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S291235

No. 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.

Fourth Appellate District, Division Three, Case No. G063066
Orange County Superior Court, Case No. 01WF1559
The Honorable Robert A. Knox, Judge

OPENING BRIEF ON THE MERITS

ROB BONTA (SBN 202668)
Attorney General of California
CHARLES C. RAGLAND (SBN 204928)
Chief Assistant Attorney General
MICHAEL R. JOHNSEN (SBN 210740)
California Supreme Court Criminal Coordinator & Supervising Deputy Attorney General
ARLENE A. SEVIDAL (SBN 188317)
Senior Assistant Attorney General
CHRISTINE Y. FRIEDMAN (SBN 186560)
*MICHAEL D. BUTERA (SBN 295601)
Deputy Attorneys General
600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: (619) 738-9054
Fax: (916) 732-7920
Michael.Butera@doj.ca.gov
Attorneys for Respondent

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ISSUE PRESENTED

Is relief under Penal Code section 1172.6 available to those convicted of attempted voluntary manslaughter?

INTRODUCTION

Penal Code section 1172.6 provides a path to resentencing for those previously convicted under certain legal theories involving imputed malice that the Legislature restricted or abolished through amendments to Penal Code sections 188 and 189.[1] Under its express terms, section 1172.6 makes retroactive relief available only for those convicted of murder, attempted murder, or the completed crime of voluntary manslaughter. There is no dispute in this case that the plain language of the statute excludes from its scope convictions for attempted voluntary manslaughter.

Appellant Phuoc Luu argued below, and the Court of Appeal held, that section 1172.6 should be interpreted to include attempted voluntary manslaughter notwithstanding the statute's clear and unambiguous language. In the Court of Appeal's view, it would be "unintended, unjust, and absurd" to permit resentencing for more culpable offenders convicted of murder or manslaughter but not a less culpable offender convicted of attempted voluntary manslaughter. (Opn. 3.) That holding impermissibly replaces the Legislature's considered judgment about where to draw the line for purposes of retroactive

[1] All further undesignated statutory references are to the Penal Code.

resentencing with the court's own view about how the Legislature might have better achieved its objectives.

Ample evidence of legislative intent demonstrates that the Legislature consciously included the three enumerated crimes of murder, attempted murder, and manslaughter within the scope of section 1172.6 while excluding attempted voluntary manslaughter. Most tellingly, the Legislature added the crime of attempted murder to section 1172.6 in the wake of confusion as to whether the statute's specification of murder also included the attempted form of that offense. At the same time, the Legislature added the crime of manslaughter but did not include the crime of attempted voluntary manslaughter. That line-drawing makes sense because it is consistent with the Legislature's focus on offenses whose sentences it viewed as most disproportionate with culpability under the theories of liability that it had restricted or abolished.

The absurd consequences principle that the Court of Appeal relied on is a tool for discerning legislative intent. It does not supplant that inquiry and is not a license for a court to rewrite statutory terms in a way that reflects its own view of how the statute's aims might have been better achieved. It is the Legislature's prerogative to determine how best to accomplish its goals while balancing competing considerations, and the lines the Legislature chooses to draw need not be perfect. The issue before the Court in this case does not concern the Legislature's power to exclude attempted voluntary manslaughter from section 1172.6—the only question is whether it intended to do so. In light of the

text, purpose, and history of the statute, and contrary to the Court of Appeal's conclusion, it is evident that the Legislature's choice to exclude attempted voluntary manslaughter from the scope of section 1172.6 was intentional, not merely the result of oversight or a mistaken belief that the offense would be implicitly covered.

LEGAL BACKGROUND

The Legislature enacted Senate Bill No. 1437 (Stats. 2018, ch. 1015) (SB 1437), effective January 1, 2019, to bar convictions for murder under the natural and probable consequences doctrine and limit the scope of the felony murder rule. (Stats. 2018, ch. 1015, § 1, subd. (f); *People v. Delgadillo* (2022) 14 Cal.5th 216, 223; *People v. Gentile* (2020) 10 Cal.5th 830, 842-851, superseded on other grounds by § 1172.6, subd. (g).) The bill amended Penal Code section 188, subdivision (a)(3), to require that all principals to murder act with express or implied malice to be convicted of that crime, with the exception of felony murder under section 189, subdivision (e). (Stats. 2018, ch. 1015, § 2.) For a felony murder conviction under section 189, subdivision (e), SB 1437 amended the law to require that the perpetrator be the actual killer, an aider and abettor to the underlying felony who acted with intent to kill, or a major participant in the underlying felony who acted with reckless indifference to human life. (Stats. 2018, ch. 1015, § 3.) The Legislature enacted this reform "after determining that there was further 'need for statutory changes to more equitably sentence offenders in accordance with their

involvement in homicides.'" (*Gentile*, at pp. 838-839, quoting Stats. 2018, ch. 1015, § 1, subd. (b).)

