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No. S291235

In the Supreme Court of the State of California

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

v.

PHUOC THIEN LUU,
Defendant and Appellant.

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

REPLY BRIEF ON THE MERITS

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INTRODUCTION

In his answer brief on the merits, Luu maintains that Penal Code section 1172.6 should be read to extend resentencing relief to those convicted of *attempted* voluntary manslaughter, in addition to those convicted of murder, attempted murder, and manslaughter, which are expressly listed in the statute.[1] He primarily argues that this reading is supported by construing section 1172.6 together with section 188, which defines now-valid theories of murder liability. But section 188 sheds no light on the proper scope of section 1172.6. The Legislature's amendments to section 188 (and section 189) narrowed some forms of implied-malice murder liability prospectively and did not address any offenses aside from murder, including non-malice offenses like manslaughter. Section 1172.6, on the other hand, extends retroactive relief to a discrete subset of final cases in which a now-invalid murder theory was alleged, even if the defendant was ultimately convicted of an offense other than murder. The Legislature did not open this path for resentencing to every case in which a now-invalid theory of murder was pursued. It instead listed three specific convictions that are eligible for resentencing, necessarily excluding many other possible convictions—including attempted voluntary manslaughter—that could result from a murder prosecution because of a plea bargain or a jury's finding on a lesser-included offense.

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

The legislative history supports what the statutory text plainly indicates. It shows that in extending retroactive relief under section 1172.6, the Legislature focused on providing redress for cases involving the most disproportionate sentences under its approach to implied-malice-murder reform. The Legislature therefore chose to draw the line for purposes of retroactive relief at the three listed offenses, which carry greater sentences than other lesser-related or lesser-included offenses to murder, including attempted voluntary manslaughter. Moreover, it is implausible that the Legislature could have omitted attempted voluntary manslaughter from section 1172.6 eligibility as an oversight or out of a mistaken belief that it would be implicitly covered. One of the primary purposes of Senate Bill No. 775 (SB 775), which added the crime of manslaughter, was to resolve an ambiguity as to whether the former version of the statute implicitly included the crime of attempted murder. Given its acute awareness of that parallel ambiguity, if the Legislature had intended to include attempted voluntary manslaughter it would have done so expressly.

In addition to addressing the statutory construction issue that this Court granted review to resolve, Luu also raises a separate claim that section 1172.6's exclusion of attempted voluntary manslaughter violates principles of equal protection. That claim is not properly before the Court. And in any event, it is meritless because there is a rational basis for the Legislature's line-drawing in section 1172.6. For purposes of extending retroactive relief, the Legislature chose to address convictions

implicating the most disproportionate sentences resulting from prosecutions under now-invalid theories of murder. Equal protection principles did not require the Legislature to take a maximalist approach to the problem, and its solution was a rational means of balancing its reformative goals against the costs and burdens of retroactive relief.

ARGUMENT

I. LUU'S READING OF SECTION 1172.6 IS IRRECONCILABLE WITH ITS TEXT AND IS CONTRARY TO OTHER INDICIA OF LEGISLATIVE INTENT

As explained in the People's opening brief, Luu is ineligible for relief under the plain language of section 1172.6, which limits the availability of resentencing to those convicted of murder, attempted murder, and voluntary manslaughter. In arguing the contrary, Luu claims that the list of offenses in 1172.6 should be understood as implicitly including attempted voluntary manslaughter in light of section 188's revised scope, SB 775's legislative history, and the absurd consequences doctrine. None of his arguments is convincing.

A. Luu's interpretation of section 1172.6 is inconsistent with the plain meaning of its text, even when read in light of section 188

As explained in the People's opening brief, the plain text of section 1172.6 expressly limits retroactive relief to those convicted of murder, attempted murder, or the completed crime of manslaughter at every stage of the resentencing process. (OBM 16-18, 21.) It restricts the right to seek resentencing, through petition or direct appeal, to those convicted of murder, attempted murder, and manslaughter. (§ 1172.6, subds. (a), (g).) It specifies

that the purpose of the petition process is to vacate one of those three convictions where eligibility has been met. (§ 1172.6, subd. (a).) It limits the authority of the courts to vacate convictions only to those three identified offenses. (§ 1172.6, subd. (d)(1).) And it permits a stipulation to resentencing only for those three offenses. (§ 1172.6, subd. (d)(2).)

Notwithstanding the statute's clear text, Luu argues that a "plain, commonsense" understanding of section 1172.6 includes attempted voluntary manslaughter in addition to the listed offenses. (ABM 9-10, 14, 17, 25-26.) He reasons that this is so because section 1172.6 must be read together with the language from Penal Code section 188, subdivision (a)(3) providing that "[m]alice shall not be imputed to a person based solely on his or her participation in a crime." (See ABM 7-10, 14, 17, 21-26.) But reading sections 188 and 1172.6 together does not demonstrate that attempted manslaughter is impliedly covered by section 1172.6.

