

No. 10-930

**In The
Supreme Court of the United States**

CHARLES L. RYAN, DIRECTOR,
ARIZONA DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

ERNEST VALENCIA GONZALES,

Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF ARIZONA VOICE FOR
CRIME VICTIMS AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	Page
Table of Authorities	ii
Interest of Amicus Curiae.....	1
Statement of the Case	2
Summary of the Argument	4
Argument.....	6
I. The Ninth Circuit’s decision harms the recognized rights of crime victims and their interests in attaining the real final- ity that comes from knowing the State’s moral judgment will be carried out.....	6
II. The victim’s trauma is not theoretical; social science and victim experience dem- onstrate that victims suffer secondary victimization as a State’s final judgment is subject to never-ending challenge	8
III. The cost of delay should be given espe- cially great weight in this case because Arizona’s Constitution gives victims a fundamental right to a prompt and final conclusion after sentencing.....	12
Conclusion.....	14

TABLE OF AUTHORITIES

	Page
CASES	
<i>Calderon v. Thompson</i> , 523 U.S. 538 (1998).....	6, 7, 8, 13
<i>Gonzales v. Arizona</i> , 516 U.S. 1052 (1996).....	3
<i>Gonzales v. Schriro</i> , CV99-02016-PHX-SMM.....	3
<i>Hill v. McDonough</i> , 547 U.S. 573 (2006).....	7
<i>In re Gonzales</i> , 623 F.3d 1242 (9th Cir. 2010)	3, 4
<i>Jones v. Allen</i> , 485 F.3d 635 (11th Cir. 2007).....	6
<i>Knapp v. Martone</i> , 823 P.2d 685 (1992)	13
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	6
<i>State v. Dixon</i> , 226 Ariz. 545, 250 P.3d 1174 (2011).....	13
<i>State v. Gonzales</i> , 181 Ariz. 502, 892 P.2d 838 (1995)	2, 3
<i>State v. Lee</i> , 226 Ariz. 234, 245 P.3d 919 (App. 2011).....	13

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

Arizona Constitution art. II, § 2.1	12, 13, 14
Alaska Constitution art. I, § 24	14
California Constitution art. I, § 28	14
Connecticut Constitution art. I, § 8(b).....	14
Idaho Constitution art. I, § 22	14
Illinois Constitution art. I, § 8.1	14
Louisiana Constitution art. 1, § 25.....	14
Michigan Constitution art. I, § 24	14
Missouri Constitution art. I, § 32	14
New Mexico Constitution art. 2, § 24	14
South Carolina Constitution art. I, § 24.....	14
Tennessee Constitution art. 1, § 35.....	14
Wisconsin Constitution art. I, § 9m	14

STATUTES AND RULES

Supreme Court Rule 37.6.....	1
ARS 13-4401(19).....	12

SECONDARY SOURCES

<i>Balancing the Scales of Justice</i> , Dan S. Levey, 89 <i>Judicature</i> 289 (2006)	11
---	----

TABLE OF AUTHORITIES – Continued

	Page
<i>Mental Health Needs of Crime Victims: Epidemiology and Outcomes</i> , Dean G. Kilpatrick & Ron Acierno, 16 J. Traum. Stress 119 (2003).....	9
<i>Secondary Victimization of Crime Victims by Criminal Proceedings</i> , Uli Orth, 15 Soc. Just. Res. 313 (2002).....	10
<i>Stedman’s Medical Dictionary</i> (27th Edition 2000)	9
Remarks at the Rally in Support of the Passage of Arizona’s Victim’s Bill of Rights, Candy Lightner (Sep. 1990)	14
<i>The Effect of Offender Punishment on Crime Victim’s Recovery and Perceive Fairness (Equity) and Process Control</i> , Dr. Joel H. Hammer, University Microfilms International 87, Ann Arbor, MI (1989).....	10
<i>The Good, The Bad, and The Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights</i> , Gessner H. Harrison, 34 Ariz. St. L. J. 531 (Summer 2002).....	12
<i>The Impact of Criminal Justice Involvement on Victims’ Mental Health</i> , Jim Parsons & Tiffany Bergin, 23 J. Traum. Stress 182 (2010).....	9, 10
<i>The Mental Health of Crime Victims: Impact of Legal Intervention</i> , Judith Lewis Herman, 16 J. Traum. Stress 159 (2003).....	9