SB 1437 also established a petition procedure, currently codified in section 1172.6, for retroactive application of those amendments.[2] Initially, the petition process was available only to those convicted of murder. But the Legislature "subsequently amended the statute to expand the categories of those eligible for relief." (*People v. Arellano* (2024) 16 Cal.5th 457, 468; see also *People v. Patton* (2025) 17 Cal.5th 549, 558.) Effective January 1, 2022, Senate Bill No. 775 (Stats. 2021, ch. 551) (SB 775) extended eligibility to persons convicted of "attempted murder under the natural and probable consequences doctrine, or manslaughter." (Stats. 2021, ch. 551, § 1, subd. (a); § 1172.6, subd. (a).)

In its current form, section 1172.6 states that those previously "convicted of felony murder or murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the natural and probable consequences doctrine, or manslaughter" may petition to vacate those convictions if they "could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189 made effective" by SB 1437. (§ 1172.6, subd. (a).) Section 1172.6, subdivisions (b) and (c), require the court to appoint counsel if a petition has been

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[2] Originally, this provision was codified as Penal Code section 1170.95. Later, the provision was renumbered, effective June 30, 2022. (Stats. 2022, Ch. 58, § 10.) This brief refers to the renumbered section.

properly pleaded and to assess, after permitting the parties to file briefs, whether the petitioner has made a prima facie case of eligibility for relief. (§ 1172.6, subds. (b), (c); *People v. Lewis* (2021) 11 Cal.5th 952, 961-970.) To make the required prima facie showing, a petitioner must establish that the requirements for eligibility are satisfied, including that the petitioner was convicted of "murder, attempted murder, or manslaughter." (§ 1172.6, subds. (a)(2), (b)(1).) If this burden is satisfied, the court must issue an order to show cause and hold an evidentiary hearing, at which the prosecution must prove beyond a reasonable doubt "that the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019." (§ 1172.6, subd. (d).)

STATEMENT OF THE CASE

A. Luu's conviction and sentence

In 2001, Luu and three accomplices from his gang participated in an attempted home burglary and armed robbery against two victims, one of whom was shot but survived. (Opn. 2, 4-5.) An Orange County jury convicted Luu of attempted voluntary manslaughter (§§ 192, subd. (a), 664), two counts of attempted robbery in concert of an inhabited dwelling (§§ 212.5, 213, subd. (a)(1)(A), 664), attempted first degree burglary (§§ 459, 664), and two counts of felony street terrorism (§ 186.22, subd. (a)). The convictions for attempted voluntary manslaughter and attempted burglary were lesser-included offenses to the charged crimes of attempted murder and burglary of an inhabited dwelling. (Opn. 5-6; CT 78-79, 87-88, 92-93.) The jury also

returned true findings on gang and firearm enhancements (§§ 186.22, subd. (b)(1), 12022.53, subds. (d), (e)(1)). (Opn. 5-6; CT 79-95.) The court sentenced Luu to state prison for an aggregate term of 26 years six months to life, consisting of: one year six months for the attempted robbery and 25 years to life for the intentional discharge of a firearm by a principal causing great bodily injury. (Opn. 6; CT 96-99, 179-182.) The court stayed punishment on all remaining counts and enhancements, including Luu's conviction for attempted voluntary manslaughter, pursuant to section 654. (CT 96, 98.)

B. Luu's section 1172.6 resentencing petition

In 2022, Luu filed a resentencing petition under section 1172.6. (Opn. 6; CT 100.) In opposing the petition, the prosecution did not dispute that, based on the evidence presented at his trial, Luu could not be convicted of murder, attempted murder, or voluntary manslaughter under current law. (Opn. 3, 7; CT 106-107; 2RT 25; 3RT 49.) Rather, it argued that resentencing under section 1172.6 was unavailable to Luu because he was convicted at trial of attempted voluntary manslaughter, whereas the statute authorizes resentencing only for those who were "convicted of murder, attempted murder, or manslaughter." (§ 1172.6, subd. (a); Opn. 3, 6-7; CT 103-104, 146-147.)

The superior court issued an order to show cause and held an evidentiary hearing. (Opn. 3, 6-7; 1RT 10-11; 2RT 20-38.) At the hearing, the prosecution maintained that Luu's attempted voluntary manslaughter conviction did not qualify for

resentencing, making him statutorily ineligible for relief. (Opn. 7; 2RT 22-25, 33-36.) The parties also discussed the fact that one of Luu's accomplices, who was convicted in a separate trial of attempted murder, received relief under section 1172.6 despite his arguably greater degree of culpability in the crimes. (Opn. 2-3, 7; 2RT 23-25; 3RT 47-48, 50-51.)

