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IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

No. 34 EAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

JEROME COFFEY,

Appellant.

BRIEF OF *AMICUS CURIAE* SHAWN NIJJAR, PRO SE, IN SUPPORT OF APPELLANT

ON APPEAL FROM THE DECISION OF THE SUPERIOR COURT OF PENNSYLVANIA AT NO. 1452 EDA 2024 DATED DECEMBER 24, 2025 AFFIRMING THE ORDER OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY AT NO. CP-51-CR-0441911-1993 DATED APRIL 25, 2024

Date: November 3, 2026

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Shawn Nijjar files this brief as *amicus curiae*, *pro se*, pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(1)(i), during merits briefing, in support of Appellant Jerome Coffey. *Amicus* is not a party to this appeal.

Amicus is a volunteer who assists people involved in the criminal justice system, and recently testified in Washington, D.C., on statutory gaps in the youth detention system. *Amicus* has an interest in the question this Court granted review to decide, whether *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026), applies retroactively, and in the sentencing-administration data that bear on how any such holding would operate. *Amicus* has no personal, familial, or organizational connection to Appellant or to any other person serving a sentence affected by *Lee*.

No person or entity other than the *amicus curiae* paid in whole or in part for the preparation of the *amicus curiae* brief or authored in whole or in part the *amicus curiae* brief.

SUMMARY OF ARGUMENT

On March 26, 2026, this Court held in *Lee* that Pennsylvania's sentencing framework, which mandates life imprisonment without parole for every person convicted of second-degree murder, violates the prohibition on cruel punishments in Article I, Section 13 of the Pennsylvania Constitution. Because *Lee* arrived on direct appeal, the Court vacated Derek *Lee*'s sentence, remanded for resentencing, stayed its mandate for 120 days so that the General Assembly could consider remedial measures, and declined to address retroactivity. The stay expired without legislation, this Court denied a further extension, and on September 29, 2026 the Court granted review in this case to decide whether *Lee* applies retroactively.

Lee announced a substantive rule. It withdraws one punishment, mandatory life without parole, from what the Commonwealth may impose on everyone convicted of an offense whose malice is imputed rather than proved. *Montgomery v. Louisiana* rejected the argument that preserving discretionary life without parole after individualized assessment makes such a rule procedural, and this Court's decisions in *Washington* and *Olson* do not point the other way. Pennsylvania's own retroactivity criteria, and this Court's independent authority over its own constitutional holdings, lead to the same result.

Because the General Assembly assigned the retroactivity holding to "that court" in 42 Pa.C.S. § 9545(b)(1)(iii), this Court should decide the question now,

and its opinion should state when the one-year filing period begins for other petitioners. Finally, the public data show that relief is administrable if phased. About 1,100 people are affected. The Parole Board's capacity is large relative to the cohort, and trial-court resentencing is the larger task, as the juvenile experience shows. *Amicus* does not minimize that burden, but it is not a reason to withhold a substantive rule.

Amicus respectfully requests that the Court hold that *Lee* announced a substantive rule of Pennsylvania constitutional law that applies retroactively on collateral review.

ARGUMENT

I. *LEE* ANNOUNCED A SUBSTANTIVE RULE, WHICH APPLIES RETROACTIVELY ON COLLATERAL REVIEW

A. The Governing Framework Distinguishes Substantive Rules from Procedural Rules

A new constitutional rule applies to all cases still pending on direct review, but it generally does not apply to convictions that were final when the rule was announced. *Commonwealth v. Olson*, 218 A.3d 863, 868 (Pa. 2019) (quoting *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016)). Under *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion), there are two exceptions, and the first is for new substantive rules. Substantive rules include those "forbidding criminal punishment of certain primary conduct" and those "prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Olson*, 218 A.3d at 868–69 (quoting *Montgomery*, 577 U.S. at 198). They "set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Id.* at 869 (quoting *Montgomery*, 577 U.S. at 201). Procedural rules, by contrast, "merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Id.* (quoting *Summerlin*, 542 U.S. at 352).

