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S291235

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Supreme Court Case No. S291235

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. PHUOC THIEN LUU Defendant and Appellant.	Court of Appeal Fourth District Division Three Case No. G063066 Orange County Superior Court Case No. 01WF1559

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

Honorable Robert A. Knox, Judge

ANSWER BRIEF ON THE MERITS

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
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ISSUE PRESENTED

Is a person entitled to resentencing relief under Penal Code section 1172.6 after being convicted of attempted voluntary manslaughter as a lesser included offense of attempted murder based upon the natural and probable consequences doctrine?

INTRODUCTION

In 2001 at the age of 17, Phuoc Luu was involved in a botched home robbery. Though his co-participants eventually shot the homeowner during a struggle, the law then permitted the prosecution to charge Mr. Luu with attempted murder based on the natural and probable consequences doctrine. The jury convicted Mr. Luu of the lesser included offense of attempted voluntary manslaughter. (CT 92-93, 78-79.)

Mr. Luu's conviction, unquestionably based on a finding of imputed malice, resulted in a sentence of 26 years, 6 months to life.

In 2018, the Legislature amended California murder law with the passage of SB 1437 to clarify that "[m]alice shall not be imputed to a person based solely upon his or her participation in a crime." (Pen. Code, § 188, subd. (a)(3)[1].) In passing SB 1437, the Legislature stated its clear purpose: "It is necessary to amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual

[1] Subsequent references to statutes shall be to the Penal Code unless otherwise stated.

killer, did not act with intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life." (Stats. 2018, ch. 1015, § 1, subd. (f).) To effectuate this purpose, SB 1437 also created section 1170.95, later renumbered to section 1172.6[2], which outlined the process for certain defendants convicted of felony murder, or murder under the natural and probable consequences doctrine, to have their murder convictions vacated and to be resentenced.

Initially, the Legislature did not specify whether resentencing was similarly available to defendants convicted of attempted murder or manslaughter under the natural and probable consequences doctrine or the former felony-murder rule. But in response to several court of appeal interpretations that section 1172.6 was limited to murder convictions, the Legislature passed SB 775 (2021-2022 Reg. Sess.) "to clarify that obvious inequity in the law." (Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, p. 7.) The Legislature explained that an interpretation that persons convicted of killing a person under the now defunct natural and

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[2] The resentencing mechanism was originally numbered section 1170.95 when enacted as part of Senate Bill 1437, effective January 1, 2019. (Stats. 2018, ch. 1015 § 4.) Effective January 1, 2022, Senate Bill 775 amended section 1170.95 to add mention of attempted murder and manslaughter. (Stats. 2021, ch. 551 § 2.) Assembly Bill 200 renumbered this to section 1172.6 effective June 30, 2022. (Stats. 2022, ch. 58 § 10.) Counsel for Mr. Luu has attempted to correctly refer to this statute by the number in effect at the time, but counsel respectfully requests that the Court treat references to 1170.95 and 1172.6 as both referring to the correct statute.

probable consequences doctrine but not the lesser offense of attempted killing would lead to an "absurd and unfair situation" where the less culpable remained incarcerated while the more culpable enjoyed a path to release. (*Id.* at p. 3.) Accordingly, SB 775 was enacted with the purpose "to clarify that persons who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural and probable consequences doctrine are permitted the same relief as those persons convicted of murder under the same theories." (*Id.* at p. 1.)

There is no question that Mr. Luu was prosecuted and convicted for an attempted killing under the natural and probable consequences doctrine. The People do not dispute that Mr. Luu would be perfectly situated for resentencing relief if his co-defendant had succeeded in killing the victim. Further, the People agree that under current law, Mr. Luu could not be convicted of murder, attempted murder, or voluntary manslaughter. (RB p. 13.) Yet, in the face of this peculiar situation made more peculiar by the fact that Luu's more culpable co-defendant received relief (RT 48), the People suggest the Legislature intentionally excluded attempted voluntary manslaughter from relief, despite the "obvious inequity" in the Legislature's passage of the law. The People fail to offer any sound explanation for such result, nor is any apparent.

Mr. Luu respectfully requests that the Court find, consistent with a commonsense reading of section 1172.6 and clear legislative intent, that section 1172.6 permits relief to Mr.

Luu and affords him relief as ordered by the Court of Appeal, thus avoiding an "unintended, unjust, and manifestly absurd result." (*People v. Luu* (2025) 110 Cal.App.5th 1051, 1067.)

Alternatively, the Equal Protection Clauses of both the California and U.S. Constitutions mandate treating Mr. Luu's offense of attempted voluntary manslaughter equally to the lesser included offense of manslaughter. The Court of Appeal did not reach this issue, but this Court may consider this alternative ground.

Finally, on remand, Mr. Luu should be entitled to a transfer hearing to determine whether he should have been sentenced as a juvenile when he was 17.

STATEMENT OF THE CASE

A. Conviction and Sentencing

In 2001 at the time of the incident, Appellant Luu was seventeen years old. (Ex. 1[3], RT1 68.) He had a below average I.Q. and suffered from severe impairment of social comprehension and borderline personality disorder, making him extremely vulnerable to peer pressure. (Ex. 1, RT5 846-47, 848, 854, 855.)

Mr. Luu had started associating with some gang members, who gave him the moniker "Goofy." (Ex. 1, RT4 633, 697.) These gang members took "Goofy" along on an attempted burglary on June 7th, 2001, jumping over the back wall of a residential back

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[3] The trial court took judicial notice of the clerk's transcripts and reporter's transcripts from Mr. Luu's file as Exhibit 1. (RT 21.) Appellant's brief will refer to Mr. Luu's trial materials using Ex. 1 plus an abbreviation that reflects the specific file name from the thumb drive that contains Exhibit 1.

yard. (Ex. 1, CT Supp. Pgs. 1-165 at 19, 26, 31; Ex. 1, RT6 957-58.) "Goofy" did not have a gun, but two of the others did. (Ex. 1, CT Supp. Pgs. 1-165 at p. 29; Ex. 1, RT6 976; RT 47.) Two of them struggled with and eventually shot the homeowner, who did survive. (Ex. 1, RT1 117, 121; RT 46-47.)

Testimony reflected that Mr. Luu remained in the yard, on or near the back wall, neither entering the house nor helping in the struggle with the homeowner. (Ex. 1, RT6 957-58 [co-participant Cam Song testifying for the defense]; Ex. 1, RT7 1156 [Detective Peter Vi testified that he interviewed Cam Song, who said Mr. Luu stayed on the wall the entire time].) Mr. Luu told investigators that he was "scared" because this was his first time involved in a robbery, so he forgot his role and did not do anything. (Ex. 1, CT Supp. Pgs. 1-165 at 19.) The other participants in the robbery got mad at Mr. Luu because "he didn't help us." (Ex. 1, RT6 958; Ex. 1, RT7 1156.)

In 2003, Mr. Luu and co-defendant Dung Van Nguyen were tried for the attempted murder in separate trials. (CT 1; RT 48.) Even though Mr. Luu was a minor at the time, the government tried him as an adult. (CT 1.)

