No. 24A_____

IN THE

Supreme Court of the United States

JONATHAN ANDREW ARIAS; CHRISTOPHER LEE MCLEOD; THOMAS JAMES ODOM; FELIPE PETRONE-CABANAS; AND CHARLES VINCENT WAGNER,

Applicants,

v.

STATE OF ARIZONA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS

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APPLICATION

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Thomas James Odom respectfully requests a 60-day extension of time, to and including October 4, 2024, within which to file a petition for a writ of certiorari to review the judgment of the Arizona Court of Appeals. Applicants Jonathan Andrew Arias, Christopher Lee McLeod, Felipe Petrone-Cabanas, and Charles Vincent Wagner respectfully request a 33-day extension of time, to and including October 4, 2024, within which to file a petition for a writ of certiorari to review the judgments of the Arizona Court of Appeals. Applicants intend to prepare a single petition for a writ of certiorari covering all of these judgments pursuant to Rule 12.4 of the Rules of this Court.

1. The Arizona Court of Appeals entered judgment in Mr. Arias's case on September 25, 2023, *see* App. 1a; in Mr. McLeod's case on October 13, 2023, *see* App. 3a-5a; in Mr. Odom's case on September 25, 2023, *see* App. 7a; in Mr. Petrone-Cabanas's case on December 6, 2023, *see* App. 9a; and in Mr. Wagner's case on December 20, 2023, *see* App. 11a-12a. The Arizona Supreme Court denied review in Mr. Odom's case on May 7, 2024, *see* App. 8a, and in the cases of Mr. Arias, Mr. McLeod, Mr. Petrone-Cabanas, and Mr. Wagner on June 3, 2024, *see* App. 2a, 6a, 10a, 13a.

2. Unless extended, the time for Mr. Odom to file a petition for a writ of certiorari will expire on August 5, 2024. Unless extended, the time for Mr. Arias, Mr. McLeod, Mr. Petrone-Cabanas, and Mr. Wagner to file petitions for a writ of certiorari will expire on September 3, 2024. This application is being filed more than ten days before the petitions are due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

3. Applicant Jonathan Andrew Arias was 16 years old when he killed two people in 1999. He pled guilty in exchange for the State's agreement not to pursue the death penalty and was sentenced to life without parole.

4. Applicant Christopher Lee McLeod was 15 years old when he killed a child in 1997. Mr. McLeod pled guilty and was sentenced to life without parole.

5. Applicant Thomas James Odom was 16 years old and suffering from untreated schizophrenia when he killed a young woman in 2010. Mr. Odom was convicted of first-degree murder and sentenced to life without parole.

6. Felipe Petrone-Cabanas was 17 years old when he killed a police officer in 1999. Mr. Petrone-Cabanas pled guilty, and the State sought the death penalty. The sentencing court determined that a death sentence was not appropriate on account of Mr. Petrone-Cabanas's youth and sentenced him to life without parole.

7. Charles Vincent Wagner was 16 years old when he killed a woman in 1994. Mr. Wagner was convicted of first-degree murder, and the State sought the death penalty. The sentencing court determined that a death sentence was not

appropriate on account of Mr. Wagner's youth and sentenced him to life without parole.

8. At the time all five applicants were sentenced, "Arizona courts had no discretion to impose parole-eligible sentences because the State had completely abolished parole for people convicted of felonies." *Bassett* v. *Arizona*, No. 23-830, 603 U.S. __, slip op. at 1 (2024) (Sotomayor, J., dissenting from the denial of certiorari). Arizona's sentencing statute continued to list two alternatives to the death penalty—(1) "natural life," under which a defendant was categorically ineligible for "commutation, parole, * * * or release from confinement on any basis," and (2) "life," which required a defendant to serve at least 25 years before he could be eligible for "release[] on any basis." Ariz. Rev. Stat. § 13-751(A) (2009). But the abolition of parole meant that "the only 'release' available under Arizona law [wa]s executive clemency." *Bassett*, slip op. at 2 (Sotomayor, J., dissenting from the denial of certiorari) (quoting *Cruz* v. *Arizona*, 598 U.S. 17, 23 (2023)). As a result, "Arizona's sentencing scheme left no discretion for a parole-eligible sentence * * * ." *Id.* at 3.

