No. S271049

In the Supreme Court of the State of California

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

v.

AHMED MUMIN,
Defendant and Appellant.

Fourth Appellate District, Division One, Case No. D076916
San Diego County Superior Court, Case No. SCD261780
The Honorable Kenneth K. So, Judge

RESPONDENT'S CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE

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INTRODUCTION

The parties' briefing before the Court addresses the appropriate standard for determining when a jury may be instructed on a kill zone theory of attempted murder liability. Amici, the Office of the State Public Defender (OSPD) and Innocence Rights of Orange County (IROC), argue for the elimination of the kill zone theory entirely. They also augment Mumin's arguments about the instructional standard as well as ask that, insofar as the Court does not eliminate the kill zone theory, it impose additional limitations on that theory.

Amici's argument that the kill zone theory should be completely eliminated is not properly before the Court because it is outside the scope of the issue presented and was not addressed by the court or the parties below. In any event, the argument is unpersuasive. Amici have not shown that lower courts are ill-equipped to implement the kill zone theory as formulated by this Court in *Canizales*, nor have they shown that the theory is so inflammatory or inequitable in its implementation as to justify discarding it.

Amici's arguments about the proper standard that a court should use in determining whether the trial evidence warrants a kill zone instruction have largely been addressed in the parties' briefing. Amici offer no new persuasive reasons for departing from the usual substantial evidence standard that governs such instructional issues.

Finally, the limitations on the kill zone theory proposed by amici are unnecessary and might even cause confusion. This

Court's articulation of the kill zone theory in *Canizales* already accounts, in general terms, for the concerns raised by amici. And the proposed, more-specific limitations—about the type of weapon used or the physical nature of the zone of harm—would raise their own difficult questions about defining those concepts for a jury. As the kill zone is highly dependent on the circumstances of a particular offense, the issues raised by amici are better addressed on a case-by-case basis.

ARGUMENT

I. ELIMINATION OF THE KILL ZONE THEORY ALTOGETHER IS UNWARRANTED, NOR IS THAT ISSUE PROPERLY BEFORE THE COURT

Amici argue that the kill zone theory should be eliminated as a formal legal doctrine because lower courts continue to incorrectly and inconsistently apply it, despite this Court's clarification of the theory in *Canizales*. (OSPD Br. 10-17; IROC Br. 14-20.) The State Public Defender argues that jury instructions should not be given on the kill zone theory, nor should the inference that a defendant's specific intent to kill every person in the area where the primary target is located be labeled a "kill zone" theory. (OSPD Br. 16-17.) Nevertheless, she concedes a prosecutor may still argue that inference to the jury. (OSPD Br. 17.) IROC goes further and argues that the kill zone theory should be "entirely rejected." (IROC Br. 12-14.) The People agree that a conflict in authority has arisen after *Canizales* on the appropriate standard governing whether a kill zone instruction should be given at trial and that clarification of that issue is appropriate. But elimination of the theory is

unwarranted, especially in light of the opportunity that this case affords the Court to address any remaining ambiguity about the kill zone theory.

Notably, Mumin himself does not argue that the theory should be eliminated. Mumin's Petition for Review identified the Issue Presented as follows:

> Does the Court of Appeal's decision affirming Mumin's attempted murder convictions based on the prosecution's "kill zone" theory of liability directly contravene this Court's decision in *People v. Canizales* (2019) 7 Cal.5th 519 and create an untenable conflict among the lower courts of appeal concerning the proper standards of review in resolving challenges to attempted murder convictions based on this theory of liability?

(Pet. for Review 5.) A question about whether the Court of Appeal violated *Canizales* and created a conflict concerning the proper standard of review does not "fairly include[]" the question of whether elimination of the kill zone theory altogether is warranted—an issue that the court and the parties below never addressed. (Cal. Rules of Court, rule 8.516(b)(1).)

This Court does not "ordinarily consider questions not raised by the appellate record and put forward only by an amicus curiae." (*In re Marriage of Oddino* (1997) 16 Cal.4th 67, 82, fn. 7.) Amici "must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered." (*San Franciscans for Reasonable Growth v. City & Cty. of San Francisco* (1989) 209 Cal.App.3d 1502, 1515, fn. 10, internal quotation marks and citation omitted; see, e.g., *Professional*

Engineers in California Government v. Kempton (2007) 40 Cal.4th 1016, 1047, fn. 12 [refusing to address amicus' arguments, because issue was not raised by the parties]; *East Bay Asian Local Dev. Corp. v. State of California* (2000) 24 Cal.4th 693, 700, fn. 4 [similar, and citing *San Franciscans for Responsible Growth*].)

