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Supreme Court of California
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DEATH PENALTY

No. S174886 – CAPITAL CASE

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

RICKY RENE MADISON,
Defendant and Appellant.

Los Angeles County Superior Court, Case No. SA062408
The Honorable James R. Dabney, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

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TABLE OF CONTENTS

Page

Introduction 10

Argument 12

I. All of Madison's prior prison term enhancements should be stricken because they constitute an unauthorized sentence 12

II. Madison is not entitled to a full resentencing hearing because section 1172.75 does not apply to a non-final judgment like his, implicate a judgment of death, or apply to stayed enhancements; in any event, remand for resentencing would be futile 14

A. Section 1172.75 does not apply to non-final cases 15

B. This case has not been referred to the sentencing court by the Department of Corrections and Rehabilitation 17

C. Section 1172.75 does not implicate a judgment of death 17

1. Principles of statutory construction 18

2. The plain language of section 1172.75, the legislative history of Senate Bill 483, and common sense establish that resentencing does not apply to a judgment of death 20

D. Section 1172.75 does not apply to the determinate portion of Madison's sentence because the prior prison term enhancement was stayed 24

E. Even assuming Madison is entitled to resentencing under section 1172.75, a remand would be futile 28

III. California's death qualification procedure does not run afoul of Code of Civil Procedure section 229 or *Hicks v. Oklahoma* 34

A. This claim is forfeited and outside the scope of this Court's invitation for supplemental briefing 34

TABLE OF CONTENTS
(continued)

Page

B. This Court's long-standing precedent comports with the purpose of the statute, and the legislature has taken no steps to impose a more literal reading, despite revisions to the statute following those holdings 35

Conclusion 39

TABLE OF AUTHORITIES

Page

CASES

Hicks v. Oklahoma
(1980) 447 U.S. 343 ..... 34, 35, 36

Holland v. Dave Altman's R.V. Center
(1990) 222 Cal.App.3d 477 20

Horwich v. Superior Court
(1999) 21 Cal.4th 272 18

In re H.W.
(2019) 6 Cal.5th 1068 19

People v. Awad
(2015) 238 Cal.App.4th 215 17

People v. Bell
(2020) 47 Cal.App.5th 153 29

People v. Bigelow
(1984) 37 Cal.3d 731 24

People v. Brewer
(2014) 225 Cal.App.4th 98 13

People v. Burgess
(2022) 86 Cal.App.5th 375 15

People v. Canty
(2004) 32 Cal.4th 1266 18

People v. Christianson
(2023) 97 Cal.App.5th 300 ..... 25, 26, 27, 28

People v. Flores
(2020) 9 Cal.5th 371 30

TABLE OF AUTHORITIES
(continued)

Page

People v. Garcia
(2018) 28 Cal.App.5th 961 973 29

People v. Gonzalez
(2008) 43 Cal.4th 1118 18

People v. Gutierrez
(2014) 58 Cal.4th 1354 30

People v. Guzman
(2005) 35 Cal.4th 577 19

People v. Howard
(2010) 51 Cal.4th 15 34

People v. Jennings
(2019) 42 Cal.App.5th 664 13

People v. Jones
(2019) 32 Cal.App.5th 267 30

People v. Langston
(2004) 33 Cal.4th 1237 ..... 12, 13

People v. Lewis
(2021) 11 Cal.5th 952 18

People v. Lopez
(2019) 42 Cal.App.5th 337 14

People v. Lua
(2017) 10 Cal.App.5th 1004 12

People v. Mataele
(2022) 13 Cal. 5th 372 33

People v. Morelos
(2022) 13 Cal.5th 722 ..... 14, 17, 29, 33

TABLE OF AUTHORITIES
(continued)

Page

People v. Newell
(2023) 93 Cal.App.5th 265 15

People v. Poore
(2022) 13 Cal.5th 266 36

People v. Reneaux
(2020) 50 Cal.App.5th 852 14

People v. Renteria
(2023) 96 Cal.App.5th 1276 ..... 26, 27

People v. Reynoza
(2024) 15 Cal. 5th 982 24

People v. Rhodius
(2023) 97 Cal.App.5th 38 ..... 25, 26, 27

People v. Riser
(1956) 47 Cal.2d 566 ..... 35, 36, 37

People v. Saldana
(2023) 97 Cal.App.5th 1270 ..... 25, 26, 27, 28

People v. Santana
(1986) 182 Cal.App.3d 185 20

People v. Stamps
(2020) 9 Cal.5th 685 29

People v. Suarez
(2020) 10 Cal.5th 116 ..... 36, 38

People v. Tice
(2023) 89 Cal.App.5th 246 19

People v. Tran
(2022) 13 Cal.5th 1169 19

TABLE OF AUTHORITIES
(continued)

Page

People v. Valdez
(2018) 28 Cal.App.5th 308 19

People v. Valencia
(1989) 207 Cal.App.3d 1042 29

People v. Zamora
(2019) 35 Cal.App.5th 200 29

Ryan v. Rosenthal
(2017) 3 Cal.5th 124 ..... 37, 38

STATUTES

Code of Civ. Proc., § 229 ..... 34, 36, 37, 38

Code of Civ. Proc., § 1858 19

Pen. Code, § 187 10

Pen. Code, § 190.2, subd. (a)(18) 10

Pen. Code, § 190.3 16

Pen. Code, § 190.4 ..... 16, 37

Pen. Code, § 667 ..... *passim*

Pen. Code, § 667.5 ..... *passim*

Pen. Code, § 1074 ..... 35, 38

Pen. Code, § 1171.1 15

Pen. Code, § 1172.75 ..... *passim*

Pen. Code, § 1203, subd. (e)(4) 10

Pen. Code, § 1385, subd. (b) 29

Pen. Code, § 1385.1 23

TABLE OF AUTHORITIES
(continued)