Teague limits federal habeas review, not a State's power to give broader retroactive effect to its own law. *Danforth v. Minnesota*, 552 U.S. 264, 266,

280–82 (2008). This Court has applied the *Teague* framework on PCRA review, see *Olson*, 218 A.3d at 868–69; *Commonwealth v. Washington*, 142 A.3d 810 (Pa. 2016), and has separately recognized a state-law retroactivity analysis that weighs the purpose of the new rule, the extent of reliance on the old rule, and the effect on the administration of justice. *Blackwell v. State Ethics Comm'n*, 589 A.2d 1094, 1099 (Pa. 1991).

B. *Lee* Removed Mandatory Life Without Parole from the Punishments the Commonwealth May Impose on a Class Defined by Its Offense

Second-degree murder is felony murder. A person may be convicted "regardless of an intent to kill," because the malice necessary to make a killing murder "is constructively inferred from the malice incident to the perpetration of the initial felony." *Lee*, 357 A.3d 356, No. 3 WAP 2024, slip op. at 3–4 (Pa. Mar. 26, 2026) (quoting *Commonwealth ex rel. Smith v. Myers*, 261 A.2d 550, 553 (Pa. 1970)). As this Court put it, "the defendant's intent as to the commission of a murder is immaterial." *Id.* at 9. The Crimes Code nevertheless mandates a life sentence, 18 Pa.C.S. § 1102(b), and the Prisons and Parole Code bars parole for such a sentence, 61 Pa.C.S. § 6137(a)(1). This Court has described that parole bar as "part of the judgment of sentence." *Lee*, slip op. at 2 n.2 (quoting *Scott v. Pa. Bd. of Prob. & Parole*, 284 A.3d 178, 192 (Pa. 2022)).

Lee treated the challenge as facial, examining the sentencing scheme "based on its text alone without considering the facts or circumstances of a particular case," because the scheme "does not provide any process in which an individual's culpability may be taken into account." *Id.* at 8–9. The Court's holding is class-wide and defined by the offense: a mandatory sentence of life without parole "for all felony murder convictions, absent an assessment of culpability," is inconsistent with Article I, Section 13. *Id.* at 1–2. The Court found that the framework imposes the sentence in all cases "regardless of the culpability and characteristics of the defendant," "without individualized assessment either at sentencing or through parole," and therefore "poses too great a risk of disproportionate punishment." *Lee*, slip op. at 69.

That is a rule about the State's power to punish a defined class. It does not regulate how guilt is found. It withdraws one punishment, mandatory life without parole, from what the Commonwealth may impose on everyone convicted of an offense whose mens rea is imputed. That is the category *Olson* describes: a "category of punishment for a class of defendants because of their ... offense." 218 A.3d at 869 (quoting *Montgomery*, 577 U.S. at 198).

C. Preserving Discretionary Life Without Parole After Individualized Assessment Does Not Make *Lee* Procedural

The most likely objection is that *Lee* is procedural because a sentencing court may still impose life without parole after assessing culpability, and *Lee* does

not guarantee release to anyone. The Governor made the premise of that point in *Lee*: life without parole for second-degree murder "may be appropriate under some circumstances, 'but only so long as the sentence is not mandatory.'" Br. of *Amicus Curiae* Governor Josh Shapiro at 17, *Lee*, No. 3 WAP 2024 (Pa. filed Apr. 26, 2024) ("Gov. Br.") (quoting *Jones v. Mississippi*, 593 U.S. 98, 106 (2021)).

Montgomery rejected the same argument as to *Miller v. Alabama*, 567 U.S. 460 (2012). Louisiana contended that *Miller* was procedural because it permitted a sentence of life without parole for some juveniles after a hearing. The Supreme Court disagreed. It held that *Miller* barred life without parole for the class of juveniles whose crimes do not reflect irreparable corruption, so that the rule was substantive like *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), and it described the individualized hearing as the means of giving effect to that substantive holding rather than as the content of the rule. *Montgomery*, 577 U.S. at 208–10. This Court has already recognized *Montgomery*'s holding in *Lee* itself, noting that *Montgomery* clarified *Miller* as "not merely a procedural protection but, critically, a substantive federal constitutional protection, making retroactive *Miller*'s prohibition" on mandatory life without parole for juvenile homicide offenders. *Lee*, slip op. at 26.