Section 188 contains no mention of attempted voluntary manslaughter or its inclusion in section 1172.6's ameliorative resentencing scheme. Instead, this provision defines malice "for purposes of" murder convictions under "section 187." (§ 188, subd. (a).) And section 188, subdivision (a)(3) states that its requirements apply specifically to convictions for murder. (§ 188, subd. (a)(3) ["Except as stated in subdivision (e) of Section 189, *in order to be convicted of murder*, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime," italics

added].) Section 188's prohibition of murder theories based upon "imputed malice" cannot fairly be characterized as a reference to attempted voluntary manslaughter, because that crime is necessarily committed without malice. (See *People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1136-1137 ["When a person attempts to kill while acting upon a sudden quarrel or in the heat of passion . . . he or she acts with a mental state that precludes the formation of malice"]; CALJIC No. 8.41 (2004 ed.) ["Every person who unlawfully attempts without malice aforethought to kill another human being is guilty of the crime of attempted voluntary manslaughter"].)

Unlike section 188, section 1172.6 is oriented retrospectively, which necessarily implicates different considerations from the prospective application of revised section 188. Section 1172.6 provides that its retroactive petition process is available not only to those convicted of murder or attempted murder on now-invalid imputed-malice theories—convictions that would be directly prohibited prospectively under revised section 188—but also to those who were prosecuted under such theories but ultimately only convicted of manslaughter. Section 1172.6 states that a petition must show that the charges in the case "allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine" or other imputed-malice theory (§ 1172.6, subd. (a)(1)) and that the petitioner "was convicted of murder, attempted murder, or manslaughter following a trial or accepted a plea offer in lieu of a trial at which the petitioner could have been convicted

of murder or attempted murder" (§ 1172.6, subd. (a)(2)). It is apparent that "the Legislature's aim in the manslaughter context was to make relief available to defendants who were convicted by plea or trial at a time when the prosecution could have pursued a murder charge, but the only way of doing so would have been a now invalid theory of imputed malice." (*People v. Lezama* (2024) 101 Cal.App.5th 583, 590.)

Thus, the Legislature's alteration of section 188's definition of murder for prospective purposes sheds no light on its intent with respect to the scope of retroactive relief under section 1172.6. The latter provision provides an opportunity to relitigate even a conviction for manslaughter—which is wholly unaffected by section 188—if it was previously procured under threat of a now-invalid murder theory. Luu's argument appears to be that this same theory of retroactive relief should be available under section 1172.6 in every case in which a now-invalid theory of murder was alleged, regardless of the ultimate offense of conviction. But that is not what the statute says. Instead, it lists three specific crimes that qualify for retroactive relief. Those crimes do not include attempted manslaughter or any of the many other offenses a defendant might have pled to or been convicted of after being charged with murder. Had the Legislature intended to extend retroactive relief to all cases in which the prosecution pursued a murder theory that is now invalid under revised section 188, as Luu contends, it would have had no need to list any specific crimes of conviction at all. (See *People v. Franco* (2018) 6 Cal.5th 433, 437 [courts "should give

meaning to every word of a statute if possible, and should avoid a construction making any word surplusage"].)

In addition to his reliance on section 188, Luu also points to *People v. Rhodius* (2025) 17 Cal.5th 1050, in which this Court "read[] together the provision making the sentence invalid and the provision that allows resentencing." (ABM 17.) But the statutory scheme at issue in *Rhodius* was markedly different from the one at issue here. *Rhodius* addressed section 1172.75, through which the Legislature sought to retroactively implement its legal invalidation of most prior prison term enhancements formerly imposed under section 667.5, subdivision (b). (*Rhodius*, at pp. 1053-1055.) The question there was whether the term "imposed" included stayed enhancement terms as well as executed terms. (*Id*. at pp. 1054, 1056-1058.) This Court's conclusion that it did rested on the meaning of that term in the context of statutory language specifically declaring prior prison term enhancements "legally invalid." (*Id*. at pp. 1054, 1061-1063.)

In contrast, SB 1437 and SB 775 did not retroactively invalidate any conviction by operation of law, even those based upon an abrogated theory of liability, nor do they implicate the meaning of any term like "imposed." Rather, section 1172.6 set forth a separate remedial scheme for adjudicating the continuing validity of prior convictions, which expressly limited the availability of resentencing to three defined offenses regardless of whether those offenses were directly affected by changes to section 188 and 189. *Rhodius* did not involve a list of offenses

eligible for relief under the statute at issue there, nor does it stand for any broad proposition that a statute retroactively implementing an ameliorative change in the law must be read maximally or even broadly. (See ABM 17; see also *In re Friend* (2021) 11 Cal. 5th 720, 740 ["'no legislation pursues its purposes at all costs"].) The Court in *Rhodius* concluded that the statutory meaning of the term "imposed" included stayed enhancements because of the particular legislative purpose and context of section 1172.75. (*Rhodius*, *supra*, 17 Cal.5th at pp. 1058-1066.) As the statutory structure and language at issue here are different from what this Court considered in *Rhodius*, that decision is of little assistance in resolving the interpretive question in this case.