Page

Pen. Code, §§ 3600 20

Three Strikes Law 10

Welf. & Inst. Code, § 6600 subd. (b) 24

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. VIII 38

COURT RULES

Cal. Rules of Court, rule 4.447 13

Cal. Rules of Court, rule 8.532 16

Cal. Rules of Court, rule 8.642 16

OTHER AUTHORITIES

1A Singer & Singer, Statutes and Statutory Construction (7th ed. 2022) § 21:14 24

https://tinyurl.com/3uxkw2m3 27

https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/ 33

Sen. Bill No. 136 (2021-2022 Reg. Sess.) 13, 14, 15, 26

Sen. Bill No. 285 24

Sen. Bill No. 483 (2021–2022 Reg. Sess.) .....*passim*

Sen. Bill No. 1393 (2017-2018 Reg. Sess.) § 2 ..... 28, 29, 30

Stats. 2019, ch. 590, § 1 13

Stats. 2021, ch. 728 15

TABLE OF AUTHORITIES
(continued)

Page

Stats. 2022, ch. 58, § 12 15

INTRODUCTION

In 2009, a jury convicted appellant Ricky Rene Madison of the first degree murder of Aysha Sly (Pen. Code, § 187; Count 1) and found true a torture-murder special circumstance allegation (§ 190.2, subd. (a)(18)). (15CT 3788; 15RT 2574.)[1] The trial court found true allegations that Madison had suffered two prior serious and/or violent felony convictions within the meaning of the Three Strikes Law (§§ 667, subds. (a)(1) & (b)-(i), 1170.12, subds. (a)-(d)), and that he had suffered nine prior convictions and had served prior prison terms (§§ 1203, subd. (e)(4), 667.5, subd. (b)). (16RT 2944.) On July 17, 2009, Madison was sentenced to death for Sly's murder. (See 15CT 3856-3857, 3873; 17CT 4269-4281.)

As relevant here, the trial court also imposed and stayed a 10-year sentence for prior conviction enhancements and a 9-year sentence for prior prison term enhancements, for a total stayed determinate term of 19 years. (17CT 4279-4281, 4293.) Specifically, the trial court explained that the stay of the determinate term "shall remain during the pendency of [Madison's automatic appeal] and shall become permanent when the [death] sentence on Count 1 is complete." (17CT 4279.) The court further explained that it was its intention "that the sentence of death imposed on Count 1 take precedence over any term of imprisonment imposed in this or any case[,]" and that if the sentence in Count 1 were to be "reversed, modified or

[1] Unless otherwise stated, all further statutory references are to the Penal Code.

reduced, whatever lesser sentence is imposed be served consecutively to the allegations that were previously stayed." (17CT 4279.)[2]

The parties completed the merits briefing in this automatic appeal in 2016. In response to this Court's December 13, 2023, invitation to file supplemental briefing addressing relevant changes in the law applicable to this case since the filing of the reply brief, Madison filed a supplemental brief raising three arguments: (1) his stayed nine-year sentence for prior prison term enhancements must be stricken pursuant to section 1172.75; (2) the matter must be remanded for a full resenting hearing pursuant to section 1172.75; and (3) the failure to comply with the Legislature's clearly expressed limitation on death qualification of California juries violated the separation of powers and Madison's constitutional rights.

Although respondent agrees that the prior prison term enhancements should be stricken in the furtherance of justice, Madison is not entitled to a full resentencing hearing because section 1172.75 does not apply to non-final judgments like his. In any event, section 1172.75 does not implicate the death penalty, nor does it apply to stayed enhancements. And a remand for resentencing would be futile because Madison has already been confined for 15 years—five years longer than the 10-year determinate sentence that is at issue here. With respect to

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[2] Appellant was arrested immediately after he murdered Sly, on December 5, 2006. (8RT 1561-1562, 1569, 1579, 1610.) It appears he has been in custody ever since then. (See e.g. 1CT 142-143.)

Madison's challenge to the death qualification process during jury selection, the claim is forfeited, outside the scope of this Court's invitation for supplemental briefing, and meritless. Therefore, respondent respectfully submits that all nine prior prison term enhancements should be stricken and the judgment, including the judgment of death, should be affirmed in all other respects.

ARGUMENT

I. ALL OF MADISON'S PRIOR PRISON TERM ENHANCEMENTS SHOULD BE STRICKEN BECAUSE THEY CONSTITUTE AN UNAUTHORIZED SENTENCE

Madison claims that his prior prison term enhancements must be stricken pursuant to section 1172.75. (Supp. AOB 9.) Respondent agrees that all nine prior prison term enhancements must be stricken, but as set forth below in Argument II, section 1172.75 does not apply to Madison's sentence. Rather, the enhancements should be stricken in the furtherance of justice because they constitute an unauthorized sentence.

First, at Madison's July 2009 sentencing hearing, the trial court imposed a nine-year prison sentence for prior prison term enhancements pursuant to former section 667.5, subdivision (b), which it then stayed. (17CT 4285-4292.) This was improper. "Once the prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken." (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; accord, *People v. Lua* (2017) 10 Cal.App.5th 1004, 1020 [concluding the trial court imposed an unauthorized sentence by imposing and discretionarily staying the one-year sentence enhancement under

section 667.5, subdivision (b)].) Therefore, staying the enhancement was not a legally valid sentencing option. (*Langston*, *supra*, at p. 1241 [noting the prior prison term enhancement "is mandatory unless stricken"].)[3]

Second, prior to January 1, 2020, section 667.5, subdivision (b), required trial courts to impose a one-year sentence enhancement for each true finding on an allegation the defendant had served a separate prior prison term and had not remained free of custody for at least five years. (Former § 667.5, subd. (b).) Effective January 1, 2020, Senate Bill 136 amended section 667.5 by limiting the prior prison term enhancement to only prior terms for sexually violent offenses, and enhancements based on prior prison terms served for other offenses became legally invalid. (§ 667.5, subd. (b); Stats. 2019, ch. 590, § 1; *People v. Jennings* (2019) 42 Cal.App.5th 664, 681-682.) The amendment was to be applied to all cases not yet final, like the instant one, on January 1, 2020. (*Jennings*, *supra*, 42 Cal.App.5th at pp. 681–682.)

