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S291235

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. PHUOC THIEN LUU Defendant and Appellant.	Supreme Court No. S291235 Court of Appeal No. G063066 Superior Court No. 01WF1559

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

Honorable Robert A. Knox, Judge

ANSWER TO PETITION FOR REVIEW

After the Published Decision of the Court of Appeal, Fourth Appellate District, Division Three, Reversing the Trial Court's Denial of the Penal Code section 1172.6 Petition

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By Appointment of the Court of
Appeal Under the Appellate
Defenders, Inc., Program

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INTRODUCTION

The People have petitioned for this Court to review the Court of Appeal's opinion, which found that Penal Code section 1172.6[1] allows resentencing for those charged with attempted murder under the now-defunct natural and probable consequences doctrine but then convicted of the lesser included offense of attempted voluntary manslaughter. (Petition for Review ("Pet.") at 7; *People v. Luu* (2025) 110 Cal.App.5th 1051.) This Petition asserted that review was necessary "to secure uniformity of decision and to settle an important question of law." (Pet. at 7.)

This case, however, does not require review. First, the Court of Appeal's decision in *People v. Luu* is the sole published decision on this issue. The unpublished decisions cited by the People do not reflect a true conflict in authority because first and foremost, they are noncitable and therefore not authority. Furthermore, most of these opinions involved no-issue briefs or turned on other arguments.

Second, the opinion in this case turned upon settled law, therefore this Court does not have anything to settle.

For these reasons, Mr. Luu respectfully requests that this Court deny the People's Petition for Review.

ARGUMENT

I. THE PETITION FOR REVIEW SHOULD BE DENIED BECAUSE IT DOES NOT SATISFY ANY BASIS FOR REVIEW

The People's Petition for Review does not satisfy any of the grounds for review under California Rules of Court, rule 8.500. First, review is not necessary to secure uniformity of decision because this case represents the sole published authority on the issue. Second, review is unnecessary to settle an important question of law because the Court of Appeal relied upon settled law to make this ruling. Therefore, Mr. Luu respectfully requests that the Court deny this Petition.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

A. There Is No Disagreement Among Published Authorities on Whether Section 1172.6 Applies to Attempted Voluntary Manslaughter

California Rules of Court, rule 8.500 indicates that the Court has grounds for review "[w]hen necessary to secure uniformity of decision." California Rules of Court, rule 8.1115 also says that "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action."

On the issue in this case, the Court of Appeal's opinion in *People v. Luu* is the sole published authority, as the People concede. (Pet. at 12.) The People cite unpublished decisions as support for its argument that there is disagreement on this issue, but these opinions are noncitable and therefore not precedent, as the People also concede. (Pet. at 12.)

Even if the Court were inclined to consider these unpublished decisions as evidence of a conflict on this issue, these unpublished opinions provide weak evidence of a true disagreement amongst the courts of appeal. First, the majority of these cases involved attorneys filing briefs pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216 and *People v. Wende* (1979) 25 Cal.3d 436, so presumably these types of cases would now rely upon the published authority of *People v. Luu* to support an argument that 1172.6 does apply to attempted voluntary manslaughter. (*People v. Delacerda* (June 5, 2023, No. F084617) [nonpub. opn.]; *People v. Sanchez* (Feb. 23, 2024, No. D083028) [nonpub. opn.] [additionally noting that "the jury was not even instructed on the natural and probable consequences doctrine"]; *People v. Lara* (Nov. 17, 2023, No. F086043) [nonpub. opn.]; *People v. Dunsmore* (Oct. 18, 2024, No. D083375) [nonpub. opn.] [additionally noting that the appellant did not raise the 1172.6 issues in his briefing]; *People v. Rojo* (Feb. 13, 2024, No. B330778) [nonpub. opn.]; *People v. Haro* (Nov. 8, 2023, No. E081033) [nonpub. opn.]; *see also People v. Resendiz* (Aug. 21, 2024, No. G062714) [nonpub. opn.] [involving a brief on the merits but not disputing on appeal the trial court's decision regarding 1172.6 and attempted voluntary manslaughter when the trial court found that 1172.6 did apply to attempted voluntary manslaughter].)

Two of the unpublished opinions cited by the government addressed issues other than whether the language of 1172.6 applied to attempted voluntary manslaughter. (*People v. Figueroa* (Apr. 30, 2024, No. G062172) [nonpub. opn.] [solely raising the question of whether equal protection required that 1172.6 apply to the appellant's case, not any statutory interpretation arguments]; *People v. Tell* (June 5, 2024, No. B322037) [nonpub. opn.] [not making any argument about whether 1172.6 applied to his case but instead using this appeal to make arguments about a separate pending appeal on other issues].)

Finally, of the remaining four unpublished cases, two had other grounds supporting the denial of the 1172.6 petition. (*People v. Cunningham* (Nov. 27, 2023, No. B324592) [nonpub. opn.] [noting that "the record of conviction unequivocally demonstrates defendant was not charged or tried as an accomplice or aider and abettor, but as the actual shooter who acted alone with the intent to kill"]; *People v. Flores* (Mar. 27, 2024, No. E082038) [nonpub. opn.] [noting that the appellant did not get any kind of murder/attempted murder under the natural and probable consequences instruction at trial, so the defense counsel acquiesced at the prima facie hearing stage that the appellant was not eligible for relief].)