The court denied the petition on the basis that Luu was ineligible for resentencing because he was not convicted of a qualifying offense under section 1172.6. (Opn. 3, 7, 17-19; 3RT 54.) In so holding, the court acknowledged the apparent inequity of the result in this case, given the relief available to other accomplices in Luu's crimes. (Opn. 7, 17-19; 3RT 49-51.) However, the court concluded that the plain language of the statute did not make relief available for Luu's offense, and it reasoned that it was not authorized to take on a law-making role or modify the statute by extending it to Luu's case. (Opn. 3, 7; 3RT 51-54.)

C. The Court of Appeal's decision

The Court of Appeal reversed. It held that section 1172.6 should be interpreted to make relief available not only to defendants convicted of the crimes enumerated in the statute but also to defendants convicted of attempted voluntary manslaughter. (Opn. 2-3, 19-20.) The court reasoned that following the literal meaning of the statute would lead to an "absurd and manifestly unjust" result where a defendant convicted of more culpable conduct would receive more favorable treatment than one, like Luu, convicted of less culpable conduct.

(Opn. 3, 16.) It invoked authority that, in the court's view, indicated the Legislature ordinarily intends to include the attempted form of a crime when it identifies only the completed form in a statute. (Opn. 14-16.) And it concluded that, just as the Legislature had made clear in passing SB 775 that its reference to murder also included attempted murder, the current version of the statute should be construed to encompass attempted voluntary manslaughter, even though that offense is not expressly listed. (Opn. 17, 19.) The court also reasoned that extending the availability of relief to those convicted of attempted voluntary manslaughter serves the legislative goal to "'more equitably sentence offenders in accordance with their involvement in homicides.'" (Opn. 17.)

ARGUMENT

A PERSON CONVICTED OF ATTEMPTED VOLUNTARY MANSLAUGHTER IS NOT ELIGIBLE FOR RESENTENCING UNDER PENAL CODE SECTION 1172.6

Luu is ineligible for relief under the plain language of section 1172.6, which limits the availability of resentencing to those convicted of murder, attempted murder, and voluntary manslaughter. Ample evidence of legislative intent confirms that the Legislature intended to draw the line at those three offenses, a choice that was within its prerogative in deciding how best to achieve its goals while balancing competing considerations. In the face of that evidence, the supposed absurd consequences that the Court of Appeal below pointed to are insufficient to suggest that the Legislature implicitly intended to include attempted

voluntary manslaughter within the scope of section 1172.6 or mistakenly overlooked its exclusion.

A. Retroactive relief is not available for attempted voluntary manslaughter under the plain meaning of section 1172.6's text

"The proper interpretation of a statute is a question of law [reviewed] de novo." (*Lewis*, *supra*, 11 Cal.5th at p. 961.) In ascertaining the meaning of a statute, courts "look to the intent of the Legislature as expressed by the actual words of the statute." (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1117.) When language is clear and unambiguous, the plain meaning governs, and courts need not engage in any further judicial interpretation. (*People v. Scott* (2014) 58 Cal.4th 1415, 1421; *Green v. State of California* (2007) 42 Cal.4th 254, 260 [where plain meaning is evident, "no court need, or should, go beyond that pure expression of legislative intent"].) The actual words of the statute are examined first because it is this statutory language that has "'successfully braved the legislative gauntlet.'" (*Wasatch*, at p. 1117.) Courts may consult extrinsic aids, such as legislative purpose and history only if "the language supports more than one reasonable construction." (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1105.)

The plain meaning of section 1172.6 is not reasonably subject to dispute. Throughout its provisions, the statute makes clear that only those petitioners convicted of murder, attempted murder, or voluntary manslaughter may seek to vacate their convictions and obtain resentencing. The statute specifies at the outset that its procedures are available so that a "person

convicted of felony murder or murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the natural and probable consequences doctrine, or manslaughter" may file a petition for the purpose of having their "murder, attempted murder, or manslaughter conviction vacated." (§ 1172.6, subd. (a).) And the enumerated prerequisites for obtaining relief include that a petitioner convicted by jury trial must make a prima facie showing that they were "convicted of murder, attempted murder, or manslaughter." (§ 1172.6, subds. (a)(2), (b)(1).)[3]

In the event that a petitioner satisfies their prima facie burden, the statute instructs the superior court to hold a "hearing to determine whether to vacate the murder, attempted murder, or manslaughter conviction and to recall the sentence and resentence the petitioner." (§ 1172.6, subd. (d)(1).) It further specifies that such a hearing may be waived where the parties

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[3] Subdivision (a)(2) also allows a petitioner to make a prima facie showing if they "accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of murder or attempted murder." This provision does not apply to the present case, as Luu was convicted of attempted voluntary manslaughter and acquitted of attempted murder at trial. (Opn. 5-6; CT 78-79.) In any case, section 1172.6 does not extend relief even to those convicted of attempted manslaughter by plea. In addition to the eligibility requirements set forth in subdivision (a)(1) through (3), the statute makes clear that the right to bring a petition and the court's ability to vacate convictions is reserved for those convicted of murder, attempted murder, and manslaughter. (§ 1172.6 subds. (a), (d)(1), (g).)

stipulate that "the petitioner is eligible to have the murder, attempted murder, or manslaughter conviction vacated." (§ 1172.6, subd. (d)(2).) Finally, the statute provides that a "person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction based on the changes made to Sections 188 and 189 by [SB] 1437." (§ 1172.6 subd. (g).)