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[3] Where a prior conviction was the basis for both an enhancement pursuant to section 667, subdivision (a), and a prior prison term enhancement pursuant to section 667.5, subdivision (b), California Rules of Court, rule 4.447, permits a trial court to impose and stay execution of the section 667.5, subdivision (b), enhancement. (*People v. Brewer* (2014) 225 Cal.App.4th 98, 104-105.) Here, the trial court appears to have used appellant's two serious and/or violent felony convictions to impose both the 667, subdivision (a), 10-year enhancement and two of the section 667.5, subdivision (b), one-year enhancements. (17CT 4269-4281.) Therefore, two of the nine one-year enhancements were properly stayed. Nonetheless, they must be stricken in light of Senate Bill 136's revision of section 667.5, subdivision (b).

As none of Madison's prior prison terms were served for sexually violent offenses (16RT 2944), the entire nine-year sentence for the prior prison term enhancements imposed by the trial court was invalidated by the recent amendment to section 667.5, subdivision (b). Therefore, this Court should strike the enhancements. (See *People v. Morelos* (2022) 13 Cal.5th 722, 770; [striking the defendant's section 667.5, subdivision (b) enhancements, which had been invalidated by Senate Bill 136] *People v. Reneaux* (2020) 50 Cal.App.5th 852, 877 [same]; *People v. Lopez* (2019) 42 Cal.App.5th 337, 342 [same].)

II. MADISON IS NOT ENTITLED TO A FULL RESENTENCING HEARING BECAUSE SECTION 1172.75 DOES NOT APPLY TO A NON-FINAL JUDGMENT LIKE HIS, IMPLICATE A JUDGMENT OF DEATH, OR APPLY TO STAYED ENHANCEMENTS; IN ANY EVENT, REMAND FOR RESENTENCING WOULD BE FUTILE

Madison claims that his case should be remanded to the trial court for a full resentencing hearing pursuant to section 1172.75. (AOB 10.) His reliance on section 1172.75 is misplaced. Madison is not entitled to resentencing on his capital murder conviction because section 1172.75 does not apply to non-final cases like his, his case has not been referred for resentencing by the Department of Corrections and Rehabilitation, and it does not implicate a judgment of death. With respect to Madison's determinate term, section 1172.75 does not apply to prior prison term enhancements that have been stayed. In any event, a remand for resentencing would be futile because, with all nine prior prison term enhancements stricken and the death judgment unaffected, the only remaining portion of Madison's sentence that the trial court could consider is the section 667, subdivision (a),

serious and/or violent felony conviction enhancement. Because the record clearly indicates that the trial court would not have stricken this enhancement even if it had the discretion to do so, a remand for resentencing would be futile. Therefore, this claim should be rejected.

A. Section 1172.75 does not apply to non-final cases

In 2021, "the Legislature enacted Senate Bill No. 483 (2021–2022 Reg. Sess.) (Senate Bill 483). This bill sought to make the changes implemented by Senate Bill 136 retroactive. . . . It took effect on January 1, 2022, and added former section 1171.1, now section 1172.75, to the Penal Code. (Stats. 2021, ch. 728, § 3; Stats. 2022, ch. 58, § 12.)." (*People v. Burgess* (2022) 86 Cal.App.5th 375, 380.) Section 1172.75 provides a retroactive resentencing procedure "to allow prisoners whose judgments of conviction were *final* a procedure to obtain retroactive resentencing because of these recent changes to the sentencing law." (*People v. Newell* (2023) 93 Cal.App.5th 265, 267, italics added; *Burgess*, *supra*, 86 Cal.App.5th at p. 380; see Stats. 2021, ch. 728; Stats. 2022, ch. 58, § 12.)

Section 1172.75, subdivision (b) directs the Secretary of the Department of Corrections and Rehabilitation to identify inmates currently serving a term for a judgment that includes an enhancement under section 667.5, subdivision (b). Upon receipt of the foregoing information, the superior court "shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a)." (§ 1172.75, subd. (c).) "If the court determines that the current

judgment includes a sentencing enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant." (*Ibid.*)

With respect to resentencing, section 1172.75, subdivision (d)(1), provides that it "shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety." Subdivision (d)(2) states that "the court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing."[4] And subdivision (d)(3) allows the court to consider post-conviction factors such as "the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice."

But section 1172.75, subdivision (d)(2), has no application here because this case remains *non-final* on direct appeal. (Cal. Rules of Court, rules 8.642, 8.532 [defining finality of Supreme Court decisions].) Therefore, there can be no "recall" of sentence

[4] Capital sentencing is not governed by the Rules of the Judicial Council, but by sections 190.3 and 190.4.

under subdivision (c) in the first place. Except for narrow circumstances not relevant here, trial courts generally lose jurisdiction over a case while it is pending on appeal. (*People v. Awad* (2015) 238 Cal.App.4th 215, 222.)

B. This case has not been referred to the sentencing court by the Department of Corrections and Rehabilitation

Section 1172.75, subdivision (b) and (c) set forth the procedures for resentencing a defendant who is serving a term that includes an enhancement imposed pursuant to section 667.5, subdivision (b). As relevant to Madison, the first step in that procedure is a referral from the Secretary of the Department of Corrections and Rehabilitation. No such referral has been made in this case. Accordingly, the procedures in section 1172.75 have no application to Madison.

C. Section 1172.75 does not implicate a judgment of death

Even assuming section 1172.75 could be applied to Madison, a capital defendant's right to "full" resentencing pursuant to section 1172.75 is a matter of first impression.[5] Madison has

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[5] In *People v. Morelos*, *supra*, 13 Cal. 5th at pp. 769-770, which similarly raised issues of the now invalidated section 667.5, subdivision (b) one-year prior prison term enhancements as well as the newly-conferred discretion to strike five-year prior serious felony enhancements pursuant to section 667, subdivision (a), Morelos did not argue that he was entitled to a full resentencing. Rather, this Court agreed "with the parties that a limited remand is appropriate for the trial court to consider whether to exercise its recently conferred discretion." (*Morelos*, *supra*, 13 Cal. 5th. at p. 769.) Indeed, even though section 1172.75 had been codified by the time of this Court's opinion, it was not discussed or applied.

cited no authority, and respondent is aware of none, to support the argument that his judgment of death is subject to resentencing pursuant to section 1172.75, subdivision (d). There is nothing in the language of the statute or the legislative history of Senate Bill 483 that demonstrates any intent to implicate a judgment of death or impact the validity and integrity of the death penalty. Therefore, Madison is not entitled to a full resentencing hearing.