Luu also relies on *People v. King* (1993) 5 Cal.4th 59, arguing that ameliorative legislation should generally be understood to apply to attempts in addition to any completed crimes that the legislation specifically references. (ABM 19-20.) *King* does not stand for that broad proposition. (OBM 31-32.) There, the Court held that a juvenile defendant was eligible for commitment to the California Youth Authority because Welfare and Institutions Code section 1731.5's reference to first degree murder "by reasonable implication, includes an attempt to commit that crime." (*King*, at pp. 69-70.) That conclusion was based on the context particular to section 1731.5, which involved ambiguities created by "the interplay of different statutory provisions" and anomalies resulting from amendments of one provision and not others. (*Id.* at pp. 65-66, 69.) Using the usual

tools of statutory construction, the Court held that "clear legislative intent" to make juvenile offenders who committed both first degree murder and its corresponding attempt eligible for commitment to the Youth Authority "should prevail over any irrational result caused by the amendment of different statutes in separate codes at different times for unrelated purposes." (*Id.* at pp. 68-69.)

Again, interpretation of section 1172.6 depends on its own language and context, which are different from those addressed in *King*. The particular result in *King* does not translate to a general proposition that references to completed crimes should be understood in other contexts to encompass the attempt form of a specified offense or any other lesser included offenses. (ABM 20; see, e.g., *People v. Ackerman* (2024) 102 Cal.App.5th 1230, 1235-1241 [section 12022.7 great bodily injury enhancement can be imposed alongside attempted voluntary manslaughter conviction, notwithstanding statutory provision that such enhancement "shall not apply to murder or manslaughter" convictions].)

In addition, Luu appeals to Penal Code section 4's instruction that "[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." (ABM 15-16, 17, 21; see also *People v. Leiva* (2013) 56 Cal.4th 498, 506 [court may "reject a literal construction that is contrary to the legislative intent apparent in the statute"].) But the requirement that criminal statutes be

construed to promote justice and effectuate legislative intent is fully consistent with the normal rules of statutory construction that govern the inquiry here, including the principle that "the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265.) This Court has repeatedly reaffirmed in the context of interpreting the Penal Code that "'if the statutory language is not ambiguous, then . . . the plain meaning of the language governs.'" (*People v. Colbert* (2019) 6 Cal.5th 596, 603; see *People v. Henderson* (2022) 14 Cal.5th 35, 51; *People v. Coronado* (1995) 12 Cal.4th 145, 151.) For the reasons fully discussed in the opening brief, the plain meaning of section 1172.6's language, even when read in light of section 188, is that the provision extends retroactive relief to those convicted of "murder, attempted murder, or manslaughter," not those convicted of other possible offenses resulting from a now-invalid murder prosecution, including attempted manslaughter. (See OBM 16-18; see also *Doe v. City of L.A.* (2007) 42 Cal.4th 531, 545 [in construing a statute, courts "may not broaden or narrow the scope of the provision by reading into it language that does not appear in it"].)

B. The legislative history supports the plain meaning of section 1172.6's text

Luu argues that the Court of Appeal below "correctly found that the legislative history supports giving relief to Mr. Luu." (ABM 26-35.) Although examining indicia of legislative intent is unnecessary in light of the unambiguous statutory text (OBM 19-

20), those materials nonetheless support the People's interpretation, not Luu's.

In Luu's view, the Legislature was silent on the interpretive question at issue here, which should be taken as an inference in favor of reading section 1172.6 to include the unstated offense of attempted manslaughter rather than against that reading. He correctly states that there is "no mention of 'attempted manslaughter' or 'attempted voluntary manslaughter' or 'voluntary attempted manslaughter' in the legislative history." (ABM 36.) He then reasons that "attempted voluntary manslaughter was not on the legislative radar" and "the legislature's omission of the phrase 'attempted manslaughter' from its discussions simply confirms that the legislature did not consider it." (ABM 33.) In other words, according to Luu, "nothing in the history or stated intent of SB 1437 or SB 775 demonstrates the Legislature intentionally omitted attempted voluntary manslaughter from relief." (ABM 26; see also ABM 30 ["the People fail to cite authority or anything explicit in the legislative history of section 1172.6 indicating that the legislature . . . had decided to exclude those convicted of attempted voluntary manslaughter from relief"], 33 [arguing that "legislative inaction" is "weak indication of intent" to exclude attempted manslaughter].)

Luu gets the analysis backwards. Where, as here, the Legislature has specifically listed certain offenses as qualifying for retroactive relief, the natural inference is that it has necessarily drawn a distinction between the particularly

identified offenses and all others. Under the *expressio unius* canon, a statute which contains "a specific list or facially comprehensive treatment," provides "reason to conclude an omission is the product of intentional design." (*Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 514.) In this context, an omission "bespeaks a negative implication." (*Chevron U.S.A., Inc. v. Echazabal* (2002) 536 U.S. 73, 81.) Thus, in assessing the kind of specific designation that the Legislature made here, courts "must presume it did so deliberately, giving effect to the distinctions, unless the whole scheme reveals the distinction is unintended." (*Metropolitan Water Dist. v. Superior Court* (2004) 32 Cal.4th 491, 502.) In other words, it is Luu's burden to show that the plain meaning of the statutory language was unintended—that there is a clear legislative intent to include attempted voluntary manslaughter in spite of the text's contrary indication, not merely the absence of an express statement of intent to exclude it.