But amici's arguments in support of eliminating the theory are unavailing in any event. Most fundamentally, amici have not shown that "lower courts continue to struggle with the application of the theory" so as to justify elimination of the kill zone theory. (OSPD Br. 13; see IROC Br. 15.) Of the 35 published and unpublished decisions pointed to by the State Public Defender as purportedly reflecting erroneous application of the kill zone theory and confusion in the lower courts, all but three were tried before *Canizales* and therefore did not have the benefit of *Canizales*'s clarification of the law. (OSPD Br. 13, 35-36.)[1] The cited appellate reversals only demonstrate that *Canizales* has in fact clarified when a kill zone instruction may be

[1] The cases cited by the State Public Defender consist of the 34 reversals listed in Appendix A to her brief and *People v. Mariscal* (2020) 47 Cal.App.5th 129, which is discussed on page 14 of that brief. (OSPD Br. 13-14, 35-36.) The People have relied on the opinions in the cited cases and their court dockets to determine whether the Court of Appeal decision, filing of the notice of appeal, or trial in each case preceded *Canizales*. The opinions and docket of *People v. Perez* (2022) 78 Cal.App.5th 192, *People v. Morris* (Aug. 11, 2021, D076312) 2021 WL 3523405, and *People v. Lazo* (Oct. 4, 2021, B304615) 2021 WL 4519937, do not indicate when they were tried relative to *Canizales*.

provided and that the courts of appeal have properly recognized erroneous applications of the theory in the wake of *Canizales*.

IROC also argues that the kill zone theory should be jettisoned because it is vaguely defined and "does not lend itself to uniformity by lower courts" based on the "infinite number of factual scenarios" that courts must address under the theory. (IROC Br. 17-18.) In a similar vein, the State Public Defender argues that the kill zone theory is "an elastic theory of liability" that is frequently employed "where it is neither applicable nor necessary." (OSPD Br. 13-16.) That the applicability of the kill zone theory will depend on the particular facts of each case, however, is not a reason to discard it. The theory remains helpful to juries where it does apply, and this Court's guidance in *Canizales* adequately channels its proper application.

As this Court recognized in *Canizales*, whether a kill zone instruction is supported by the evidence and may be the basis for an attempted murder conviction is a fact-driven inquiry. (See *Canizales*, *supra*, 7 Cal.5th at pp. 606-608.)[2] *Canizales*'s delineation of the circumstances that inform whether the theory applies "suggests a multifaceted, qualitative evaluation rather than a simple quantitative assessment." (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1151-1152 [in determining whether

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[2] *Canizales* held that a defendant's intent to create kill zone and the scope of such a zone depends on "circumstances of the offense," including the type of weapon used, the number of shots fired, the distance between a defendant and the victims, and the distance between primary and attempted murder victims. (*Canizales*, *supra*, 7 Cal.5th at pp. 606-608.)

evidence was sufficient to show that movement of victim was not incidental to rape, "each case must be considered in the context of the totality of its circumstances," including court-articulated "'scope and nature'" of movement and "'context of the environment'"]; see *Canizales*, *supra*, 7 Cal.5th at p. 602 [noting that under concept of concurrent intent to kill as stated in *People v. Bland* (2002) 28 Cal.4th 313, "'nature and scope of the attack directed at a primary victim may raise an inference'" defendant intended to harm primary victim by harming everyone in that vicinity].)

Canizales's approach ensures that a determination of whether a kill zone instruction was properly given will be supported by "the totality of [each case's] circumstances." (See *Dominguez*, *supra*, 39 Cal.4th at pp. 1152-1153 [noting that application of court-articulated factors "in any given case will necessarily depend on the particular facts and context of the case"].) Courts routinely engage in this type of fact-intensive analysis, including in assessing whether an instruction on a general principle of law is supported by the evidence. (*People v. Burney* (2009) 47 Cal.4th 203, 246 [trial courts have a duty to "instruct the jury, even without a request, on all general principles of law that are "'closely and openly connected to the facts and that are necessary for the jury's understanding of the case.'"'"].) There is no reason to conclude that the lower courts are incapable of applying the kill zone theory, whether at trial or on appellate review, particularly if this Court were to further clarify the appropriate legal standards in the present case. Amici have

not shown that the kill zone theory is so error prone that it "cannot be repaired and should be abandoned." (IROC Br. 15-18.)