1. Principles of statutory construction

The proper interpretation of a statute is a question of law that is reviewed de novo. (*People v. Lewis* (2021) 11 Cal.5th 952, 961.) The court's fundamental task is "to determine the Legislature's intent so as to effectuate the law's purpose." (*Ibid.*, internal quotation marks omitted.) A court interpreting a statute begins by "examining the statute's words, giving them a plain and commonsense meaning." (*Ibid.*, internal quotation marks omitted.)

"The language is construed in the context of the statute as a whole and the overall statutory scheme, and [the court] give[s] 'significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.'" (*People v. Canty* (2004) 32 Cal.4th 1266, 1276, internal citations omitted; see also *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126 [a court must look to the statute as a whole and adopt the meaning that best serves to harmonize the statute internally]; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276 ["[W]e do not construe statutes in isolation, but rather read every statute with reference to the

entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness."].) A court must decline to read language into a statute that is not there. (Code Civ. Proc., § 1858; *People v. Guzman* (2005) 35 Cal.4th 577, 587 ["'insert[ing]' additional language into a statute 'violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes'"].)

Generally, courts will "consult extrinsic sources, like a statute's history, to interpret a statute only when its language is ambiguous." (*People v. Tran* (2022) 13 Cal.5th 1169, 1220; see also *In re H.W.* (2019) 6 Cal.5th 1068, 1073 ["If the relevant statutory language is ambiguous, [the court] may glean further insight from appropriate extrinsic sources, including the legislative history."].)

"If the meaning of the statute remains unclear after examination of both the statute's plain language and its legislative history, then [the court] will proceed to the third and final step of the interpretive process. [The court will] apply reason, practicality, and common sense to the language at hand. The words of the statute should be interpreted to make them workable and reasonable. [The court] will also consider the consequences that will flow from a particular statutory interpretation." (*People v. Valdez* (2018) 28 Cal.App.5th 308, 313, internal quotations and citations omitted; accord, *People v. Tice* (2023) 89 Cal.App.5th 246, 252.)

2. The plain language of section 1172.75, the legislative history of Senate Bill 483, and common sense establish that resentencing does not apply to a judgment of death

The plain language of section 1172.75 clearly demonstrates that resentencing pursuant to subdivision (d)(2) does not apply to a judgment of death. First, there have been no legislative changes to the capital statutory scheme and its constitutionality has been repeatedly upheld by this Court. Second, relief under section 1172.75 is confined to persons "currently serving a term" for a judgment that includes a prison prior enhancement. (§ 1172.75, subd. (b).) It is not clear that condemned inmates serve a term of imprisonment; rather, the better reading of the law may be that they are detained indefinitely pending execution of their death sentence. (§§ 3600 [male condemned inmates "shall be kept in a California prison until execution of the judgment"]; 3601 & 3602 [regarding female condemned inmates].) This reading of the law has greater force where, as in this case, any determinate or indeterminate term was stayed pending execution of the death judgment. (See *Holland v. Dave Altman's R.V. Center* (1990) 222 Cal.App.3d 477, 482 ["the term 'stay' . . . appears to have a commonly understood meaning as an indefinite postponement of an act or the operation of some consequence, pending the occurrence of a designated event"]; *People v. Santana* (1986) 182 Cal.App.3d 185, 190 ["A stay is a temporary suspension of a procedure in a case until the happening of a defined contingency."].)

Even assuming the existence of an ambiguity, the legislative history of Senate Bill 483 clearly demonstrates that the

legislature never intended for subdivision (d)(2) to implicate a judgment of death. Senate Bill 483 was enacted to address a common sentencing enhancement that adds "one year for each prison prior or felony jail term" and to "ensur[e] that no one is *serving time* on outdated rules." (Sen. Com. on Pub. Safety, April 25, 2021, at pp. 2-3, italics added.) The author of the bill reasoned that "[a] robust body of research finds that long prison and jail sentences have no impact on public safety, yet are documentably injurious to families and communities—particularly Black, Latino, and Native Americans in the United States and California." (*Ibid*.) According to the author, "[p]eople *returning from incarceration* face significant barriers to finding jobs and housing. Family members of incarcerated people struggle with crushing debt from court costs, visitation and telephone fees, and diminished income. The longer the sentence, the more severe these problems tend to be, and the tougher it is for societal reintegration." (*Id*. at p. 3, italics added.) Furthermore, the effect of SB 483 "will modestly reduce prison and jail populations and advance fairness in our criminal legal system." (*Ibid*.)

Notably, the digest from the Senate Rules Committee third reading of the bill on May 20, 2021, specifically states that the bill only "applies retroactively the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled sentences." (Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 483, May 25, 2021, at p. 4.) It

will also result in "reduced state incarceration costs for individuals whom the courts invalidate sentence enhancements and who, absent this measure, would be serving their full term." (Sen. Comm. on Appropriations, analysis of SB 483, May 7, 2021, at p. 2.)

The author of the Senate Floor Analyses of SB 483 noted the "recognition of the harms that long periods of incarceration have on the community safety and well-being," such that SB 483 would "retroactively apply the elimination of those enhancements to people currently held in prisons and jails, ensuring that no one is serving time based on outdated rules." (Sen. Rules Com. on Sentencing: Resentencing to Remove Sentencing Enhancements, Sept. 1, 2021, at pp. 3-4.) The author further indicated that "SB 483 applies the law equally by retroactively applying California's elimination of ineffective three-year and one-year sentence enhancements." (*Id.* at p. 4.)