The plain meaning of the statutory text is unambiguous. At every stage of the resentencing process, the statute expressly limits relief to those convicted of the three specified offenses. By contrast, the statute does not once mention attempted manslaughter—even though it does specify that resentencing may be obtained for an attempted murder conviction—nor does it give trial courts discretion to grant relief to those convicted of offenses that are not expressly listed. (See *In re A.G.* (2011) 193 Cal.App.4th 791, 798 [voluntary manslaughter and attempted voluntary manslaughter "are two different offenses"].) In this situation, a reviewing court presumes that "the Legislature meant what it said and the plain meaning of the statute governs." (*People v. Henderson* (2022) 14 Cal.5th 35, 51, internal quotation marks omitted.)

The interpretive canon, *expressio unius est exclusio alterius*, supports the plain meaning of the text. Under that canon, the explicit expression of certain offenses "necessarily means the exclusion" of others not expressed. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852; see also *Chevron U.S.A., Inc. v. Echazabal* (2002) 536 U.S. 73, 81 [*expressio unius* canon applies where there

is a "series of terms from which an omission bespeaks a negative implication"].) Had the Legislature wanted the remedies available through section 1172.6 to reach other crimes, it would have identified them clearly, as it did for the three listed offenses. Where, as here, the Legislature has elected to create a discrete category of offenses that qualify for ameliorative relief, setting these offenses apart from offenses that do not fall within section 1172.6, courts "must presume it did so deliberately, giving effect to the distinctions, unless the whole scheme reveals the distinction is unintended." (*Metropolitan Water Dist. v. Superior Court* (2004) 32 Cal.4th 491, 502.)

B. Other indicia of legislative intent support the plain meaning of section 1172.6's text

It is not necessary to consult extrinsic sources of legislative intent here because there is no demonstrable ambiguity in the statutory language. (See *Ruiz*, *supra*, 4 Cal.5th at p. 1105; *People v. Coronado* (1995) 12 Cal.4th 145, 151 ["Where the statute is clear, courts will not interpret away clear language in favor of an ambiguity that does not exist," internal quotation marks omitted].) Even so, extrinsic sources, including the relevant legislative history, support the plain meaning of the statutory text.

In enacting SB 1437, and later SB 775, the Legislature made an intentional choice about how to appropriately circumscribe the scope of retroactive relief, balancing the aims of the legislation with the costs it would impose—a choice that is uniquely within its purview. (See *People v. Turnage* (2012) 55 Cal.4th 62, 74 ["It is both the prerogative and the duty of the Legislature to define

degrees of culpability and punishment, and to distinguish between crimes in this regard. . . . Courts routinely decline to intrude upon the 'broad discretion' such policy judgments entail"].) The fundamental goal of these reforms was to restore proportionality between personal culpability and punishment for homicide crimes where malice could be imputed to a defendant. The Legislature therefore focused on offenses whose punishments were, in its view, most disproportionate. Indeed, the legislative background of SB 775 is an obvious indication that in making this judgment the Legislature specifically chose to exclude the crime of attempted voluntary manslaughter. A main driver of that legislation was an interpretive question that had arisen about whether section 1172.6 made relief available for those convicted of attempted murder, even though that crime was not specifically listed. The Legislature's addition of attempted murder as well as voluntary manslaughter to section 1172.6 strongly shows that its simultaneous exclusion of attempted voluntary manslaughter was not the result of mere oversight or a mistaken belief that the crime would be implicitly covered by the statute.

Throughout the legislative process for both bills, a recurring and central concern of the lawmakers was to amend the Penal Code in a manner that restored a proportionality of punishment commensurate with a defendant's conduct and intent. (See *People v. Montes* (2021) 71 Cal.App.5th 1001, 1008 ["The enactment of Senate Bills 1437 and 775 (2020-2021 Reg. Sess.) shows the Legislature's recognition of the need for statutory

changes to more equitably sentence offenders in relation to their involvement in the criminal activity"]; *People v. Watson* (2021) 64 Cal.App.5th 474, 492 ["The statements of the preamble and the legislative history of Senate Bill No. 1437 confirm the Legislature's intent to restore . . . the 'normal legislative policy of examining the individual state of mind' and affording defendants convicted of murder 'fine judicial calibration' with respect to punishment"].) In a preamble to SB 1437, the Legislature declared, "It is a bedrock principle of the law and of equity that a person should be punished for his or her actions according to his or her own level of individual culpability." (Stats. 2018, ch. 1015, § 1, subd. (d).) The Legislature also stated: "Reform is needed in California to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual." (Stats. 2018, ch. 1015, § 1, subd. (d).)[4]

In addition, a report by the Assembly Committee on Appropriations stated, "According to the author: [¶] SB 1437 seeks to *restore proportional responsibility* in the application of California's murder statute reserving the harshest punishments for those who intentionally planned or actually committed the killing." (Assem. Com. on Appropriations, Rep. on Sen. Bill No.

