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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

Petition to Amend Ariz. R. Crim. P. 13.5.

No. R-26-0028

**Comment of Arizona Attorneys for
Criminal Justice regarding Petition
to Amend Ariz. R. Crim. P. 13.5**

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment on the Petition to amend Arizona Rule of Criminal Procedure 13.5.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law

through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ opposes the petition filed by the Arizona Attorney General's Office ("AGO"). The petition seeks to overrule *Navarro-Figueroa v. State*, 260 Ariz. 530 (App. 2025), but that case was correctly decided. Far from "creating an ambiguity that has produced inconsistent results," Petition at 1, *Navarro-Figueroa* faithfully applied the plain language of the rule and this Court's precedent. Petitioner wishes to draw distinctions between capital and noncapital cases; while there is reason for such distinctions in some contexts, there is no reason to create one for probable-cause findings of sentencing allegations. This Court has previously dismissed the "sky is falling" fears about mini-trials, and the rule is necessary to ensure that prosecutors do not bring allegations that are unsupported in fact or law.

I. Petitioner misconstrues the 2002 rule change petition's purpose.

On August 28, 2002, the Maricopa County Attorney's Office, joined by AGO, filed a petition to modify several rules impacted by the U.S. Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002). Petition Attachment B. Petitioner is correct that the proximate driving force of the 2002 filing was the more recent *Ring* decision, which directly affected capital cases. But although Petitioner repeatedly claims that the proposed changes to the capital and noncapital provisions in that petition served different

purposes, the language of the 2002 petition does not support such a claim. Moreover, contrary to Petitioner’s argument, *Ring* and *Apprendi* in fact support treating capital and noncapital sentencing allegations the same.

A. *Ring* is dependent on *Apprendi*.

Apprendi stated a new rule: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. at 490. Throughout the 1980s and 1990s, the U.S. Supreme Court held that sentencing was a judicial function and thus sentencing allegations need not be proven to a jury. *McMillan v. Pennsylvania*, 477 U.S. 79 (1986). Applying this general rule, it upheld Arizona’s scheme where judges would find one or more enumerated capital aggravating circumstances. *Walton v. Arizona*, 497 U.S. 639 (1990). The breaking point occurred with *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which essentially allowed any sentencing issue to be found by a judge. Only one year later, in *Jones v. United States*, 526 U.S. 227, 236-39 (1999), the Court retreated from this broad proposition in the context of the federal carjacking statute, which did not clearly delineate the line between a sentence enhancement and an element of a distinct offense. On the heels of *Jones* came *Apprendi*.

In *Ring*, the Court recognized *Walton* and *Apprendi* were irreconcilable, and because Arizona’s enumerated aggravating factors operated as “the functional

equivalent of an element of a greater offense,” the Sixth Amendment requires that they be found by a jury. *Ring*, 536 U.S. at 604-05 (quoting *Apprendi*, 530 U.S. at 494 n.19).¹ *Ring* was a straightforward application of *Apprendi*.

Even after *Ring* and this Court’s adoption of the 2002 rule change petition, that was not “the end of the matter.” *Blakely v. Washington*, 542 U.S. 296, 313 (2004). Arizona required jury trials for sentence enhancements that increased the range of punishment, *State v. Gross*, 201 Ariz. 41 (App. 2001), but until 2004, it continued to allow judges to find aggravating factors to determine whether to impose an aggravated sentence within the range. *Blakely* definitively resolved that question and held that aggravating factors are included in the category of facts that must be proven to a jury beyond a reasonable doubt. *Blakely* caused Arizona courts to issue a flurry of opinions confirming the jury trial right and the precise contours of a judge’s authority. See, e.g., *State v. Brown*, 209 Ariz. 200 (2004) (for *Blakely* purposes, the presumptive term is the “statutory maximum” that may be imposed); *State v. Martinez*, 210 Ariz. 578 (2005) (if one aggravating factor is properly found