These legislative findings are directed to determinate sentences—specifically, one and three-year sentence enhancements—not a judgment of death. In fact, the legislative findings specifically state that the bill only applies to prior prison term enhancements. The findings relate to the negative impact lengthy sentences have on defendants' ability to reintegrate into society, as well as community safety. They note the challenges faced by the families of those serving long sentences, the cost saving aspect of the bill, and the resulting reduction in prison and jail populations. None of these findings relate to capital defendants.

Indeed, all capital defendants have been found guilty of a special circumstance, which mandates a sentence of either death or life in prison without the possibility of parole. A trial court cannot sua sponte impose any ameliorative statutes that would reduce a death sentence to life without the possibility of parole. And even if a defendant moved to dismiss all special circumstances in his case, section 1385.1 prohibits judicial dismissal of special circumstances where the crimes were committed after June 5, 1990. In any event, legislation aimed at improving outcomes for incarcerated individuals reentering society does not apply to defendants who can, at most, receive a reduction in their sentence to life without the possibility of parole.

Furthermore, common sense dictates that a capital defendant is not entitled to resentencing of a judgment of death pursuant to section 1172.75. To find otherwise would create a windfall for those capital defendants whose sentences are enhanced by prison priors and leave out those capital defendants who have no such enhancements. Such arbitrary availability of recall and resentencing procedures under 1172.75 would then see defendants who are arguably less suited for resentencing (because they were recidivists prior to committing their capital offenses) receive a second look at the totality of their sentence. Therefore, an ameliorative statute that permits a mitigating

adjustment to a determinate sentencing enhancement cannot be allowed to impact the validity and integrity of a death judgment.[6]

D. Section 1172.75 does not apply to the determinate portion of Madison's sentence because the prior prison term enhancement was stayed

In non-capital cases there is currently a split among the appellate districts regarding whether a defendant whose enhancement was imposed and stayed is entitled to full resentencing under section 1172.75, subdivision (d). This Court

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[6] Senate Bill 285 has amended 1172.75 to include subdivision (f): "Commencing on January 1, 2025, an individual who has been convicted of a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code and sentenced to death or a life term without the possibility of parole, who, as of January 1, 2025, has not had their judgment reviewed and verified by the sentencing court as provided in subdivision (c), is not eligible for recall and resentencing under this section. This subdivision does not apply retroactively." The Attorney General's best reading of this amendment is that individuals who have been convicted of a sexually violent offense (as defined), as well as individuals who have been sentenced to death or life without the possibility of parole, whose sentences have not yet been reviewed under section 1172.75 as of January 1, 2025, are not eligible for recall and resentencing under this statute. (See *People v. Reynoza* (2024) 15 Cal. 5th 982, 991 ["But the word and is not always to be taken conjunctively. It is sometimes, in a fair and rational construction of a statute, to be read as if it were or, and taken disjunctively . . . ."; see *People v. Bigelow* (1984) 37 Cal.3d 731, 755 ["the word 'and' is often carelessly used when 'or' is intended"]; 1A Singer & Singer, Statutes and Statutory Construction (7th ed. 2022) § 21:14 ["There has been . . . such laxity in the use of these terms ['and' and 'or'] that courts have generally said the words are interchangeable and that one may be substituted for the other, if consistent with legislative intent"], some citations and internal quotations omitted.)

has recently granted review of this issue in three non-capital cases: *People v. Rhodius* (2023) 97 Cal.App.5th 38, review granted February 21, 2024, S283169; *People v. Christianson* (2023) 97 Cal.App.5th 300, review granted February 21, 2024, S283189; and *People v. Saldana* (2023) 97 Cal.App.5th 1270, review granted March 12, 2024, S283547.[7]

Respondent respectfully submits that the analysis in *Rhodius*, the lead case, is correct and should be affirmed by this Court. There, Division Two of the Fourth Appellate District held that a defendant was not entitled to full resentencing under section 1172.75, subdivision (d)(1), because the prior prison term enhancement was imposed and stayed. The court stated, "subdivision (d)(1)'s requirement that the resentencing shall result in a lesser sentence than the one originally imposed necessitates the conclusion that the repealed enhancement increased the length of the sentence. The only way for the repealed enhancement to have increased the length of a sentence is for the enhancement to have been imposed and executed. If the repealed enhancement was imposed and stayed, the sentence would not have been increased, as was the case here." (*Id.* at p. 44.) The court found that this interpretation was supported by a

[7] According to this Court's docket, the opening brief in *Rhodius* was filed on July 24, 2024. The answer brief was filed on October 22, 2024. The Supreme Court has issued a grant and hold in *Christianson* and *Saldana* pending resolution of the issue in *Rhodius*. All of these cases concern the recall and resentencing procedures of section 1172.75 for *final* judgments.

statutory analysis of section 1172.75 and the legislative history of Senate Bills 136 and 483. (*Id.* at 42-49.)

In *People v. Christianson, supra,* 97 Cal.App.5th 300, Division One of the Fourth Appellate District reached a different conclusion, holding that a statutory interpretation analysis demonstrated that full resentencing under 1172.75, subdivision (d)(1), applies to enhancements that were both imposed and stayed. The court reasoned, "[w]hen a punishment is stayed, as opposed to stricken, the trial court retains the ability to lift the stay and impose the term under certain circumstance, such as if an alternately imposed term is invalidated. [Citation.] Thus, a stayed sentence enhancement remains as part of the judgment and continues to carry the potential for an increased sentence in certain circumstances, and removal of the stayed enhancement does provide some relief to the defendant by eliminating that potential." (*Id.* at p. 312.)

Finally, in *People v. Saldana*, *supra*, 97 Cal.App.5th 1270, the Third Appellate District agreed with the *Christianson* court, finding that the plain language and legislative intent of section 1172.75 supported a finding that it applies to both imposed and stayed enhancements.[8] The court reasoned, "The presence of a

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[8] The court also relied on *People v. Renteria* (2023) 96 Cal.App.5th 1276. (*Saldana*, *supra*, 97 Cal.App.5th at pp. 1273, 1276.) The decision in *Renteria* predated the decision in *Rhodius*. Renteria was a non-capital defendant who had been sentenced to a determinate term and had appealed a second time after his first appeal resulted in a limited remand to strike all prior prison term enhancements that had been invalidated due to Senate Bill

(continued…)

stayed term or enhancement is not without significance; it is part of the sentence and remains available if its execution becomes necessary and proper for any legally sanctioned reason." (*Id*. at 1278.) In addition, the court rejected respondent's argument that section 1172.75 applied to warrant the striking of a section 667.5 enhancement but not to full resentencing. The court stated, "[e]ither section 1172.75 applies to the defendant or it does not." (*Id*. at 1276.) The court saw "no authority for selectively applying the statute's various requirements." (*Id*. at 1278.)

