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No. S291105

In the Supreme Court of the State of California

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

v.

ARTHUR LEE HENDERSON,
Defendant and Petitioner.

Second Appellate District, Case No. B330707
Los Angeles County Superior Court, Case No. A918235
The Honorable Nicole C. Bershon, Judge

ANSWER TO BRIEF OF AMICUS CURIAE

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TABLE OF CONTENTS

Page

Introduction....6

Argument....7

I. There is no dispute that the Legislature did not intend section 1172.6 to apply section 1385.1 retrospectively to resentencings for crimes committed before section 1385.1's enactment....7

A. CDAA does not meaningfully dispute the correct interpretation of section 1172.6....7

B. The correct interpretation of section 1172.6 undercuts the premises of CDAA's arguments and its framing of the issue presented....11

II. The Legislature had authority to enact section 1172.6 in the manner it did....12

A. Section 1172.6 does not unconstitutionally amend section 1385.1....12

B. CDAA's arguments for a broader reading of section 1385.1 directly contravene *Tapia*....15

III. CDAA's arguments about the ex post facto clause are irrelevant and, in any event, wrong....20

A. This case does not present an ex post facto challenge to the application of section 1172.6....20

B. CDAA's ex post facto analysis of section 1385.1 ignores its effect on the possible sentencing range....21

Conclusion....25

TABLE OF AUTHORITIES

Page

CASES

Cal. Dep't of Corrections v. Morales
(1995) 514 U.S. 499 22

Castellanos v. State of California
(2024) 16 Cal.5th 588 ..... 13, 14

Collins v. Youngblood
(1990) 497 U.S. 37 ..... 22, 23

Garner v. Jones
(2000) 529 U.S. 244 23

Lindsey v. Washington
(1937) 301 U.S. 397 ..... 22, 23

Lynce v. Mathis
(1997) 519 U.S. 433 22

Moradi-Shalal v. Fireman's Fund Ins. Companies
(1988) 46 Cal.3d 287 9

People v. Brown
(2012) 54 Cal.4th 314 10

People v. Buycks
(2018) 5 Cal.5th 857 ..... 10, 11

People v. Chhuon
(2026) 19 Cal.5th 1018 23

People v. Cooper
(1991) 53 Cal.3d 771 16

People v. Gonzales
(2021) 65 Cal.App.5th 1167 21

People v. Hayes
(1989) 49 Cal.3d 1260 18

TABLE OF AUTHORITIES
(continued)

Page

People v. Hill
(2024) 100 Cal.App.5th 1055 21

People v. Ledesma
(2006) 39 Cal.4th 641 17

People v. Lewis
(2004) 33 Cal.4th 214 ..... 16, 17

People v. Nguyen
(2025) 109 Cal.App.5th 1133 20

People v. Padilla
(2022) 13 Cal.5th 152 ..... 7, 10, 12

People v. Rojas
(2023) 15 Cal.5th 561 ..... 13, 15, 18, 19

People v. Superior Court (Gooden)
(2019) 42 Cal.App.5th 270 ..... 14, 19

People v. Superior Court (Pearson)
(2010) 48 Cal.4th 564 ..... 13, 15

People v. Trent
(2025) 112 Cal.App.5th 251 ..... 8, 11, 12

People v. Williams
(1981) 30 Cal.3d 470 ..... 16, 21

Peugh v. United States
(2013) 569 U.S. 530 22

Tansavatdi v. City of Rancho Palos Verdes
(2023) 14 Cal.5th 639 18

Tapia v. Superior Court
(1991) 53 Cal.3d 282 ..... *passim*

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Pen. Code
§ 3 ..... 10, 18
§ 190.4, subd. (e) 16
§ 1172.6, subd. (d)(1) 6, 7, 8, 9, 11, 12, 14
§ 1385.1 19

LEGISLATIVE MATERIALS

Sen. Bill No. 94 (2023-2024 Reg. Sess.) 9

INTRODUCTION

The California District Attorneys Association (CDAA) ignores the central statutory interpretation question here: whether the Legislature intended Penal Code section 1172.6 to apply Penal Code section 1385.1's restrictions to resentencings for crimes committed before section 1385.1 was enacted.[1] CDAA does not meaningfully dispute that the answer is no. As the State explained, the Legislature drafted section 1172.6 to provide successful petitioners with a full resentencing "as if the petitioner had not previously been sentenced." (§ 1172.6, subd. (d)(1); see ABM 26-28.) Just as in an initial sentencing, section 1385.1 thus applies to resentencings for crimes committed after it was enacted in 1990 but not crimes committed before its enactment.

