's decision in *Valencia* did not mandate specific findings about a juvenile offender's "permanent incorrigibility" or "transient immaturity" in deciding whether to impose a parole-eligible sentence.

Wagner, 510 P.3d at 1087 ¶ 20. As such, this Court should vacate the superior court's erroneous ruling.

Moreover, for the superior court to now find *Valencia* inapplicable would raise concerns of an equal protection problem under both the U.S. and Arizona Constitutions. Since *Valencia* was issued, several defendants similarly situated to Mr. Aston—*i.e.*, juveniles at the time of the offense who received natural life sentences—have already been resentenced in other counties. *See, e.g.*, *State v. Chambers*, Pima Cty. Super. Ct. No. CR060975; *State v. Healer,* Pima Cty. Super. Ct. No. CR048232-001; *State v. Jewitt*, Pima Cty. Super. Ct. No. CR044112; *State v. Odhinnson*, Mohave Cty. Super. Ct. No. CR-98-1243; *State v. Valencia*, Pima

Cty. Super. Ct. No. CR051447. And the Pima County Superior Court recently found that *Valencia* continues to provide the standard for juveniles challenging life-without-parole sentences in Arizona post-*Jones* and ordered that an evidentiary hearing pursuant to *Valencia* should continue. *State v. Cruz*, Pima Cty. Super. Ct. No. CR20002693-001 (Order dated Dec. 1, 2021). For this Court to affirm the superior court's finding that *Valencia* is inapplicable to Mr. Aston and other similarly situated defendants in Maricopa County would create two classes of individuals who are being treated differently with no rational basis—those who were fortunate to be before a court that acted on their case before the U.S. Supreme Court issued its decision in *Jones*, and those like Mr. Aston, whose cases have stalled. Such arbitrary discrimination in the application of such a severe penalty cannot comply with the Eighth and Fourteenth Amendments of the U.S. Constitution nor the corresponding provisions of the Arizona Constitution.

CONCLUSION

For the foregoing reasons, *amici curiae* the Arizona Justice Project and Juvenile Law Center respectfully request that this Court grant Mr. Aston's petition for review, reverse the ruling of the superior court, and remand for an evidentiary hearing that complies with *Valencia*.

RESPECTFULLY SUBMITTED this 21st day of July, 2022.

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