Assuming section 1172.75 applies to non-final cases like Madison's, this Court should apply the analysis in *Rhodius*. Indeed, in a capital case, a stayed enhancement does not create a potential for an increased sentence. Contrary to the defendants in *Christianson* and *Saldana*, Madison is under a judgment of death. Even if he were to obtain penalty phase relief on direct appeal, and assuming this Court upholds the true finding on the

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136 and to allow the trial court to exercise its discretion whether to strike a prior serious felony enhancement. (*Renteria*, *supra*, 96 Cal.App.5th at pp. 1279-1280.) Renteria raised in his second appeal that the trial court erred in not applying several sentencing statutes that had come into effect after remand. (*Id*. at pp. 1280-1281.) In this different procedural posture, the Attorney General agreed that section 1172.75 entitled Renteria to resentencing based on newly-enacted statutes even though the previously-stricken prison prior enhancements were imposed and stayed in that case. (*Id.* at pp. 1281-1282.) The court in *Renteria* did not undertake a statutory construction analysis of its own. The Attorney General filed a petition for rehearing, arguing that section 1172.75 did not apply to Renteria because his prior prison term enhancements had been stayed. Rehearing was denied. (See https://tinyurl.com/3uxkw2m3.)

torture-murder special circumstance, he would still be subject to a sentence of life without the possibility of parole. And because a prior prison term enhancement does not have the potential to increase the sentence of a defendant who will already spend the rest of his life in prison, *Christianson* and *Saldana* are distinguishable. With respect to the *Saldana* court's concern about the selective application of section 1172.75's requirements, as set forth in Argument I, Madison's prior prison term enhancement must be stricken because it was unauthorized at the time of sentencing and because of the amendment to section 667.5, subdivision(b), not because section 1172.75 rendered it invalid.

E. Even assuming Madison is entitled to resentencing under section 1172.75, a remand would be futile

Should this Court determine that section 1172.75 applies to non-final cases and to enhancements that have been stayed, a remand for resentencing in Madison's case would be futile. With the entirety of the sentence related to the prior prison term enhancements stricken and the judgment of death unaffected, the only remaining sentence for the trial court to consider is the aggregate 10-year section 667, subdivision (a), serious and/or violent felony conviction enhancement. Although Madison is entitled to the retroactive application of the amendment created by Senate Bill 1393, the trial court's statements and sentencing

choices at his original sentencing demonstrate that it would not sentence Madison any differently on remand.[9]

As previously stated, section 1172.75, subdivision (d)(2), requires a resentencing court to "apply any other changes in law that reduce sentences or provide for judicial discretion . . . ." At the time of Madison's original sentencing, trial courts had no authority to strike enhancements proven under section 667, subdivision (a)(1). (*Morelos*, *supra*, 13 Cal. 5th at p. 769; *People v. Valencia* (1989) 207 Cal.App.3d 1042, 1045-1047.) But Senate Bill 1393, which became effective January 1, 2019, removed the prohibition on striking the enhancement by deleting the provision of the former version of section 1385, subdivision (b), which stated: "This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667." (Sen. Bill No. 1393 (2017-2018 Reg. Sess.) § 2.) Because Senate Bill 1393 has taken effect and Madison's judgment is not yet final, the new law applies to Madison retroactively. (*People v. Stamps* (2020) 9 Cal.5th 685, 699; *People v. Bell* (2020) 47 Cal.App.5th 153, 198; *People v. Zamora* (2019) 35 Cal.App.5th 200, 208; *People v. Garcia* (2018) 28 Cal.App.5th 961 973.)

Notwithstanding the retroactive effect of Senate Bill 1393, remand to permit the court to exercise its discretion is not required if "'the record shows that the trial court clearly indicated when it originally sentenced the defendant that it would not in

---

[9] Appellant did not raise a Senate Bill 1393 claim in his supplemental opening brief.

any event have stricken [the] . . . enhancement' even if it had the discretion." (*People v. Jones* (2019) 32 Cal.App.5th 267, 272-273, quoting *People v. McDaniels* (2018) 22 Cal.App.5th 420, 425; *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1391.) To obviate the need for remand, it is not necessary for the trial court to have specifically stated at sentencing that it would not strike the enhancement even if it had the power to do so. (*Jones*, *supra*, 32 Cal.App.5th at p. 273.) In determining whether remand is necessary, this Court's task is to review the trial court's statements and sentencing decisions to infer what the court's intent would have been if it had the discretion to strike the enhancement. (See *People v. Flores* (2020) 9 Cal.5th 371, 432 [remand for trial court to exercise its sentencing discretion to strike a firearm enhancement "would be an idle act" where the trial court stated at sentencing that the defendant "falls into the category of the worst of the worst offenders thereby deserving the ultimate sentence of death."]; *Jones*, *supra*, 32 Cal.App.5th at pp. 273-275 [remand under Senate Bill 1393 not required in light of trial court's statements about the nature of defendant's current crimes and the facts of his felony prior, the court's expression of satisfaction in imposing a lengthy sentence, and the court's imposition of an upper-term sentence].)