Unable to dispute this straightforward interpretation, CDAA instead tries to pivot to a different issue: whether the ex post facto clause *required* the Legislature to design section 1172.6 the way it did. (CDAA Br. 26, 31.) But that is the wrong question. The Court need not decide whether the Legislature was constitutionally required to limit section 1385.1's application in section 1172.6 resentencings to crimes committed on or after 1990 because, regardless, the Legislature chose to do so. This Court's role is to interpret and follow the Legislature's judgment.

CDAA's focus on the wrong question stems in large part from its misreading of section 1385.1. Although it never quite expressly articulates its full logic, CDAA's argument appears to

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[1] All further statutory references are to the Penal Code unless otherwise noted.

be that—unless constitutionally required by the ex post facto clause—the Legislature had no authority to enact section 1172.6, as it is properly interpreted, because it would be an impermissible amendment of the voters' initiative behind section 1385.1. (See CDAA Br. 17-19.) But that argument is premised on an interpretation of section 1385.1 that this Court has already rejected. This Court held in *Tapia* that the voters did not intend section 1385.1 to apply retrospectively to crimes committed before its enactment. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 297-299.) Far from amending section 1385.1, section 1172.6 follows that same line in its resentencings. CDAA effectively asks the Court to overrule *Tapia* and adopt the broadest imaginable interpretation of section 1385.1, yet CDAA offers no good reason for departing from established precedent.

ARGUMENT

I. THERE IS NO DISPUTE THAT THE LEGISLATURE DID NOT INTEND SECTION 1172.6 TO APPLY SECTION 1385.1 RETROSPECTIVELY TO RESENTENCINGS FOR CRIMES COMMITTED BEFORE SECTION 1385.1'S ENACTMENT

A. CDAA does not meaningfully dispute the correct interpretation of section 1172.6

As the State explained (ABM 24-28), the statutory text and structure of section 1172.6 is dispositive of the question here. A successful petition under section 1172.6 vacates the challenged conviction and recalls the original sentence, rendering the judgment no longer final. (§ 1172.6, subd. (d)(1); see *People v. Padilla* (2022) 13 Cal.5th 152, 161-162.) The petitioner is then resentenced "on any remaining counts in the same manner as if the petitioner had not previously been sentenced." (§ 1172.6, subd. (d)(1).) Through this text, the Legislature chose to grant

the petitioner a full resentencing, which is treated the same as an initial sentencing except where the statute expressly states otherwise. (ABM 27-28.)[2] That means section 1385.1 does not apply at resentencings for crimes committed before 1990, just as it could not have applied at the initial sentencings for those crimes. (See *Tapia*, *supra*, 53 Cal.3d at pp. 297-299.) But for crimes committed on or after 1990, section 1385.1 applies at the resentencing just as it did at the original sentencing.

CDAA does not meaningfully challenge this interpretation—and rightly so, as there is no other reasonable way to read the statute. CDAA therefore does not engage with section 1172.6's text or dispute the Legislature's intent. In fact, in at least one part of its brief, CDAA appears to agree that the Legislature "opened" this kind of relief in a section 1172.6 resentencing "in this unique circumstance" of pre-1990 crimes. (CDAA Br. 22.)[3]

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[2] In a footnote, CDAA suggests that comparing the resentencing to the initial sentencing is "circular" (CDAA Br. 35, fn. 8), but it misunderstands the point. As stated above, section 1172.6 treats the resentencing like the initial sentencing *except* where the statute directs otherwise. For example, requiring the new sentence not to exceed the original is an express exception in the statute. (§ 1172.6, subd. (d)(1).) Applying new ameliorative laws to other parts of the judgment is also an accepted exception under *Estrada* that the Legislature chose not to displace. (See *People v. Trent* (2025) 112 Cal.App.5th 251, 260-263.) These exceptions do not apply here and are not circular—they merely reflect the Legislature's choices in defining the relief.

