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**Attorney for Appellant
Louis Sanchez Emanuel**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS SANCHEZ EMANUEL,

Defendant and Appellant.

Case No. S280551

**(Court of Appeal No.
H049147)**

**(Santa Clara Co. Superior
Court No. C1246799)**

**REQUEST FOR JUDICIAL NOTICE OF RECORDS, FILES,
AND DOCKETS IN *PEOPLE v. WHITLEY* et al., H043651,
AND *PEOPLE v. EMANUEL*, H047062/H047347
(Cal. Rules of Court, rule 8.252)**

TO: THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE OF
THE STATE OF CALIFORNIA, AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT:

The current case is on review following the Court of Appeal's decision upholding the denial of appellant Louis Sanchez Emanuel's petition for resentencing under Penal Code section 1172.6.

Appellant has had two previous appeals which are relevant to this one. The first was his original direct appeal in *People v. Whitley, et al.*, H043651, in which the Court of Appeal affirmed his murder conviction but remanded for resentencing. The second was *People v. Emanuel*, H047062/H047347, which arose from the same petition for resentencing at issue in the present appeal but was eventually dismissed as moot.¹

For the reasons further set forth in the memorandum of points and authorities, the records, files, and dockets in Case Nos. H043651 and H047062 are relevant to the procedural history and/or legal arguments which will be made in appellant's opening brief on the merits. Accordingly, appellant respectfully requests that this Court take judicial notice of the records, files and dockets in *People v. Jacob Craig Whitley et al.*, Case No. H043651, and *People v. Emanuel*, Case Nos. H047062 and H047347. (Evid. Code, §§ 452, subd. (d)(1) & (h), 453 & 459.)

Dated: November 16, 2023

Respectfully submitted,

/s/ Solomon Wollack
SOLOMON WOLLACK
Attorney for Appellant
Louis Sanchez Emanuel

¹ For reasons unknown, Emanuel's earlier petition appeal was processed twice and given two different case numbers. For convenience, it is herein referred to by only the first of these case numbers – H047062.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

A. Factual and procedural background

In 2015, appellant and Jacob Whitley were jointly tried on first degree murder charges. The case was tried exclusively on a felony-murder theory. It was undisputed that Whitley was the actual killer. The jury convicted both defendants. A joint appeal ensued in *People v. Whitley et al.*, H043651. On November 22, 2019, the Sixth District Court of Appeal affirmed appellant's conviction but remanded for resentencing.

In late 2018, while appellant's original appeal was still pending, the Governor signed SB 1437 into law. Appellant later filed a petition for resentencing under what is now Penal Code section 1172.6. (CT [Case Nos. H047062/H047347]: 1-7.) The trial court denied the petition on April 26, 2019, finding Senate Bill No. 1437 (SB 1437) unconstitutional. (CT [Case Nos. H047062]: 107.) The court did not reach the merits of appellant's petition at that time.

Appellant appealed the trial court's ruling in Case No. H047062. While the case was on appeal, a series of published appellate cases unanimously upheld SB 1437's constitutionality. As a result of these cases, appellant successfully moved to stay the appeal so he could ask the trial court to reconsider its ruling. The trial court ended up vacating its previous ruling and issuing an order to show cause. (1 CT 87; 1 RT 5.) The Court of Appeal then dismissed Case No. H047062 as moot.

The trial court eventually denied appellant's petition on the merits, finding that he was a major participant who acted with reckless indifference to human life. (CT 187-211.) On appeal, appellant challenged the sufficiency of the evidence on the reckless indifference finding. The Court of Appeal affirmed and this Court granted review.

B. In order to assess the correctness of the trial court’s ruling in this case, it is necessary to take judicial notice of the records, files, and dockets in appellant’s original appeal, as well as his first petition appeal.

Evidence Code section 452, subdivision (d)(1) permits judicial notice of the records of any court of this state. These same principles apply in the Court of Appeal. (Evid. Code, § 459, subd. (b).) Under Evidence Code sections 452 and 459, an appellate court may take judicial notice of the records and files from a previous appeal in the same case. (*People v. McCarthy* (2016) 244 Cal.App.4th 1096, 1100, fn. 2; *Williams v. City of Los Angeles* (1991) 229 Cal.App.3d 1627, 1633, fn. 3.)

California Rules of Court, rule 8.252 provides the means for judicial notice on appeal. Under subdivision (a)(2), a motion for judicial notice must state:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
- (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

Rule 8.252, subdivision (a)(3) further provides that, for matters not in the record, the party seeking judicial notice “must attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so.”

The record in the original appeal (Case No. H043651) is relevant to the present appeal because the trial court expressly based its ruling on the evidence presented at trial. (See Aug. RT [Dec. 16, 2020]: 60; COA’s Opn., p. 8.) The record in Case No. H047062 is relevant because it was part of the same underlying proceedings as the present appeal. In fact, the clerk’s transcript in the current appeal essentially begins where the clerk’s transcript in Case No. H047062 left off. The record in the current appeal does not even include the actual petition for resentencing, as that document is

found in the record of Case No. H047062. Hence, reference to the record in Case No. H047062 will be necessary to describe the procedural background of the petition at issue in this case.

The Court of Appeal took judicial notice of the records, files, and dockets in both Case Nos. H043651 and H047062. (See Jul. 27, 2022 Docket Entry, Court of Appeal No. H049147.) The trial court, likewise, took “judicial notice of the records and files in this case” – a description which can only reasonably be understood to include the trial transcripts on which it expressly based its decision. (1 CT 197, fn. 6; see also 1 CT 34, 114; Aug. RT [Dec. 16, 2020]: 60.) The trial court had no need to take judicial notice of the record in Case No. H047062. However, the record in that case is a proper subject of judicial notice because it is an official court record. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (b).) The proceedings in Case Nos. H043651 and H047062 both took place before the January 12, 2021 order which is the subject of the present appeal.

The combined records in Case Nos. H043651 and H047062 are more than 3,800 pages long. Because of their combined length, it is not practicable to attach those records to this motion. Instead, appellant requests that this Court order both records transmitted to this Court so they may be reviewed during the course of this appeal.

For the foregoing reasons, appellant hereby requests that this Court: (1) take judicial notice of the records, files, and dockets in *People v. Jacob Craig Whitley et al.*, Case No. H043651, and *People v. Emanuel*, Case Nos. H047062 and H047347; and (2) order the records in the aforementioned cases transferred from the Sixth District Court of Appeal to this Court.

Dated: November 16, 2023

Respectfully submitted,

/s/ Solomon Wollack
SOLOMON WOLLACK
Attorney for Appellant
Louis Sanchez Emanuel

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS SANCHEZ EMANUEL,

Defendant and Appellant.

] Case No. S280551

] (Court of Appeal No.
] H049147)

] (Santa Clara Co. Superior
] Court No. C1246799)

[PROPOSED] ORDER GRANTING REQUEST
FOR JUDICIAL NOTICE

Good cause having been shown, appellant's Request for Judicial Notice of Records, Files, and Dockets in *People v. Whitley et al.*, H043651, and *People v. Emanuel*, H047062/H047347, is hereby granted.

Chief Justice, California Supreme Court

PROOF OF SERVICE

I, SOLOMON WOLLACK, declare that I am over the age of 18, an active member of the State Bar of California, and not a party to this action. My business address is P.O. Box 23933, Pleasant Hill, California 94523. On the date shown below, I served the within

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(Cal. Rules of Court, rule 8.252);**

and

**[PROPOSED] ORDER GRANTING REQUEST
FOR JUDICIAL NOTICE**

to the parties on the attached service list by:

X **BY ELECTRONIC TRANSMISSION** – Transmitting a PDF version of this document by electronic mail to the party identified below, using the e-mail address indicated:

Ms. Sarah J. Farhat
Deputy Attorney General
San Francisco, CA 94102-7004
SFAGDocketing@doj.ca.gov
Sarah.Farhat@doj.ca.gov
(Respondent)

Mr. Jonathan Grossman
Sixth District Appellate Program
San Jose, CA 95113
servesdap@sdap.org
(Appellant)

X **BY MAIL** – Placing a true copy of the foregoing, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pleasant Hill, California, addressed to:

Mr. Louis Sanchez Emanuel
(Defendant/Appellant)

I declare under penalty of perjury the foregoing is true and correct.
Executed this 16th day of November, 2023, at Pleasant Hill, California.

/s/ Solomon Wollack