INTEREST OF AMICUS CURIAE

Arizona Voice for Crime Victims Inc. (“AVCV”) is an Arizona nonprofit corporation that works to promote and protect crime victims’ interests throughout the criminal-justice process. To achieve these goals, AVCV empowers victims of crime through legal advocacy and social services. AVCV also provides continuing legal education to the judiciary, lawyers, and law enforcement.¹

AVCV seeks to foster a fair justice system which (1) provides crime victims with resources and information to help them seek immediate crisis intervention, (2) informs crime victims of their rights under the laws of the United States and Arizona, (3) ensures that crime victims fully understand those rights, and (4) promotes meaningful ways for crime victims to enforce their rights, including through direct legal representation. A key part of AVCV’s mission is working to give the judiciary information and policy insights that may be helpful in the sometimes difficult task of balancing an accused’s constitutional rights with the crime victim’s right to reasonable finality, while also protecting the wider community’s need for deterrence.

¹ Both Petitioner and Respondent consented to the filing of this amicus curiae brief, and their letters of consent have been filed with the Clerk. No counsel for any party authored this brief in whole or in part, and no person or entity, other than amicus curiae, made a monetary contribution to the preparation or submission of this brief. Sup. Ct. R. 37.6.

AVCV believes that the Ninth Circuit’s ruling in this case fails to properly balance these interests. While other advocates will offer the Court a comprehensive demonstration of the Ninth Circuit’s error under existing statutes and caselaw, AVCV submits this brief (1) to articulate the distinct and powerful interest—well recognized under federal and state law—that victims of crime share in the finality of a State’s moral judgment, and (2) to demonstrate the injury that Ninth Circuit’s decision will inflict on victims’ rights and interests, should that decision be allowed to stand.



STATEMENT OF THE CASE

A full procedural background will be set out in the merits briefs, but AVCV hopes to set this amicus brief in context by providing a brief factual and procedural background of this case, which began its odyssey through the legal system 22 years ago. Respondent Ernest Valencia Gonzales was convicted of a murder that took place on February 20, 1990. *State v. Gonzales*, 181 Ariz. 502, 506, 892 P.2d 838, 842 (1995). That evening, Darrel Wagner, accompanied by his wife Deborah and her son, had arrived home to find Gonzales in their townhouse. *Id.* As Darrel entered the house, Gonzales shoved him to the ground and began stabbing him. *Id.* Deborah, after pleading with Gonzales to leave, jumped on the assailant’s back and tried to stop the attack. *Id.* A struggle ensued and Gonzales then stabbed Deborah

twice before fleeing. *Id.* Darrel Wagner died that night and Deborah spent five days in intensive care. *Id.* After two trials, Gonzales was convicted of six counts, including felony murder, and then sentenced to death. *Id.* at 506-07, 892 P.2d at 842-43. It was not until six years after the murder, on January 8, 1996, that Gonzales's convictions and death sentence became final. *Gonzales v. Arizona*, 516 U.S. 1052 (1996).

Yet for the next 16 years, the State of Arizona has been prohibited from carrying out Gonzales's sentence because of multiple appeals resulting, eventually, in the indefinite stay order at issue in this case. In November 1999, Gonzales initiated a habeas proceeding in the U.S. District for the District of Arizona. *See* Pet. for Cert. at 4 (citing *Gonzales v. Schriro*, CV99-02016-PHX-SMM at Docs. 1, 3). But the habeas petition went nowhere as Gonzales pursued other appeals and the district court sought to resolve the procedural status of Gonzales's petition. *In re Gonzales*, 623 F.3d 1242, 1244 (9th Cir. 2010). By the time the district court had finally established a deadline for merits briefing in the habeas proceedings, another six years had passed. *Id.* But instead of this case moving toward a resolution, Gonzales's counsel moved to stay the proceedings altogether. *Id.* According to his lawyers, Gonzales's mental condition had deteriorated to the point that he could no longer rationally communicate with counsel and assist them. *Id.* That request led to another four years of briefing and appeals, which culminated in the Ninth Circuit's decision to

stay Gonzales's proceedings indefinitely. *Id.* at 1247-48.

The result is that more than 15 years after Gonzales's sentence became final in Arizona—and a full 22 years after the murder itself—this case is stayed, indefinitely, with no apparent prospect of reaching finality. Caught in this limbo are Darrel Wagner's widow and her son, victims themselves, who must continue to relive the horrible events of February 20, 1990. For them, as is often the case for crime victims, the Ninth Circuit's decision assures them of many more years with no end in sight to the continuing trauma.