Jones v. Mississippi does not change that analysis. *Jones* held that a sentencer need not make a separate finding of permanent incorrigibility before imposing a discretionary sentence of life without parole, but it reaffirmed that the sentence cannot be mandatory. 593 U.S. at 106–07. *Jones* did not question

Montgomery's holding that *Miller* is retroactive. *Lee* cited *Jones* for the same proposition. *Lee*, slip op. at 26.

Lee presents the same structure. Its constitutional defect is the mandatory scheme: the foreclosure of individualized assessment "either at sentencing or through parole." That some people may, after assessment, still receive life without parole shows only that the individualized process is the mechanism through which the substantive limit operates. It does not turn the limit into a procedural rule.

D. *Washington* and *Olson* Do Not Control, and *Amicus* Does Not Rely on a "Void Ab Initio" Theory

Washington held that *Alleyne v. United States*, 570 U.S. 99 (2013), did not apply retroactively on PCRA review, and observed that "a new rule of law does not automatically render final, pre-existing sentences illegal." *Washington*, 142 A.3d at 814–20. *Alleyne* concerned who must find a fact that increases a mandatory minimum, the judge or the jury, and under what burden. That is a rule about the allocation of factfinding, which *Summerlin* treats as procedural. 542 U.S. at 353–54. *Lee* does not concern who decides a fact. It limits what punishment may be mandated for a class of offenders.

Olson applied the *Teague* framework to a Fourth Amendment decision, and its statement of the substantive-rule category is the one quoted above. *Olson*, 218 A.3d at 868–69. Nothing in it narrows that category. If anything, it confirms that

the question here is whether *Lee* "prohibit[s] a certain category of punishment for a class of defendants because of their status or offense."

Amicus acknowledges adverse authority on one further point. The Superior Court, sitting en banc, has rejected the argument that a mandatory sentencing statute rendered unconstitutional by a later decision is void from inception, so that every sentence imposed under it is automatically invalid. *Commonwealth v. Ciccone*, 152 A.3d 1004, 1009 (Pa. Super. 2016) (en banc). *Lee*'s description of its challenge as facial therefore does not, by itself, answer the retroactivity question. *Amicus*'s position rests on the substantive-rule analysis above, not on facial invalidity alone.

E. Another Court Applying *Montgomery*'s Reasoning to a State-Constitutional Rule Has Held It Retroactive

In *People v. Poole*, No. 166813, 2025 WL 978646 (Mich. Apr. 1, 2025), a unanimous Michigan Supreme Court held that its earlier decision in *People v. Parks*, 510 Mich. 225, 987 N.W.2d 161 (2022), which held that mandatory life without parole for 18-year-olds violates Michigan's prohibition on cruel or unusual punishment, announced a substantive rule that applies on collateral review. The court reached that conclusion under state retroactivity analysis, after reasoning from *Montgomery*, and *Parks*, like *Lee*, left discretionary life without parole available after individualized sentencing. *Parks* rested on the attributes of youth, whereas *Lee* rests on diminished culpability tied to the offense, so *Poole* is

persuasive rather than controlling. But it shows that *Montgomery*'s logic is not limited to Eighth Amendment decisions about juveniles.

II. PENNSYLVANIA'S OWN RETROACTIVITY CRITERIA POINT THE SAME WAY, AND THIS COURT HAS INDEPENDENT AUTHORITY TO SO HOLD

Lee rests on Article I, Section 13 alone. *Lee*, slip op. at 27–28 (finding no relief under the Eighth Amendment). Under *Danforth*, this Court may therefore decide the retroactive effect of its own constitutional holding without regard to federal habeas limits. 552 U.S. at 280–82. The Court need not decide whether *Teague* governs a state-constitutional rule, because the result is the same under both approaches.