Luu cannot make that showing because the legislative history confirms the plain language of section 1172.6. To begin with, every pertinent committee report is consistent with the statute's text in referring to the three specific offenses eligible for retroactive relief. (See OBM 19-28.) They indicate that the Legislature enacted SB 775 to ensure that "the petition process through which qualifying defendants can have their convictions of felony murder or murder under the natural and probable consequences doctrine vacated and be resentenced, when specified conditions are satisfied, also applies to: a) Murder

convictions under any theory in which malice is imputed to the defendant based solely on their participation in a crime; b) Attempted murder convictions under the natural and probable consequences doctrine; and, c) Manslaughter convictions." (Assem. Com. On Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) July 6, 2021, pp. 1, 7-9; see Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, pp. 3, 9.) The committee reports also confirm the Legislature's understanding that "[i]f 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." (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, p. 9; see Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 3.)

Further, there are strong inferences to be drawn from the legislative history showing that the Legislature's omission of attempted voluntary manslaughter from the list of qualifying offenses was intentional. Luu ignores that both the Assembly and Senate Committees on Appropriations calculated their estimates for the fiscal impact of processing new petitions under SB 775 based on the total number of current inmates incarcerated for murder, attempted murder, and voluntary manslaughter; not those convicted of attempted manslaughter or any other crime. (Assem. Com. on Appropriations, Rep. on Sen.

Bill No. 775 (2021-2022 Reg. Sess.) Aug. 19, 2021, p. 2; Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 3.) That neither analysis anticipated or identified any costs associated with evaluating the merits of petitions brought by those convicted of attempted voluntary manslaughter or any other criminal offense shows that the Legislature did not intend the enacted relief to apply to such defendants.

In addition, the background of the bill that amended section 1172.6 strongly refutes any inference that the exclusion of voluntary manslaughter from the statute's text was inadvertent or that the Legislature assumed that the offense would be implicitly covered. One of the main purposes of SB 775 was to clarify, in light of a decisional conflict, that attempted murder convictions qualified for retroactive relief under section 1172.6 in addition to convictions for completed murder. (See Assem. Com. On Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) July 6, 2021, pp. 1, 7-9; see Sen. Com. on Public Safety, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 13, 2021, pp. 3, 9.) The Legislature was thus focused directly on the distinction between completed and attempted crimes. In light of that, it is highly improbable that the Legislature would have specified manslaughter in the list of qualifying offenses while either assuming that its attempted form would also be covered or simply overlooking the distinction. (See *In re Greg F.* (2012) 55 Cal.4th 393, 407 ["failure of the Legislature to change the law in a particular respect when the subject is generally before it and

changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended"].)

Luu observes that, in enacting SB 775, the Legislature rejected case law holding that it had previously used its line-drawing authority to exclude relief for attempted murder or manslaughter in SB 1437. (ABM 28-32, citing Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 775 (2021- 2022 Reg. Sess.) Feb. 19, 2021, pp. 3, 7; Assem. Com. on Pub. Safety Analysis on Sen. Bill No. 775 (2021-2022 Reg. Sess.) July 6, 2021, p. 7; *People v. Cervantes* (2020) 44 Cal.App.5th 884, 886 [finding section 1170.95 did not apply to a voluntary manslaughter conviction].) As he sees it, the Legislature's criticism of a narrow interpretation of SB 1437 while expanding the scope of relief to include attempted murder and completed manslaughter should be viewed as evidence that eligibility under the statute is not limited to the text as it is now written. (ABM 28-32.)

Luu draws the wrong conclusion from the circumstances of SB 775. The crucial takeaway is not the Legislature's view on the correctness of now-superseded caselaw, but the remedy it chose to employ in light of its awareness of the previous ambiguity. In enacting SB 775, the Legislature clarified that it intended the relief it had fashioned to apply more broadly than was written into the changes enacted through SB 1437; it effectuated that intent by passing a new law to amend the wording of section 1170.95 (now section 1172.6) in order to expand eligibility to two additional specified offenses. (See *People v. Arellano* (2024) 16 Cal.5th 457, 468 [describing SB 775 as

"subsequently amend[ing] the statute to expand the categories of those eligible for relief"]; ABM 22 [acknowledging that "the legislature enacted Senate Bill 775 to amend section 1170.95 and clarify" that relief applied more broadly].) Contrary to Luu's understanding, this action was not a repudiation of the Legislature's line-drawing authority. (ABM 30-32, 36.) Rather, it was an acknowledgment that SB 1437 as written did not draw the accurate line between qualifying and nonqualifying offenses, and that further legislative action was necessary to align the words of the statute with the purposes of the legislation and legislative intent. Against that backdrop, the fact that the Legislature chose not to include attempted manslaughter when it expanded the list of eligible offenses strongly suggests that it concluded that doing so was not necessary to achieve its policy aims. (*Greg F.*, *supra*, 55 Cal.4th at p. 407.) Given that SB 775 was passed specifically to resolve ambiguities regarding the scope of qualifying offenses, it is implausible that the Legislature would have intended to add attempted manslaughter by implication, rather than expressly.