The State Public Defender also contends that the kill zone theory should be rejected because it is inflammatory "by labeling defendants as the architects of a 'kill zone[,]'" and it renders "an intent to kill [a] primary target … a foregone conclusion." (OSPD Br. 16.) But the State Public Defender allows that prosecutors would still be permitted to argue the theory and it does not explain how the instruction is any more inflammatory or conclusory than a prosecutor arguing in closing that the defendant, "'as a means of killing the primary target, … specifically intended to kill every single person in the area in which the primary target was located.'" (OSPD Br. 17, quoting *People v. McCloud* (2012) 211 Cal.App.4th 788, 803; see also *People v. Campos* (2007) 156 Cal.App.4th 1228, 1244 [holding then CALCRIM No. 600's use of "kill zone" was not argumentative or inflammatory because it "does not invite inferences favorable to either party and does not integrate facts of this case as an argument to the jury"]; see *ibid.* [noting that other "disparaging terms" including flight, suppression of evidence, and consciousness of guilt have been used in approved instructions].)

Finally, IROC argues that the kill zone theory should be eliminated on the basis that it is disproportionately used against minorities. (IROC Br. 10-14.) While inequitable enforcement of the criminal laws is a problem that this Court and other courts

should take seriously, IROC's analysis on the point is deeply flawed.

IROC's argument is premised on undefined categories of "race or ethnicity" that it tabulates based on dubious proxy indicators (such as surname or gang affiliation) that happen to appear in the various opinions it surveys—and that come uncomfortably close to simple stereotyping. (IROC Br. 10, fn. 1.) More fundamentally, the claimed disparity that IROC points to is based only on its examination of kill zone cases in isolation (IROC Br. 10), which reveals nothing about whether the claimed disparity is attributable to that particular theory or to some other aspect of criminal law enforcement.

The tally is also "a bare statistical comparison" of the assumed race of defendants in the surveyed cases "without consideration of individual case characteristics." (*People v. Montes* (2014) 58 Cal.4th 809, 830; see *id.* at pp. 828-829 [considering whether statistical report showed discriminatory effect that is required for discovery on discriminatory-prosecution defense].) IROC presumes, for example, that prosecution under a kill zone theory will invariably result in a longer sentence, without regard for whether the same number of attempted murder counts may be possible based a specific intent to kill each victim. (See *Canizales*, *supra*, 7 Cal.5th at pp. 602-603, citing *People v. Bland* (2002) 28 Cal.4th 313, 329-330 [noting that kill zone theory is a concurrent intent theory that is one way of establishing specific intent requirement for attempted murder].) As the State Public Defender acknowledges, however, the kill

zone theory may be unnecessary for establishing a specific intent to kill. (OSPD Br. 14, fn. 1, citing *People v. Mariscal* (2020) 47 Cal.App.5th 129, 140 [erroneous instruction on kill zone theory was harmless because there was "undisputed evidence" of a direct intent to kill all five victims].)

This Court has previously rejected a defendant's "statistical report indicating that 81 percent of capital prosecutions undertaken by [a] District Attorney from 1992 to 1994 involved White victims" as failing to show a discriminatory effect on "murderers of White people." (*Montes, supra,* 58 Cal.4th at pp. 830-831.) The study there, for example, "did not indicate what percentage of the non-White-victim homicides would have been eligible to be charged as capital homicides." (*Id.* at p. 830.) It was therefore "fundamentally flawed and failed to show discriminatory effect, let alone discriminatory intent," because it "failed to take into account the case characteristics of the homicides, which is a crucial factor for a district attorney's capital charging decisions." (*Id.* at p. 831.) IROC's analysis similarly lacks crucial context and thus does not provide a useful basis for considering the very real issue of inequitable law enforcement. (See, e.g., *McCleskey v. Kemp* (1987) 481 U.S. 279, 286-287, 292-299 ["sophisticated statistical studies" of over 2000 murder cases indicating cross-racial killings were more likely to result in death penalty was insufficient proof of discriminatory intent in violation of equal protection].)

