

## I. INTRODUCTION

A state court decision is generally unreviewable by the Supreme Court even if it addresses a question of federal law when the judgement is supported by adequate and independent state grounds.<sup>1</sup> Usually, this doctrine precludes federal review for mere deviations from established state procedure.<sup>2</sup> However, where an established rule is applied in an unwarranted or unreasonable way, federal review may be available.<sup>3</sup>

The purpose of this Note is to evaluate *Cruz v. Arizona*, in which the Supreme Court held that the Arizona Supreme Court's justification for their procedural ruling in *State v. Cruz* was not an adequate and independent state-law ground.<sup>4</sup> This Note will discuss the Supreme Court precedent relevant to the *Cruz* decision, as well as the decision's rationale and future implications.

## II. THE CONTEXT OF THE *Cruz* DECISION

### a. The adequate and independent state ground doctrine

The Supreme Court will not address a question of federal law in cases where “the decision of [the state] court rests on a state law ground that is *independent* of the federal question and *adequate* to support the judgment.”<sup>5</sup> Whether a state procedural ruling is adequate is itself always a federal question.<sup>6</sup> Traditionally, mere violation of established state procedure will be

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<sup>1</sup> *Cruz v. Arizona*, 598 U.S. 651, 658 (2023).

<sup>2</sup> *Cruz*, 598 U.S. at 658; *Lee v. Kemna*, 534 U.S. 362, 375 (2002).

<sup>3</sup> *Cruz*, 598 U.S. at 658.

<sup>4</sup> *Id.* at 654.

<sup>5</sup> *Lee*, 534 U.S. at 376 (emphasis added).

<sup>6</sup> *Beard v. Kindler*, 558 U.S. 53, 60 (2009).

insufficient to warrant federal review.<sup>7</sup> However, an established rule may be applied in such a way that the state ground is rendered inadequate to preclude federal review.<sup>8</sup>

For example, “an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude [the Supreme Court’s] review.”<sup>9</sup> Federal review will not be foreclosed when a state adopts a novel approach to procedure that lacks “fair or substantial support in prior state law.”<sup>10</sup> In particular, where a court’s procedural ruling is irreconcilable with “past unambiguous holdings,” it will be held inadequate to avoid review.<sup>11</sup>

#### **b. The history of *Simmons* Instruction interpretation in Arizona**

The Supreme Court in *Simmons v. South Carolina* held that when the likelihood of a defendant’s future dangerousness to society is an issue considered during sentencing, and state law prohibits the defendant’s release on parole, due process requires that the sentencing jury be informed of the defendant’s ineligibility for parole.<sup>12</sup> This doctrine is sometimes referred to as “*Simmons* Instruction.”<sup>13</sup>

In *State v. Lynch*, the Arizona Supreme Court interpreted *Simmons* as only applying in cases where there would be no possibility of parole if the jury chose to sentence the defendant to

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<sup>7</sup> *Cruz*, 598 U.S. at 658; *Lee*, 534 U.S. at 376.

<sup>8</sup> *Cruz*, 598 U.S. at 658.

<sup>9</sup> *Id.*; *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964).

<sup>10</sup> *Cruz*, 598 U.S. at 661; *Walker v. Martin*, 562 U.S. 307, 320 (2011).

<sup>11</sup> *Cruz*, 598 U.S. at 661; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 456 (1958).

<sup>12</sup> *State v. Cruz*, 251 Ariz. 203, 205 (2021); *Simmons v. South Carolina*, 512 U.S. 154, 169 (1994).

<sup>13</sup> *State v. Lynch*, 238 Ariz. 84, 103 (2015).

life in prison.<sup>14</sup> Consistent with this interpretation, the court held that, although parole was not available to the defendant under Arizona law, because the defendant “could have received another form of release, such as executive clemency,” the failure of the trial court to allow *Simmons* Instruction was not an error.<sup>15</sup>

The Supreme Court in *Lynch v. Arizona* (*Lynch II*) corrected Arizona’s mistaken understanding of the *Simmons* doctrine.<sup>16</sup> *Lynch II* addressed “the distinctions [the Arizona Supreme] Court had drawn between the defendant in *Simmons* and similarly situated capital defendants in Arizona cases.”<sup>17</sup> The Court rejected the argument that “the possibility of clemency diminishes a capital defendant’s right to inform a jury of his parole ineligibility” and held that the Arizona Supreme Court had misapplied *Simmons*.<sup>18</sup>