Luu's position that the legislative history supports his reading of section 1172.6 is based on a misunderstanding about the breadth of the Legislature's reforms in this area. He erroneously suggests that the Legislature intended to entirely eliminate theories of liability based upon the natural and probable consequences doctrine or imputation of a perpetrator's culpability based on participation in a crime. (ABM 35; see also ABM 27 [describing the natural and probable consequences

doctrine as "defunct" and claiming that his liability rested on "the precise theory of culpability" which "legislative history shows that the legislature intended to invalidate"].) But SB 1437 and SB 775 did not invalidate natural and probable consequences and imputed mens rea theories of liability altogether. It left them unaltered for a number of serious criminal offenses, including lesser-included and lesser-related offenses of murder and attempted murder. (OBM 22-24; *People v. Gentile* (2020) 10 Cal.5th 830, 849; see also Couzens et al., *Sentencing California Crimes* (The Rutter Group), § 23:49, Accomplice liability—Elimination of the natural and probable consequences doctrine.)[2]

Similarly, the Legislature did not take a maximalist approach when retroactively extending relief based on the changes to sections 188 and 189. (See ABM 29 [section 1172.6's "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"].) Rather, the legislative materials instead reflect an intent to target a small list of the harshest-punished homicide crimes for retroactive relief, where convictions obtained in light of now-invalid murder theories would result in a substantial disproportionality between the culpability of an offender and the resulting penalty. (OBM 19-25; see Stats. 2018, ch. 1015, § 1,

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[2] Although it could have done so, the Legislature elected not to alter these theories as applied to a number of serious and violent felonies, including torture, mayhem, and felony assault likely to cause great bodily injury. (See OBM 23; *People v. Abelino* (2021) 62 Cal.App.5th 563, 581-582.)

subd. (d); Assem. Com. on Appropriations, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Aug. 8, 2018, p. 2; Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Apr. 24, 2018, pp. 4, 6.) Luu's stayed conviction for attempted manslaughter does not implicate this concern to the same degree as the listed offenses, as his offense may result in a sentence of as little as one-and-a-half years in state prison, and never exceeds a sentence of five-and-a-half years. (§§ 193, subd. (a), 664, subd. (a).)

C. The absurd consequences doctrine does not support Luu's reading of section 1172.6

As explained in the opening brief, faithful application of section 1172.6's plain and unambiguous meaning does not run afoul of the absurd consequences doctrine. (OBM 29-35.) The absurdity exception to the plain meaning rule is reserved only for those rare circumstances where departure from a literal interpretation of the statute is compelled because its application would "frustrate the manifest purpose of the legislation" or would otherwise be "repugnant to the general purview of the act." (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340; *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 356.) The doctrine is a tool to be used in ascertaining legislative intent, not superseding it. (*People v. Leiva* (2013) 56 Cal.4th 498, 506.) It is not to be used to second-guess the wisdom of the Legislature's choices or rewrite the statute to fashion a policy the court believes would better accomplish the law's policy aims. (*In re D.B.* (2014) 58 Cal.4th 941, 948; *People v. Leal* (2004) 33 Cal.4th 999, 1008.)

Luu argues that excluding him from seeking retroactive relief under section 1172.6 would result in absurd consequences because (1) his case exemplifies the situation described in the legislative history in which "the least culpable people are still serving decades in prison"; (2) he would be entitled to seek relief if the victim had died, but is not because the victim lived; and (3) his codefendant in the same crime, who was convicted of attempted murder, was eligible for relief while he was not. (ABM 38-40.) But these arguments depend on Luu's overbroad understanding of legislative intent. Given that the Legislature did not aim to extend retroactive relief as widely as possible under section 1172.6, Luu's arguments fail to show that the Legislature could not have intended to draw the line where it did.

First, Luu does not fall into the category of offenders that the Legislature focused on for retroactive relief—those who potentially face "decades in prison" because they were convicted of the most serious offenses despite their now-less-culpable conduct. The sentence for Luu's attempted manslaughter conviction was stayed and could not have exceeded five-and-a-half years. (CT 96, 98; §§ 193, subd. (a), 664, subd. (a).) Luu's lengthy sentence was the result of a firearm enhancement attached to his conviction for attempted robbery—both of which are indisputably unaffected by the changes to sections 188 and 189. (Opn. 6; CT 96-99, 179-182.) And while Luu presumably seeks to use the section 1172.6 petition process as a means to reopen his final judgment and receive the retroactive ameliorative benefits of *other* statutory changes, the

unavailability of this avenue for relief does not establish that section 1172.6's inapplicability to attempted manslaughter is absurd or contravenes the Legislature's intent.

Luu's second and third arguments are premised on the assertion that he would be in a better position for purposes of seeking relief under section 1172.6 had he committed some other, *more culpable* offense. But that defeats rather than supports his position. As noted, the primary policy concern in passing SB 1437 and SB 775 was to restore proportionality between an offender's degree of culpability and the corresponding punishment. (OBM 19-22; *People v. Montes* (2021) 71 Cal.App.5th 1001, 1008 ["The enactment of Senate Bills 1437 and 775 . . . shows the Legislature's recognition of the need for statutory changes to more equitably sentence offenders in relation to their involvement in the criminal activity"].) In extending retroactive relief, it makes sense that the Legislature chose to focus on cases involving the most disproportionate sentences under its theory of reform.