[3] In another footnote, CDAA suggests that the Legislature did so "perhaps inadvertently" (CDAA Br. 22, fn. 5), but that is unfounded. CDAA's speculation is based on the failed passage of a later bill, which was broader in scope than the issue here.

(continued…)

CDAA makes only two cursory statements regarding section 1172.6's interpretation. First, it notes in passing that section 1172.6 does not expressly reference section 1385 authority for crimes committed before 1990. (CDAA Br. 39.) But that would be unnecessary and impractical. The Legislature did not need to mention sections 1385 or 1385.1 specifically because it already provided that the resentencing would be as if the petitioner had not previously been sentenced. (§ 1172.6, subd. (d)(1).) That concisely and fully conveys the intent discussed above. (*Ante* pp. 7-8.) It would be burdensome and impractical for the Legislature to address expressly every statute or proposition that might affect the resentencing, especially where, as here, it would need to state that one rule applies to some petitioners (those who committed crimes before 1990) and a different rule to others (those who committed crimes on or after 1990). Treating the resentencing the same as the initial sentencing incorporates those baseline prospectivity principles more efficiently.

Second, CDAA claims that "the parties agree" a section 1172.6 resentencing "restores jurisdiction to apply current

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SB 94 would have created a separate, standalone avenue for resentencing available to prisoners serving life without parole sentences for crimes committed before 1990 once they had served 25 years of their sentence. (Sen. Bill No. 94 (2023-2024 Reg. Sess.).) That this new and broader ground for resentencing did not pass has no bearing on the narrower issue here, which merely addresses the intended scope of relief for prisoners who have already obtained resentencing under the distinct grounds in section 1172.6. In any event, "'[u]npassed bills, as evidences of legislative intent, have little value.'" (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 300.)

sentencing law under the full resentencing rule." (CDAA Br. 40.) CDAA is correct that section 1172.6 grants successful petitioners a full resentencing, but CDAA errs in conflating full resentencing and retroactivity, which are two distinct issues. A full resentencing means that the court can "modify *every* aspect of the sentence, and not just the portion subjected to the recall." (*People v. Buycks* (2018) 5 Cal.5th 857, 893.) CDAA is wrong in claiming that must also mean all current sentencing laws apply.

Under the *Estrada* rule, when a criminal judgment becomes nonfinal, new *ameliorative* legislation applies retroactively at resentencing, but that is an exception to the general rule of section 3 that "new criminal laws do not govern prosecutions initiated before the law went into effect." (*Padilla*, *supra*, 13 Cal.5th at p. 160; see § 3 ["No part of [the Penal Code] is retroactive, unless expressly so declared."]; *People v. Brown* (2012) 54 Cal.4th 314, 323.) It follows that new *non-ameliorative* laws do not apply retrospectively at resentencing, just as they would not apply at an original sentencing if the law had changed during the course of prosecution. (See *Padilla*, *supra*, at p. 160.) Indeed, section 3 would be undermined, and *Estrada*'s narrow exception to it would be unnecessary, if all current sentencing laws applied retrospectively upon resentencing for crimes that predated the change in law. Here, there is no dispute that section 1385.1 is not ameliorative and does not fall within the *Estrada* exception. (Compare *Tapia*, *supra*, 53 Cal.3d at pp. 298-299 [provisions detrimental to defendants, like section 1385.1], with *id.* at pp. 300-301 [ameliorative provisions].)

CDAA provides no support for turning this well-settled rule of prospective statutory application on its head. It cites only *People v. Buycks*, which involved an ameliorative change in the law and concerned the distinct issue of whether the full resentencing rule allows the court to address other counts in the same judgment. (*Buycks*, *supra*, 5 Cal.5th at pp. 893-895.) Nothing in *Buycks* suggests that full resentencing requires new non-ameliorative laws to be applied retrospectively to crimes committed before their enactment.