The judge instructed the jury that it should find Mr. Luu guilty if the "attempted murder or the lesser included offense of attempted voluntary manslaughter was a natural and probable consequence" of the robbery. (Ex. 1, RT7 1279-80.)

The jury found that Mr. Luu was not guilty of attempted murder but was guilty of the lesser included offense of attempted voluntary manslaughter. (Ex. 1, CT3 585-86.) The jury form

indicated that the members of the jury "DO NOT FIND IT TO BE TRUE that [Mr. Luu] was armed with a firearm." (Ex. 1, CT3 597.) The court sentenced Mr. Luu to a term of 26 years, 6 months to life. (CT 181.)

Nam Nguyen, the primary person to fight with the homeowner, was killed in 2001 during law enforcement's attempt to apprehend him and was never tried. (Ex. 1, RT4 568, 591.) A third participant, Cam Chang Song, entered a guilty plea to attempted murder and related charges and was sentenced to 18 years. (RT 47.)

Mr. Luu's codefendant, Dung Van Nguyen, was convicted of attempted murder. (RT 48.) In 2022, Mr. Nguyen successfully filed a section 1172.6 petition. (RT 48.) Previously ordered to serve 102 years to life, Mr. Nguyen was resentenced and released from prison. (RT 48.)

B. Proceedings Under Section 1172.6

On April 12, 2022, Mr. Luu filed a petition for resentencing under former section 1170.95, subdivision (a)(1). (CT 100.)

The People opposed the petition, arguing that section 1170.95 did not apply to attempted voluntary manslaughter. (CT 103-104.) The trial court found a prima facie showing had been made and issued an order to show cause for an evidentiary hearing. (RT 10-11.)

At the evidentiary hearing on July 21, 2023, the prosecution conceded that based on the trial evidence, "the People would be unable to meet their burden to prove beyond a reasonable doubt that Mr. Luu would be guilty of attempted

murder under current law had he been convicted of attempted murder by the jury that he was in front of." (RT 25, 49.) Nonetheless, the prosecution argued that section 1172.6 did not provide resentencing relief to Mr. Luu because he was convicted of the lesser offense of attempted voluntary manslaughter—an offense not clearly delineated in the statute. (RT 23.)

After the evidentiary hearing, the trial court denied Mr. Luu's petition, concluding that the plain language of the statute omits attempted voluntary manslaughter from relief. (RT 54.) However, the trial court commented, "it is difficult for the Court to conceive how the legislature intended to afford relief to the codefendant, Dung Nguyen, who was armed and helped detain another person, but not the petitioner, who, at least according to some of the evidence, was apparently unarmed, notwithstanding the jury's verdict that he was armed in the commission of the residential robbery."[4] (RT 50.) "But at least the testimony seemed to suggest that [Mr. Luu] was a less enthusiastic participant in the crime than the other individuals that were involved. So, arguably he's less culpable." (RT 50-51.)

C. Court of Appeal's Decision

After hearing oral argument from the parties, the Court of Appeal ruled on April 24, 2025, to reverse the order denying Mr. Luu's petition for resentencing under section 1172.6. (*Luu, supra,* 110 Cal.App.5th at p. 1056.) The court examined the statutory

[4] The trial court's finding in this regard conflicts with the jury form, which indicates that it the members of the jury "DO NOT FIND IT TO BE TRUE that the defendant, PHUOC THIEN LUU, was armed with a firearm." (Ex. 1, CT3 597.)

language of section 1172.6 in context to determine the legislature's meaning. (*Id.* at p. 1059.) It ultimately found that Mr. Luu was "eligible for relief under section 1172.6 because he was convicted of attempted manslaughter under the now invalid natural and probable consequences doctrine. Our holding is consistent with the Legislature's intent, and a contrary interpretation has led to an unintended, unjust, and manifestly absurd result." (*Id.* at 1067.)

ARGUMENT

I.
The Court of Appeal Correctly Found that Resentencing Under Penal Code Section 1172.6 Should Apply to Defendants Like Mr. Luu, Convicted of Attempted Voluntary Manslaughter After Being Charged with Attempted Murder Under the Now Invalid Natural and Probable Consequences Doctrine

A. Introduction

Mr. Luu respectfully requests that the Court affirm the Court of Appeal's decision finding that he is eligible for resentencing relief under section 1172.6.

First, contrary to the People's argument that the plain language shows that attempted manslaughter is ineligible for section 1172.6 relief, a commonsense reading of sections 1172.6 and 188 together shows that relief should apply to attempted manslaughter to give amendments to section 188 their full effect.

Additionally, the legislative history further shows the legislature intended section 1172.6 to apply broadly to remove the effects of the now invalid natural and probable consequences doctrine, contrary to the People's suggestion that the Legislature

was proceeding incrementally and purposely excluded attempted voluntary manslaughter.

Further, the Court of Appeal's decision is consistent with authority the People cite in its analysis of the absurdity doctrine, negating the People's argument that the Court of Appeal misapplied this doctrine.

Finally, if this Court still believes the language of the statute is ambiguous, the rule of lenity mandates that the statutory interpretation favors Mr. Luu—an argument that the People did not address in its brief despite Mr. Luu raising it below.

Accordingly, Mr. Luu respectfully requests that this Court affirm the Court of Appeal's decision.

B. Standard of Review

The People err by applying a strict construction of the language of section 1172.6 alone, ignoring longstanding principles that require courts to view statutory language in context, ensuring that it promotes the legislature's intent. (Opening Brief on the Merits, p. 16-18.)

This Court reviews a "question of statutory interpretation de novo." (*People v. Tirado* (2022) 12 Cal.5th 688, 694.)

Throughout its brief, the People assert that the court must apply "[t]he plain meaning of section 1172.6" because it is "not reasonably subject to dispute." (Opening Brief on the Merits, p. 16.) In essence, the People are asking this Court to strictly apply the language of section 1172.6 in isolation.

When courts interpret statutes, however, "[t]he rule of the common law, 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." (Penal Code, § 4.)

To ensure that they are interpreting statutes fairly, courts "construe the statute's words in context, and harmonize statutory provisions to avoid absurd results. If [they] find the statutory language ambiguous or subject to more than one interpretation, [they] may look to extrinsic aids, including legislative history or purpose to inform [their] views." (*John v. Superior Court* (2016) 63 Cal.4th 91, 96.)

When interpreting the language of a statute, this Court does "begin with the text, 'giving it a plain and commonsense meaning …[but] in the context of the statutory framework as a whole.'" (*People v. Partee* (2020) 8 Cal.5th 860, 867 [quoting *Coalition of Concerned Communities, Inc. v. City of L.A.* (2004) 34 Cal.4th 733, 737].)

"Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute…; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126 [internal cites and quotes omitted].) "In construing legislative intent, it is fundamental that a statute should not be interpreted in a manner that would lead to absurd results." (*People v. Morris* (1988) 46 Cal.3d 1, 15 [disapproved of on other grounds in *In re Sassounian* (1995) 9 Cal.4th 535, 543

fn. 5]). "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Morris, supra,* 46 Cal.3d at p. 16.)