Here, the trial court's findings at the hearing on Madison's section 190.4 automatic motion for modification of his death sentence, as well as its ultimate determination that the death penalty was warranted, clearly demonstrate that it would not

have stricken the enhancement even if it had the discretion to do so. The court stated as follows:

> That on December 5, 2006, Ricky Madison took part in the stabbing death of 27-year-old Aysha Sly, a young woman who was employed by [Madison] and with whom he was having an affair.
>
> At the time of stabbing, [Madison] believed Aysha Sly to be pregnant.
>
> During the course of the attack, Aysha Sly was stabbed 172 times. All the stab wounds were antemortem. None showed signs of having penetrated to the hilt of the knife. 116 were characterized as relatively deep, 56 as cuts or punctures. Between 19 to 23 were fatal, and 47 of the wounds appeared to be defensive wounds, indicating that the victim struggled for her life while she was being repeatedly stabbed in a deliberate manner.
>
> While death would not have occurred with minutes – excuse me. While death could have occurred within minutes of receiving the fatal wounds, and unconsciousness before that, the screams by her heard by Brittney Asbury and Brandee Kent support the conclusion that the victim was conscious and struggling for her life during the majority of the assault.
>
> In addition, the vast majority of the wounds were to the upper chest, neck, face, arms, and upper back. Several wounds, however, were to the abdomen, away from the other wounds, a significant detail when one considers [Madison] believed the victim to be pregnant.

(16RT 2957-2958.) The court also noted that Madison "stayed afterwards, while the police were called from 911, for several minutes, and then walked casually away carrying a beer." (16RT 2958.)

The court also referenced Madison's prior felony convictions involving the use of force or violence, stating as follows:

> In 1981, [Madison] stabbed and killed his girlfriend at the time, Rhonda Flintroy, during the course of an altercation in which Ms. Flintroy armed herself with a knife. After falling to the ground, Ms. Flintroy dropped the knife, which [Madison] then picked up and used to stab Ms. Flintroy nine times, killing her.
>
> In 1985, [Madison] shot Rose Anne Olivers Cramer, who was six and a half months pregnant, in the neck with a shotgun. That incident occurred when [Madison's] advances were rebuffed by a friend, Adrein Pimpton. Although Ms. Cramer survived, she was hospitalized for two weeks and suffered serious injuries.

(16RT 2959.)

The court further cited seven additional felony convictions between 1987 and 1996. One was for receiving stolen property and the remaining were for drug offenses. (16RT 2959-2960.) After considering the aggravating and mitigating factors, the court found that the mitigating factors were "substantially outweighed by the circumstances not only of the brutal murder of Aysha Sly, where [Madison] believed he was also killing an unborn baby; but also by the crimes he committed against Rhonda Flintroy and [Rose Anne Olivers Cramers]." (16RT 2960.)[10] The court expressly stated that if the sentence in Count 1 were to be "reduced, whatever lesser sentence is imposed [is to] be served consecutively to the allegations that were previously

[10] The trial court mistakenly named Adrein Pimpton instead of Rose Anne Olivers Cramers. (16RT 2960.) This was corrected in the death warrant. (17CT 4276.)

stayed." (17CT 4279.) The court's statements and sentencing choices thus make it clear that it would not sentence Madison any differently on remand.

Although section 1172.75, subdivision (d)(3), allows a trial court to consider post-conviction factors that warrant a reduction in sentence, Madison fails to cite any such factors in his supplemental opening brief. Finally, Madison has been in prison for 15 years, five years longer than his surviving 10-year determinate term for the section 667, subdivision (a), enhancement.[11] Therefore, if this Court affirms Madison's conviction and death sentence in all other respects, a remand for resentencing would be a waste of judicial resources.

Should this Court determine that a remand is appropriate, it should be limited to allow the trial court to consider only whether it should exercise its discretion to strike the prior serious and/or violent felony conviction enhancements, and, if so, "to amend the abstract of judgment accordingly" (*People v. Mataele* (2022) 13 Cal. 5th 372, 437-438) "and forward it to the Department of Corrections and Rehabilitation" (*Morelos*, *supra*, 13 Cal. 5th at p. 770). "In all other respects," this Court should affirm "the judgment (including the judgment of death . . . ." (*Ibid.*)

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[11] Appellant was received by the California Department of Corrections and Rehabilitation on August 5, 2009. (See https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/.)

III. CALIFORNIA'S DEATH QUALIFICATION PROCEDURE DOES NOT RUN AFOUL OF CODE OF CIVIL PROCEDURE SECTION 229 OR *HICKS V. OKLAHOMA*

Madison asserts that the plain language of California Code of Civil Procedure section 229 limits the exclusion of a juror for bias against the death penalty only if the juror holds "'conscientious opinions *as would preclude the juror finding the defendant guilty*; . . . .'" (Supp. AOB 11, italics added in Supp. AOB.) He argues that this Court's long-standing precedent regarding the application of Code of Civil Procedure section 229 conflicts with the statute's plain language and his right "to the protection from arbitrary deprivation of the procedural protection of the jury trial right enshrined in the state statute." (Supp. AOB 12.) As an initial matter, this claim is forfeited by Madison's failure to raise it in the trial court, and it is outside the scope of this Court's invitation for supplemental briefing. In any event, Madison's claim is meritless and should be rejected.

A. This claim is forfeited and outside the scope of this Court's invitation for supplemental briefing

Madison implicitly concedes that he failed to object to the death qualification process at the time of trial, but he argues that such an objection would have been futile given that this Court "has long held that the statutory language at issue here should be disregarded when jurors who may oppose the death penalty are being selected to try the penalty case as well as determine the defendant's guilt." (Supp. AOB 12.) Madison's argument is unavailing. His failure to object at trial renders this claim forfeited. (*People v. Howard* (2010) 51 Cal.4th 15, 26 [argument that the process used in California for death qualification of

jurors is unconstitutional is waived by appellant's failure to raise it in the trial court].)

Madison's claim also falls outside the scope of this Court's December 13, 2023, invitation for supplemental briefing which stated, "If appellant contends any changes in the law (including any ameliorative statute) *since the filing of the reply brief* are relevant to this appeal, appellant shall serve and file a supplemental opening brief . . . addressing those changes and their relevance to this case." (Italics added.) The instant claim is not based on a change in law. Rather, it is an expansion of the death qualification procedure claims Madison raised in his original opening brief and reply brief, which were "filed prior to counsel's development … of an independent claim based on California's statutory limitation on death qualification and *Hicks v. Oklahoma*, *supra*, 447 U.S. 343." (Supp. AOB 8.) Counsel's development of a claim based on existing law falls outside the scope of this Court's order. Moreover, Madison has not identified any changes in the law that would support his argument. Therefore, this claim should be rejected.