B. The correct interpretation of section 1172.6 undercuts the premises of CDAA's arguments and its framing of the issue presented

While CDAA does not dispute the correct interpretation of section 1172.6, many of its arguments rely on premises that fail in light of that interpretation. As a result, its arguments miss the point of the issue presented here, and the policy considerations purportedly animating its position are unsound.

For example, CDAA repeatedly claims that Henderson could have invited the trial court to dismiss his special circumstance finding under section 1385 at his initial sentencing, but that the court then had not done so. (CDAA Br. 10-12, 22, 30-31, 37.) But the remedy called for in section 1172.6 is to vacate and recall that original sentence so the petitioner can be resentenced as if he had not previously been sentenced. (§ 1172.6, subd. (d)(1).) This includes allowing the court to "'exercise its sentencing discretion in light of the changed circumstances.'" (*Buycks*, *supra*, 5 Cal.5th at p. 893; see *People v. Trent* (2025) 112 Cal.App.5th 251, 263.) Because Henderson's initial sentence was thus recalled and

vacated, the fact that Henderson had an opportunity to raise section 1385 at his original sentencing is inconsequential.

CDAA also repeats the fact that Henderson's case was final after his direct appeal ended (CDAA Br. 11, 22, 33, 37, 39) and that his petition was granted only as to his attempted murder conviction, not his murder conviction (CDAA Br. 11-12, 22). But this, too, makes no difference. As the State explained and CDAA does not dispute, vacating the sentence and returning jurisdiction to the trial court for resentencing reopens the case and renders the judgment nonfinal again, even if it was previously final after direct appeal. (ABM 27; see *Padilla*, *supra*, 13 Cal.5th at pp. 161-162; *Trent*, *supra*, 112 Cal.App.5th at pp. 260-263.) Likewise, the full resentencing that CDAA concedes a successful petitioner receives (CDAA Br. 22) means that a petition vacating one conviction leads to a full resentencing "on any remaining counts." (§ 1172.6, subd. (d)(1).) Thus, while Henderson's murder conviction was not vacated, the resentencing court can exercise its sentencing discretion with respect to that count anew after his attempted murder conviction was vacated.

II. THE LEGISLATURE HAD AUTHORITY TO ENACT SECTION 1172.6 IN THE MANNER IT DID

A. Section 1172.6 does not unconstitutionally amend section 1385.1

Unable to dispute the parties' interpretation of section 1172.6, CDAA focuses on section 1385.1 in an attempt to suggest that it deprived the Legislature of authority to enact section 1172.6 in the manner it did. That attempt to hamstring the Legislature's power and override its judgment fails. While CDAA

appears to suggest that section 1172.6 unconstitutionally amends section 1385.1, it fails to address, much less satisfy, the standard for striking down a statute as an unconstitutional amendment.

It is true that the Legislature "may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers." (*People v. Rojas* (2023) 15 Cal.5th 561, 568, quotation marks omitted throughout.) But that bar only applies when the statute is an *amendment* of the voters' initiative.

This Court defined an amendment as "a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision." (*Rojas*, *supra*, 15 Cal.5th at p. 568.) Importantly, "this does not mean that any legislation that concerns the same subject matter as an initiative, or even augments an initiative's provisions, is necessarily an amendment." (*Ibid.*) "The Legislature remains free to address a related but distinct area . . . or a matter that an initiative measure does not specifically authorize or prohibit." (*Ibid.*, italics omitted.) Thus, section 1172.6 only amends the voters' initiative in section 1385.1 if "it prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.)[4]

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[4] CDAA cites *Castellanos v. State of California* (CDAA Br. 19), but that case did not address the question of whether a legislative statute unconstitutionally amended a prior voter initiative, the issue specifically discussed in *Rojas*. Instead,

(continued…)