Because Luu was convicted of attempted manslaughter based on his attempt to participate in a home invasion robbery, the penalty he faced was commensurate with his criminal intent and was akin to the punishment imposed for his underlying target crime. (See §§ 193, subd. (a), 664 [attempted voluntary manslaughter punishable by imprisonment for one-and-a-half, three, or five-and-a-half years]; §§ 212.5, 213, subd. (a)(1)(A), 664 [attempted first degree robbery in concert punishable by imprisonment for one-and-a-half, three, or four-and-a-half

years].) Had the victim died, however, his participation in the underlying offense would carry a far harsher consequence, potentially exposing him to a sentence of 11 years in state prison for voluntary manslaughter or an indeterminate sentence of 15 or 25 years to life in prison for murder. (§§ 190, 193, subd. (a).) It is not absurd to conclude that the latter scenario raises a substantially greater risk of punishment that is unduly severe relative to the offender's culpability; nor is it absurd for the Legislature to redress that inequity while leaving other, lesser convictions undisturbed.

The same is true with respect to the difference in treatment between Luu and his non-shooter accomplice. Although both Luu and his accomplice were convicted of a shooting based on their participation in the underlying robbery, their two different juries reached different conclusions regarding the offense supported by the evidence; while Luu's conviction for attempted voluntary manslaughter is punishable by a maximum of five-and-a-half years, his accomplice could have faced a life sentence if the attempted murder was premeditated and a prison term up to nine years if it was not. (§ 664, subds. (a), (c).) In light of the significant difference in potential punishment for the two participants—despite the fact that both were convicted based on their comparable mental states and the actions of another perpetrator—extending resentencing relief to one conviction and not the other comports rather than conflicts with legislative intent. That is especially true given that the Legislature's line-

drawing necessarily operates in the abstract and must tolerate some potentially anomalous outcomes at the margins.

D. It is not necessary to resort to the rule of lenity

Luu also invokes the rule of lenity, arguing that any ambiguity in section 1172.6 must be construed favorably to him. (ABM 40-42.) But "[t]he rule of lenity does not apply every time there are two or more reasonable interpretations of a penal statute." (*People v. Manzo* (2012) 53 Cal.4th 880, 889.) Instead, the rule applies "only if the court can do no more than guess what the legislative body intended; there must be an *egregious* ambiguity and uncertainty to justify invoking the rule." (*Ibid.*, internal quotation marks omitted.) In other words, "the rule of lenity is a tie-breaking principle, of relevance when two reasonable interpretations of the same provision stand in relative equipoise." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1102, fn. 30, internal quotation marks omitted.)

This is not a case in which the Court is faced with equally reasonable competing interpretations of the statute. Far from merely being "susceptible to the interpretation urged by the People" (ABM 42), application of ordinary principles of statutory construction show that the Legislature's exclusion of attempted voluntary manslaughter from the list of eligible offenses in section 1172.6 was intentional, not the result of oversight or assumption. Because the straightforward language of the statute and its legislative history resolve the question of statutory interpretation here, resort to the "tie-breaking" rule of lenity is not necessary. (*Manzo*, *supra*, 53 Cal.4th at p. 889.)

II. LUU'S EQUAL PROTECTION CLAIM IS NOT PROPERLY BEFORE THE COURT AND IS WITHOUT MERIT

In addition to addressing the statutory construction argument presented in the People's opening brief, Luu raises a separate claim that excluding those convicted of attempted voluntary manslaughter from eligibility under section 1172.6 violates equal protection. (ABM 42-47.) The claim is not properly before the Court and, in any event, it is meritless.

A. The issue is not properly before the Court

Luu's equal protection claim is outside the scope of the question presented on review. This Court granted review solely on the issue of statutory interpretation that was addressed in the Court of Appeal's opinion: "Is relief under Penal Code section 1172.6 available to those convicted of attempted voluntary manslaughter?" (See Petn. 7; Order Granting Petn.) Luu had the opportunity to "ask the court to address additional issues" in his answer to the petition for review but chose not to do so. (Cal. Rules of Court, rule 8.500(a)(2); see Answer to Petn. 3-7.) Unless otherwise ordered by this Court, "the parties must limit their briefs and arguments to those issues" identified or fairly included within the question on which review is granted. (Cal. Rules of Court, rule 8.516(a)(1).) This rule exists for good reason, as allowing Luu to introduce a new issue for review in his answer brief on the merits—and thereby compelling the People to respond within the limited confines of the reply—would not provide "reasonable notice and opportunity to brief and argue" a potentially outcome-determinative question. (Cal. Rules of Court, rule 8.516(b)(2).)

The constitutional claim Luu raises is separate from the question of statutory interpretation decided by the Court of Appeal below, not fairly encompassed within it. And there is no compelling need for this Court to address that separate issue. No intermediate appellate court has issued a published opinion on the question of whether equal protection requires that defendants convicted of attempted voluntary manslaughter be eligible for resentencing relief under section 1172.6. And this Court has previously denied review of that question in cases where appellate courts rejected such equal protection claims in unpublished opinions. (See *People v. Ernst*, S283030; *People v. Haro*, S283097.)