9. "This Court's precedents require a 'discretionary sentencing procedure—where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole.'" *Id.* at 1 (quoting *Jones* v. *Mississippi*, 593 U.S. 98, 112 (2021)); *see also Miller* v. *Alabama*, 567 U.S. 460 (2012); *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016).

10. Applicants were among the multiple defendants sentenced as juveniles who initially obtained state postconviction relief from their unconstitutional

mandatory life-without-parole sentences. *See, e.g.*, *State* v. *Wagner*, 510 P.3d 1083, 1087 (Ariz. Ct. App. 2022) (holding that Arizona's sentencing scheme was unconstitutionally "mandatory" because "court[s] had no discretion to sentence [a defendant] to a parole-eligible term"); *State* v. *Arias*, No. 1 CA-CR 22-0064 PRPC, 2022 WL 3973488, at *1 (Ariz. Ct. App. Sept. 1, 2022); *State* v. *Petrone-Cabanas*, No. 1 CA-CR 21-0534 PRPC, 2022 WL 2205273, at *1-2 (Ariz. Ct. App. June 21, 2022); *State* v. *Odom*, No. 1 CA-CR 21-0537 PRPC, 2022 WL 4242815, at *1-2 (Ariz. Ct. App. Sept. 15, 2022). The State petitioned the Arizona Supreme Court for review in these and several other cases.

11. The Arizona Supreme Court granted review in one case—that of Lonnie Allen Bassett—and held that Arizona's sentencing scheme did not violate the Eighth Amendment as construed in *Miller*, *Montgomery*, and *Jones*. *See State ex rel. Mitchell* v. *Cooper*, 535 P.3d 3 (Ariz. 2023). The Arizona Supreme Court acknowledged that defendants sentenced between 1994 and 2014 were "actually ineligible for parole" because the legislature had "eliminated parole," but reasoned that "*Miller* and its progeny do not specifically require the availability of parole when sentencing a juvenile." *Id.* at 8, 11. In the Arizona Supreme Court's view, "a *choice* between two sentencing options," even if neither option included parole, sufficed. *Id.* at 13.

12. Following its decision in *Cooper*, the Arizona Supreme Court granted the State's other petitions for review, vacated the decisions below, and remanded for further proceedings consistent with *Cooper*.

13. Citing *Cooper*, the Arizona Court of Appeals denied relief to Mr. Arias, Mr. McLeod, Mr. Odom, Mr. Petrone-Cabanas, and Mr. Wagner. App. 1a, 3a-5a, 7a, 9a, 11a-12a. Each defendant petitioned for review, which the Arizona Supreme Court summarily denied in each case. App. 2a, 6a, 8a, 10a, 13a.

14. Since the Arizona Supreme Court's decision in *Cooper*, every Arizona court to consider *Miller* claims has cited *Cooper* in denying relief—including in four cases in which the State conceded error and stipulated to resentencing. *See State* v. *Deshaw*, No. 1 CA-CR 21-0512, 2024 WL 3160590, at *3-5 (Ariz. Ct. App. June 25, 2024) (rejecting concession of error and citing *Cooper* in "restor[ing]" "Defendants' original sentences").

15. Applicants plan to file a certiorari petition seeking this Court's review of the Arizona Court of Appeals' decisions denying relief under *Cooper*. "[T]he Arizona Supreme Court's decision [in *Cooper*] departed from this Court's established precedents * * * ." *Bassett*, slip op. at 8 (Sotomayor, J., dissenting from the denial of certiorari). It contradicted this Court's repeated admonition that juvenile defendants can be sentenced to life without parole "only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment." *Jones*, 593 U.S. at 106 (quoting *Miller*, 567 U.S. at 476). "When a State offers no possible penalty other than life without parole, the sentence is unconstitutionally mandatory because consideration of age 'could not change the sentence; whatever [is] said in mitigation, the mandatory life-without-parole prison term would kick in.'" *Bassett*, slip op. at 5

(Sotomayor, J., dissenting from the denial of certiorari) (quoting *Miller*, 567 U.S. at 488).

16. This Court denied Mr. Bassett's petition for certiorari on July 2, 2024. As Justice Sotomayor noted in her dissent from the denial of certiorari, the State's primary argument in opposing certiorari was its speculation that "the sentencing court 'was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller*' because of a 'widespread mistaken belief among Arizona judges and attorneys that the release-eligible option included parole eligibility.'" Slip op. at 4, 5 (quoting Br. in Opp'n at 3, 27). Arizona "concede[d] that '[b]ut for the sentencer's actual consideration of parole-eligibility * * *, there would be a *Miller* violation." *Id.* at 8 (quoting Br. in Opp'n at 23).