Section 1172.6 does neither. There is no conflict between sections 1172.6 and 1385.1 because section 1385.1 does not apply to crimes like Henderson's. As this Court held, section 1385.1 applies to crimes committed after its enactment in 1990, but not to crimes committed before. (*Tapia*, *supra*, 53 Cal.3d at pp. 297-299.) Section 1172.6 neither adds to nor takes away from that. As discussed above, section 1172.6 follows the same line by providing for a resentencing "in the same manner as if the petitioner had not previously been sentenced": thus, resentencings for crimes committed after 1990 apply section 1385.1, while resentencings for crimes committed before do not. (§ 1172.6, subd. (d)(1).) CDAA's characterization of section 1172.6 as "resurrect[ing]" a power the voters eliminated (CDAA Br. 12) is therefore wrong. Section 1385.1 never eliminated a sentencing court's discretion under section 1385 to strike a special circumstance for crimes committed before its enactment, so section 1172.6 did not "resurrect" that discretion.

This straightforward conclusion is not changed simply because section 1172.6 involves a resentencing. As explained above, the resentencing replaces the original sentencing, which was vacated. (See *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 286 [proposition increasing the punishment

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Castellanos presented the distinct issue of whether a challenged voter initiative was an unconstitutional limit on plenary authority granted to the Legislature in the Constitution. (*Castellanos v. State of California* (2024) 16 Cal.5th 588, 596.) The Court declined to decide whether any future law would be an amendment of the initiative. (*Id.* at pp. 607-610.)

for murder was not amended by Legislature's change to the elements of murder, including when applied via resentencing procedure under section 1172.6 (formerly numbered 1170.95)].) CDAA cannot point to anything in section 1385.1 or its ballot arguments that indicates the voters intended to preclude the Legislature from providing ameliorative relief for crimes committed before section 1385.1 was enacted. (See, e.g., *Rojas*, *supra*, 15 Cal.5th at pp. 571-573 [no indication that voters intended to lock in definition of "criminal street gang" effective at the time of the initiative]; *Pearson*, *supra*, 48 Cal.4th at pp. 570-573 [no indication that proposition addressing pretrial discovery was intended to preclude posttrial discovery].)[5]

B. CDAA's arguments for a broader reading of section 1385.1 directly contravene *Tapia*

CDAA's contrary argument is premised on the flawed view that section 1385.1 should be given the "broadest possible" interpretation. (CDAA Br. 20.) But CDAA's claim that section 1385.1 applies to all cases is precluded by *Tapia*'s holding that it applies only to crimes committed after its enactment. Indeed, many of CDAA's arguments directly contradict what this Court said in *Tapia*. (See, e.g., CDAA Br. 20, fn. 4.)

CDAA's various attempts to downplay *Tapia*'s significance fail. Its claim that *Tapia* did not decide whether section 1385.1

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[5] To the extent CDAA implies that section 1172.6 intrudes on the Governor's clemency power (CDAA Br. 40-41), that is also baseless. The executive clemency power is distinct from the Legislature's power to enact laws, including ameliorative laws granting relief to defendants. The possibility of clemency does not supplant a prisoner's eligibility for statutory relief.

applies retrospectively (CDAA Br. 21, 25) cannot be reconciled with the opinion itself. *Tapia* held that Proposition 115 was intended to operate prospectively, with the exception of ameliorative changes (which all agree section 1385.1 is not). (*Tapia*, *supra*, 53 Cal.3d at p. 287.) *Tapia* then held that section 1385.1 fell within the category of provisions that "change the legal consequences of criminal behavior to the detriment of defendants" (*id.* at pp. 297-298); and that, for this category, prospective application meant that these provisions could only be applied to crimes committed in or after 1990 (*id.* at p. 299).

In its attempt to justify its rewriting of *Tapia*, CDAA quotes *People v. Lewis* (2004) 33 Cal.4th 214 out of context. (CDAA Br. 25.) The *Lewis* Court was not questioning *Tapia*'s holding on section 1385.1's prospectivity. Rather, it noted that the Court had "never definitively resolved" the distinct issue of whether—even before section 1385.1's enactment—section 1385 enabled courts to strike a special circumstance after a death verdict. (*Lewis*, *supra*, at pp. 228-229.) In that unique circumstance, there was a question as to whether a motion for modification under section 190.4, subd. (e), was "'the sole remedy after a death verdict.'" (*Id.* at p. 229.) *Lewis*'s focus is evident from its citations to *Williams* and *Cooper*, which reserved the question of section 1385's application to death verdicts and made no mention of section 1385.1's retrospectivity. (*Id.* at pp. 228-229, citing *People v. Williams* (1981) 30 Cal.3d 470, 490, fn. 11, abrogated by § 1385.1; *People v. Cooper* (1991) 53 Cal.3d 771, 849.)