¹ The 2002 petition offered a “counter argument” that no court has held that capital aggravating factor are elements of a greater offense. Petition Attachment B at 7. It cited *Poland v. Arizona*, 476 U.S. 147, 156 (1986), and *Floyd v. State*, 42 P.3d 249, 256 (Nev. 2002) (quoting *Poland*), for this proposition. As shown above, *Ring* resolves that question against the counter-argument. *Ring* did not cite *Poland*, but it overruled *Walton*, which in turn relied on *Poland*. See *Walton*, 497 U.S. at 639-40, 648 (analyzing *Poland* favorably).

and the sentencing range is increased, then the judge may find other aggravating factors consistent with *Blakely*).

Over the last two decades, the Supreme Court has continued to expand that jury trial right. *Alleyne v. United States*, 570 U.S. 99 (fact increasing minimum sentence must be submitted to jury); *United States v. Haymond*, 588 U.S. 634 (2019) (factfinding authorizing a new mandatory minimum sentence must be submitted to jury); *Erlinger v. United States*, 602 U.S. 821 (2024) (whether multiple prior convictions are on the “same occasion” is a fact to be determined by jury). And as with *Blakely*, Arizona courts continue to apply these extensions of *Apprendi*’s rule to Arizona’s sentencing scheme. *State v. Large*, 234 Ariz. 274 (App. 2014) (applying *Alleyne* to the on-parole sentencing allegation); *State v. Blackwell*, -- Ariz. --, 2026 WL 1408878 (App., May 20, 2026) (applying *Erlinger*, requiring jury to determine whether prior convictions were on same occasion).

What is noteworthy is that while every case in the last twenty-five years traces its roots to *Apprendi*, most also cite *Ring* as an application of *Apprendi*, as opposed to a separate rule. *See Ring*, 536 U.S. at 613 (Kennedy, J., concurring) (“Though it is still my view that *Apprendi* was wrongly decided, *Apprendi* is now the law, and its holding must be implemented in a principled way. As the Court suggests, no principled reading of *Apprendi* would allow *Walton* to stand.”) (citations omitted); *Blakely*, 542 U.S. at 303-05 (explaining *Ring* as application of *Apprendi*); *McKaney*

v. Foreman, 209 Ariz. 268, 270 ¶ 8 (2004) (“The holdings in *Apprendi* greatly informed the Supreme Court’s decision in *Ring*...”). This Court even recognized in *State v. Ring* that *Apprendi* could not authorize judges to find capital aggravating factors, but it affirmed because of *Walton* and honoring the Supremacy Clause. *Ring*, 536 U.S. at 596 (citing *State v. Ring*, 200 Ariz. 267, 279-80 ¶¶ 43-44 (2001)).

B. The 2002 rule changes implement *Apprendi* as well as *Ring*.

To be sure, the 2002 rule change petition was triggered not only by *Ring* but the legislative changes to the capital trial and sentencing scheme that immediately followed. *See Chronis v. Steinle*, 220 Ariz. 559, 561 ¶ 10 (2009) (discussing petition in context of *Ring* and new legislation). But the rule change petition also recognized that rule changes were necessary to implement *Apprendi*, since this Court made no changes in 2000-2001 after that decision. Previously, Rule 13.5(c) (Rev. 2001) permitted challenges to the “charging document” “by a motion filed in accordance with Rule 16.” The 2002 petition included an alteration to Rule 13.5(a) to account for *Apprendi* and added a new Rule 13.5(d) to account for *Ring*. This choice in structure was just that—a choice. For purposes of challenging the legal sufficiency of sentencing allegations, there is no principled distinction between capital and noncapital cases, and that is why the 2002 petition used identical language for permitting such challenges: “This is the system Arizona has used in the non-capital area for sentence enhancements for many years.” Petition Attachment B at 8.