### III. THE *Cruz v. Arizona* DECISION

#### a. Facts

John Montenegro Cruz was arrested and charged with first-degree murder of Officer Hardesty.<sup>19</sup> At trial, Cruz repeatedly requested that the jury receive *Simmons* Instruction.<sup>20</sup> The court denied this request, distinguishing Cruz from the defendant in *Simmons* by arguing that Cruz’s jury was “properly informed of the three possible sentences Cruz faced if convicted:

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Lynch v. Arizona*, 578 U.S. 613, 616 (2016).

<sup>17</sup> *Cruz*, 251 Ariz. at 205.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 204.

<sup>20</sup> *Cruz*, 598 U.S. at 656.

death, natural life, and life with the possibility of parole after twenty-five years.”<sup>21</sup> Furthermore, the court emphasized that, had the jury chosen to sentence Cruz to life in prison, there was no state law prohibiting Cruz’s release on parole after twenty-five years.<sup>22</sup> The jury convicted Cruz of first-degree murder and he was sentenced to death.<sup>23</sup>

### **b. Procedural History**

Following Cruz’s conviction, the Arizona Supreme Court affirmed his conviction and sentence.<sup>24</sup> The United States Supreme Court denied Cruz’s petition for a writ of certiorari.<sup>25</sup> Cruz then filed his first petition for post-conviction relief (“PCR”), which was dismissed by the PCR court.<sup>26</sup> The Arizona Supreme Court also denied review.<sup>27</sup>

After the *Lynch II* decision, Cruz filed a second PCR petition pursuant to Arizona Rule of Criminal Procedure 32.1(g) (“Rule 32.1(g)”), which allows a second PCR petition when a significant change in the law has occurred that, if applied to the defendant’s case, may overturn the defendant’s sentence or judgment.<sup>28</sup> The PCR court denied this petition, finding that *Lynch II* did not represent a significant change in the law that warranted relief, and that, even if *Lynch II*

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<sup>21</sup> *Cruz*, 251 Ariz. at 205.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 204.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; ARIZ. R. CRIM. P. 32.1(g)

was a significant change in the law, it did not apply retroactively and would probably not have changed Cruz's sentence.<sup>29</sup>

The Arizona Supreme Court granted review to determine whether *Lynch II* constituted a significant change in the law that, if applied retroactively, would likely overturn Cruz's sentence.<sup>30</sup> The court held that *Lynch II* was not a significant change in the law because it changed the application of a law rather than the law itself.<sup>31</sup>

The Supreme Court granted review.<sup>32</sup>

### **c. The Supreme Court's Decision**

In a 5-4 decision, the Supreme Court vacated and remanded the judgment of the Arizona Supreme Court. Justice Sotomayor delivered the majority opinion, and Justice Barrett filed a dissenting opinion, in which Justice Thomas, Justice Alito, and Justice Gorsuch joined.

#### **i. The Majority Opinion**

The Court found that Arizona's state procedural ruling regarding Rule 32.1(g) was not an adequate ground precluding review.<sup>33</sup> The Supreme Court opined that *Lynch II* was in fact a significant change in the law.<sup>34</sup> Historically, Arizona's courts have interpreted "a significant change in the law" to mean a "transformative event" or "clear break from the past," the archetype of which is when previously binding case law is overruled.<sup>35</sup> The Court argued that

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<sup>29</sup> *Cruz*, 251 Ariz. at 204.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 207.

<sup>32</sup> *Id.* at 204.

<sup>33</sup> *Cruz*, 598 U.S. at 658.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; *see also* State v. Shrum, 220 Ariz. 115, 118 (2009).