[4] Uncodified statutory preambles, while not conclusive, are entitled to consideration in ascertaining the purpose of legislation. (*People v. Canty* (2004) 32 Cal.4th 1266, 1280.)

1437 (2017-2018 Reg. Sess.) Aug. 8, 2018, p. 2, italics added.) Likewise, the Senate Committee on Public Safety's report for SB 1437 repeatedly emphasized the goal of proportional punishment in its discussion of changes to the felony-murder rule, and expressed a desire to counter the erosion of "the relation between criminal liability and moral culpability." (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Apr. 24, 2018, pp. 4, 6.) This concern about the undue severity of punishment was reemphasized in the legislative history of SB 775, which stated that one intent behind the proposed amendment was to remedy a "situation where the least culpable people are still serving decades in prison even though they should be eligible for relief." (See Sen. Com. on Public Safety Analysis of SB 775, Feb. 19, 2021, p. 3.)

Focusing on its primary concern about proportionality, the Legislature did not take the broadest possible approach but acted in a more measured way. SB 1437 was created for the express purpose of abrogating the natural and probable consequences doctrine and limiting the scope of the felony-murder rule as they relate to the offenses of first and second degree murder. (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Apr. 24, 2018, pp. 2-3, 5-7; Assem. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Jun. 26, 2018, pp. 1-2, 5-6.) But in passing SB 1437 and SB 775, the Legislature did not seek to entirely eliminate the natural and probable consequences doctrine or theories of criminal liability in which the mens rea of a perpetrator is imputed to a defendant

whose intent is to participate in a different target crime. (See *Gentile*, *supra*, 10 Cal.5th at p. 849 ["it is not unreasonable to say that Senate Bill 1437 'amend[ed] . . . the natural and probable consequences doctrine, as it relates to murder,' by eliminating the doctrine's applicability to murder while leaving the doctrine intact with respect to other crimes"]; see also Couzens et al., *Sentencing California Crimes* (The Rutter Group), § 23:49, Accomplice liability—Elimination of the natural and probable consequences doctrine ["It is important to observe that SB 1437 makes no change to the application of NPC to crimes other than murder"].) It left the theories of natural and probable consequences and imputed mens rea unchanged for a multitude of serious criminal offenses (some of which are lesser-included and lesser-related offenses of murder and attempted murder), such as felony assault likely to cause great bodily injury, battery, mayhem, and torture. (*Gentile*, at p. 849; see, e.g., *People v. Abelino* (2021) 62 Cal.App.5th 563, 581-582 [affirming sufficiency of evidence for felony assault, battery, and mayhem under natural and probable consequences theory based on defendant's intent to participate in a riot]; *People v. Flores* (2016) 2 Cal.App.5th 855, 870 [affirming conviction for torture under the natural and probable consequences doctrine based on aiding and abetting target offense of child abuse].)

And in determining the scope of relief that should be available *retroactively*—a policy judgment that must balance the importance of the legislative changes against the costs and burdens of unwinding final convictions—the Legislature focused

on three specific offenses whose punishments under the former theories of liability it viewed as especially disproportionate to individual culpability. The Legislature's focus on the particular crimes listed in section 1172.6 makes sense in light of their punishments relative to other offenses. A murder conviction leads to an indeterminate sentence of 15 or 25 years to life in prison, and can carry penalties as severe as death or life without the possibility of parole. (§ 190.) A premeditated attempted murder conviction can result in life with the possibility of parole, while unpremeditated attempted murder provides for an upper term of nine years in state prison. (§ 664, subds. (a), (c).) Voluntary manslaughter carries an upper term of 11 years in state prison. (§ 193, subd. (a).) By contrast, a defendant convicted of attempted voluntary manslaughter may be sentenced to as little as one-and-a-half years in state prison, and would never face more than five-and-a-half years imprisonment for the commission of that offense. (§§ 193, subd. (a), 664, subd. (a)). Accordingly, a conviction for attempted voluntary manslaughter under a natural and probable consequences theory does not implicate the same degree of concern that the Legislature had regarding lengthy sentences for other offenses that are grossly disproportionate to the defendant's individual culpability or criminal intent.