SUMMARY OF THE ARGUMENT

By giving criminal defendants a new tactic to indefinitely delay punishment, the Ninth Circuit's decision threatens to harm the recognized interests of crime victims in attaining reasonable finality. It is well established that the State and the victim share a legitimate interest in seeing that the State's moral judgment is carried out. But while these interests are similar, the victim's interest is distinct and worthy of individual protection. The State's interest in finality arises from the need for proper enforcement of its laws, but the victim's interest in finality is profoundly personal and ultimately physical and psychological. For the victim, finality represents the resolution of a traumatic life event and its aftermath. Judicial policy

and social science recognize that victims often suffer added trauma as a result of so-called secondary victimization at the hands of the criminal-justice system. As a defendant inevitably seeks to employ all available means to delay punishment, the victim's trauma is prolonged. And while our system justly ensures that some delays are inevitable, the human cost of delay should be weighed when granting defendants new ways to postpone a sentence. Here, by creating a new right for a defendant to provide meaningful assistance to counsel *when the habeas challenge is purely record-based*, the Ninth Circuit's decision cannot justify the harm it will cause to crime victims' interest in reasonable finality.

This interest carries special weight here because Arizona's Constitution explicitly guarantees crime victims a prompt and final conclusion of a case after sentencing. In other words, the victim's rights and interests in this case, in addition to being worthy of judicial protection themselves, also heighten the need for the state to be able to enforce its laws in a timely manner. The Ninth Circuit's decision impairs not just a victim's need for reasonable finality, but also Arizona's legitimate state efforts to promote and protect this interest and the interests of its citizens generally.



ARGUMENT

I. The Ninth Circuit’s decision harms the recognized rights of crime victims and their interests in attaining the real finality that comes from knowing the State’s moral judgment will be carried out.

In *Payne v. Tennessee*, this Court recognized that evidence of a crime’s impact on a particular victim is legitimate consideration when deciding the appropriate sentence for a crime. 501 U.S. 808, 819 (1991). This is because a jury deprived of victim-impact evidence may not be able to “know the full extent of the harm caused by the crime, including its impact on the victim’s family and community.” *Id.* at 830 (O’Connor, J., concurring). At root, *Payne* provides an affirmation of the simple, but nevertheless profound, recognition that each victim’s uniqueness as a human being represents a unique loss to a family and a society. *See id.* at 824-25. If a sentencing decision fails to account for this loss, then it is possible that the penalty will not reflect the true “human cost of the crime.” *Id.* at 826.

Although *Payne* recognizes the legitimacy of considering the victim’s cost when a state imposes its sentence, this cost is no less worthy of consideration when the state seeks to implement its sentence, for the victim’s interest does not end at sentencing. Victims of crime share a legitimate interest in seeing that the punishment is ultimately carried out. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). *See also Jones v. Allen*, 485 F.3d 635, 641 (11th Cir. 2007)

(“Not only the State, but also the [victim’s] children . . . have a strong interest in seeing . . . punishment exacted”). Only after the sentence is executed can a victim achieve true finality, and “[f]inality is essential to both the retributive and the deterrent functions of criminal law.” *Calderon*, 523 U.S. at 555.

This interest in finality may be shared by state and victim alike, but their interests are distinct and must be weighed separately. For the state, finality is rooted in a federal balance that respects the state’s need to enforce its independent law-making power. This finality, then, is essentially an assurance that the state can execute its own moral judgment without violating paramount federal constitutional concerns. But for the victim, the need for finality is highly personal and affects the victim’s physical and psychological wellbeing. *See* I.B. Finality for the victim means a resolution to a traumatic life event and its aftermath. “Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out.” *Calderon*, 523 U.S. at 556.