*Lynch II* overruled binding Arizona precedent and required Arizona courts to “recognize that capital defendants have a due process right to provide the jury with [information regarding parole eligibility] when future dangerousness is at issue.”<sup>36</sup> Therefore, according to Arizona’s own standards, *Lynch II* constituted a significant change in the law.<sup>37</sup>

The Arizona court argued that *Lynch II* was not a significant change because it relied on *Simmons*, which was established at the time of Cruz’s trial, and that although *Lynch II* changed how Arizona courts applied federal law, the Rule 32.1(g) requirement was nonetheless not met because it requires a significant change in the law rather than a significant change of the law’s application.<sup>38</sup> The Court pointed out that this interpretation of the requirements of Rule 32.1(g) was completely novel and in conflict with Arizona’s prior case law, emphasizing that there was “no other instance in which the overturning of binding Arizona precedent failed to satisfy Rule 32.1(g)’s ‘significant change in the law’ requirement.”<sup>39</sup>

Arizona further argued that, since *Lynch II* was a summary reversal, it did not impose a new interpretation of federal law.<sup>40</sup> The Court held that, while *Lynch II* did not change the Court’s interpretation of *Simmons*, it did change Arizona’s mistaken interpretation of *Simmons*, and thus it makes no difference that *Lynch II* did not alter federal law.<sup>41</sup>

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<sup>36</sup> *Cruz*, 598 U.S. at 658.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 659.

<sup>39</sup> *Id.*; see also *Walker*, 562 U.S. at 320.

<sup>40</sup> *Cruz*, 598 U.S. at 660.

<sup>41</sup> *Id.*

Finally, Arizona objected that a decision against it would impede its ability to “flesh out” its Rule 32.1(g) jurisprudence in new contexts.<sup>42</sup> The Court held that, following its decision, the Arizona Supreme Court remained free to extend its prior Rule 32.1(g) jurisprudence.<sup>43</sup>

The Court vacated and remanded the judgment.<sup>44</sup>

## ii. The Dissenting Opinion

Justice Barrett argued that the bar for determining if a state ground is inadequate is “extraordinarily high.”<sup>45</sup> She stated that when the argument for inadequacy is “based on the state court's inconsistent or novel application of its law, the bar is met only by a decision so blatantly disingenuous that it reveals hostility to federal rights or those asserting them.”<sup>46</sup> Justice Barrett argued that a procedural ruling can be found inadequate only when it is irreconcilable with the state court’s previous unambiguous holdings.<sup>47</sup> She distinguished *Cruz* by arguing that the Arizona Supreme Court did not contradict its own settled law, but instead addressed a novel issue and delivered an opinion consistent with its precedent.<sup>48</sup>

Justice Barrett explained that the ordinary procedure in Arizona allows a criminal defendant to present a constitutional challenge in a timely PCR petition.<sup>49</sup> However, Rule 32.1(g)

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<sup>42</sup> *Id.* at 661.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 662.

<sup>46</sup> *Id.*; *see also Walker*, 562 U.S. at 321.

<sup>47</sup> *Cruz*, 598 U.S. at 662; *see also NAACP*, 357 U.S. at 456.

<sup>48</sup> *Cruz*, 598 U.S. at 663.

<sup>49</sup> *Id.*

provides an exception to this procedure.<sup>50</sup> More than once, the Arizona Supreme Court has had to determine whether a subsequent judicial decision constituted a significant change in the law. For the purposes of Rule 32.1(g).<sup>51</sup> Justice Barrett cited two examples: *State v. Bigger* and *State v. Shrum*.<sup>52</sup> In *Bigger*, the court considered whether a Supreme Court decision significantly changed the content of a federal law,<sup>53</sup> while in *Shrum*, the court determined whether its own state-court decision significantly changed the law in Arizona.<sup>54</sup>

Unlike prior cases, Justice Barrett asserted that *Cruz* raised a “question of first impression.”<sup>55</sup> The Arizona Supreme Court was tasked with determining if a significant change occurs when an intervening decision reaffirms existing law, but corrects a prior misapplication of the law.<sup>56</sup> Justice Barrett opined that mere novelty of a decision does not deem it inadequate, but that a decision is deemed inadequately novel only when it lacks “fair or substantial support in prior state law” or is “wholly unforeseeable.”<sup>57</sup>

Justice Barrett urged the Court to give the utmost deference to the Arizona court’s judgment in making its determination.<sup>58</sup>

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<sup>50</sup> *Id.*; ARIZ. R. CRIM. P. 32.1(g)

<sup>51</sup> *Cruz*, 598 U.S. at 663.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*; see also *State v. Bigger*, 251 Ariz. 402, 412 (2021).