Under *Blackwell*'s three factors, the purpose of *Lee*'s rule is to prevent a punishment this Court has held cruel from being imposed on those it does not fit; that purpose is about the fairness of the sentence itself, not about the accuracy of the trial that preceded it. The Commonwealth's reliance interest in continuing to carry out a mandatory sentence that this Court has held unconstitutional is limited. And the third factor, the effect on the administration of justice, depends on facts, which Part IV addresses. As *Montgomery* explained, the interest in finality that supports withholding procedural rules has much less force when a rule is substantive. See 577 U.S. at 205–06.

Pennsylvania's own experience also bears on that third factor. After *Miller* and *Montgomery*, Pennsylvania had 520 juvenile lifers, more than any other State.

Pa. Parole Board, Juvenile Lifer Statistics as of January 31, 2025. By March 31, 2024, 497 had been resentenced. Gov. Br. at 20. The Commonwealth has done this before, under a retroactive substantive rule, and on a schedule that the legal system absorbed.

III. THIS COURT SHOULD DECIDE RETROACTIVITY NOW, IN THIS APPEAL

A. The PCRA Makes This Court the Only Body That Can Supply the Holding

The PCRA provides relief to persons serving illegal sentences. 42 Pa.C.S. § 9542; see *id.* § 9543(a)(2)(vii). A petition must be filed within one year of finality unless an exception applies. One exception covers a "constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively." *Id.* § 9545(b)(1)(iii). A petition invoking an exception must be filed "within one year of the date the claim could have been presented." *Id.* § 9545(b)(2). Under the "has been held" language, the retroactivity determination must already have been made by "that court" before a petitioner can invoke the exception. *Commonwealth v. Abdul-Salaam*, 812 A.2d 497, 501 (Pa. 2002).[1]

[1]This Court recently held that when the Philadelphia District Attorney's Office concedes post-conviction relief, the PCRA court must give the Office of Attorney General notice and an opportunity to intervene, and that a prosecutor's concession does not substitute for the court's own independent review. *Commonwealth v. Brown*, 358 A.3d 469, 504–05 (Pa. 2026) (citing *Commonwealth v. Brown*, 196 A.3d 130, 145 (Pa. 2018)). The Philadelphia District Attorney's Office supported the appellant in *Lee*. *Lee*, slip op. at 35. Whatever positions the parties take

In *Lee* the Governor asked this Court to leave retroactivity to the legislative and executive branches. Gov. Br. at 21–23; see *Lee*, slip op. at 33. The statute does not allow retroactivity to be left unanswered. A person whose sentence has been final for more than a year can invoke a new state constitutional right under Section 9545(b)(1)(iii) only if this Court has already held that the right applies retroactively. *Abdul-Salaam*, 812 A.2d at 501. Lower courts cannot make that holding in the first instance in an untimely proceeding. Until this Court speaks, no untimely petitioner can satisfy the exception, and any such petition will be dismissed. Even a prosecutor's agreement cannot supply that holding or waive the claim-specific time bar, because "[t]he agreement of the parties does not suffice to vest a court with jurisdiction," *Commonwealth v. Rivera*, 324 A.3d 452, 467–68 (Pa. 2024), and "[a] confession of error by the Commonwealth does not constitute a judicial ruling in [the petitioner's] favor," *Commonwealth v. Brown*, 358 A.3d 469, 504–05 (Pa. 2026) (quoting *Commonwealth v. Brown*, 196 A.3d 130, 145 (Pa. 2018)).