This case would also make a poor vehicle for addressing Luu's equal protection claim. Luu concedes that he did not raise the issue before the trial court when arguing his eligibility under the statute. (ABM 43-44; CT 125-133; 2RT 28-33, 36-37.) That failure deprived the trial court of the opportunity to rule on the issue and forfeited it on appeal. (3RT 49-54; see *People v. Alexander* (2010) 49 Cal.4th 846, 880, fn. 14 ["Defendant did not raise his equal protection claim in the trial court. . . . The claim therefore is forfeited"]; *People v. Rogers* (2006) 39 Cal.4th 826, 854 [declining to address the merits of equal protection and other constitutional claims, where "defendant forfeited each of these claims by failing to raise them at trial"].) And when he raised his equal protection claim on appeal, the Court of Appeal below declined to rule on it under the constitutional avoidance doctrine. (ABM 43; Opn. 8, fn. 3, citing *Cal. Teachers Assn. v. Board of*

Trustees (1977) 70 Cal.App.3d 431, 442 ["Courts should follow a policy of judicial self-restraint and avoid unnecessary determination of constitutional issues"].) Consequently, there is no reasoned opinion from the Court of Appeal that would aid in this Court's examination of the issue, nor did either court below even reach a decision on the merits of the question that this Court could review.

B. Section 1172.6's exclusion of attempted voluntary manslaughter does not violate equal protection

In any event, Luu's equal protection claim is without merit. The right to equal protection of the laws is violated when "the government . . . treat[s] a [similarly situated] group of people unequally without some justification." (*People v. Chatman* (2018) 4 Cal.5th 277, 288.) In assessing this type of challenge, courts will "presume the constitutionality of a legislative act, resolving all doubts in its favor, and . . . must uphold it unless a conflict with a provision of the state or federal Constitution is clear and unquestionable." (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 279-280, quotation marks and citation omitted.) "Coupled with a rebuttable presumption that legislation is constitutional, this high bar helps ensure that democratically enacted laws are not invalidated merely based on a court's cursory conclusion that a statute's trade-offs seem unwise or unfair." (*Chatman*, at p. 289.)

Where, as here, the challenged law "neither draws a suspect classification nor burdens fundamental rights," courts ask only whether there is a "*rational* relationship between [the] disparity in treatment and some legitimate government purpose."

Chatman, *supra*, 4 Cal.5th at pp. 288-289; *People v. Turnage* (2012) 55 Cal.4th 62, 74.) As Luu concedes (ABM 45), rational basis review governs his claim because "[a] defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.'" (*People v. Wilkinson* (2004) 33 Cal.4th 821, 838.) A defining feature of rational basis review is its "deferential nature." (*Turnage*, at p. 77.) Under that standard, "[i]f a plausible basis exists for the disparity, courts may not second-guess its wisdom, fairness, or logic." (*Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871, 881, internal quotation marks omitted.) "Nor does the logic behind a potential justification need to be persuasive or sensible—rather than simply rational." (*Chatman*, *supra*, 4 Cal.5th at p. 289.) Courts "may engage in 'rational speculation' as to the justifications for the legislative choice"—regardless of whether "such speculation has 'a foundation in the record'"—and a challenger must "'negative every conceivable basis' that might support the disputed statutory disparity." (*Johnson*, at p. 881, citations omitted.)

Equal protection analysis historically proceeded in two steps, separately analyzing whether the identified groups were "similarly situated" and whether there was a "rational basis" for the distinction. (*People v. Hardin* (2024) 15 Cal.5th 834, 848.) But this Court recently clarified that when plaintiffs raise equal protection challenges to "laws drawing distinctions between identifiable groups or classes of persons," the proper inquiry is only whether the facial difference in treatment is adequately

justified under rational basis review. (*Id.* at pp. 848-851.) Here, there is no equal protection violation because the complained-of distinction bears a rational relationship to a legitimate state purpose.

The Legislature had a rational basis for drawing the line where it did for purposes of retroactive relief under section 1172.6 because the penalties for attempted voluntary manslaughter are not comparable to the penalties for murder, attempted murder, and voluntary manslaughter. As detailed in the opening brief and in Argument I, *ante*, the Legislature's focus in amending sections 188 and 189 was on restoring proportionality between culpability and punishment with respect to imputed malice theories of murder. (OBM 19-24.) It sought to remedy the "situation where the least culpable people are still serving decades in prison even though they should be eligible for relief." (See Stats. 2018, ch. 1015, § 1, subd. (d); Assem. Com. on Appropriations, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Aug. 8, 2018, p. 2; Senate Committee on Public Safety Analysis of SB 775, Feb. 19, 2021, at p. 3.)

Making retroactive relief available in light of those changes required the Legislature to balance the importance of its reformative goals against the costs and burdens of revising final judgments. (See, e.g., Assem. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Aug. 19, 2021, p. 2 [assessing fiscal impact]; Sen. Com. on Appropriations, Rep. on Sen. Bill No. 775 (2021-2022 Reg. Sess.) Apr. 30, 2021, p. 3 [same]; *In re Martinez* (2017) 3 Cal.5th 1216, 1222 [noting "the

important public interest in the finality of judgments," internal quotation marks omitted].) The offenses the Legislature chose to list are those implicating cases where the punishment is most likely to be disproportionate to culpability under its imputed-malice reforms. Murder, attempted murder, and manslaughter are punished more severely than other lesser included or lesser related offenses, including attempted voluntary manslaughter. (§§ 190, 193, subd. (a), 664, subds. (a), (c).)