There is one distinction between capital aggravating factors and noncapital sentencing allegations: the timing for filing. Notice of capital aggravators must be filed at the same time as the notice of intent to seek the death penalty. Rule 15.1(g)(2) (Rev. 2002); Rule 15.1(i)(2) (Rev. 2026). In noncapital cases, on the other hand, sentencing allegations need only be filed “[w]ithin the limits of Rule 16.1(b),” i.e., 20 days before trial. This appears to be the only reason why capital aggravators and noncapital sentencing allegations are separated in Rule 13.5.² As will be discussed later, this can be clarified with minor tweaks to the rule.

Many of the 2002 rule changes are specific to capital cases. Because the jury would now decide the life-or-death sentence, mitigation would have to be complete prior to trial, as opposed to the former practice of trying guilt to the jury and then permitting the defense to conduct the mitigation investigation after the jury returns a verdict. Petition Attachment B at 2-3. But the petition did not use different language when defining the scope of such challenges in capital versus noncapital cases. When this Court amended Rule 13.5 and provided equal opportunity to

² Petitioner attributes special meaning to the fact that Rule 13.5(c) includes language that the notice of aggravating circumstances “amends the charging document.” Petition at 14. Far from the “stark contrast” Petitioner sees from Rule 13.5(a), this is a distinction without a difference. As explained above, at the time the 2002 petition was filed, it was unknown whether this Court would require the allegation of aggravating factors in the indictment. Petition Attachment B at 6-7. This Court resolved that question in *McKaney*, 209 Ariz. at 273 ¶ 23.

challenge capital aggravators and noncapital sentence allegations the same, it meant what it said. *See State v. Serrato*, 259 Ariz. 493, 496 ¶ 9 (2025) (“When interpreting statutes, this Court starts with the text.”). “When the text is clear and unambiguous, we apply the plain meaning and our inquiry ends.” *State v. Burbey*, 243 Ariz. 145, 147 ¶ 7 (2017). Petitioner’s plea to ignore the text in favor of legislative history fails not only as a matter of textualism, but also because the 2002 petition reveals no such desire.

Finally, Petitioner ignores that in 2016-2017, this Court’s Criminal Rules Task Force overhauled the criminal rules, and although most changes to the rules were stylistic, some were substantive. Relevant to this discussion, the Task Force recommended merging Rules 13.5(a) & (d) so that (a) would more clearly track (c).³ This Court adopted that change. At the time of the rule change petition, the Task Force was familiar with *Chronis*, *Sanchez v. Ainley*, 234 Ariz. 250 (2014), and *Allen v. Sanders*, 240 Ariz. 569 (2016). None of the Task Force materials or the comments to the rule change petition voiced any concern about treating capital and noncapital sentencing allegations the same.

³ *See* [R-17-0002](#), Petition Appendix B ep 24 (“The Task Force proposes to incorporate current Rule 13.5(d)’s provision about challenging noncapital allegations into proposed Rule 13.5(a) and to delete the rest of Rule 13.5(d). The Task Force’s other proposed changes to this rule are stylistic.”).

II. Rule 13.5 serves the same important purpose in capital and noncapital cases alike.

A. The rationale of *Chronis* is no less applicable in noncapital cases.

Petitioner is correct that *McKaney* held Arizona does not recognize a constitutional guarantee to a probable cause finding of capital aggravating factors. Petition at 7 (citing *McKaney*, 209 Ariz. at 270-73 ¶¶ 9-22). This Court did not see the need to revisit this conclusion in *Chronis*, because it adopted the reasoning of the partially dissenting justices in that case as allowing a probable-cause hearing under Rule 13.5. 220 Ariz. at 562 ¶¶ 16-17. Petitioner reads these cases to mean that not only are the rights established in Rule 13.5(c) “judicially created,” but also that no such rights extend to noncapital cases. This is a leap of logic.

Rule 13.5 serves to protect important constitutional rights. True, not every word of the rule is constitutionally mandated, and this Court has previously used the word “prophylactic” to distinguish the protections afforded by the constitution and the rule in the context of notice. *State v. Freeney*, 223 Ariz. 110, 114 ¶¶ 24-26 (2009). Treating the rule as merely “judicially created,” however, runs the risk of ignoring the constitutional rights that the rule is designed to protect.