B. This Court's long-standing precedent comports with the purpose of the statute, and the legislature has taken no steps to impose a more literal reading, despite revisions to the statute following those holdings

Madison acknowledges that this Court has repeatedly rejected this literal reading of the statute and its predecessor, Penal Code section 1074, subdivision (8). (AOB 14.) At least as early as 1956, in *People v. Riser* (1956) 47 Cal.2d 566, 575-576, this Court held:

> Admittedly, a literal reading of section 1074, subdivision 8, does not compel the exclusion of jurors incapable of exercising the discretion contemplated by section 190. It would be doing violence to the purpose of these sections of the Penal Code, however, to construe section 1074, subdivision 8, to permit these jurors to serve. It would in all probability work a de facto abolition of capital punishment, a result which, whether or not desirable of itself, it is hardly appropriate for this court to achieve by construction of an ambiguous statute.

(Footnote omitted.) And more recently in *People v. Suarez* (2020) 10 Cal.5th 116, 137-139, this Court affirmed that holding, noting a long line of cases that had rejected Madison's argument. (See also *People v. Poore* (2022) 13 Cal.5th 266, 298-300, affirming *Riser*, *supra*, 47 Cal.2d 566.)

Madison, relying on *Hicks v. Oklahoma* (1980) 447 U.S. 343, 345-346, now urges this Court to reassess those prior holdings and require the literal interpretation to avoid a due process violation. But *Hicks* involved a change in the sentencing statute that had resulted in a mandatory 40-year prison term and which was, in a later case, found to be unconstitutional. On remand for resentencing, the appellate court simply reimposed the prior sentence, finding that it was within the range of lawful punishment. The due process violation in *Hicks* was based on the petitioner's right to have his punishment fixed by a jury and, absent the unconstitutional mandatory term, petitioner could have been sentenced to as little as 10 years. (*Ibid.*)

Unlike *Hicks*, where the statute in question had been found unconstitutional, this Court has repeatedly held that Code of Civil Procedure section 229 and its predecessor can reasonably be

read to comport with the legislative intent only if it includes the ability to strike jurors who have indicated that their ability to consider the possibility of imposing either the death penalty or life without parole is substantially impaired.

In *Ryan v. Rosenthal* (2017) 3 Cal.5th 124, 129, a case involving the statutory interpretation of an appealable order, this Court noted that in addition to the statutory text, it will consider the context, including related provisions and the overall structure of the statutory scheme, to better understand the intended legislative purpose. As part of that contextual review, this Court observed that following several decisions interpreting the statute in a particular manner as to appealable orders, the legislature had repealed and replaced the statute while leaving the relevant language essentially intact. (*Ibid.*)

Enforcing a literal reading of Code of Civil Procedure section 229 does violence to the purpose of the statute by allowing jurors who are incapable of voting for death to sit on a case where the State is seeking the death penalty. As this Court noted in *Riser*, "General views of the social desirability or moral permissibility of capital punishment could logically have no place among the factors influencing the exercise of a discretion so conceived." (*People v. Riser*, *supra*, 47 Cal.2d at p. 575.) Failing to exclude jurors whose general views would substantially impair their ability to exercise sentencing discretion puts such views front and center and violates the sentencing requirements of section 190.4, particularly given the legislative preference for one jury to hear

both guilt and penalty. (*People v. Suarez*, *supra*, 10 Cal.5th at p. 138.)

Here too, as in *Ryan*, this Court's interpretation of the language purporting to limit consideration of a juror's ability to find a defendant guilty was well established prior to the legislative change moving the provision from section 1074 of the Penal Code to section 229 of the Code of Civil Procedure. Knowing the established interpretation of that provision, the legislature has chosen to use the same language while providing no statement that it was limited to the literal reading or that it was in any way meant to overrule this Court's precedent. This Court has repeatedly held that the death qualification process does not violate a defendant's constitutional rights, including the Eighth Amendment right not to be subjected to cruel and unusual punishment, nor does it fail to produce the heightened reliability required for death judgments. (*People v. Suarez*, *supra*, 10 Cal.5th at pp. 138-139, and cases cited therein.) Madison offers no reason to overturn decades of holdings that interpret the statute consistently with the legislative intent to ensure that jurors trying a capital case are not substantially impaired in their ability to consider all relevant factors.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that Madison's nine prior prison term enhancements should be stricken. In all other respects, the judgment, including the judgment of death, should be affirmed.

Respectfully submitted,

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October 28, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** uses a 13 point Century Schoolbook font, is 30 pages long, and contains 7,501 words.

ROB BONTA
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COLLEEN M. TIEDEMANN
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Attorneys for Respondent

October 28, 2024

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DECLARATION OF ELECTRONIC SERVICE
AND SERVICE BY U.S. MAIL & E-MAIL

Case Name: *The People v. Madison*
No.: **S174886**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 28, 2024, I electronically served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on October 28, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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Executive Officer/Clerk of the Court
Los Angeles County Superior Court
Stanley Mosk Courthouse
111 North Hill Street
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For delivery to:
The Hon. James R. Dabney, Judge (Ret.)

Sonja Hardy
Death Penalty Appeals Clerk
Los Angeles County Superior Court
Criminal Appeals Unit
Clara Shortridge Foltz Criminal Justice Center
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Los Angeles, CA 90012

Governor's Office
Attn: Legal Affairs Secretary
State Capitol, First Floor
Sacramento, CA 95814

On October 28, 2024, I electronically served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by transmitting a true copy via this Court's TrueFiling system addressed as follows:

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On October 28, 2024, I served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by transmitting a true copy via electronic mail to:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 28, 2024, at Los Angeles, California.

Marianne A. Siacunco	*/s/ Marianne A. Siacunco*
Declarant	Signature

LA2009507470

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 10/28/2024 by Celia Wong, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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Date

/s/Marianne Siacunco
Signature

Tiedemann, Colleen (208787)
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