Appeals from timely PCRA petitions are the ordinary vehicle by which this Court has addressed retroactivity of new rules. *Olson* and *Washington* both arose on collateral review. For Appellant, whose current PCRA petition was filed on November 21, 2014—within one year after his reinstated direct appeal became

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here, the Court's decision will rest on its own review of the governing law, and *Amicus* therefore addresses the arguments that could be made against retroactivity by any participant.

final—the route is straightforward. A timely PCRA petition may challenge the legality of a sentence, and an illegal-sentence claim is not subject to ordinary waiver. *Commonwealth v. DiMatteo*, 177 A.3d 182, 192 (Pa. 2018). Whether *Lee* renders a final sentence illegal depends on whether *Lee* applies retroactively, which is the question this Court granted review to answer. See *Washington*, 142 A.3d at 814.[2]

B. Pending Legislation Does Not Substitute for a Judicial Holding on the Constitutional Question

Justice Dougherty explained in his dissenting statement from the order denying an extension, *Commonwealth v. Lee*, No. 3 WAP 2024 (Pa. July 31, 2026) (Dougherty, J., dissenting statement), that legislation was pending in both chambers, that the Senate had passed a bill on June 25, 2026, and that the House was in session on July 23, 2026. He expressed a preference for a comprehensive legislative response. *Amicus* agrees that legislation could provide the best remedy. But the General Assembly can decide how to remedy a constitutional violation; it cannot decide whether Article I, Section 13 requires relief for sentences that are already final. That is a question of constitutional law for this Court. And because

[2] *Amicus* notes one issue only to the extent a participant raises it. This Court has described the PCRA's timeliness exceptions as claim-specific. See *Brown*, 358 A.3d at 504–05 (quoting *Commonwealth v. Rivera*, 324 A.3d 452, 467–68 (Pa. 2024)). If a participant argues that a *Lee* claim first raised in 2026 in a petition first filed in 2014 must independently satisfy an exception, the answer is that Appellant raised the claim within weeks of *Lee*, and the only element of Section 9545(b)(1)(iii) not yet satisfied, a holding "by that court" that the right applies retroactively, is the element this Court can supply in this appeal. *Abdul-Salaam* addressed the jurisdiction of PCRA courts to make that determination in the first instance. 812 A.2d at 501. Appellant's counsel are better placed to address this issue in detail.

the stay expired without enactment, the question will return to the courts regardless. The decision of this Court will not foreclose legislation. *Montgomery* itself recognized that a State may remedy a violation of this kind by allowing affected prisoners to be considered for parole rather than by resentencing them. 577 U.S. at 212. A holding that *Lee* is retroactive, coupled with a statement that the General Assembly may provide that remedy, would give the legislature the constitutional baseline it needs.

C. The Court's Opinion Should State When the One-Year Period Under Section 9545(b)(2) Begins for Other Petitioners

Other petitioners cannot file under Section 9545(b)(1)(iii) before this Court holds *Lee* retroactive, because the right has not yet "been held" to apply retroactively. *Abdul-Salaam*, 812 A.2d at 501. Section 9545(b)(2) requires a petition to be filed within one year of "the date the claim could have been presented." A claim that could not be presented until the retroactivity holding could not have been presented earlier. The Superior Court applied that reasoning to *Miller* and *Montgomery*. *Commonwealth v. Secreti*, 134 A.3d 77, 82 (Pa. Super. 2016). Without a statement from this Court, petitioners and trial courts will litigate whether the one-year period began on March 26, 2026, the day *Lee* was decided, or on the day of this decision. Prisoners who waited because *Abdul-Salaam* left them no alternative should not be penalized for doing so. A sentence in the Court's opinion would prevent a large volume of avoidable litigation.

IV. THE AVAILABLE DATA SHOW THAT RETROACTIVE RELIEF IS ADMINISTRABLE IF PHASED

The Governor told this Court in *Lee* that immediate retroactivity "would undoubtedly strain legal resources" and would require "twice as many reviews" as the juvenile resentencings. Gov. Br. at 20. That concern deserves a direct answer. *Amicus* relies only on public sources, identifies the date and source of each figure, and notes limits where they apply. These figures bear on the administration-of-justice factor and on the form of any remedy. They are not necessary to decide whether *Lee* is substantive. Calculations are *Amicus*'s own. Each formula and input is stated so that the parties and the Court can verify or correct it.