Given this profound physical and psychological need for a conclusion, a victim has an interest in not only seeing the judgment enforced, but enforced in a reasonably prompt manner. As this Court has recognized, “Both the state and the victims of crime have an important interest in the *timely* enforcement of a sentence.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (emphasis added). When lengthy federal proceedings indefinitely delay the implementation of a state’s judgment, the victim necessarily experiences

a concomitant postponement of his or her ability to achieve reasonable finality. *See, e.g., Calderon*, 523 U.S. at 556. As more and more time passes, the humane concerns at the heart of federal habeas review begin to fail to account for the reality that the accused is not the only stakeholder in the outcome of the appeal. So when courts empower the accused with a novel and unnecessary tactic for delaying execution of a sentence, those same tactics easily become means of visiting continued trauma on the victim or the victim's family. This trauma, and the victim's interest of being protected from it, must be accounted for when making decisions that could cause this harm to continue indefinitely.

II. The victim's trauma is not theoretical; social science and victim experience demonstrate that victims suffer secondary victimization as a State's final judgment is subject to never-ending challenge.

This Court's recognition of the victim's interest in finality is well supported by the actual victim experience. As studies show, the failure to achieve finality in a timely manner can lead to a secondary victimization inflicted by the criminal justice-system itself. The initial trauma caused by a crime is compounded as the victim's involvement with the crime is prolonged by continual delay in adjudication and punishment. This trauma can manifest itself in many forms. For example, the most consistently documented consequence of violent crime is posttraumatic

stress disorder (PTSD). Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. Traum. Stress 182, 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traum. Stress 119, 119 (2003). Though commonly associated with combat trauma, PTSD can occur any time a person suffers a psychologically traumatic event that is generally outside the range of usual human experience. Stedman's Medical Dictionary (27th ed. 2000). This disorder appears in both those directly victimized and those indirectly victimized, like a child or spouse, and the occurrence of PTSD is particularly high in family members and friends of homicide victims. Kilpatrick & Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traum. Stress 119, 125-27 (2003). Those suffering from PTSD experience intense fear, helplessness, and horror. *Id.* Studies also suggest a connection between initial victimization and later depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and even suicide. Parsons & Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. Traum. Stress at 182.

These intense and painful consequences of initial victimization are compounded by a prolonged and difficult experience with the criminal-justice system. *See id.* at 182-183; *see also* Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traum. Stress 159, 159 (2003).

This so-called secondary victimization sometimes causes even more harm than the initial criminal act. Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Res. 313, 321 (2002). Indeed, a victim's experience with the justice system often "means the difference between a healing experience and one that exacerbates the initial trauma." Parsons & Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. Traum. Stress at 182. For example, one study examining the effect of offender punishment on crime victim recovery found that most victims experienced improved recovery when there was an increased perceived punishment of the offender. Dr. Joel H. Hammer, *The Effect of Offender Punishment on Crime Victim's Recovery and Perceived Fairness (Equity) and Process Control*, University Microfilms International 87, Ann Arbor, MI (1989). Similarly, where offenders accepted plea bargains, the victims experienced greater recovery because of the absence of extended delays. *Id.*

These studies demonstrate that a timely resolution is important to victim recovery. Avoiding a prolonged proceeding may help avert the stressful impact of unreasonable delay. *Id.* In death-penalty cases, for example, Dan S. Levey, the President of the National Organization of Parents of Murdered Children, has observed that the automatic and often repeated appeals associated with the death penalty inflict continual trauma on victim family members.

Dan S. Levey, *Balancing the Scales of Justice*, 89 *Judicature* 289, 290 (2006). While defendants often seek tactical advantage through endless delays, victims must continually steel themselves to go to court and relive the murder year after year. *Id.* at 290-291.

The growing statutory and constitutional framework for considering the victim's interest is a sound one and rooted in actual victim experience. Secondary victimization exacts an enormous physical, psychological, financial, and emotional toll on victims. *Id.* at 291. This is itself an injustice and the total human cost of the crime cannot be accounted for without balancing the very real trauma caused by continual delay. *Id.* It is certainly true that some delay, and therefore additional trauma, may be inevitable as the courts give effect to an accused's constitutional rights. But every decision that could increase delay should be justified in light of the indisputable harm it will inevitably cause to victims.

Here, the Ninth Circuit's decision represents a needless infliction of additional trauma. As demonstrated by Petitioner, allowing a defendant to indefinitely delay habeas proceedings on the basis of inability to assist counsel will be a handy tool for a habeas petitioner who wishes to postpone implementation of his sentence. Most important, the Ninth Circuit's decision allows this even where the challenges are entirely record-based and could be resolved without any meaningful input from the defendant. In

other words, the substantial human cost of increased delay cannot be justified by the meager benefit, if any, the Ninth Circuit’s decision would confer on a habeas petitioner.