C. The Court of Appeal Correctly Found that a Commonsense Reading of Section 1172.6 in Context with Section 188 Shows that Mr. Luu Should Qualify for Resentencing

The Court of Appeal correctly found that the overall context of California's legislation removing the natural and probable consequences doctrine as a theory of culpability meant that section 1172.6 should also encompass attempted voluntary manslaughter. The People's arguments to the contrary fail because the People rely solely upon a strict construction of only section 1172.6's language, ignoring that section 1172.6 must be read in conjunction with amendments to section 188, which invalidate the natural and probable consequences doctrine as it relates to attempted murder.

First, relief to Mr. Luu is consistent with prior decisions giving a broad reading of resentencing statutes designed to remove invalid sentences. Second, relief is consistent with precedent allowing ameliorative legislation to apply to attempts as well as completed crimes.

Recently, in the case of *People v. Rhodius,* this Court read the plain language of remedial criminal legislation broadly to give effect to the legislature's purpose of removing now legally invalid parts of a sentence, reading together the provision making the sentence invalid and the provision that allows

resentencing. (See, e.g., *People v. Rhodius* (2025) 17 Cal.5th 1050, 1062-63.) In *Rhodius*, the question was how to interpret section 1172.75, subdivision (a), whose purpose was to allow resentencing for those defendants whose convictions included enhancements for prison priors under the former version of section 667.5, subdivision (b). (*Id.* at p. 1053-54.) Section 1172.75 declared that "[a]ny sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5"—except for sexually violent offenses—was "legally invalid." (*Id.* at p. 1054.) Section 1172.75 also provided a "mechanism for resentencing" those individuals serving time for those now invalid prison priors under the prior version of section 667.5, subdivision (b). (*Ibid.*) The trial court, relying upon *Gonzales, supra*, 43 Cal.4th at page 1127, found that the word "impose" sometimes is a legislative shortcut for "impose and execute." (*Rhodius, supra,* 17 Cal.5th at p. 1056.) Because *Rhodius*'s enhancement had been stayed for purposes of sentencing, the trial court found him ineligible for relief under 1172.75 because the enhancement had not been "imposed" and executed. (*Id.* at 1057.)

This Court, however, looked at the plain meaning of "impose" in context and harmonized it with the statutory framework overall. (*Id.* at p. 1057.) In particular, it considered whether the statute's requirement that resentencing result in a lesser sentence must mean that "impose" really meant "imposed and executed" because only executed sentencing enhancements would lengthen the sentence, so only removal of an executed

enhancement would lessen it. (*Id.* at 1060.) However, even stayed enhancements remain part of the judgment, ready to be imposed later; removing a stayed enhancement does mean the defendant receives a lesser sentence. (*Id.* at 1061.)

Further, the statute's language included broad statements such as "[a]ny sentencing enhancement" being legally invalid (apart from those involving sexually violent offenses, which the legislature specifically named). (*Ibid.*) Additionally, the real purpose of 1172.75 was not resentencing but to declare these enhancements to be invalid, therefore, "[t]he statute's resentencing procedures flow inexorably from [this] invalidity." (*Id.* at p. 1062.)

Though the People argued that the legislature perhaps intended only to allow resentencing at first for those with imposed and executed enhancements, "[t]he statute's broad statement of legal invalidity makes no mention of stayed enhancements. We see thus no sound basis to conclude that the Legislature intended to exempt stayed enhancements from prompt invalidation and reexamination, instead choosing to put those matters off for another day." (*Id.* at p. 1062.)

In other cases, this Court has extended legislation to include an attempt as well as the completed crime when the overall statutory context suggested this was the legislature's intent—even though a specific provision only mentioned the completed crime. (See, e.g., *People v. King* (1993) 5 Cal.4th 59, 70.) For instance, in *King*, the Court considered whether a person convicted of attempted murder while a juvenile could be eligible

for commitment to the California Youth Authority ("CYA"). (*Id.* at p. 69.) Various parts of the statute combined to show that the legislature specifically said that those convicted of murder while a minor could receive CYA, but none of those provisions explicitly addressed attempted murder. (*Ibid.*) The Court found "[t]he clear legislative intent to make first degree murderers under the age of 18—and by extension those who attempt but fail to commit the crime—eligible for CYA should prevail." (*Ibid.*) The Court therefore found that "the specific reference to first degree murder in Welfare and Institutions Code section 1731.5, by reasonable implication, includes an attempt to commit that crime." (*Id.* at p. 69-70; see also *People v. Barrajas* (1998) 62 Cal.App.4th 926, 930 [finding that "[a]s remedial legislation, the diversion statutes should be liberally construed to promote their general purpose" and apply to attempted narcotics offense as well as the actual offense.])

Further, remedial legislation should apply to lesser included offenses because they are embodied within those offenses. Indeed, a defendant cannot even prevent the court from giving an instruction on lesser included offenses, even when the defendant does not want it. (See, e.g., *People v. Breverman* (1998) 19 Cal.4th 142, 154, [finding that the trial court must sua sponte instruct on manslaughter as a lesser included offense of murder, noting that courts must instruct on lesser included offenses "even when as a matter of trial tactics a defendant not only fails to request the instruction but expressly objects to it being given"]

[overruled in part on other grounds in *People v. Schuller* (2023) 15 Cal.5th 237, 260.])

In Mr. Luu's case, a commonsense reading of sections 1172.6 and 188 together confirm that the Court of Appeal correctly found he is entitled to relief, contrary to the People's reliance on a strict view of section 1172.6's language only. First, Mr. Luu's need for resentencing flows from the legal invalidity of the natural and probable consequences doctrine, and thus the resentencing provisions should apply broadly to encompass his conviction for attempted voluntary manslaughter to give amended section 188 its full effect. As this Court said, "In 2018, the Legislature amended the law of homicide, eliminating several theories of liability based on imputed malice. It has also offered relief to those convicted under certain homicide theories, such as murder or attempted murder under the natural and probable consequences doctrine, ***whose convictions are now tainted***." (*People v. Patton* (2025) 17 Cal.5th 549, 556 [emphasis added].) The amended plain language of section 188, subdivision (a)(3), now declares that "[m]alice shall not be imputed to a person based solely on his or her participation in a crime."

To effect this declaration that theories of imputed malice are no longer legally valid, the legislature originally enacted section 1170.95, which provided a mechanism for those convicted solely upon their participation in a crime to challenge those convictions. (Stats. 2018, ch. 1015, § 4.)

When courts applied section 1170.95 too narrowly to only those convicted of murder based upon natural and probable

consequences and not other murder crimes, the legislature enacted Senate Bill 775 to amend section 1170.95 and clarify that relief applied more broadly to include any convictions based upon malice flowing from the natural and probable consequences of aiding and abetting another crime. "In its findings and declarations, the Legislature explained that Senate Bill 775 '[c]larifies that persons who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural probable [sic] consequences doctrine are permitted the same relief as those persons convicted of murder under the same theories.'" (*People v. Hin* (2025) 17 Cal.5th 401, 441-442 [quoting Stats. 2021, ch. 551, § 1, subd. (a)].)