A. The Affected Population Is About 1,100 People, and Most Are Older and Have Served Long Terms

The Department of Corrections reported to the Governor's Office that it housed 1,042 people serving life for second-degree murder when the Governor filed his brief in April 2024. Gov. Br. at 14. This Court noted a figure of 1,063 from the Commonwealth's brief. *Lee*, slip op. at 37. Justice Dougherty's dissent describes the affected population as more than 1,000, and *Amicus* uses 1,100 below as a conservative round planning figure above those counts. Of the 1,042, 574 people (about 55%) were 50 or older, and 381 were both 50 or older and had served 30 years or more. Gov. Br. at 14–15. Those figures are now more than two years old and are older still today.

The Department of Corrections also estimated, from a review of case files, that in about half of second-degree murder cases the defendant was the killer, with the remaining half split between cases in which the defendant was clearly not the killer and cases in which it was not clear. Gov. Br. at 5. The figure does not say how large each group is. But it does show that the class includes many people whose conduct differs materially from that of the person who killed, which is the premise of *Lee*. And it answers the concern that retroactivity would give a windfall to killers: a *Lee* proceeding, whether at resentencing or before the Parole Board, evaluates the individual's role, and life without parole remains available where the record supports it.

B. The Parole Board Can Absorb the Cohort Over a Phased Schedule

The Parole Board interviewed 11,584 incarcerated people for parole in fiscal year 2023–24. Testimony of Jim Fox, Chairperson, Pa. Parole Board, House Appropriations Comm. (Mar. 3, 2025). *Amicus* tests the Governor's capacity concern two ways.

First, a load model. Spreading N = 1,100 cases evenly over T years adds N ÷ T interviews per year, which is N ÷ (T × 11,584) of the Board's existing annual volume. At one interview per person that is 3.2% for a three-year rollout, 1.9% for five years, and 1.2% for eight. One interview per person understates the load, because a person who is denied will be considered again. *Amicus* therefore models

total interviews as N × [1 + (1 − r) × R], where r is the share of interviewed people who are released and R is the number of further interviews each person not released receives during the rollout. The Board's juvenile-lifer data supply a reference value for r: 310 releases against 472 interviews, or 65.7% (using 65% in Table 1). Pa. Parole Board, *Juvenile Lifer Statistics as of January 31, 2025*. Because that cohort is not this one, Table 1 also tests r = 50% and r = 25%, and R up to four.

Table 1. Added Board interviews per year, five-year rollout (share of 11,584 annual interviews)

Release rate (r)	R = 0	R = 2	R = 4
65%	220 (1.9%)	374 (3.2%)	528 (4.6%)
50%	220 (1.9%)	440 (3.8%)	660 (5.7%)
25%	220 (1.9%)	550 (4.7%)	880 (7.6%)

Source: *Amicus*'s calculation, N × [1 + (1 − r) × R] ÷ 5, with N = 1,100. Not a forecast.

Second, a break-even test that needs no assumption about how long an interview takes. Interviews of people convicted of homicide, with victim participation, may be heavier than the average interview. Let w be the effort of one cohort interview relative to the average. At one interview per person, the cohort raises the Board's workload by w × (N ÷ T) ÷ 11,584. That increase reaches 10% only when w = 0.10 × 11,584 × T ÷ N, and it doubles the workload only when w = 11,584 × T ÷ N. For a five-year rollout those thresholds are w = 5.3 and w = 52.7. For a three-year rollout the 10% threshold is w = 3.2; for eight years it is w = 8.4.

Each cohort interview would have to take more than five times the effort of the Board's average interview before a five-year schedule added even ten percent to its workload.

Stacking pessimistic assumptions changes the answer, and *Amicus* says so. In the harshest cell of Table 1 (r = 25%, R = 4), a five-year rollout adds 7.6% to the Board's interview volume. If each of those interviews also took five times the average, the added workload would be about 38%. That is a real burden, but it requires three assumptions to hold at once, and it is spread over five years. The interview count says nothing about staffing or hearing-examiner time, and the Board is better placed than *Amicus* to supply those figures.