Indeed, contrary to CDAA's interpretation of *Lewis*, this Court two years later recognized *Tapia*'s holding on prospectivity, citing it to conclude that section 1385.1 did not apply to a defendant's case because he had committed his crime before 1990. (*People v. Ledesma* (2006) 39 Cal.4th 641, 745, fn. 29.)

CDAA further errs in its view of *Tapia* by suggesting that *Tapia*'s holding depended on whether section 1385.1 was an ex post facto law. (CDAA Br. 20.) *Tapia*'s primary holding was one of statutory interpretation. The Court relied on the presumption of prospectivity and concluded there was nothing in Proposition 115's text or ballot arguments to depart from that "ordinary rule of construction." (*Tapia*, *supra*, 53 Cal.3d at p. 287.) It held that section 1385.1 could not be applied to crimes committed before 1990 because that would be retrospective. (*Id.* at pp. 297-299.) True, it then went on to add that "[s]uch application would *also* likely violate the rule against ex post facto legislation." (*Id.* at 298, italics added.) But that "likely" conclusion was in addition to its primary holding, not a necessary basis of its interpretation. Regardless, even if CDAA were right that *Tapia*'s holding about prospectivity depended on this statement, that would not help CDAA—it would mean *Tapia* also held that CDAA's reading of section 1385.1 would be an ex post facto violation, even further precluding CDAA's arguments (see *post* at pp. 21-24).

CDAA's attempt to distinguish *Tapia* fares no better. CDAA notes that *Tapia* involved the defendant's initial sentencing while section 1172.6 involves resentencings. (CDAA Br. 23-24.) But as the State explained, this makes no difference because, in section

1172.6, the Legislature vacated a successful petitioner's original sentence and intended the resentencing to be treated the same as the initial sentencing. (ABM 24-28.) As discussed above, CDAA fails to meaningfully dispute this critical point or explain why the procedural posture should make a dispositive difference.

What CDAA actually seeks, then, is for this Court to overrule *Tapia*, but CDAA offers no compelling reason to overturn established precedent. (See *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 666 [stare decisis requires that "'a party urging us to overrule a precedent faces a rightly onerous task'"].) *Tapia* was correctly decided, and CDAA identifies nothing in the text or ballot history of section 1385.1 to indicate that the voters intended it to apply retrospectively.

Instead, CDAA relies on the absence of "limiting language" restricting section 1385.1 to future crimes. (CDAA Br. 17.) But CDAA turns basic principles of interpretation on their head.[6] It is "well settled" that laws are "presumed to operate prospectively absent an express declaration of retrospectivity or a clear indication that the electorate . . . intended otherwise." (*Tapia*, *supra*, 53 Cal.3d at p. 287 [collecting cases]; e.g., *People v. Hayes* (1989) 49 Cal.3d 1260, 1274; see § 3.) CDAA cites nothing to overcome this presumption. In claiming that section 1385.1's text is "broad," CDAA relies solely on the introductory phrase "*notwithstanding Section 1385 or any other provision of law*, a

[6] This Court "appl[ies] the same principles governing statutory construction" to a voter initiative as to a statute. (*Rojas*, *supra*, 15 Cal.5th at p. 568.)

judge shall not strike or dismiss any special circumstance . . . ." (CDAA Br. 17-19; § 1385.1, italics added.) Even assuming that phrase could be read to suggest an intent to override conflicting laws (but see Henderson Answer to CDAA Br. 8), it would only do so to the extent that a law actually conflicted with section 1385.1, which section 1172.6 does not. The general prefatory phrase "notwithstanding Section 1385 or any other provision of law" does nothing to address whether section 1385.1 applies to resentencings for crimes committed before it was enacted.