<sup>54</sup> *Cruz*, 598 U.S. at 663; see also *Shrum*, 220 Ariz. at 120.

<sup>55</sup> *Cruz*, 598 U.S. at 663.

<sup>56</sup> *Id.*; see also *Lynch*, 578 U.S. at 616.

<sup>57</sup> *Cruz*, 598 U.S. at 663; *Walker*, 562 U.S. at 320.

<sup>58</sup> *Cruz*, 598 U.S. at 665.



#### IV. ANALYSIS OF THE *Cruz* DECISION

*Cruz v. Arizona* could have a significant impact on the Court's future determinations regarding whether state procedural rulings constitute adequate state grounds. Historically, the Court has held state procedure as inadequate grounds precluding federal review where the state court deviates from its normal procedural application in a way that is harmful to a marginalized people group.<sup>59</sup> The timeframe of many of the precedential decisions is informative as well: 1958 and 1964, amid the civil rights movement. It seems the Court's original motive in holding that inexplicable deviations from established state procedure constitute inadequate grounds precluding federal review was to protect such persons from being deprived by a state of their constitutional rights and to prevent a state from attempting to use a jurisdictional loophole to protect itself.

Modern usage of this exception to the adequate state-law doctrine reveals that the Court will still rely on this doctrine to gain jurisdiction over a case in which equal protection or due process is at issue.<sup>60</sup> Particularly, the court often uses this exception when examining a state procedural decision that, in effect, deprives a defendant of a fundamental right, such as life or liberty, without due process.<sup>61</sup> It is critical that federal courts maintain the ability to examine the cohesiveness of a state's application of state procedure in order to ensure procedural due process. More importantly, the Court should retain the authority to determine when an exception to a

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<sup>59</sup> See, *NAACP*, 357 U.S. at 456; *Bouie*, 378 U.S. at 354; *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964).

<sup>60</sup> *Ford v. Georgia*, 498 U.S. 411, 414 (1991).

<sup>61</sup> See *Lee*, 534 U.S. at 366; *Beard*, 558 U.S. at 59; *Walker*, 562 U.S. at 310-11.

state's established procedure is warranted, and when outlandishly strict adherence to such procedure violates due process.<sup>62</sup>

The distinction Justice Barrett drew in her dissent between a state's unforeseeably novel application of an established rule and mere novelty of the rule itself is interesting, but not detrimental. *State v. Cruz* was the first time that the Arizona Supreme Court addressed whether a corrected application of an established law qualified as a significant change in the law.<sup>63</sup> Rather than misapplying established state procedure, or inappropriately refusing to deviate from established state precedent under extraordinary circumstances, the Arizona court established state procedure where there previously was none. However, the Supreme Court correctly emphasized that there had been "no other instance in which the overturning of binding Arizona precedent failed to satisfy Rule 32.1(g)'s 'significant change in the law' requirement."<sup>64</sup> Although it is an important feature of federalism that states can establish their own procedure, a state's novel establishment of procedure should be subject to federal review when individuals are at risk of being deprived of rights without due process.

## V. CONCLUSION

The Supreme Court's decision in *Cruz* may be an unusual application of the longstanding exception to the adequate and independent state ground doctrine regarding states' application of state procedure. However, it is not unwarranted. Examining the exception's history reveals a doctrine interested in protecting individuals from being deprived of their rights by states without due process. *Cruz* can hardly be characterized as inconsistent with this motive. The Court's

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<sup>62</sup> See *Lee*, 534 U.S. at 376.

<sup>63</sup> *Cruz*, 598 U.S. at 663.

<sup>64</sup> *Id.* at 659.

decision to apply the exception more broadly is supported by the overarching philosophy behind the exception's existence. In cases where criminal defendants are at risk of being deprived of life or liberty by a state, the state's application of its own procedure should be subject to stricter scrutiny, and ultimately, federal review if necessary. Future application of the *Cruz* decision should only serve to further protect the most vulnerable.

PLEDGE.