The Governor stated in *Lee* that the Board decides parole for people convicted of third-degree murder, manslaughter, and other serious crimes, and that deciding parole for second-degree murder offenders "would not impose any meaningful extra burden." Gov. Br. at 17. The Governor made that point while arguing against immediate retroactivity, but the observation about the Board's capacity stands on its own, and the arithmetic above is consistent with it.

C. Trial-Court Resentencing Is the Larger Task, and the Juvenile Experience Shows Both That It Can Be Done and That It Takes Time

If relief is by resentencing rather than by legislation providing parole consideration, the burden falls on the Courts of Common Pleas, and *Amicus* does

not minimize it. The juvenile-lifer experience is the only Pennsylvania benchmark. *Montgomery* was decided on January 25, 2016, and 497 of 520 juvenile lifers (95.6%) had been resentenced by March 31, 2024. Gov. Br. at 20; Pa. Parole Board, Juvenile Lifer Statistics as of January 31, 2025. Over those 8.18 years (8.2 years rounded), that is 60.8 resentencings per year statewide, or 11.7% of the cohort per year.

That average probably understates what the courts sustained at their peak. The Parole Board reports the same count of 497 resentenced as of January 31, 2025, ten months later. If the count was flat over that interval, the 60.8 average includes a tail in which little was happening. The public sources do not report the annual distribution, so *Amicus* does not claim a peak rate, but the parties or the Administrative Office of Pennsylvania Courts can supply it.

Table 2 measures the work a rollout would demand against the 60.8-per-year benchmark.

Table 2. Resentencing pace required for 1,100 people, relative to the juvenile benchmark

Rollout period (T)	Resentencings per year (1,100 ÷ T)	Multiple of juvenile pace (60.8 per year)
3 years	367	6.0×
5 years	220	3.6×
8 years	138	2.3×
10 years	110	1.8×

Source: *Amicus*'s calculation from Gov. Br. at 20.

Two bounds frame the answer. If statewide capacity is fixed at the juvenile pace, 1,100 resentencings would take 1,100 ÷ 60.8 = 18.1 years. If capacity instead scales with caseload, so that the courts resentence the same 11.7% of the cohort each year (60.8 ÷ 520), they would complete about 129 resentencings per year and finish in 1,100 ÷ 129 = 8.5 years. At that scaled pace of 129 resentencings per year (2.1× the raw juvenile pace of 60.8), the courts would finish in 8.5 years—and finishing in 5 years (220 per year) would require 1.7× that scaled pace rather than 3.6×. Which bound is closer depends on how much of the juvenile work was concentrated in a few courts, a fact the public record *Amicus* reviewed does not report. That is a reason for the Court to ask for the data, not a reason to assume the worse case.

Prioritization changes the arithmetic for the people with the most at stake. Devoting the juvenile pace first to the 381 people who are 50 or older and have served 30 years or more would reach all of them in 381 ÷ 60.8 = 6.3 years, and at twice that pace in 3.1 years. Applying the April 2024 share of 36.6% to 1,100 yields about 402 people, or 6.6 years at the juvenile pace. Those counts are from April 2024, and the tier is larger or smaller today.

Three features of a remedy would reduce the strain. First, the Court can phase relief, for example by prioritizing the 381 people who are 50 or older and have served 30 years or more. Second, the General Assembly can provide parole consideration in place of resentencing, as *Montgomery* allows. Third, the Court can leave to the sentencing courts the manner of individualized assessment, as it did in

Lee. None of this requires the Court to decide the schedule now. It requires only that the Court's opinion not foreclose these options.

D. The Parole Board's Own Juvenile-Lifer Data and the Statutory Victim-Participation Provisions Address Public-Safety Concerns

The Parole Board publishes statistics for juvenile lifers released after *Montgomery*. As of January 31, 2025, 497 of 520 juvenile lifers had been resentenced, the Board had interviewed 472, and 310 had been released, a parole rate of 65.7% (about 65%). Pa. Parole Board, Juvenile Lifer Statistics as of January 31, 2025. The Board counted 10 recommitments as convicted parole violators and 22 as technical parole violators, and notes that the counts are of board actions or case-closure codes and may not reflect distinct individuals. *Id.* The Chairperson reported in 2023 that only two paroled juvenile lifers had been recommitted on new criminal charges. Testimony of Theodore W. Johnson, Chairperson, Pa. Parole Board, House Appropriations Comm. (Mar. 30, 2023).