II. A KILL ZONE INSTRUCTION NEED ONLY BE SUPPORTED BY SUBSTANTIAL EVIDENCE THAT WOULD PERMIT THE JURY TO FIND THAT AN INTENT TO CREATE A KILL ZONE IS THE ONLY REASONABLE INFERENCE FROM THE EVIDENCE

Amici alternatively ask this Court to "enforce" *Canizales*'s requirement that the kill zone theory be limited to cases "where the only reasonable inference is that the defendant intended to create a zone of fatal harm." (OSPD Br. 18-23; see IROC Br. 26-28.) Under amici's view, both a trial court and a reviewing court on appeal must make this same determination in assessing whether a kill zone instruction is properly supported by the evidence. (OSPD Br. 19; IROC Br. 28.)

This argument has been thoroughly addressed in the People's answer brief. As explained there, *Canizales* appropriately held that *the jury* must conclude that the only reasonable inference from the evidence is an intent to create a kill zone before it may find a defendant guilty of attempted murder under the kill zone theory. (ABM 32-41.) *Canizales* recognized that a jury that is properly instructed on circumstantial evidence and reasonable doubt could misapply the theory as formerly articulated, in part because it was not expressly required to conclude that the defendant intended to kill everyone in the zone of harm as a means of killing the primary target. (ABM 36.) Consequently, *Canizales* set forth a two-pronged test to guard against such potential misapplication. (ABM 36-37.) Under *Canizales*'s formulation, the kill zone theory may be applied "only when a jury concludes: (1) the circumstances of the defendant's attack on a primary target, including the type and extent of force the defendant used, are

such that the only reasonable inference is that the defendant intended to create a zone of fatal harm—that is, an area in which the defendant intended to kill everyone present to ensure the primary target's death—around the primary target and (2) the alleged attempted murder victim who was not the primary target was located within that zone of harm. Taken together, such evidence will support a finding that the defendant harbored the requisite specific intent to kill both the primary target and everyone within the zone of fatal harm." (*Canizales*, *supra*, 7 Cal.5th at p. 607; see ABM 37)

Canizales then looked to the trial court's duties when instructing on a permissive inference and held that a kill zone instruction should be provided "only in those cases where the court concludes there is sufficient evidence to support a jury determination that the only reasonable inference" from the evidence is an intent create a kill zone. (*Canizales*, *supra*, at p. 608, italics omitted; see ABM 32-33, 38.) Appellate review of whether the instruction was properly given, *Canizales* further explained, asks whether there was substantial evidence in the record that, if believed by the jury, would support the conclusion that the only reasonable inference was that a defendant intended to kill everyone in the kill zone. (*Canizales*, *supra*, at pp. 609-610; see ABM 33-34.)

The State Public Defender makes a number of arguments to the effect that the ordinary substantial evidence test on appeal for determining whether an instruction was properly given at trial should not apply in the kill zone context. She maintains

that the standard that was applied in *Canizales* is not the "established substantial evidence appellate review standard for instructional error." (OSPD Br. 18-23.) Citing *In re R.V.* (2015) 61 Cal.4th 181, 200, the State Public Defender states that "there is 'no single formulation of the substantial evidence standard test for all its applications.'" (OSPD Br. 21.) And she contends that, at a minimum, both trial and reviewing courts must find there is "substantial evidence under which a reasonable jury could reject equally reasonable inferences inconsistent with the kill zone." (OSPD Br. 19-20, 22.)

But by finding there was substantial evidence from which a jury could reasonably conclude that *the only reasonable inference* from the evidence was that Mumin intended to create a kill zone, the trial court and Court of Appeal appropriately concluded that there was substantial evidence in the record that allowed the jury to reject a contrary finding. *R.V.* does not show that some other standard should apply here. *R.V.* discussed the standard of review for a challenge to a trial or juvenile court's finding of competency—a substantively different type of proceeding that presents a different issue from the one in this case. (*R.V., supra,* 61 Cal.4th at pp. 185-186, 200-202 [noting presumption of competence and that burden of proving incompetency by preponderance of evidence is on claimant].) As this Court recognized in *R.V.*, the substantial evidence standard for a challenge to the sufficiency of the evidence supporting guilt beyond a reasonable doubt "has no application in a challenge to the sufficiency of the evidence supporting a finding of competency

for either a juvenile or an adult criminal defendant." (*Id.* at p. 202.) Because the instructional issue here is different, that holding does not aid the State Public Defender's argument.