CDAA's reliance on the voters' purposes fares no better. CDAA claims generally that the voters intended to "maintain, and in some places increase, the consequences for serious crimes" when they enacted Proposition 115, a multifaceted measure that contained numerous different provisions addressing diverse aspects of criminal procedure. (CDAA Br. 19; see *Tapia*, *supra*, 53 Cal.3d at pp. 297-301 [categorizing the various provisions].) But CDAA points to nothing addressing the proper interpretation of section 1385.1 itself, let alone suggesting that the voters intended it to apply retrospectively to prior crimes, either on initial sentencing or resentencing. (See *Rojas*, *supra*, 15 Cal.5th at pp. 574-578 [rejecting argument for unconstitutional amendment based on overly broad reading of voters' general purposes]; *Gooden*, *supra*, 42 Cal.App.5th at pp. 284-285.) In fact, *Tapia* already considered the voters' intent and concluded that the "ballot arguments are entirely silent on the question of retrospectivity." (*Tapia*, at p.287.)

III. CDAA'S ARGUMENTS ABOUT THE EX POST FACTO CLAUSE ARE IRRELEVANT AND, IN ANY EVENT, WRONG

Relying on its misinterpretation of section 1385.1, CDAA erroneously suggests that this Court must decide whether the ex post facto clause prohibits applying section 1385.1 to a section 1172.6 resentencing for a crime committed before section 1385.1's enactment. But as the State explained (ABM 8-9), the Court need not decide that constitutional issue where, as here, the Legislature did not intend section 1385.1 to apply retrospectively in those section 1172.6 resentencings in the first place.[7] Regardless, CDAA's ex post facto arguments are unavailing.

A. This case does not present an ex post facto challenge to the application of section 1172.6

CDAA's arguments about the ameliorative nature of section 1172.6 have no bearing on the issue presented here. It is irrelevant that section 1172.6 was an act of lenity because, as both parties explained, Henderson is not challenging the application of section 1172.6 to his sentence. (ABM 19; OBM 38.) Rather, he challenges the retrospective application of section 1385.1 to his resentencing, which was granted under section 1172.6. As explained above, the Legislature did not intend section 1385.1 to apply to a section 1172.6 resentencing in these

[7] CDAA faults the court of appeal in *People v. Nguyen* for failing to discuss ex post facto principles (CDAA Br. 33-34), but the *Nguyen* court correctly concluded that section 1385.1 did not apply as a matter of statutory interpretation, making it unnecessary to reach the ex post facto question. (*People v. Nguyen* (2025) 109 Cal.App.5th 1133, 1141-1142.)

circumstances. Whether some other aspect of section 1172.6 would violate the ex post facto clause is not before this Court.

CDAA's reliance on *People v. Hill* and *People v. Gonzales* is flawed for similar reasons. As the State explained, those cases present different issues. *Hill* addressed the denial of a section 1172.6 petition, at which stage the sentence remained final and the issue was whether the Legislature intended the petitioner to be eligible for ameliorative relief at all. (*People v. Hill* (2024) 100 Cal.App.5th 1055, 1067-1070; ABM 29-31.) *Gonzales* involved a specific aspect of the resentencing process that the court held was expressly addressed by the Legislature in section 1172.6's text, thus placing defendants on notice that resentencing can include uncharged offenses if they choose to seek that purely voluntary relief. (*People v. Gonzales* (2021) 65 Cal.App.5th 1167, 1174; ABM 31-32.) The State explained these critical distinctions in its answer brief, yet CDAA makes no attempt to offer any response or explain its reliance on them notwithstanding.

B. CDAA's ex post facto analysis of section 1385.1 ignores its effect on the possible sentencing range

CDAA's ex post facto arguments about section 1385.1 fare no better. CDAA errs from the outset by assuming there is no change to the sentencing range because, with or without section 1385.1, the defendant could still be sentenced to life without parole or death. (CDAA Br. 26.) But CDAA errs by focusing solely on the maximum sentences. As the State explained (ABM 22-24), section 1385's discretion allowing a court to strike a special circumstance would have made possible a lower sentence of life with parole. (*Williams*, *supra*, 30 Cal.3d at p. 485.) Section

1385.1 thus increases the sentencing range by removing the possibility of that lower sentence. Following U.S. Supreme Court precedents, that is an increase in punishment, even when the maximum punishment is unchanged. (ABM 23-24, citing, e.g., *Lindsey v. Washington* (1937) 301 U.S. 397, 400-401.)