III. The cost of delay should be given especially great weight in this case because Arizona’s Constitution gives victims a fundamental right to a prompt and final conclusion after sentencing.

In addition to a victim’s profound need to stanch ongoing physical and psychological trauma, the Ninth Circuit’s decision would also have an injurious impact on Arizona crime victims’ state constitutional rights. Arizona’s Constitution enshrines a Victims’ Bill of Rights (VBR), which went into effect on November 27, 1990—the year of the murder underlying this case—and enumerates specific individual rights intended to “preserve and protect victims’ rights to justice and due process.” Ariz. Const. art. II, § 2.1(A). *See also* Gessner H. Harrison, *The Good, The Bad, and The Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L. J. 531, 532 (Summer 2002). In the case of murder, these rights are explicitly conferred on the deceased’s spouse, parent, or child. *Id.* at § 2.1(C); *see also* ARS 13-4401(19) (defining “victim” to include, among others, a murder victim’s “spouse, parent, child, grandparent or sibling”).

Most important here, Arizona's VBR gives victims the "right to a speedy trial or disposition *and prompt and final conclusion of the case after the conviction and sentence.*" Ariz. Const. art. II, § 2.1(A)(10) (emphasis added). These constitutional rights require Arizona's courts to consider not just the accused's right to a speedy trial, but also to account for the crime victim's rights to reasonable finality. *See State v. Dixon*, 226 Ariz. 545, 555, 250 P.3d 1174, 1184 (2011). Victim's rights may not be whittled away through judicially created ad hoc exceptions or contrary court rules, and the Arizona legislature is similarly prohibited from reducing rights conferred by Arizona's VBR. *See Knapp v. Martone*, 823 P.2d 685, 687 (1992); *see also State v. Lee*, 226 Ariz. 234, 237, 245 P.3d 919, 922 (App. 2011) ("[N]either the legislature nor court rules can eliminate or reduce rights guaranteed by the VBR"). In other words, Arizona's Constitution gives crime victims a fundamental right not to be victimized a second time as the defendant seeks to delay final punishment.

Of course, "the power of a state to pass laws means little if the State cannot enforce them." *Calderon*, 523 U.S. at 556 (internal quotes omitted). And the delay inherent in habeas proceedings poses a special threat to the State's interest in enforcing its judgments. *See id.* This is especially true here where the state's and the victim's distinct interests in reasonable finality themselves are intertwined in Arizona's VBR. By giving victims a constitutional right to a prompt and final conclusion, Arizona has

used its independent law-making authority to ensure that victims of crime achieve the finality necessary to find resolution. As Candy Lightner, the notable victim's advocate and mother who started Mothers Against Drunk Driving, stated in a speech in support of Arizona's Victim's Bill of Rights, "Victims don't want vengeance, they want healing, but there can be no healing until justice is done." Candy Lightner, Remarks at the Rally in Support of the Passage of Arizona's Victim's Bill of Rights (Sep. 1990). By giving the accused yet another tactic to delay punishment indefinitely, the Ninth Circuit's decision threatens to severely impair Arizona's constitutional guarantees of justice and reasonable finality.²

◆

CONCLUSION

As demonstrated more fully by the Petitioner, the Ninth Circuit's decision to allow habeas petitioners an extra-statutory tactic to achieve indefinite delay of a capital sentence cannot withstand scrutiny, especially when the habeas petitioner's remaining challenges are entirely record-based and legal in nature.

² Victims in other states face similar harm to their explicit guarantee of a prompt disposition to criminal proceedings. *See, e.g.*, Alaska Const. art. I, § 24; Cal. Const. art. I, § 28; Conn. Const. art. I, § 8(b); Idaho Const. art. I, § 22; Ill. Const. art. I, § 8.1; La. Const. art. 1, § 25; Mich. Const. art. I, § 24; Mo. Const. art. I, § 32; N.M. Const. art. 2, § 24; S.C. Const. art. I, § 24; Tenn. Const. art. 1, § 35; Wis. Const. art. I, § 9m.

This error is made only more manifest when weighed against the needs and rights of crime victims to see a State's moral judgment carried to its conclusion. AVCV asks the Court to give due consideration to victims' rights, especially those guaranteed by state constitutions, and to take into account the ongoing physical and psychological trauma that will inevitably result unless the Ninth Circuit's decision is reversed.

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