In this case, for example, Luu's sentence consists of one year six months imposed on the attempted robbery count plus 25 years to life for the attached firearm enhancement. (Opn. 6; CT 96-99, 179-182.) The sentence for the attempted voluntary

manslaughter conviction was stayed. (CT 96, 98.) Had Luu's sentence for attempted voluntary manslaughter not been stayed, his potential punishment for that offense would have been comparable to those prescribed for the underlying felony offenses he was convicted of. (Compare §§ 193, subd. (a), 664 [attempted voluntary manslaughter punishable by imprisonment for one-and-a-half, three, or five-and-a-half years] with §§ 212.5, 213, subd. (a)(1)(A), 664 [attempted first degree robbery in concert punishable by imprisonment for one-and-a-half, three, or four-and-a-half years]; § 186.22, subd. (a) [street terrorism punishable by imprisonment for one-and-a-quarter, two, or three years]; §§ 459, 461, subd. (a), 664 [attempted first degree burglary punishable by imprisonment for one, two, or three years].) Indeed, the target offenses in which Luu actually intended to participate (a successful as opposed to a thwarted first-degree robbery and first-degree burglary) both call for harsher punishment than attempted manslaughter—with upper terms of nine and six years, respectively. (§§ 213, subd. (a)(1)(A), 461, subd. (a).)

Perhaps the most obvious indicator of the Legislature's intent to exclude attempted voluntary manslaughter from the list of offenses eligible for retroactive relief is its passage of SB 775 in 2021. That bill was enacted to resolve a split of appellate authority and clarify the law by specifying that "the petition process through which qualifying defendants can have their convictions of felony murder or murder under the natural and probable consequences doctrine vacated and be resentenced,

when specified conditions are satisfied, also applies to: a) Murder convictions under any theory in which malice is imputed to the defendant based solely on their participation in a crime; b) Attempted murder convictions under the natural and probable consequences doctrine; and, c) Manslaughter convictions." (Assem. Com. On Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) July 6, 2021, pp. 1, 7-9; see Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, pp. 3, 9.) Committee reports confirm the Legislature's understanding that, if the bill passed, "people who are serving a sentence of manslaughter or attempted murder that were prosecuted under a felony murder theory or a natural and probable consequences theory will be able to have their sentences recalled under the same standards as people who have been convicted of first and second-degree murder." (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, p. 9; see Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 3.)

As passed, SB 775 amended section 1172.6 to include attempted murder and manslaughter but did not add attempted manslaughter and did not authorize courts to apply the statute to unspecified offenses. (Stats. 2021, ch. 551, § 2; *Delgadillo*, *supra*, 14 Cal.5th at p. 223, fn. 3.) This legislative history shows that the omission of attempted voluntary manslaughter from the list of qualifying offenses in section 1172.6 was intentional. It was not an oversight, and it could not have been the product of a mistaken belief that the addition was unnecessary. A central

purpose of SB 775 was to clarify that the ameliorative changes brought about by SB 1437 apply to certain offenses that were not previously identified in the statute—namely, attempted murder and manslaughter. In light of the Legislature's intent to clarify the scope of section 1172.6, it is significant that the legislative history of SB 775 never mentions expanding relief to attempted voluntary manslaughter. Had the Legislature intended to cover that offense, it surely would have done so expressly when it passed the bill. "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended." (*In re Greg F.* (2012) 55 Cal.4th 393, 407, internal quotation marks omitted.)

And notably, in analyzing the fiscal impact of the changes effectuated by SB 775, the Assembly Committee on Appropriations calculated the estimated court costs for processing new petitions based on the total number of current inmates incarcerated for "second degree murder, attempted murder, and voluntary manslaughter." (Assem. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Aug. 19, 2021, p. 2.) The staff comments on the fiscal estimate prepared by the Senate Committee on Appropriations similarly referenced the number of inmates serving sentences for the completed crime of voluntary manslaughter, not attempted voluntary manslaughter. (Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 3.)

Neither analysis anticipated or identified any costs associated with evaluating the merits of petitions brought by those convicted of attempted voluntary manslaughter or any other criminal offense. (*Ibid*.) Moreover, in their respective discussions of existing law, the Senate and Assembly Committee Reports define and explain the elements of murder, attempted murder, and voluntary manslaughter, but contain no accompanying definition or discussion of attempted manslaughter. (See Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, pp. 4-7; Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 2; Assem. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) July 13, 2021, pp. 2-4.)