Therefore, because these unpublished opinions do not provide evidence of any real disagreement amongst the courts of appeal, Mr. Luu respectfully requests that this Court deny the petition on this ground.

B. Review Is Unnecessary to Settle an Important Question of Law Because the Court of Appeal Relied Upon Settled Law When Ruling

Under California Rules of Court, rule 8.500, review also might be proper "to settle an important question of law." The Court of Appeal, however, relied upon settled principles of law when ruling, so review is unnecessary on these grounds.

First, the Petition for Review does not cite to or discuss Penal Code section 4, relied upon by the Court of Appeal, which says "The rule … that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote

justice." (*Luu, supra,* 110 Cal.App.5th at p. 1063 [quoting Pen. Code, § 4].) Instead, the Petition argues that the Court of Appeals erred because it did not strictly construe this Penal Code section 1172.6 by limiting it to its exact words. (Pet. at 13-14.)

Additionally, the Petition for Review does not discuss authority concerning the principle that "the Legislature intends remedial legislation to apply to attempted crimes, even when the Legislature only mentions the completed crimes within the statute," which is settled law that the Court of Appeal relied upon. (*Ibid.* [citing *People v. King* (1993) 5 Cal.4th 59, 69; *People v. Barrajas* (1998) 62 Cal.App.4th 926, 930; *People v. Marinelli* (2014) 225 Cal.App.4th 1, 6].)

Finally, the Petition for Review misconstrues the legislative history of section 1172.6, arguing that "the Legislature could rationally decide to draw lines or proceed incrementally by first extending relief to those defendants who faced the greatest punishment—as opposed to attempted voluntary manslaughter defendants facing a maximum sentence of five-and-a-half years." (Pet. at 15.) However, the People fail to cite authority or anything in the legislative history indicating that the legislature was proceeding incrementally or intended to exclude those convicted of attempted voluntary manslaughter from relief under section 1172.6. Rather, the legislature specifically said that "[t]he purpose of this legislation is to 1) clarify that persons who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural probable consequences doctrine are permitted the same relief as those persons convicted of murder under the same theories." (*Luu, supra,* 110 Cal.App.5th at p. 1162-63 [quoting Sen. Com. on Public Safety, Analysis of Sen. Bill No. 775 (2021–2022 Reg. Sess.) as amended Feb. 19, 2021, at p. 1]). The legislature therefore intended to merely clarify that 1172.6 should apply more broadly to those convictions based upon the now-defunct natural and probable consequences doctrine. (*Ibid.*) These amendments responded directly to cases like *People v. Cervantes* (2020) 44 Cal.App.5th 884, which tried to limit the prior version of the statute to just murder, citing the legislature's "line drawing authority." (Assem. Com. on Pub. Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended July 6, 2021, p. 7.) The legislature explained that the amendment

would "clarify" that section 1172.6's petition process does apply more broadly to manslaughter cases, thereby rejecting the suggestion that the legislature was taking an incremental approach. (*Ibid.*) Mr. Luu's case fits squarely within the legislative intent to broadly remove the effects of the now-defunct natural and probable consequences doctrine.

Because the Court of Appeal did rely upon settled law when it reached its decision, this case does not require review by the Supreme Court.

CONCLUSION

For the reasons stated, Mr. Luu respectfully requests that the Court deny the petition for review.

Dated: June 22, 2025

Respectfully submitted,

Elisabeth R. Cannon
State Bar No. 211208

Attorney for Defendant and Appellant Phuoc Thien Luu

CERTIFICATION OF WORD COUNT

I, Elisabeth R. Cannon, hereby certify in accordance with California Rules of Court, rule 8.504(d), that this petition contains 2165 words as calculated by the Microsoft Word software in which it was written.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 23, 2025

Respectfully submitted,

Elisabeth R. Cannon
State Bar No. 211208

PROOF OF SERVICE
People v. Luu
Supreme Court Case No.: S291235
Court of Appeal No.: G063066
San Diego Superior Court No.: 01WF1559

I, the undersigned, declare that I am over 18 years of age, employed in the County of San Diego, and not a party to the instant action. My business address is listed above. My electronic service address is ecannon211208@gmail.com. I served the attached **ANSWER TO PETITION FOR REVIEW** as follows:

ELECTRONIC SERVICE: By sending from my electronic service address of ecannon211208@gmail.com, on June 23, 2025, the above-named document to each of the following persons at the following authorized email service addresses:

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ATTORNEY GENERAL'S OFFICE	SDAG.Docketing@doj.ca.gov
OFFICE OF THE DISTRICT ATTORNEY	Appellate@ocdapa.org
COURT OF APPEAL (per Supreme Court TrueFiling policy)	

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ORANGE COUNTY SUPERIOR COURT
700 Civic Center Drive West, 1st Fl. Santa Ana, CA 92701

AARON SPOLIN
Spolin & Dukes, P.C.,
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I additionally declare that I electronically submitted a copy of this **ANSWER TO PETITION FOR REVIEW** to the California Supreme Court on its website at

https://supreme.courts.ca.gov/e-filing-procedures/e-filing, in compliance with the Court's Terms of Use.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 23, 2025

/s/ *Elisabeth R. Cannon*
Elisabeth R. Cannon

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. LUU**
Case Number: **S291235**
Lower Court Case Number: **G063066**

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6/23/2025
Date

/s/Elisabeth Cannon
Signature

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The Law Office of Elisabeth R. Cannon
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