Petitioner first argues that Rule 13.5(a) is restricted to preserving the right to notice, because that was the issue in *State v. Nichols*, 201 Ariz. 234 (App. 2001), and *State ex rel. Smith v. Conn*, 209 Ariz. 195 (App. 2004). But pretrial notice of sentencing allegations was also required prior to *Apprendi*. *State v. Waggoner*, 144

Ariz. 237, 238-39 (1985); *State v. Guytan*, 192 Ariz. 514, 522-23 ¶¶ 31-32 (App. 1998).⁴ That no appellate decision prior to *Navarro-Figueroa* squarely held that Rule 13.5 provides for a pretrial probable-cause hearing is not evidence that *Navarro-Figueroa* was wrongly decided; otherwise, the same could be true of *Chronis*. All that this means is the issue was not litigated in appellate courts.

Perhaps the issue has not been litigated because other prosecuting agencies have accepted that *Chronis* applies equally in noncapital cases.⁵ Commentators also understand this to be true. *See* David J. Euchner & Barbara E. Bergman, ARIZONA CRIMINAL PRACTICE MANUAL, § 4:6 (2024-25 ed.) (“Because there is no difference in the language between Rule 13.5(c) and the last sentence of Rule 13.5(a), the *Chronis* rule applies equally in noncapital cases.”). Or maybe it is because defense lawyers have neglected this opportunity. It is pointless to speculate why it took more than twenty years for this issue to percolate to the appellate courts, just as it is pointless to wonder why it took fifteen years for the court of appeals to decide that

⁴ Petitioner cites *State v. Nelson*, 2 CA-CR 2022-0086, 2023 WL 6534124 (Ariz. App. Oct. 6, 2023) (mem. decision). *Nelson*, a memorandum decision, held that there was no prejudicial error for the state to fail to give notice of aggravating factors prior to trial commencing. This holding contravenes the clear language of *Waggoner*, which was cited in Appellant’s Opening Brief, see 2023 WL 1861406, and Reply Brief, see 2023 WL 4374387, but the court of appeals did not cite *Waggoner* once.

⁵ Undersigned counsel conducted a noncapital trial and filed a *Chronis* motion, and the State responded on the merits and conceded certain points. *State v. Poitra*, Pima County Superior Court No. CR20220548-001 (motion filed May 23, 2022).

the “offenses committed on different occasions” enhancement required a jury trial. *State v. Flores*, 236 Ariz. 33 (App. 2014) (erroneously holding that the issue was inherent in the verdicts); *State v. Ortiz*, 238 Ariz. 329, 342-45 ¶¶ 60-71 (App. 2015) (finding error harmless). As the AGO recently pointed out in a comment to a different rule change petition, just because a practice has existed for a long time doesn’t make it right. See [R-26-0024](#), AGO Comment in Opposition, at 6-7 (“So any practice that might have developed over time in this regard has been prohibited and unauthorized by law.”). To the extent trial lawyers have failed to seek, and trial courts have failed to provide probable-cause hearings on sentencing allegations, it can only be attributable to a failure to read the plain language of the rule.

Allowing a probable cause hearing serves the same purpose in noncapital and capital cases alike. It makes sense that the jury should not hear evidence on any allegation that is unsupported in fact or law. In a capital case, the State should not be able to baldly claim an aggravating factor applies based only on a prosecutor’s say-so. It makes no sense that a noncapital defendant should have any less protection in this regard, since the rights involved concern bringing charges that are supported by probable cause, which is not specific to capital punishment.