The Legislature's focus on the most prominent aspects of the problem for purposes of extending retroactive relief does not offend equal protection. "'Nothing compels the state to choose between attacking every aspect of a problem or not attacking the problem at all. Far from having to solve all related ills at once, the Legislature has broad discretion to proceed in an incremental and uneven manner without necessarily engaging in arbitrary and unlawful discrimination.'" (*People v. Williams* (2024) 17 Cal.5th 99, 125, internal quotation marks and citations omitted.) "A classification is not arbitrary or irrational simply because there is an imperfect fit between means and ends, or because it may be to some extent both underinclusive and overinclusive." (*Ibid.*, internal quotation marks and citations omitted.) Accordingly, section 1172.6's focus on those convicted of the three listed offenses is rational and falls squarely within the Legislature's broad authority to set criminal justice policy and determine appropriate punishment for each specific crime. (*Wilkinson*, *supra*, 33 Cal.4th at pp. 837-838; see *Johnson*, *supra*, 60 Cal.4th at p. 887.)

Luu argues that the Legislature could have had no rational basis for excluding attempted voluntary manslaughter from the list of offenses eligible for retroactive relief under section 1172.6 because to do so would be contrary to the statute's "purpose of lenity." (ABM 46-47.) Of course, "'no legislation pursues its purposes at all costs.'" (*Friend*, *supra*, 11 Cal. 5th at p. 740, quoting *Rodriguez v. United States* (1987) 480 U.S. 522, 525-526.) Rather, "'[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice . . . .'" (*Friend*, at p. 740.) And, as explained, equal protection does not force and all-or-nothing choice on the Legislature. (*Williams*, *supra*, 17 Cal.5th at p. 125.) Thus, although the purpose of section 1172.6 is undoubtedly remedial, the provision is not unconstitutional simply because it could have been written in an even more remedial way.

Luu's reliance on the decision in *People v. Heard* (2022) 83 Cal.App.5th 608 is also unpersuasive. (See ABM 44-47.) Setting aside whether *Heard* was correctly decided, it does not stand, as Luu asserts, for a general proposition that the State may not treat "less culpable offenders more harshly under a statute that has the purpose of treating offenders with lenity." (ABM 45.) The equal protection inquiry is context-specific. And at least as applied here, that broad rule would fly in the face of the well-established principle that equal protection does *not* require the Legislature to address every aspect of a problem comprehensively or calibrate its classifications with exquisite precision.

The circumstances addressed in *Heard* were markedly different from the ones at issue here. *Heard* addressed whether, under equal protection principles, section 1170, subdivision (d)'s recall provision for juveniles serving life-without-parole terms must also extend to juveniles serving lengthy terms for lesser offenses that are the functional equivalent of life without parole. (*Heard*, *supra*, 83 Cal.App.5th at p. 633.) Luu's case involves no similar functional equivalence. Luu's maximum potential sentence of five-and-a-half years for attempted manslaughter is by no means the functional equivalent of the punishments imposed for the three offenses eligible for relief under section 1172.6. The question here is whether the Legislature could rationally choose to extend retroactive relief to defendants subject to those more serious punishments without also extending it to defendants, like Luu, who were punished less severely. It was rational, and therefore constitutional, for the Legislature to address the problem of disproportionate punishment under now-abolished imputed-malice theories by focusing on those cases involving the most pronounced disproportionality.

III. THIS COURT NEED NOT ADDRESS THE APPLICATION OF PROPOSITION 57 TO LUU'S CASE

Luu argues that, "[i]f the Court finds that Mr. Luu is eligible for relief under section 1172.6," it should also "confirm that his now non-final sentence requires the case go before the juvenile court for a transfer hearing pursuant to Proposition 57." (ABM 47-49.) Like his equal protection claim, this claim is not properly before the Court. (See Arg. II.A., *ante*.) Though it appears likely

that he would be entitled to this remedy if he is ultimately entitled to relief, addressing that issue would be premature at this juncture. Even if the Court were to decide the issue presented in this appeal in Luu's favor, its decision will resolve only whether Luu was convicted of an offense that makes him eligible to *seek* section 1172.6 resentencing. It would not determine whether Luu is actually entitled to relief under that statute, which is what would implicate the further question whether Luu is entitled to a juvenile transfer hearing.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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March 5, 2026

CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY BRIEF ON THE MERITS** uses a 13-point Century Schoolbook font and contains 7648 words.

ROB BONTA
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/s/ Michael D. Butera
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March 5, 2026

DECLARATION OF ELECTRONIC SERVICE

Case Name: **People v. Luu**
Case No.: **S291235**

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 correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On March 5, 2026, I electronically served the attached **REPLY BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 5, 2026, at Los Angeles, California.

Valerie Thompson	/s/ *Valerie Thompson*
Declarant	Signature

SD2025802405

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 3/5/2026 by Biying Jia, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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Lower Court Case Number: **G063066**

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