17. But the Arizona Court of Appeals denied relief to all five Applicants here without considering any "mistaken belief" in parole eligibility or whether the sentencer "actual[ly] consider[ed]" parole eligibility. The Arizona Court of Appeals summarily denied relief in three cases. *See* App. 1a, 7a, 9a. In the other two cases, the court explained that *Cooper* held that the natural-life sentences were "not mandatory under *Miller*" because the sentencing courts had discretion to impose "a sentence of life with no possibility of release for 25 years when it chose to sentence [the defendants] to natural life." App. 4a, 11a-12a. As the State has conceded, however, a choice between two life sentences, neither of which allowed parole, does not comply with *Miller*, *Montgomery*, and *Jones*.

18. Not only is there no evidence that the sentencer actually considered parole eligibility, but the evidence cuts the other way. For example, Mr. Odom's trial counsel understood that Mr. Odom's only option for release, if the court imposed a release-eligible sentence, was through executive clemency. His counsel explained that Mr. Odom was "getting life," and although the sentencing statute listed the "option" of sentencing Mr. Odom to "life with the possibility of parole at 25 [years]," "[o]bviously that's got to be a decision from an executive officer," and "as the Court is well aware, and I was deputy counsel to Governor H[u]ll,[1] there has never been someone released on parole since the statute was put in place." Sentencing Tr. at 4, 17-18, *State* v. *Odom*, No. CR2010-121445-001 (Ariz. Super. Ct. Aug. 19, 2011). As a result, "the odds of Mr. Odom being released at 41 are possible but not likely." *Id.* at 4; *see also id.* at 17 ("the odds are very slim that he would be able to get out"). The sentencing court did not discuss or reference parole before sentencing Mr. Odom to natural life. There is thus no indication that Mr. Odom's sentencer gave any "actual consideration of parole-eligibility," Br. in Opp'n at 23, *Bassett*, No. 23-830—and instead considered only whether Mr. Odom should be sentenced to natural life or life with the possibility of executive clemency. And as the State has already conceded, "clemency-eligibility alone would have been insufficient." *Id*. at 22-23.

19. Several of the Applicants also faced the death penalty, which distorted any consideration of youth. For example, the sentencing judge cited Mr. Petrone-Cabanas's youth as a reason not to impose the death penalty, without addressing any

[1] Governor Jane Dee Hull was governor of Arizona from 1997-2003.

distinction between the two possible life sentences. *See* Special Verdict on Count 2 at 18-19, 28-29, *State* v. *Petrone-Cabanas*, Nos. CR-99-004790, CR-99-006656 (Ariz. Super. Ct. Feb. 20, 2002). The court thus viewed a life-without-parole sentence as an act of leniency, making it impossible to conclude that the court "consider[ed] an offender's youth and attendant characteristics[] before imposing a life-without-parole sentence." *Jones*, 593 U.S. at 108-109 (citation and quotation marks omitted).

20. Neal Katyal of Hogan Lovells US LLP, Washington, D.C., was retained by all five Applicants to file a petition for certiorari in this Court. Good cause exists for the extension, as Mr. Katyal is in the process of briefing three merits cases in this Court. Mr. Katyal's deadlines include drafting the petitioners' brief in *NVIDIA Corp., et al.* v. *E. Ohman J:or Fonder AB, et al.*, No. 23-970 (U.S.), due on August 13; drafting the petitioner's brief in *Duffey* v. *United States*, No. 23-1150 (U.S.), currently due on August 16; drafting a brief in opposition to certiorari in *Maryland Shall Issue, Inc.* v. *Anne Arundel County*, No. 23-1225 (U.S.), due on August 26; and drafting a reply brief in *Royal Canin U.S.A., Inc., et al.* v. *Wullschleger*, No. 23-677 (U.S.), due on September 4.

21. Counsel intends to file a joint petition for certiorari, *see* Sup. Ct. R. 12.4, which requires coordination with multiple defendants' state court counsel and reviewing voluminous materials.

22. For these reasons, Applicants respectfully request that an order be entered extending the time to file a petition for certiorari to and including October 4, 2024.

Respectfully submitted,

/s/ Neal Kumar Katyal

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