These numbers have limits. Juvenile lifers are not the same population as people convicted of felony murder as adults, and a recommitment as a convicted parole violator reflects a new conviction, which may be for any offense. They are best read as evidence that the Board's existing parole process is functioning for a long-sentence cohort, not as a prediction of recidivism for this one. Whether any individual should be released is for the sentencing court or the Board.

Victims' families will be heard. The Board must consider "[t]he written or personal statement of the testimony of the victim or the victim's family," 61 Pa.C.S. § 6135(a)(5), and the Crime Victims Act separately lists victims' rights, 18 P.S. § 11.201. See Gov. Br. at 17, 23.

E. Continued Confinement of an Aging Cohort Is Not Cost-Free, Though Cost Is Not the Basis for the Rule

The Department of Corrections estimates that it costs more than $66,000 per year to house an inmate, and more than $217,000 for inmates who are elderly and infirm. Gov. Br. at 15. At the lower figure alone, housing the 381 people who are 50 or older and have served 30 years or more costs more than $25 million per year. The Governor noted that cost "should not guide sentencing decisions," and *Amicus* agrees. *Id.* Cost matters here only to the administration-of-justice factor, and it shows that the status quo has its own price.

Phasing itself has a price, and *Amicus* calculates it so the Court can weigh it against administrative strain. Suppose a share r of the cohort would be released and a T-year rollout releases them evenly. The average person released then waits T ÷ 2 years longer than under immediate relief. At the Department's $66,000 average annual cost, the added confinement cost is N × r × (T ÷ 2) × $66,000. With N = 1,100 that is $9.1 million per year of rollout length at r = 25%, $18.2 million ($18.15 million unrounded) at r = 50%, and $23.6 million at r = 65%. At r = 50%, a five-year schedule instead of a three-year schedule adds $36.3 million.

Two cautions apply. The $66,000 figure is an average cost, and the savings from releasing one person are lower because many prison costs do not vary with a single bed, so these figures are upper bounds on cash savings. They also count confinement only, omitting supervision costs and the value of the time itself. *Amicus* offers them to show that the cost of phasing grows in proportion to its length. The Court should therefore favor the shortest schedule the courts can administer, and phasing by age and time served is the means of putting the people who have waited longest first.

CONCLUSION

WHEREFORE, *Amicus Curiae* Shawn Nijjar respectfully requests that the Court hold that *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026), announced a substantive rule of Pennsylvania constitutional law that applies retroactively on collateral review, including for purposes of 42 Pa.C.S. § 9545(b)(1)(iii). *Amicus* further respectfully proposes that the Court's opinion state three things: that the one-year period in 42 Pa.C.S. § 9545(b)(2) for petitioners whose judgments became final more than one year before *Lee* begins on the date of this Court's decision; that the General Assembly may provide for meaningful consideration of release, including through the Parole Board, as a remedy for sentences that were mandatory when imposed; and that unless and until it does so, sentencing courts should conduct individualized resentencing proceedings as this Court prescribes, with phasing by age and time served permitted to manage the volume of cases.

Date: November 3, 2026

Respectfully submitted,

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CERTIFICATION PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Date: November 3, 2026 By: /s/ Shawn Nijjar
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CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 2135

I hereby certify that this brief contains 5,637 words, as determined by the word-count feature of the word-processing program used to prepare this brief, excluding the portions of the brief exempted by Pa.R.A.P. 2135(b) and (d). This brief complies with the 7,000-word limit imposed by Pa.R.A.P. 531(b)(3) and Pa.R.A.P. 2135(a)(1).

Date: November 3, 2026
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PROOF OF SERVICE

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