CDAA ignores this argument and these precedents. CDAA suggests only that *Collins v. Youngblood* "refocused" the ex post facto analysis (CDAA Br. 30), but that case did not undermine the decisions the State cited. True, *Collins* narrowed the scope of the ex post facto clause by clarifying that there is no separate category of ex post facto violation for procedural changes that deprive a defendant of "substantial protections" or "personal rights." (*Collins v. Youngblood* (1990) 497 U.S. 37, 45-46.) But the State's constitutional avoidance argument is not based on this now-eliminated category; it is based on an increase in punishment, which all agree remains a recognized category of ex post facto violation. (*Tapia*, *supra*, 53 Cal.3d at pp. 298-299; see *Collins*, *supra*, at p. 44 [defendant conceded that the case was not about established categories like increased punishment].)

Since *Collins*, the U.S. Supreme Court has made clear that the holdings of pre-*Collins* cases remain good law where they are grounded in increased punishment rather than mere deprivation of substantial protections. (See, e.g., *Peugh v. United States* (2013) 569 U.S. 530, 541, fn. 4; *id.* at p. 546 [continuing to rely on *Lindsey* after *Collins*]; *Cal. Dep't of Corrections v. Morales* (1995) 514 U.S. 499, 505-506, fn. 3; also *Lynce v. Mathis* (1997) 519 U.S. 433, 441-443, 445-446.) Indeed, *Tapia* itself was decided after

Collins and recognized that section 1385.1 could increase punishment. (*Tapia*, *supra*, 53 Cal.3d at pp. 298-299, fn. 17.)

CDAA's suggestion that a petitioner must establish the empirical probability that a request for relief under section 1385 would be granted is thus erroneous. CDAA relies on cases involving procedural changes, where the question was whether the new procedures posed a sufficient risk of actually increasing the defendant's sentence. But even the cases cited by CDAA recognized that evidence of practical implications only need be considered when "the rule does not by its own terms show a significant risk." (*Garner v. Jones* (2000) 529 U.S. 244, 255.) Unlike here, those cases did not involve laws that changed the possible sentencing range itself; at most, the procedural changes at issue there could be argued to affect the likelihood of a different sentence within the same range. (See *id.* at p. 246 [law changed intervals between parole considerations]; *Collins*, *supra*, 497 U.S. at p. 40 [law allowed improper verdict to be reformed to delete unlawful fine instead of requiring new trial]; *People v. Chhuon* (2026) 19 Cal.5th 1018, 1045 [law permitted joinder of murder prosecutions, but "did not increase the range of possible punishment"].) In contrast, where (as here) one end of the sentencing range has been increased, that itself poses a sufficient risk of a higher sentence by eliminating any possibility of a lower one. (See *Lindsey*, *supra*, 301 U.S. at p. 401.)

CDAA's attempt to recharacterize section 1385.1 as a law about procedures rather than increasing punishment (CDAA Br. 19-20) fails because it again contravenes *Tapia*. *Tapia*

separated the provisions of Proposition 115 into categories, and it held that section 1385.1 fell within the category of provisions that "change the legal consequences of criminal behavior to the detriment of defendants," not the category of provisions that merely "address the conduct of trials." (Compare *Tapia*, *supra*, 53 Cal.3d at pp. 297-299, with *id.* at pp. 299-300.) At bottom, then, CDAA's argument amounts to a meritless request for this Court to overrule *Tapia*, which the Court should decline.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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September 28, 2026

CERTIFICATE OF COMPLIANCE

I certify that the attached Answer to Brief of Amicus Curiae uses a 13-point Century Schoolbook font and contains 4,829 words.

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September 28, 2026

Supreme Court of California
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