True, in capital cases, the trial is literally a matter of life or death. In noncapital cases, the stakes are less serious; but that does not mean they are not serious. For example, prior convictions not only increase the sentencing ranges, but sometimes

they increase the offense level as well. See A.R.S. §§ 13-1402(C)-(D), 13-1403(C)-(D) (indecent exposure or public sexual indecency can range from class 1 misdemeanor or a class 3 felony); § 13-1805(I) (increasing penalty for shoplifting from class 1 misdemeanor to class 4 felony based on prior convictions). Courts must impose draconian penalties on an offender who otherwise may be appropriate for probation if offenses are dangerous crimes against children. *E.g.*, *State v. Berger*, 212 Ariz. 473 (2006) (discussing mandatory consecutive sentencing scheme). In any event, *Apprendi* disposed of the distinction: “The differential in sentence..., it is true, as extreme as the difference between a small fine and mandatory life imprisonment. But it can hardly be said that the potential doubling of one’s sentence—from 10 years to 20—has no more than a nominal effect.” 530 U.S. at 495.

Without the requirement of a probable-cause finding, the legislature could authorize prosecutors to seek life sentences based on comparatively minor offenses, under the guise of “noncapital sentence enhancements.” As Justice Feldman asked, months before *Apprendi* was decided: “Could Arizona establish one violent crime – ‘knowingly causing injury to another’ – punishable as a class 1 felony, subject only to a wide variety of factors that would reduce punishment to lesser levels by a series of sentence mitigators to be determined by the judge and not the jury?” *State v. Eagle*, 196 Ariz. 188, 194 ¶ 26 (2000) (Feldman, J., concurring in part, dissenting in part). *Apprendi* answered that question; but if Petitioner’s rule change is adopted,

then the State could allege a series of enhancements that increase the penalty substantially without having to answer to its allegations until a Rule 20 motion.

B. Eliminating *Chronis* hearings in noncapital cases implicates the federal constitutional right to an independent finding of probable cause.

The Fifth Amendment's right to a grand jury indictment has not yet been incorporated to the states through the Fourteenth Amendment's Due Process Clause, and *Apprendi* and *Ring* purposefully both left that issue untouched. *Apprendi*, 530 U.S. at 477 n.3 ("Apprendi has not here asserted a constitutional claim based on the omission of any reference to sentence enhancement or racial bias in the indictment We thus do not address the indictment question separately today."); *Ring*, 536 U.S. at 597 n.4 ("Ring's claim is tightly delineated: He contends only that the Sixth Amendment required jury findings on the aggravating circumstances asserted against him Ring does not contend that his indictment was constitutionally defective."). Yet both *Apprendi* and *Blakely* dictate the result.

First, when stating the rule in *Apprendi*, Justice Stevens incorporated the rule from *Jones*: "'any fact (other than prior conviction) that increases the maximum penalty for a crime must be **charged in an indictment**, submitted to a jury, and proven beyond a reasonable doubt.' The Fourteenth Amendment commands the same answer in this case involving a state statute." *Apprendi*, 530 U.S. at 476 (quoting *Jones*, 526 U.S. at 243 n.6) (emphasis added). True, the constitutional provisions related to notice and jury trial and not to grand jury. He also noted: "Any

possible distinction between an ‘element’ of a felony offense and a ‘sentencing factor’” was unknown to the practice of criminal indictment, trial by jury, and judgment by court as it existed during the years surrounding our Nation’s founding.” *Id.* at 478.

Then, in *Blakely*’s dictum, Justice Scalia said: “‘Bishop was not ‘addressing’ the ‘problem’ of statutes that aggravate common-law offenses. Rather, the entire chapter of his treatise is devoted to the point that ‘every fact which is legally essential to the punishment’ must be charged in the indictment and proved to a jury.” 542 U.S. at 302 n.5 (quoting 1 J. Bishop, CRIMINAL PROCEDURE § 81). Although *Blakely* did not purport to reach the additional issue of the right to a grand jury finding of probable cause on sentence enhancements, this language shows that if the Court is asked to reach the question, there is a strong likelihood that it will incorporate the right to a grand jury determination to the states.

Justice Hurwitz’s partial dissent in *McKaney* shows the problem:

The majority correctly notes that the federal indictment clause does not apply to the states, and we therefore are not mandated by federal law to provide our citizens the same protections mandated by the Fifth Amendment. . . . [I]n construing our Constitution, we properly begin from the premise that federal constitutional law is “the benchmark of minimum constitutional protection.” *Large v. Superior Court*, 148 Ariz. 229, 235, 714 P.2d 399, 405 (1986). We have occasionally found our Constitution to provide broader protections to our citizens than afforded by analogous clauses in the federal document, e.g., *Pool v. Superior Court*, 139 Ariz. 98, 108, 677 P.2d 261, 271 (1984), but we have never interpreted the protections of our fundamental document as narrower than those in the national charter.

...

The Court’s conclusion today that Article II, Section 30 is not congruent with the Fifth Amendment rests entirely on the notion that the notice of alleged aggravating circumstances provided to defendants under Arizona Rule of Criminal Procedure 15.1(i)(1) satisfies due process requirements. *See* Ariz. R. Crim. P. 13.5(c) (providing that the filing of such a list amends the charging document). . . . Our indictment clause, however, was intended not only to provide a defendant with notice of the charges, but also to ensure that a neutral intermediary—a grand jury comprised of ordinary citizens—finds that probable cause exists before the State can bring charges. Arizona grand juries, like their federal counterparts, were thus designed to act as a “vital check against the wrongful exercise of power by the State and its prosecutors.”

McKaney, 209 Ariz. at 274-275 ¶¶ 29, 31 (Hurwitz, J., concurring in part and dissenting in part). Consistent with *McKaney*, this Court held in *Sanchez* that not only is a grand jury not *required* to find probable cause of aggravating factors, but neither is it *permitted* to do so—and it relied on reasoning from noncapital cases to reach that conclusion. 234 Ariz. at 253-54 ¶¶ 10-13. *McKaney* need not be revisited so long as the accused has an opportunity to demand a probable-cause finding in some form before trial. Rule 13.5 provides that avenue, and for that reason, Petitioner’s rule change petition invites an unnecessary confrontation over incorporation of the Fifth Amendment right to a grand jury proceeding.

“[T]he Court has never held that federal concepts of a ‘grand jury,’ binding on the federal courts under the Fifth Amendment, are obligatory for the States.” *Alexander v. Louisiana*, 405 U.S. 625, 633 (1972) (citing *Hurtado v. California*, 110 U.S. 516, 538 (1884)). In the last hundred years, every right in the Bill of Rights that

has been considered for incorporation has been found “fundamental to our scheme of ordered liberty,” or “deeply rooted in this Nation's history and tradition.” *Timbs v. Indiana*, 586 U.S. 146, 150 (2019) (quoting *McDonald v. Chicago*, 561 U.S. 742, 767 (2010)). *Hurtado*, decided long before the U.S. Supreme Court developed its incorporation doctrine, is the only remaining right of the criminally accused in the Bill of Rights to be incorporated. It is only a matter of time.

By providing probable-cause hearings under Rule 13.5, using the procedures for preliminary hearings under Rule 5, Arizona supplies an equivalent to the federal constitutional right to a grand jury. If such a right were to be taken away, and the U.S. Supreme Court then held that the Fifth Amendment right to a grand jury is incorporated to the states, then article 2, section 30 of the Arizona Constitution, which allows for a preliminary hearing as an equivalent process, would be deemed unconstitutional under the Supremacy Clause. The legislature would then be required to take immediate corrective action (as it did when *Ring* was decided). There is no need to upend Arizona law merely because Petitioner is unhappy about *Navarro-Figueroa*.

III. Petitioner’s policy concerns are misplaced, but minor changes to the rule may help with case management in the trial court.

Petitioner complains that permitting probable-cause challenges to sentence enhancements will require “inefficient mini-trials.” Petition at 16. The State made

this very argument in *Chronis*; this Court rejected it out of hand because of relaxed evidentiary rules and the hearing’s limited scope. 220 Ariz. at 562-63 ¶¶ 18-19.

Last point first. Even if the State were right about such inefficiencies, that is irrelevant. As Justice Scalia repeatedly opined, the criminal justice system is inefficient by design, because such inefficiencies ensure the protection of the rights of the accused. See *Apprendi*, 530 U.S. at 498 (Scalia, J., concurring) (“[T]he jury-trial guarantee was one of the least controversial provisions of the Bill of Rights. It has never been efficient; but it has always been free.”); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 325 (2009) (“The Confrontation Clause may make the prosecution of criminals more burdensome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause—like those other constitutional provisions—is binding, and we may not disregard it at our convenience.”).

Regardless, the State’s claim of mini-trials is not borne out by daily practice in court. Many sentencing allegations—capital and noncapital alike—“turn on purely legal questions” that can be addressed in pleadings and argument. *Allen*, 240 Ariz. at 572 ¶¶ 13-14. In *Allen*, this Court held that *Chronis* and *Sanchez* required the trial court only to make an independent legal determination whether a concurrently indicted charge qualified as a “serious offense” but that the trial court need not reevaluate the evidence to make a new finding of probable cause for that

crime. *Id.* ¶¶ 12-13. Such hearings could last five minutes. Others would require more evidence, such as determining whether a murder was “heinous, cruel or depraved,” whether under the capital statute, A.R.S. § 13-751(F)(4) (Rev. 2026), or the parallel noncapital statute, A.R.S. § 13-701(D)(5). *See State v. Johnson*, 229 Ariz. 475 (2012) (*Blakely* trial to determine whether second-degree murder was cruel, heinous, or depraved). This is true of all evidentiary hearings; some are short and some are long, depending on the case and the issues. And other complicated motions have the same deadline: 20 days before trial.

In *Navarro-Figueroa*, despite being required to file the motion only 20 days before trial, the defendant filed it 73 days before trial was set to begin on May 5, 2025. 260 Ariz. at 532 ¶ 5. The court held the hearing more than a month before the trial date.⁶ It is possible (though not likely, much less definite) that a probable-cause hearing on the serious drug offender allegation, see A.R.S. § 13-3410, may involve extensive testimony, even under relaxed evidentiary rules. But if found by the jury, that allegation carries a mandatory life sentence. Requiring the accused to go to trial facing a life sentence on a prosecutor’s word that the evidence supports the allegation is bad public policy, if not unconstitutional.

⁶ *See Navarro-Figueroa v. State*, 2 CA-SA 2025-0028, [Appendix to Petition for Special Action](#).

A compromise is available. If the State is concerned about eve-of-trial motions, this Court should shift the deadlines both for the State to file the sentencing allegation notice and for the defendant to file a motion challenging the legal insufficiency of one or more allegations. This is the practice with motions to remand to the grand jury for redetermination of probable cause: Rule 12.9(b) requires the defendant to file the motion no later than 45 days after arraignment or after the grand jury transcript is filed (whichever is later). For example, this Court could require the State to file a sentencing allegation no later than 60 days after arraignment (as with the notice of intent to seek the death penalty), and in turn it could require the defendant to file a motion no later than 45 days after the State files its notice. Such a rule would improve the efficient management of the case and would facilitate plea negotiations, potentially obviating the need for trial.

Conclusion

The rights that Rule 13.5 seeks to protect—neutral finding of probable cause, notice of the charges, the right to test the legal sufficiency of the charges, and the right to a jury trial—are not peculiar to capital cases. On the contrary, the U.S. Supreme Court has protected these rights almost exclusively through noncapital vehicles. It is mere happenstance that this Court has interpreted Rule 13.5(c) but not Rule 13.5(a). *Navarro-Figueroa* was not only correctly decided, but it represents

good public policy and avoids an unnecessary confrontation over incorporation of the Fifth Amendment right to a grand jury proceeding.

For these reasons, AACJ asks this Court to deny the petition.

DATED (electronically filed): June 15, 2026.

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