All told, these legislative materials do not contain a single mention of attempted voluntary manslaughter, let alone any expression of intent to include this offense in the expanded list of offenses for which retroactive relief is available under section 1172.6. Such consistent omissions, including from discussions of both policy and fiscal impact, cannot fairly be characterized as an oversight. The Legislature would surely have understood that any offense not included in its amendments to the Penal Code would remain subject to prior existing law. (See *People v. Frahs* (2020) 9 Cal.5th 618, 634 ["the Legislature 'is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted'"]; cf. *Barnhart v. Sigmon Coal Co., Inc.* (2002) 534 U.S. 438, 454 [courts will not ascribe differences in treatment by a statute to a "'mistake in draftsmanship'"].) The

legislative history thus supports the plain text of section 1172.6: it does not extend relief to those defendants convicted of attempted voluntary manslaughter.

C. The Court of Appeal misapplied the absurd consequences doctrine

The Court of Appeal below relied primarily on the idea that the exclusion of attempted voluntary manslaughter from section 1172.6 could not have been what the Legislature intended because of absurd consequences that, in its view, would result. (Opn. 14-19.) But that approach failed to credit, or even acknowledge, strong evidence that the Legislature made a deliberate choice to exclude attempted voluntary manslaughter. As a result, the court impermissibly replaced the Legislature's judgment with its own view of what the most reasonable resentencing policy under section 1172.6 would be.

The absurd consequences principle is a tool of statutory interpretation that operates in service of ascertaining legislative intent. It holds that a court may "'reject a literal construction that is *contrary to the legislative intent* apparent in the statute'" or "'would result in absurd consequences *that the Legislature could not have intended*.'" (*People v. Leiva* (2013) 56 Cal.4th 498, 506, italics added.) Application of this principle "'requires much more than showing that troubling consequences may potentially result if the statute's plain meaning were followed or that a different approach would have been wiser or better.'" (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 356; see also *In re D.B.* (2014) 58 Cal.4th 941, 948.) Rather, departure from the literal meaning is permitted only where justified by

"compelling" reasons, in particular where its application would "frustrate the manifest purpose of the legislation" or be otherwise "repugnant to the general purview of the act." (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.)

Thus, "our courts have wisely cautioned that the absurdity exception to the plain meaning rule should be used most sparingly by the judiciary and only in extreme cases else we violate the separation of powers principle of government." (*Siry*, *supra*, 13 Cal.5th at p. 356, internal quotation marks omitted.) It is the Legislature's prerogative to determine how best to address its public policy goals, and, within broad bounds, courts must construe statutes to implement the Legislature's intent, "whatever may be thought of the wisdom, expediency, or policy of the act." (*D.B.*, *supra*, 58 Cal.4th at p. 948; see also Cal. Const., art. IV, §§ 1, 8 [vesting lawmaking authority in the legislative branch].) Courts, in other words, may not interpret statutes to conform to their own vision of how best to accomplish the aims of the law, but must faithfully implement the Legislature's choices. (See *People v. Leal* (2004) 33 Cal.4th 999, 1008 [courts "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used"]; *People v. Guzman* (2005) 35 Cal.4th 577, 587 ["the cardinal rule of statutory construction [is] that courts must not add provisions to statutes"].)

The Court of Appeal below misapplied the absurdity doctrine by narrowly focusing on its preferred interpretation of section 1172.6 without any mindfulness of whether the Legislature

actually intended the approach reflected in the statutory text. As explained, the indicia of legislative intent strongly show that the Legislature intentionally circumscribed the availability of retroactive relief under that statute to the three listed offenses. (See *ante*, at pp. 19-29.) The Court of Appeal, however, relied primarily on what it described as a general rule that "the Legislature intends remedial legislation to apply to attempted crimes, even when the Legislature only mentions the completed crimes within the statute." (Opn. 14, citing *People v. King* (1993) 5 Cal.4th 59, 69 and *People v. Barrajas* (1998) 62 Cal.App.4th 926, 930.) It viewed that rule as essentially dispositive. (See Opn. 14-16.) But while the courts in *King* and *Barrajas* concluded that the statutes at issue in those cases encompassed attempted crimes that were not specifically enumerated, they do not stand for the general proposition invoked by the Court of Appeal. (See, e.g., *People v. Ackerman* (2024) 102 Cal.App.5th 1230, 1235-1241 [section 12022.7 great bodily injury enhancement can be imposed alongside attempted voluntary manslaughter conviction, notwithstanding statutory provision that such enhancement "shall not apply to murder or manslaughter" convictions]; *People v. Lewis* (1993) 21 Cal.App.4th 243, 247-252 [same].) As this Court's analysis in *King* makes clear, resolution of that question depends on the usual, broader inquiry into legislative intent. (See *King*, at pp. 67-70 [discussing legislative history in detail].)