The State Public Defender insists that the kill zone theory is "inconsistent with the traditional applications of the substantial evidence test" because an instruction on the theory "is never required." (OSPD Br. 22, italics omitted.) Whether an instruction is required or permissive, however, is irrelevant to the appropriate standard of review asking whether the evidence in the case supported it. As discussed in the answer brief, this Court has repeatedly applied the substantial evidence standard to appellate determinations of whether the trial evidence supported an instruction on a permissive inference or theory of liability. (ABM 24-31.)

Nor would application of the ordinary substantial evidence standard render *Canizales* "toothless," as the State Public Defender claims. (OSPD Br. 20; see OSPD Br. 12.) As the People argued in the answer brief, *Canizales* was principally concerned about the danger that a conviction under the kill zone theory might not be premised on an intent to kill all persons in the kill zone, despite proper jury instructions on circumstantial evidence and the burden of proof. (ABM 35-36.) Applying the ordinary substantial evidence standard of review would not detract from the limitations articulated in *Canizales* to address that concern. While a trial court or Court of Appeal need only conclude that there is substantial evidence that could support the trier of fact's determination on the kill zone theory, *Canizales* made clear that

the determination the jury must make is that an intent to create a kill zone is the only reasonable inference from the evidence. (ABM 36-37.) *Canizales* further directed that the jury, in determining a defendant's intent to create a kill zone and the scope of that zone, must consider the circumstances of the offense, including the type of weapon used, the number of shots fired where the weapon is a firearm, the distance between the defendant and the alleged victims, and the proximity of the victims to the primary target. (ABM 37.) Significantly, *Canizales* made explicit that a jury's finding of an intent to kill all victims in the kill zone is required and that a conscious disregard of the risk of death or serious injury to people in the kill zone is insufficient as a matter of law. (AMB 35-38.) Substantial evidence review does not undermine any of these requirements.

Finally, the State Public Defender argues in a related vein that a kill zone instruction must require a jury to find that the only reasonable conclusion from the defendant's use of lethal force, is that the defendant intended to create a kill zone; she notes that the current standard CALCRIM kill zone instruction accurately conveys that requirement but that the parallel CALJIC instruction does not. (OSPD Br. 25-27.) The People agree that any kill zone instruction must tell the jury that, before it may return an attempted murder verdict under a kill zone theory, it must conclude that the only reasonable inference from

the evidence is that the defendant intended to create a kill zone, as *Canizales* requires. (See ABM 61-68.)[3]

III. THE ADDITIONAL LIMITATIONS ON THE KILL ZONE THEORY PROPOSED BY AMICI SHOULD BE REJECTED

Amici lastly ask this Court to impose several express limitations on the kill zone theory to the extent it is retained. They argue that for the theory to apply: (1) a defendant must know that any additional victims, other than the primary target, are in the kill zone (OSPD 27-30); (2) the weapon used must be

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[3] To the extent the State Public Defender claims that the instruction given in this case was defective, that issue is not properly before this Court. The State Public Defender contends Mumin raised the issue of whether the instruction misstated the law. (OSPD Br. 24, fn. 5.) As noted in the answer brief, Mumin did not challenge the correctness of his kill zone instruction as an independent ground for reversal in his petition for review or in his opening brief on the merits. (ABM 47, fn. 5.) The Issue Presented in Mumin's Petition for Review asks whether the Court of Appeal's affirmance "contravene[s]" *Canizales*. In *Canizales*, this Court did not reach the defendants' separate challenge to the version of CALCRIM No. 600 that was given in their case because the Court concluded that the instruction was not supported by the evidence and should not have been given. (*Canizales*, *supra*, 7 Cal.5th at p. 618.) The Court of Appeal below could not have "contravene[d]" *Canizales* on an issue it did not consider. Further, Mumin did not raise the contention even in the Court of Appeal. (*Mumin*, *supra*, 68 Cal.App.5th at p. 54 ["Mumin does not argue, as an independent ground for reversal, that this modified instruction prejudicially misstated the law"].) Consequently, if this Court concludes that the trial evidence supported the kill zone instruction, it should not consider the correctness of the instruction as an independent ground for reversal because the latter issue is not properly before this Court. (See *People v. Villa* (2009) 45 Cal.4th 1063, 1076; *People v. Clark* (2016) 63 Cal.4th 522, 552.)

capable of killing all persons in the kill zone (IROC Br. 20-23); and (3) the kill zone must be located in a closed defined space "known to the defendant," without a means of escape (OSPD Br. 30-32; IROC Br. 23-26). These proposed limitations are unnecessary and potentially even unhelpful.