Section 1172.6's language squarely applies to Mr. Luu in two of its requirements and ambiguously in the third, but the overall statutory context shows that the third should apply to Mr. Luu. First, Mr. Luu meets section 1172.6's requirement that he was charged with "attempted murder under the natural and probable consequences doctrine." (§ 1172.6, subd. (a)(1)). He also meets the requirement that he "could not presently be convicted of murder or attempted murder because of changes to Section 188." (§ 1172.6, subd. (a)(3)). The prosecution conceded that it could not currently convict Mr. Luu. (RT 25, 49.) For the third requirement, if he had taken a plea, he would have fit with section 1172.6, subdivision (a)(2)'s language that he "accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of … attempted murder." This language of section (a)(2) recognizes that such now illegal charges might result in a lesser

included offense, and a plea to such lesser included offenses does result in resentencing relief. Further, section 1172.6, subdivision (a)(2) also applies to someone "convicted of attempted murder, or manslaughter following a trial," recognizing the lesser included offenses of murder. The question, however, is whether the language of "manslaughter" also encompasses attempted manslaughter, which results when the victim does not actually die.

Mr. Luu submits that given the statutory context of sections 188 and 1172.6, this language only makes sense if the Court reads it to encompass attempted manslaughter as well, which is a lesser included offense of the attempted murder charge the government brought against him.

Section 188 and 1172.6 together combine to create a mechanism for reversing convictions for those tried upon the now invalid natural and probable consequences murder and attempted murder theories. The only way to ensure that both sections 188 and 1172.6 have full effect is to read "manslaughter" to encompass its attempt as well.

Such a reading would be consistent with this Court's ruling in *Rhodius*. Just as this Court in *Rhodius, supra,* 17 Cal.5th at pages 1062-63 found that resentencing relief should apply broadly to any now-invalid sentencing enhancement (except the explicit exception for sexually violent offenses), resentencing here should similarly be available to Mr. Luu, whose conviction was based upon a now-invalid theory of culpability. Such a reading is necessary to remove the effects of this now legally invalid

doctrine of attempted murder under the natural and probable consequences doctrine.

Second, such a reading is also consistent with this Court's past rulings that have extended ameliorative legislation to attempts and lesser included offenses. The People's brief dismisses *People v. King*, which the Court of Appeal relied upon for the idea that ameliorative legislation should apply to lesser included offenses and attempts. (Opening Brief on the Merits, pp. 31-32.) However, the People made no attempt to distinguish the facts and reasoning of *King*, instead just saying that *King* should not control because it involved a different statute with a different legislative history. (*Id.* at p. 31-32.) However, *King* is analogous to the facts here. Just as *King, supra,* 5 Cal.4th at p. 70 found that juveniles convicted of attempted murder should be eligible for CYA though the statute only mentioned completed murder, the ameliorative legislation here should also extend to attempted manslaughter. In both cases, it would frustrate the legislative purpose, evident from the overall statutory context, if the legislation did not extend to attempts and lesser included offenses.

The People's brief errs by focusing exclusively on the language of section 1172.6 itself rather than reading it in context with section 188. (Opening Brief on the Merits, p. 16-18.) Because these sections were enacted together, and because section 1172.6 is simply the mechanism for removing the now invalid theories of malice under section 188, they must be read in concert and harmonized. (See *Rhodius, supra,* 17 Cal.5th at 1054 [reading

changes to section 667.5 invalidating certain enhancements together with the "mechanism for resentencing" in section 1172.75.]) This is the same error made by the defendant in *People v. Ruiz* (2018) 4 Cal.5th 1100, 1109, cited by the People. (Opening Brief on the Merits, p. 16.) There, the Court admonished that "defendant's argument ignores the principle that, in determining a statute's purpose, we consider its language, not in isolation, but in the context of its 'entire substance' and all of 'its various parts.'" (*Ibid.* [quoting *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040.])

The Peoplo also incorrectly cite the canon of statutory construction *expressio unius est exclusio alterius* as support for its narrow reading of section 1172.6. (Opening Brief on the Merits, at p. 18.) However, this principle does not apply when it results in an interpretation contrary to the legislature's intent, such as when it would result in absurd consequences. (See, e.g., *In re J.W. (2002)* 29 Cal.4th 200, 209-210 ["courts do not apply the *expressio unius est exclusio alterius* principle if its operation would contradict a discernible and contrary legislative intent. More generally, we have often said that courts will not give statutory language a literal meaning if doing so would result in absurd consequences that the Legislature could not have intended" [internal cites and quotes omitted.]]) Given the absurd consequences here, *espressio unius* does not aid the People's argument.

In sum, reading section 1172.6 in context with section 188's invalidation of the natural and probable consequences doctrine

indicates that a plain, commonsense reading of section 1172.6 should be that its reference to "manslaughter" applies broadly to all manslaughter crimes, including attempted manslaughter. The Court of Appeal's decision so finding should therefore be affirmed.

D. The Court of Appeal Further Correctly Found that the Legislative History Supports Finding Mr. Luu Eligible for Relief

The Court of Appeal also correctly found that the legislative history supports giving relief to Mr. Luu. Contrary to the People's assertion, nothing in the history or stated intent of SB 1437 or SB 775 demonstrates the Legislature intentionally omitted attempted voluntary manslaughter from relief. Rather, the Legislature clearly stated that relief should apply broadly to any sentence affected by the invalidated natural and probable consequences doctrine, finding that an interpretation that persons convicted of killing a person under the now defunct natural and probable consequences doctrine but not the lesser offense of attempted killing would lead to an "absurd and unfair situation." (Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, p. 3.) Indeed, SB 775 was passed to "clarify that obvious inequity in the law." (*Id.* at p. 7.)

"If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. [cite] In such circumstances, we choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a

construction that would lead to absurd consequences." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.)

The legislative history of section 1172.6 supports finding that Mr. Luu is eligible for relief. This legislative history shows that the legislature intended to invalidate the precise theory of culpability under which Mr. Luu was charged and provide relief for those sentenced after such charges. Contrary to the People's contention, nothing suggests that the legislature wanted to proceed incrementally and only provide relief for those with the lengthiest sentences resulting from the defunct natural and probable consequences doctrine. (Opening Brief on the Merits, p. 23-24.)

From the beginning, the legislature had a clear intent to broadly abolish an unfair theory of murder culpability and remove its effects. In 2018, when the legislature amended section 188 and provided resentencing under section 1170.95, it noted that "[i]t 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).) Furthermore, it stated that "[r]eform 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." (*Id.* at § 1, subd. (e).)

Later amendments only reconfirmed that the legislature intended resentencing relief to apply broadly. When courts applied section 1170.95 too narrowly to only those convicted of murder and not other now-invalid murder crimes, the legislature enacted Senate Bill 775 to clarify that relief applied more broadly to include any convictions based upon malice flowing from the natural and probable consequences of aiding and abetting another crime. The Bill's author noted:

> Although SB 1437 [which enacted section 188] changed California's long-held and unjust homicide laws that was [sic] overly punitive to those who did not kill or intend to kill, some appellate courts have reasoned, incorrectly, that SB 1437 applies only to murder and not to attempted murder. ***This has led to an absurd and unfair situation where people are eligible for resentencing if the victim died, but are ineligible if the victim did not die.*** Furthermore, although SB 1437 allowed a pathway for people who took pleas [sic] deals to ***lesser charges such as manslaughter*** to apply for resentencing, the bill did not explicitly include these people for resentencing. As a result, ***this has led to a situation where the least culpable people are still serving decades in prison even though they should be eligible for relief***.

(Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, p. 3.) The legislature therefore recognized that it was absurd for section 188 relief to only apply to those convicted of murder but not attempted murder or a lesser included offense like manslaughter. (*Ibid.*)

The legislature further noted:

> While it may seem obvious that persons who have pled or been convicted of manslaughter or attempted

> murder at trial under a felony murder or natural and probable consequences theory should be entitled to the same relief as persons convicted of more serious offenses of first and second degree murder some courts have ruled that they are not. ***This bill seeks to clarify that obvious inequity in the law.*** If this bill passes, 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.

(*Id.* at 7 [emphasis added].) This amendment merely clarified, therefore, that this resentencing procedure applies to those charged with a crime based upon malice under a natural and probable consequences theory but then convicted of a lesser included offense.

Based upon this legislative scheme of section188 combined with section 1172.6, Mr. Luu should be eligible for relief because he was charged and convicted of a crime based solely upon malice imputed to him as a natural and probable consequence of aiding and abetting another crime—a conviction that could no longer stand under the current statutory scheme, as the prosecution admitted. (RT 25, 49.) The trial court denied Mr. Luu relief, though, despite finding that "Mr. Luu's sentence is disproportionate to sentences imposed on his codefendants, and … inconsistent with the court's understanding of the legislative intent of the statute." (*Id.* at pp. 53-54.)

Mr. Luu now finds himself in an absurd and unequal situation because the trial court found that he was not eligible for

relief under section 1172.6 when someone convicted for voluntary manslaughter would be—simply because the victim had died. Mr. Luu, therefore, absurdly is ineligible for relief simply because the victim in his case did not die, but another defendant would be eligible because the victim did.

Even more absurdly, the trial court did grant relief to the very co-conspirator in Mr. Luu's case who was found guilty of the same attempted murder that prosecutors alleged Mr. Luu committed, but Mr. Luu, who was convicted of the lesser included offense of attempted voluntary manslaughter, is still in prison. (RT 48.) This is exactly the situation the legislature intended to correct when SB 775 amended section 1170.95 because courts were applying it too narrowly.

The People incorrectly argue that the legislature was simply exercising its power "to draw lines that are not necessarily perfect" by only affording resentencing relief to those defendants convicted of more serious crimes, omitting attempted manslaughter as some kind of rational choice. (Opening Brief on the Merits, p. 33-34).

However, the People fail to cite authority or anything explicit in the legislative history of section 1172.6 indicating that the legislature was proceeding incrementally or had decided to exclude those convicted of attempted voluntary manslaughter from relief under section 1172.6.

Rather, the legislature explicitly said that it was rejecting authority that speculated that the legislature was doing that kind of line drawing. (Assem. Com. on Pub. Safety Analysis on

Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended July 6, 2021, p. 7.) In enacting SB 775, the legislature specifically mentioned *People v. Cervantes* (2020) 44 Cal.App.5th 884 as one of the court of appeal decisions that wrongly interpreted section 1170.95 to not apply to lesser included offense convictions in cases where the People charged a defendant with murder based upon the natural and probable consequences. (*Ibid.*) The legislature noted that:

> The court [in *Cervantes*] held that the "decision not to include manslaughter in section 1170.95 falls within the Legislature's 'line-drawing' authority as a rational choice that is not constitutionally prohibited" (*Cervantes, supra*, at p. 888), rejecting[] an equal protection challenge to section 1170.95.
>
> **This bill would clarify that the petition process for retroactive relief applies to manslaughter convictions by plea or jury trial**. Specifically, this bill would provide for relief only if "[t]he petitioner could not presently be convicted of murder or attempted murder *because* of changes to Section 188 or 189 made effective January 1, 2019." (Emphasis added.) In other words, for resentencing to be granted, it would have to be established that the petitioner could not have been convicted of murder or attempted murder under the law as it reads after January 1, 2019.

(*Ibid.* [emphasis added].) In other words, the legislature indicated that *Cervantes* got it wrong—that this law should apply equally to manslaughter convictions for someone charged with murder or attempted murder who now could not be convicted of that crime. The legislature explicitly rejected *Cervantes*'s suggestion that it was using its line-drawing authority and excluded manslaughter. Rather, the legislature explained that the amendment would

"clarify" that section 1170.95's petition process does apply more broadly, thereby rejecting the suggestion that the legislature was taking an incremental approach. (*Ibid.*) Mr. Luu's case therefore fits squarely within the legislative intent to broadly remove the effects of the now-defunct natural and probable consequences doctrine.

The People also argue that the legislature could not have failed to include attempted manslaughter as an oversight. (Opening Brief on the Merits, p. 10, 20, 26, 28, 32.) However, prior to SB 775 taking effect on January 1, 2022, no published California decision had considered whether resentencing applied to a conviction for attempted voluntary manslaughter. Only cases involving manslaughter—not its attempt—had resulted in published opinions. (See, e.g., *Cervantes, supra,* 44 Cal.App.5th at p. 886 [finding section 1170.95 did not apply to a voluntary manslaughter conviction]; *People v. Paige* (2020) 51 Cal.App.5th 194, 204 [finding "defendants charged with felony murder but convicted of voluntary manslaughter pursuant to a plea agreement are not eligible for relief under section 1170.95."]; *People v. Harris* (2021) 60 Cal.App.5th 557, 563 [affirming denial of resentencing to a conviction for voluntary manslaughter]; *People v. Sanchez* (2020) 48 Cal.App.5th 914, 916 ["We join the courts that have held that section 1170.95 does not apply to defendants convicted of voluntary manslaughter."])

Therefore, as it was drafting SB 775, the legislature was not on notice that these issues could also arise for an attempted manslaughter conviction. Therefore, contrary to the People's

assertion that omission of attempted voluntary manslaughter "cannot fairly be characterized as an oversight," (Opening Brief on the Merits, p. 28) attempted voluntary manslaughter was not on the legislative radar.

Additionally, the People argue that the legislature's failure to mention attempted manslaughter in the legislative history shows that the legislature expressly intended to omit attempted manslaughter. (Opening Brief on the Merits, p. 28.) However, the legislature's omission of the phrase "attempted manslaughter" from its discussions simply confirms that the legislature did not consider it. As this Court has often found, "legislative inaction is a weak indication of intent at best; it is generally more fruitful to examine what the Legislature has done rather than not done." (*People v. Anderson* (2002) 28 Cal.4th 767, 780.)

In *Anderson*, for example, the defendant argued that duress should be a defense to all murders except special circumstances murders with the possibility of the death penalty. (*Ibid.*) He argued that because the legislature twice amended the murder statute and did not address the duress provision, the legislature must have intended that duress was available as a defense. (*Ibid.*) This Court disagreed, noting that "there is no indication that the Legislature even considered duress when it amended section 26 in other areas. Moreover, when it did amend the section, there was no long-standing and consistent judicial interpretation that duress was a defense to some but not all murder, only fleeting dicta in a single intermediate appellate court decision." (*Ibid.*)

Here, there is similarly no mention of "attempted manslaughter" or "attempted voluntary manslaughter" or "voluntary attempted manslaughter" in the legislative history—only broad mention of "manslaughter convictions." (See, e.g., Assem. Com. on Approp. Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended July 6, 2021, p. 1.) Other language confirms that this legislation broadly concerns "elimination of the felony murder rule to second degree murder, attempted murder, manslaughter ***or where malice was imputed based solely on the person's participation in a crime***." (*Ibid.*)

Given that no published 1170.95 case concerned attempted manslaughter prior to enactment of SB 775, there is even less reason than in *Anderson* to believe that the legislative inaction here means that the legislature intended to exclude attempted manslaughter from relief.

Finally, the legislative history cited by the People merely supports Mr. Luu's position. The People rely upon parts of the legislative history indicating that the legislative goal was to "restore proportionality between personal culpability and punishment for homicide crimes where malice could be imputed to a defendant." (Opening Brief on the Merits, p. 20.) The People further note the legislative goal was "to remedy a 'situation where the least culpable people are still serving decades in prison even though they should be eligible for relief.'" (Opening Brief on the Merits, p. 22, quoting Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, p. 3.) These cases are cited as evidence that "the

Legislature did not take the broadest possible approach but acted in a more measured way." (Opening Brief on the Merits, p. 22.)

The legislature, though, did take a broad approach by revising section 188 to invalidate *imputed malice* as a basis for culpability. The legislature made that broad decision—to eliminate entire theories of culpability based upon the natural and probable consequences and felony murder doctrines—to better reflect punishment based upon merit. That is what these parts of the legislative history discuss, not any kind of deliberate choice for the legislature to afford relief to those with the harshest punishments and leave arguably less culpable people like Mr. Luu in prison.

In sum, the legislative goal in SB 1437 and SB 775 was to eliminate culpability in murder convictions based upon the natural and probable consequences doctrine to better reflect punishment for only those most culpable. It also intended to remove the effects of that defunct doctrine by allowing resentencing. Relief to Mr. Luu is consistent with both these purposes, as the Court of Appeal correctly decided.

E. The Court of Appeal Correctly Found that Section 1172.6 Must Apply to Mr. Luu to Avoid Absurd Consequences

The People claim that the Court of Appeal misapplied the absurd consequences doctrine because the Court of Appeal misunderstood the legislative intent of section 1172.6. As noted above, the Court of Appeal's decision is consistent with the actual legislative intent rather than what the People claim the

legislature intended: line-drawing that the legislature itself said it was not doing. (See Section I.B. above.)

"As in other instances when a statute 'blindly and literally applied' would lead to 'obvious injustice and a perversion of the legislative purpose' [cite], we must instead choose a reasonable interpretation that avoids absurd consequences that could not possibly have been intended." (*People v. Bullard* (2020) 9 Cal.5th 94, 106.)

The cases cited by the People actually support the Court of Appeal's interpretation of the absurdity doctrine. For example, *People v. Leiva* (2013) 56 Cal.4th 498, 505, (Opening Brief on the Merits at page 29) illustrates such absurd circumstances. This Court analyzed how to use the word "toll" in a code provision that concerned summary revocation of probation. (*Ibid.*) Using the literal meaning of the word toll would create an absurdity: the defendant would no longer have to comply with the terms of probation if the court summarily revoked probation. (*Id.* at p. 508.) The legislature could not possibly have intended this result because it would "give a defendant a 'free pass' until the formal hearing and decision on the alleged probation violation." (*Id.* at p. 508.) Even though the tolling provision might appear "unambiguous on its face," the statute had "a latent ambiguity" due to these absurd results. (*Id.* at 510 [quoting *Stanton v. Panish* (1980) 28 Cal.3d 107, 115].) Therefore, the court did look at extrinsic aids for help in interpreting the statute. (*Leiva, supra,* 56 Cal.4th at 510.)

In contrast, in *In re D.B.* (2014) 58 Cal.4th 941, 948, cited in the Opening Brief at page 29, this Court did not find absurd results when interpreting the phrase "most recent offense" in a statute that allowed juveniles to be committed to DJF. The plain meaning meant that if a juvenile's last offense in time was nonviolent, the juvenile could not be placed in DJF. (*Id.* at p. 944.) The People argued that this created an absurd result because a juvenile on a violent crime spree could not receive DJF detention if their very last crime happened to be nonviolent. (*Id.* at p. 947.) Even though such a result was "troubling," the plain meaning was still consistent with the legislative intent, which was to reduce the number of juveniles in DJF facilities. (*Id.* at p. 948.) Plus, prosecutors could control for such circumstances by either not charging or later dismissing the nonviolent offense. (*Ibid.*) Therefore, this Court applied the plain meaning and affirmed the ruling that the defendant was not eligible for DJF. (*Id.* at p. 948-49.)

Similarly, *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 366 (Opening Brief at pages 29-30) involved this Court finding the plain meaning governed when the legislature had expressly rejected a narrower reading. The Court gave a treble damages statute its plain meaning and applied it broadly, citing as support that the legislature had "expressly removed narrowing language" and "replaced it with the present broad language" when amending the law. (*Ibid.*; see also *People v. Leal* (2004) 33 Cal.4th 999, 1007-08 [continuing to apply the common, broad understanding of duress to the crime of committing a lewd

act upon a child when the legislature specifically said it was deleting the "hardship" form of duress only from the rape and spousal rape statutes, and the legislature logically may have wished to provide more protection for children]; *People v. Guzman* (2005) 35 Cal.4th 577, 587 ["we may partially rewrite a statute 'when compelled by necessity and supported by firm evidence of the drafters' true intent.'"])

Here, the legislative intent is clear, and the result would be absurd under that intent if Mr. Luu were not to receive resentencing relief. The legislature itself called it "absurd" for resentencing relief under 1172.6 to apply to a defendant whose victim had died but not to the defendant whose victim had lived. (Sen. Com. on Pub. Safety Anal. of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, at 3 [explaining that its goal was to remedy the "absurd and unfair situation where people are eligible for resentencing if the victim died, but are ineligible if the victim did not die," which has "led to a situation where the least culpable people are still serving decades in prison even though they should be eligible for relief."])

Mr. Luu would be in exactly this absurd situation if section 1172.6 did not afford him resentencing relief. If the victim in his case had died and he had been convicted of manslaughter, he would be eligible for relief without question. Because this victim fortunately lived, though, he is amongst the last vestiges of people still serving a sentence under this now defunct legal theory.

Even more absurdly, Mr. Luu's codefendant who was convicted of attempted murder received relief under section 1172.6 while Mr. Luu did not. (RT 50.) This happened even though Mr. Luu was convicted of a lesser included offense of attempted murder and was by definition less culpable. The term "lesser included offense" means just that—the defendant is not as culpable as the person who is convicted of the greater crime. (See, e.g., *People v. Gonzalez* (2018) 5 Cal.5th 186, 196 ["Under California law, trial courts must instruct the jury on lesser included offenses of the charged crime if substantial evidence supports the conclusion that ***the defendant committed the lesser included offense and not the greater offense"***] [emphasis added].) This directly conflicts with the legislature's explicit goal "to remedy a 'situation where the least culpable people are still serving decades in prison even though they should be eligible for relief.'" (Opening Brief on the Merits, p. 22, quoting Sen. Com. on Pub. Safety Anal. of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, p. 3.)

This statute therefore is similar to the statute in *Leiva, supra,* 56 Cal.4th at page 505, which had latent ambiguity that the Court recognized through the absurd circumstances that would result from the literal meaning of the statute. That tolling provision would allow probationers to violate conditions with no consequences if the Court applied the plain meaning, a result contrary to the purpose of the probation revocation law. Similarly here, the purpose of SB 1437 and SB 775 was to remove culpability for imputed malice and provide resentencing for those

whose judgments included such offenses; it would be absurd to not afford Mr. Luu such relief for the least culpable of all these crimes. This also differs from *D.B., supra,* 58 Cal.4th at page 948, where the plain language was consistent with the legislature's intent of reducing DJF sentences for juveniles. The only legislative goal that the People cite—punishment proportionate to crime (Opening Brief on the Merits, p. 21-22)—is not served by keeping Mr. Luu in prison while allowing those convicted of attempted murder to receive resentencing.

Further, Mr. Luu's case differs from *Siry, supra,* 13 Cal.5th at page 356 because the legislature there specifically rejected language that gave the statute a narrower meaning. The People provide no evidence here that the legislature even considered attempted manslaughter specifically—and certainly no evidence that the legislature explicitly rejected language including attempted manslaughter from section 1172.6 relief.

In this case, the legislature has explicitly described what it believed were absurd consequences under this statute, and Mr. Luu's case squarely fits within those absurd circumstances. The Court of Appeal therefore correctly applied the absurdity doctrine to Mr. Luu's case. Mr. Luu respectfully requests that this Court affirm the Court of Appeal's decision giving him relief to remedy this absurdity and obvious injustice.

F. Additionally, the Rule of Lenity Supports Finding that Section 1172.6 Allows Resentencing for Mr. Luu

Because the legislature's intent is clear here and favors the reading of section 1172.6 in the Court of Appeal's decision, this

Court need not reach the rule of lenity. (See, e.g., *People v. Braden* (2023) 14 Cal.5th 791, 824 [not applying the rule of lenity when the statute's language, structure, legislative history, and other settled law pointed to one interpretation.])

However, if the Court finds that this statute is still ambiguous, the rule of lenity mandates that the Court rule in Mr. Luu's favor. The People did not address the Rule of Lenity in its brief, though Mr. Luu raised this argument below. (AOB p. 27-28.)

The rule of lenity requires that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." (*Yates v. United States* (2015) 574 U.S. 528, 547-48 [quoting *Cleveland v. United States* (2000) 531 U.S. 12, 25.]) This rule applies when "two reasonable interpretations of the same provision stand in relative equipoise, i.e., that resolution of the statute's ambiguities in a convincing manner is impracticable." (*People v. Avery* (2002) 27 Cal.4th 49, 58 [quoting *People v. Jones* (1988) 46 Cal.3d 585, 599.]) In such cases, "ambiguous penal statutes are construed in favor of defendants." (*Avery, supra,* 27 Cal.4th at p. 58 [quoting *Jones, supra,* 46 Cal.3d at p. 599]; see also *Skilling v. United States* (2010) 561 U.S. 358, 411 [applying the rule of lenity to reject the government's expansive view of a statute]; *People v. Reynoza* (2024) 15 Cal.5th 982, 1013 [applying the rule of lenity and adopting an interpretation favorable to the defendant where the Court could "do no more than simply venture a guess as to" the legislature's intent about whether to read the statute conjunctively or disjunctively.])

If the Court here believes that section 1172.6 is susceptible to the interpretation urged by the People, the rule of lenity mandates reading the statute in the way the Court of Appeal ruled.

II.
Alternatively, Equal Protection Mandates that Mr. Luu Receive Resentencing Because the Government Has No Rational Basis to Treat Him Differently Than a Person Convicted of Completed Manslaughter

A. Introduction

If the Court finds that the statute does not apply to Mr. Luu, the Court should find that the Equal Protection Clauses under both the California and Federal Constitutions mandate resentencing relief.

First, Mr. Luu is similarly situated to a person charged with murder and then convicted of the lesser included offense of manslaughter; if anything, he is less culpable than the person involved in a case with an actual death. Second, there is no rational basis for treating Mr. Luu differently than a person convicted of the lesser included offense of manslaughter, especially since the legislature has explicitly said it wanted section 1172.6 to fix the inequality of the statute applying to convictions where the victim died but not applying to convictions where the victim lived.

B. Standard of Review

This Court reviews equal protection claims de novo. (*Cal. Grocers Assn. v. City of L.A.* (2011) 52 Cal.4th 177, 208.)

C. This Issue Is Properly Before the Court

The Court of Appeal did not reach Mr. Luu's Equal Protection arguments because it ruled in his favor on the statutory arguments. (*Luu, supra,* 110 Cal.App.5th at p. 1059 fn. 3.) This Court may review an equal protection claim as an alternative ground for affirmance, even when the Court of Appeal did not reach such claims. (*Cal. Grocers Assn., supra,* 52 Cal.4th at 188, 208.)

A court has "discretion to decide a pure question of law presented on undisputed facts." (*People v. Brown* (1996) 42 Cal.App.4th 461, 475.) In *Brown*, the court exercised this discretion to hear an equal protection challenge in an appeal where the defendant had requested an additional peremptory challenge in the trial court but did not raise an equal protection argument after its denial. (*Ibid.*) Similarly, while an appellant can forfeit an equal protection claim by not raising it below, "'appellate courts have discretion to address constitutional issues raised on appeal' where, as here, 'the issue presented is "a pure question of law" turning on undisputed facts.'" (*People v. Heard* (2022) 83 Cal.App.5th 608, 626-627 [superseded by statute on substantive grounds as stated in *People v. Lara* (2025) 115 Cal.App.5th 484, 487], quoting *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1323.) The *Heard* court exercised its discretion to hear an equal protection claim regarding a petition for resentencing. (*Heard, supra,* 83 Cal.App.5th at p. 627.)

In this case, Mr. Luu's counsel objected multiple times that section 1172.6 should apply to Mr. Luu but did not make an equal

protection argument in name. This Court's analysis of this issue would involve examining whether 1172.6 applies unequally to those convicted of manslaughter and those convicted of attempted voluntary manslaughter, which is simply a question of law, not a fact intensive inquiry. Mr. Luu therefore requests that the Court exercise its discretion to hear this argument.

D. The Equal Protection Clause Mandates that Mr. Luu Be Treated Like Others Under Section 1172.6

The Fourteenth Amendment of the United States Constitution provides that the government may not "deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const., 14th amend.) Furthermore, the California Constitution provides, "A person may not be … denied equal protection of the laws." (Cal. Const., Art. I § 7.)

"Both the state and federal Constitutions extend to persons the equal protection of law." (*People v. Chatman* (2018) 4 Cal.5th 277, 287.) "[O]ur precedent has not distinguished the state and federal guarantees of equal protection for claims arising from allegedly unequal consequences associated with different types of criminal offenses." (*Ibid.*) "At core, the requirement of equal protection ensures that the government does not treat a group of people unequally without some justification." (*Id.* at p. 288.)

This Court recently decided in *People v. Hardin* that "when plaintiffs challenge laws drawing distinctions between identifiable groups or classes of persons, on the basis that the distinctions drawn are inconsistent with equal protection, courts no longer need to ask at the threshold whether the two groups

are similarly situated for purposes of the law in question. The only pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review. The burden is on the party challenging the law to show that it is not." (*People v. Hardin* (2024) 15 Cal.5th 834, 850-51.)

In cases not involving fundamental rights or a suspect class, the applicable standard of review concerns "whether the challenged classification ultimately bears a rational relationship to a legitimate state purpose." (*Chatman, supra,* 4 Cal.5th at p. 289.)

The state generally has no rational basis for treating less culpable offenders more harshly under a statute that has the purpose of treating offenders with lenity. (See *Heard, supra,* 83 Cal.App.5th at p. 631.) *Heard* found that the state had no rational basis for allowing resentencing for juveniles explicitly sentenced to life without parole but excluding juveniles sentenced to the functional equivalent of life without parole. (*Id*. at p. 633.) The court noted that the purpose of section 1170 was "lenity" by allowing defendants to seek a lower sentence. (*Id*. at p. 631.) The legislature had already amended sentencing laws to allow for parole for both types of juveniles. (*Id*. at p. 631.)

The *Heard* court also found that the culpability of the offenders did not provide a basis for treating these defendants differently. (*Id*. at p. 633.) Those juveniles explicitly eligible for relief necessarily committed special circumstances murders, "the most heinous acts," while less culpable juveniles were ineligible. (*Ibid.* [internal cites omitted].) The court found that the statute

instead "has the incongruous effect of extending sentencing leniency exclusively to the category of offenders generally regarded as the least deserving of it." (*Ibid.* [internal cites omitted].) In contrast, this Court in *People v. Hardin* (2024) 15 Cal.5th 834, 839 found that the legislature could rationally decide not to expand youth offender parole to those who committed a special circumstances murder, which "is a uniquely serious offense." "[T]he Legislature could rationally balance the seriousness of the offender's crimes against the capacity of all young adults for growth, and determine that young adults who have committed certain very serious crimes should remain ineligible for release from prison." (*Ibid.*) In *Hardin*, the rational choice was to treat more serious offenses more seriously. (See *ibid.*)

Here, there is no rational basis to treat Mr. Luu's less culpable conviction differently than other more serious lesser included murder offenses and attempts. Section 1172.6 reflects a purpose of lenity that the legislature has already extended to those in Mr. Luu's position. The amendments to section 188 mean that the government may no longer charge defendants with murder or attempted murder with malice based upon the natural or probable consequences, which means that defendants will no longer face convictions for the lesser included offenses of voluntary manslaughter or attempted voluntary manslaughter on that basis. This reflects the legislative intent to provide leniency to both groups. There is simply no rational reason why the legislature would want to treat those lesser included offenses

differently for purposes of section 1172.6 merely because in one case the victim died. Like the resentencing provision in *Heard*, section 1172.6 now has the incongruous effect of providing relief for those less deserving—those whose acts involved loss of human life. In the legislative history to section 1172.6, the legislature specifically said that it did not want "a situation where the least culpable people are still serving decades in prison even though they should be eligible for relief." (Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Feb. 19, 2021, at 3.)

There is simply no rational state purpose for finding those convicted of a lesser included offense of voluntary manslaughter are entitled to relief when those convicted of attempted voluntary manslaughter are not. For these reasons, the Mr. Luu requests that the Court find that equal protection mandates that he also be eligible for resentencing under section 1172.6.

Because denying Mr. Luu's 1172.6 petition violates equal protection of the law under both the United States and California Constitutions, Mr. Luu respectfully requests that the Court reverse the order denying Mr. Luu's petition for resentencing under section 1172.6 and remand to the trial court for further proceedings consistent with this ruling.

III.
When Resentencing Mr. Luu, the Trial Court Should Treat Mr. Luu as a Juvenile Under Proposition 57

If the Court finds that Mr. Luu is eligible for relief under section 1172.6, Mr. Luu requests that the Court also confirm that his now non-final sentence requires the case go before the

juvenile court for a transfer hearing pursuant to Proposition 57. Both the People and the Court of Appeal so agreed below. (*Luu, supra,* 110 Cal.App.5th at p. 1067 fn. 7.)

This Court has clarified that when a juvenile is sentenced as an adult and that sentence later is vacated, the judgment becomes nonfinal, and Proposition 57 applies to the resentencing. (*People v. Padilla* (2022) 13 Cal.5th 152, 158.) This Court noted that "once a court has determined that a defendant is entitled to resentencing, the result is vacatur of the original sentence, whereupon the trial court may impose any appropriate sentence." (*Id*. at p. 163.) This means that prior to resentencing, the juvenile is entitled to a "transfer hearing" in juvenile court to determine whether the juvenile will be resentenced as an adult or as a juvenile—even if the juvenile is now well past the age of juvenile court jurisdiction. (*Id*. at p. 168 [citing *People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 310 [applying Proposition 57 retroactively to all nonfinal adjudications]; *People v. Ramirez* (2019) 35 Cal.App.5th 55, 59-60 [affirming an order for a transfer hearing to a defendant who was already well over the age of 25, the cut off for juvenile court jurisdiction].) "If the juvenile court finds it would not have transferred the juvenile, the court will treat the convictions as juvenile adjudications and impose an appropriate disposition." (*Ramirez, supra*, 35 Cal.App.5th at p. 59.)

At that transfer hearing, the juvenile court must evaluate a probation report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, § 707, subd. (a)(1).) The court will

also consider criteria including "the degree of criminal sophistication exhibited by the minor," "the minor's previous delinquent history," and "[t]he circumstances and gravity of the offense alleged in the petition to have been committed by the minor." (*Id*. at § 707, subd. (a)(3).)

If this Court finds that Mr. Luu requires resentencing, his original sentence is vacated, and his case again becomes nonfinal. At this point, *Padilla* instructs that Proposition 57 applies, and he must receive a transfer hearing prior to resentencing to determine whether his resentencing should happen in the trial court or in juvenile court.

CONCLUSION

For the reasons stated, Mr. Luu respectfully requests that the Court affirm the decision of the Court of Appeal.

Dated: January 14, 2026

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 brief contains 12,005 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: January 14, 2026

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 BRIEF ON THE MERITS** as follows:

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700 Civic Center Drive West, 1st Fl. Santa Ana, CA 92701

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Spolin & Dukes, P.C.,
11500 W. Olympic Blvd., Suite 400, Los Angeles, CA 90064

I additionally declare that I electronically submitted a copy of this **ANSWER BRIEF ON THE MERITS** 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 January 14, 2026

/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

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STATE OF CALIFORNIA
Supreme Court of California

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

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