The Court of Appeal acknowledged the legislative history relating to SB 775, but it drew precisely the wrong inference from

that history. (Opn. 11-13.) In the Court of Appeal's understanding, just as the Legislature clarified that the original version of section 1172.6 was intended to include attempted murder, the current statute's inclusion of manslaughter should be understood to also include attempted manslaughter. (Opn. 17, 19.) But the Legislature's enactment of SB 775 to add attempted murder to section 1172.6, while also adding manslaughter and simultaneously omitting attempted manslaughter, shows just the opposite: when the Legislature passed SB 775, it was aware of the importance of expressly including the attempted version of a crime, even if it had not been when SB 1437 was originally enacted; and so its omission of attempted manslaughter when passing SB 775 cannot reasonably be seen as a mere oversight or as based on an assumption that specification of the completed crime would also include the attempt. (See *ante*, at pp. 25-29.)

The Court of Appeal's discussion of the results that it viewed as absurd also shows that its approach was incorrect. The court posited that it would be absurd to permit resentencing for the more serious crimes of attempted murder or completed voluntary manslaughter but not the lesser related or included crime of attempted voluntary manslaughter because the Legislature could not have intended "'a lesser included offense to have potentially harsher penal consequences than the greater offense.'" (Opn. 14, quoting *King*, *supra*, 5 Cal.4th at pp. 69-70; see also Opn. 3, 16.)[5]

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[5] The Court of Appeal also appeared to suggest that excluding Luu from seeking resentencing under section 1172.6 would be absurd because he might have been convicted of

(continued…)

However, neither SB 1437 nor SB 775 affected the punishments for voluntary manslaughter or attempted murder, both of which remain significantly more severe than the penalty for attempted voluntary manslaughter. (§§ 664, subds. (a), (c), 190, 193, subd. (a).) Rather, these bills altered the *theories* under which a conviction could be obtained for the identified offenses, and provided a procedure for vacating prior convictions obtained under now-invalidated theories. (§ 1172.6, subd. (a).) It is not absurd for the Legislature to allow conviction for attempted voluntary manslaughter under theories of vicarious liability that are not available to convict for the more harshly punished offenses of attempted murder and voluntary manslaughter.

Moreover, the issue in this case implicates the provision regarding retroactive resentencing rather than prospective reform. The policy determination about how broadly to extend the scope of retroactive relief involves considerations beyond those involved in defining crimes and setting punishments prospectively. In making such policy judgments, the Legislature is entitled to draw lines that are not necessarily perfect. (See *D.B.*, *supra*, 58 Cal.4th at p. 948.) The issue before this Court does not concern any claim that the Legislature was without

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attempted murder or completed voluntary manslaughter in this case under different facts—had his victim actually died or had his jury found that his conduct satisfied the elements of attempted murder. (Opn. 3, 16.) But that does not demonstrate any absurdity; it amounts only to the unremarkable observation that, under alternative hypothetical situations not actually present in this case, Luu would have been able to seek relief under the plain terms of section 1172.6.

power to circumscribe the availability of relief under section 1172.6 in the way its express terms indicate—the question is only one of statutory construction. But even under principles concerning the constitutional scope of the Legislature's power, it is well recognized that a statute is not "arbitrary or irrational simply because there is an imperfect fit between means and ends, or because it may be to some extent both underinclusive and overinclusive." (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 887, internal quotation marks and citations omitted.) Courts must "accept any gross generalizations and rough accommodations that the Legislature seems to have made." (*People v. Williams* (2024) 17 Cal.5th 99, 124-125, internal quotation marks omitted.) Likewise, the Legislature's carefully selected and clearly articulated solution to a given problem may not be discarded under the absurd consequences doctrine merely because "a different approach would have been wiser or better." (*Siry*, *supra*, 13 Cal.5th at p. 356.)

To be sure, there may be legitimate policy arguments in favor of expanding relief under section 1172.6 to those convicted of attempted voluntary manslaughter. But the statute in its current form reflects a deliberate choice by the Legislature about how to best effectuate the goals of that retroactivity provision. And the considerations that the Court of Appeal pointed to do not support its contrary view that the Legislature must have overlooked attempted voluntary manslaughter or implicitly included it within section 1172.6's scope. In the future, the Legislature may very well choose to revise section 1172.6 to

extend the availability of relief to defendants convicted of attempted voluntary manslaughter. But unless and until it chooses to do so, those individuals are not eligible for retroactive relief under the statute's plain terms.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

ROB BONTA
Attorney General of California
CHARLES C. RAGLAND
Chief Assistant Attorney General
MICHAEL R. JOHNSEN
California Supreme Court Criminal Coordinator & Supervising Deputy Attorney General
ARLENE A. SEVIDAL
Senior Assistant Attorney General
CHRISTINE Y. FRIEDMAN
Deputy Attorney General

s/ Michael D. Butera

MICHAEL D. BUTERA
Deputy Attorney General
Attorneys for Plaintiff and Respondent

October 15, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 6728 words.

ROB BONTA
Attorney General of California

s/ Michael D. Butera

MICHAEL D. BUTERA
Deputy Attorney General
Attorneys for Plaintiff and Respondent

October 15, 2025

Supreme Court of California
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