As argued in the People's answer brief, a defendant's knowledge of specific ancillary targets is not required under the kill zone theory. Nor is it necessary, because the defendant's intent to kill all those who could reasonably be expected to be present in the zone of harm, even in circumstances (like an airplane bombing) when specific identification would be unlikely or impossible, adequately captures the defendant's culpable mental state justifying an attempted murder conviction. (ABM 55-61.) This Court recognized as much in *Bland* when it discussed *People v. Vang* (2001) 87 Cal.App.4th 554 with approval: "'The fact [the defendants] could not see all of their victims did not somehow negate their express malice or intent to kill as to those victims who were present and in harm's way, but fortuitously were not killed.'" (*Bland*, *supra*, 28 Cal.4th at pp. 330-331, quoting *Vang*, *supra*, at pp. 563-564 [discussing *Vang* as a kill zone case before finding the facts in *Bland* "virtually compels" a similar inference].)

Amici's proposed limitations regarding the type of weapon used and the physical nature of the kill zone might prove more confusing than clarifying. They invite questions about defining for a jury the nature of a weapon or of the physical environment of the attempted killing that are likely to vary greatly depending

on the circumstances of the offense and are therefore more appropriately addressed on a case by case basis.

And there is no need to attempt to broadly articulate such limitations since those concepts are already adequately accounted for under the existing formulation of the kill zone theory. As this Court recognized in *Canizales*, a defendant's intent to create a kill zone and the scope of that zone are informed by "circumstances of the offense, such as the type of weapon used, the number of shots fired (where a firearm is used), the distance between the defendant and the alleged victims, and the proximity of the alleged victims to the primary target." (*Canizales*, *supra*, 7 Cal.5th at p. 607.) By considering whether these circumstances indicate a defendant harbored an intent to kill everyone in the kill zone, the inquiry necessarily takes into account the capacity of the weapon, the scope of any kill zone, including means of escape, and the facts as they are believed by the defendant. (See *id.* at pp. 609-612 [considering defendants' proximity to target, location of attack, number of bullets, bullet trajectories, victims' means of escape].) This Court has recently reaffirmed that a "defendant's guilt or innocence is determined as if the facts were as he perceived them," for purposes of establishing the defendant's specific intent to commit a crime. (*People v. Moses* (2020) 10 Cal.5th 893, 900, internal quotations and italics omitted; see *ibid.* [noting "a person who intends to kill and shoots at the victim can be guilty of attempted murder, even if it is later discovered that the gun contained only blank rounds"].)

Finally, amici's contention that there are gaps in the evidence of this case showing why their proposed limitations are justified is unfounded. (OSPD Br. 24, 27-31; IROC Br. 23.) As noted in the answer brief, the kill zone instruction in this case informed the jury, "If you have a reasonable doubt whether the defendant … intended to kill the person opening the door by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of Officer Luke Johnson." (ABM 45, 63-64; 2CT 383.) The jury was therefore properly instructed that it was required to find that the only reasonable inference from the evidence was an intent to create a kill zone. The answer brief also outlined the substantial evidence showing Mumin believed that there were multiple officers outside of the doors when the primary target attempted to open Door 1, based on Mumin's movements that night, the number of bullets he kept in his possession as he abandoned other personal property, the number and trajectory of the bullets he fired, and the scale of the police search that involved a helicopter overhead and loud callouts of residents. (ABM 50-51.) Hence, as far as Mumin was concerned, he was shooting at multiple officers on the other side of the doors. In turn, Mumin's firearm and three of 28 bullets fired were certainly capable of killing "everyone" in the kill zone—in other words, Mackay, the primary target, and Johnson, the additional victim. (ABM 52.) And the kill zone created by Mumin was well defined by the contours of the two doors through which he fired the three bullets in a trajectory that was intended to strike officers on the other side. (ABM 49, 51,

55.) The location and surprise nature of Mumin's gunshots also limited the officers' ability to escape or avoid the kill zone. (ABM 51.) Consequently, Mumin's possession of a gun and two loaded magazines containing 28 rounds, his behavior the night of the shooting, the ongoing police search at the location, and the trajectory of his three bullets through Doors 1 and 2 amply supported the kill zone instruction under *Canizales*'s formulation and does not demonstrate a need for further limitation of the doctrine. (ABM 49-55.)

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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November 28, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE** uses a 13 point Century Schoolbook font and contains 4467 words.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/28/2022

Date

/s/Eniola Longe-Atkin

Signature

Le, Minh (292440)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm