

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,  PLAINTIFF AND RESPONDENT,  V.  LOUIS SANCHEZ EMANUEL,  DEFENDANT AND APPELLANT.	No. S280551  Sixth District Court of Appeal No. H049147  Santa Clara County Superior Court No. C1246799
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**AMICUS CURIAE BRIEF OF THE OFFICE OF THE  
STATE PUBLIC DEFENDER IN SUPPORT OF  
APPELLANT LOUIS SANCHEZ EMANUEL**

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**INTEREST OF AMICUS**

The Office of the State Public Defender (OSPD) represents indigent persons in their appeals from criminal convictions in both capital and non-capital cases. The Legislature has instructed OSPD to “engage in related efforts for the purpose of improving the quality of indigent defense.” (Gov. Code, § 15420, subd. (b).) To that end, it has “authorized [OSPD] to appear as a friend of the court[.]” (Gov. Code, § 15423.) OSPD has a longstanding interest in the fair and uniform administration of California criminal law, especially regarding prosecutions for murder and attempted murder, and more generally in the protection of the constitutional and statutory rights of those convicted of crimes.

OSPD has a particular interest in the proper interpretation of Penal Code section 1172.6, at issue in the underlying case.<sup>1</sup> OSPD has represented and currently represents numerous petitioners appealing superior court decisions in Penal Code section 1172.6 proceedings. Since the Legislature passed Senate Bill No. 1437 (2017-2018 Reg. Sess.) (SB 1437), OSPD has appeared as amicus curiae in several cases in this Court involving section 1172.6, including *People v. Gentile* (2020) 10 Cal.5th 830, *People v. (Janeth) Lopez* (2021) 286 Cal.Rptr.3d 246, *People v. Strong* (2022) 13 Cal.5th 698 (*Strong*), *People v. Delgadillo* (2022) 14 Cal.5th 216, *People v. Reyes* (2023) 14 Cal.5th 981 (*Reyes*), *People v. Curiel* (2023) 15 Cal.5th 433, *People v. Arellano*, review granted Mar. 15, 2023, S277962, *People v. Patton*, review granted June 28, 2023, S279670, and *People v. Antonelli*, review granted Oct. 18, 2023, S281599.

The parties have – appropriately in this instance – limited their arguments to applying existing guidelines for determining “reckless indifference” to the specific facts of this case.<sup>2</sup> The parties

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> The Attorney General chides the appellant for not trying to do more: “Emanuel does not seek the announcement of a new rule or an expansion of an existing rule. He simply disagrees with the superior court’s assessment of the facts and its reasoning under *Clark* and asks this Court to engage in error review.” (Respondent’s Brief on the Merits (RBOM) at p. 24.)

Amicus submits that appellant’s briefs do indeed (properly and very persuasively) chart the error in his particular case. But amicus anticipates that this Court has more in mind than “error review.” Amicus hopes to be of assistance to the Court – not in proposing a “new rule or ... expansion of an existing rule” – but in

have not been called upon to assist the Court in dealing with the larger problem of clarifying the legal standard to which those guidelines apply. That clarification would provide the lower courts (and juries) with the guidance needed to ensure that – as this Court’s precedent promises – not every participant in a “garden-variety armed robbery,” during which a fatality occurs, can be held liable for murder. (See *People v. Banks* (2015) 61 Cal.4th 788, 802 (*Banks*); *People v. Clark* (2016) 63 Cal.4th 522 (*Clark*)). Amicus hopes to be of help to the Court in that regard.

## SUMMARY OF ARGUMENT

When someone is killed in the course of an armed robbery, an accomplice can be held liable under a felony-murder theory if, and only if, they either intended the killing or were “a major participant in the underlying felony and acted with reckless indifference to human life ....” (§ 189, subd. (e)(3).)<sup>3</sup> As the instant case illustrates, despite this Court’s efforts to provide guidance, many lower courts and juries remain confused about the meaning of the “reckless indifference” element and continue to impose felony murder liability on virtually anyone involved in an armed robbery in which an unforeseen death occurs.

Amicus respectfully suggests that the Court end that confusion by making explicit what its own cases have repeatedly

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pointing to language in the Court’s cases that should be employed to provide much-needed clarification of the existing rule.

<sup>3</sup> The same rule applies to those who aid and abet any of the several other violent felonies list in section 189, subdivision (a).

implied: that an accused can only be held to have exhibited “reckless indifference to human life” if there is proof beyond a reasonable doubt of that individual’s “willingness to kill, or to assist another in killing, to achieve a distinct aim.” (See *Strong, supra*, 13 Cal.5th at p. 706, quoting *Clark, supra*, 63 Cal.4th at p. 617.)

For decades after the “major participant/reckless indifference” formulation was first adopted as a limitation on felony-murder special circumstance liability, juries and lower courts regularly imposed that liability on unarmed participants in routine armed robberies that had gone wrong. (See *Banks, supra*, 61 Cal.4th at p. 809, fn. 8; see also *Strong, supra*, 13 Cal.5th at pp. 719-720 [discussing the difference between such adjudications before and after *Banks* and *Clark*].) In *Banks* and *Clark*, this Court “for the first time provided substantial guidance on the meaning of the two relevant statutory phrases.” (*Strong, supra*, 13 Cal.5th at p. 703.) Although those cases worked a “significant change” in the law (*id.* at pp. 717, 719), the Court did not announce a new standard. On the contrary: it reiterated the same language that had always been used to define “reckless indifference” – namely, whether the defendant “‘knowingly engaged in criminal activities known to carry a grave risk of death.’” (*Banks, supra*, 61 Cal.4th at p. 801, quoting *People v. Estrada* (1995) 11 Cal.4th 568, 577 (*Estrada*), quoting *Tison v. Arizona* (1987) 481 U.S. 137, 157 (*Tison*); see *Clark, supra*, 63 Cal.4th at pp. 617, 621.) That is still the only definition afforded to juries (and then only if the trial court chooses to provide it). (See CALCRIM No. 703.)

The problem, as this Court has recognized, is that a juror given only this definition could view *any* armed robbery as entailing “a grave risk of death.” (See *In re Scoggins* (2020) 9 Cal.5th 667, 682 (*Scoggins*)). So, *Banks* and *Clark* set out “nonexhaustive list[s] of considerations” (*Strong, supra*, 13 Cal.5th at p. 706) to be used in assessing whether the facts of each individual case meet the statutory criteria.<sup>4</sup> (*Id.* at p. 703, discussing *Clark, supra*, 63 Cal.4th at pp. 618-623 and *Banks, supra*, 61 Cal.4th at p. 803.) In doing so, the Court emphasized the bedrock principle that “simple participation in, e.g., a ‘garden-variety armed robbery’ was not sufficient, without more, to establish” reckless indifference to human life. (*Id.* at p. 719, discussing *Banks, supra*, 61 Cal.4th at p. 802; see *Clark, supra*, 63 Cal.4th at p. 617 [“mere fact” that a robbery involves a gun, “on its own and with nothing more presented, is not sufficient to support a finding of reckless indifference to human life.”].)

Yet this case and many others – several of which are on review pending the outcome of the instant case – illustrate that juries and the lower courts are still frequently imposing felony-murder liability on ordinary participants in otherwise unexceptional armed robberies that unexpectedly turned fatal. This Court’s repeated injunction that something “more” is required (see *Strong, supra*, 13 Cal.5th at p. 719) has not served as a functional

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<sup>4</sup> The trial court may, but need not, include these “considerations” (described in the pattern jury instruction as “factors”) when instructing the jury in a pertinent case. (CALCRIM No. 703.)

limitation. When someone has been killed, there is virtually *always* something more to be found in applying the enunciated factors, even if it is just that the accomplice, shocked by the unintended killing, flees the scene rather than lingering to provide assistance (and risking certain arrest).<sup>5</sup>

What this and the other similar cases demonstrate is that the guidelines this Court has previously enunciated, while helpful, are not in themselves sufficient to give guidance to juries and the courts below. What is needed is a clear statement of what does and does not constitute “reckless indifference to human life.” What is needed is a legal standard.

Fortunately, this Court has repeatedly articulated just such a concise and accurate description: “Reckless indifference ‘encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions.’” (*Scoggins, supra*, 9 Cal.5th at pp. 676-677, quoting *Clark, supra*, 63 Cal.4th at p. 617; accord, *Strong, supra*, 13 Cal.5th at p. 706.) Unfortunately, juries are not told that, and many appellate courts seem to treat that description as dicta rather than as a definition of “reckless indifference.”

Amicus accordingly proposes that a simple solution to the current confusion, inconsistent results and resulting injustices

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<sup>5</sup> As will be detailed, *post*, this is just one example of the ways in which the *Banks/Clark* “considerations” have been used to elevate simple participation in a garden-variety robbery into proof of reckless indifference.

would be for this Court to clarify that its own words *are* the standard. Thus, juries and the courts below would be instructed that an accused can only be held to have exhibited “reckless indifference to human life” if there is proof beyond a reasonable doubt of that individual’s “willingness to kill, or to assist another in killing, to achieve a distinct aim.” Applying that legal standard to the instant case demonstrates why it is simple and workable – and underlines why this case was wrongly decided.

### **THE DEFINITION OF RECKLESS INDIFFERENCE HAS NOT KEPT PACE WITH THE EVOLVING UNDERSTANDING OF ITS MEANING**

This Court’s opinion in *Strong* traces the origins and evolving application of the “major participant/reckless indifference to human life” test for accomplice felony murder liability. (*Strong, supra*, 13 Cal.5th at pp. 704-709.) As the Court recounted:

The major participant and reckless indifference phrases were “derive[d] verbatim” from United States Supreme Court precedent concerning the permissible scope of capital punishment for felony murder. (*People v. Estrada* (1995) 11 Cal.4th 568, 575, citing *Tison v. Arizona* (1987) 481 U.S. 137 (*Tison*)).) But for the next quarter century, neither the United States Supreme Court nor California courts offered much guidance about the major participant or reckless indifference standards, except to indicate that neither phrase is used in a specialized or technical sense in Penal Code section 190.2, subdivision (d). (*Banks*, at p. 800; see *Estrada*, at pp. 574–578 [addressing court’s instructional duties concerning the reckless indifference element]; *People v. Proby* (1998) 60 Cal.App.4th 922, 933 [(*Proby*)] [addressing the major participant element].)

(*Id.* at p. 705.) In fact, the *Estrada* Court expressly declined to require that juries be given any further definition of the reckless indifference element, holding that the formulation was adequate all by itself to convey the applicable test: “the phrase ‘reckless indifference to human life’ conveys the notion of a subjective appreciation or knowledge by the defendant of a grave risk of death ...” (*Estrada, supra*, 11 Cal.4th at p. 578.)

The Court of Appeal took this response one step further in *Proby*, holding that, even upon request, a defendant was not entitled to an instruction equating “reckless indifference” with a “[subjective] appreciat[ion] that his or her acts were *likely* to result in the taking of innocent life ....” (*Proby, supra*, 60 Cal.App.4th at p. 932, italics added.) The *Proby* court opined that, in defining reckless indifference as knowledge or awareness that the defendant’s “acts involve a grave risk of death,” the standard instruction conveyed exactly the same information. (*Id.* at p. 933.) As such, *Proby* ignored an essential point of *Tison*, that “[t]he *degree* of risk to human life is crucial to the analysis.”<sup>6</sup> (*Scoggins, supra*, 9 Cal.5th at p. 682, italics supplied.)

Which brings us to the problem that compelled *Banks* and *Clark* to provide “significant guidance” regarding the proper interpretation of the statutory phrase. After *Estrada* and *Proby*, juries continued to impose felony murder liability

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<sup>6</sup> In fact, the language rejected by the *Proby* court was taken verbatim from the seminal high court case. (See *Tison, supra*, 481 U.S. at p.153 [noting that the defendants “subjectively appreciated that their acts were likely to result in the taking of innocent life.”].)

on mere participants in “garden-variety armed robberies” – and the lower courts continued to uphold those convictions. (See, e.g., *People v. (Cristo) Lopez* (2011) 198 Cal.App.4th 1106, disapproved by *Banks, supra*, 61 Cal.4th at p. 809, fn.8; *People v. Hodgson* (2003) 111 Cal.App.4th 566 [same]; *People v. Banks* (Aug. 29, 2013, B236152) 2013 WL 4628094, review granted Dec. 11, 2013, S213819 [nonpub. opn.] This was hardly surprising. Neither the phrase “reckless indifference to human life” taken by itself, nor with the gloss that it entails “knowledge by the defendant of a grave risk of death,” meaningfully distinguishes defendants who are appropriately held liable for murders that occur in the course of felonies they have aided from those who are not. Put in terms of the high court cases which gave life to the distinction: those phrases are not in themselves adequate to separate the “Tisons” from the “Enmunds.”<sup>7</sup>

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<sup>7</sup> As this Court summarized in *Banks* (and recounted in *Strong*): “Toward one end of the spectrum was the getaway driver the high court found constitutionally ineligible for death in *Enmund*: a “minor actor in an armed robbery, not on the scene, who neither intended to kill nor was found to have had any culpable mental state.” Toward the other end of the spectrum were the confederates found eligible for death in *Tison*, who had broken convicted murderers out of jail, armed them, captured an innocent family, held the family at gunpoint while the two murderers deliberated whether the family should live or die, and then stood by while all four members were shot.” (*Strong, supra*, 13 Cal.5th at p. 705 (internal citations and signals omitted), quoting *Banks, supra*, 61 Cal.4th at pp. 802, 805, discussing, *Tison, supra*, 481 U.S. 137 and *Enmund v. Florida* (1982) 458 U.S. 782, 797-801 (*Enmund*)).

To the foregoing summary should be added this Court’s observation that Mr. Enmund was deemed a “minor actor”

The reason is simple. As this Court has repeatedly observed, “any person who plans or participates in an *armed* robbery can be said to anticipate that lethal violence might be used, given that ‘roughly 1 in 200 armed robberies results in death.’” (*Scoggins, supra*, 9 Cal.5th at p. 682 (italics by the Court, brackets omitted), quoting *Banks, supra*, 61 Cal.4th at p. 811.) Even more to the point: each case before the jury or the reviewing court is *necessarily* the “1 in 200” that resulted in death, for there would not have been any issue of felony murder liability unless someone was killed in the course of the felony in which the defendant participated.

To anyone employing a plain-English understanding of the phrase “grave risk,” taking part in any armed robbery would be ample to constitute “engaging in criminal activity that a reasonable person would know involves a grave risk of death.” (See CALCRIM No. 703.) The most common synonym for the word “grave” is “serious”; the definition that comes closest to conveying the meaning in this context is “fraught with danger or harm.” (American Heritage Dict. (4th ed. 2006) p. 767.) Given the ever-present potential for “lethal violence,” jurors (and judges) employing this definition could easily conclude that a “garden-variety armed robbery” necessarily involves “a grave risk of death.” So it was – and is – entirely foreseeable that jurors and reviewing courts alike might

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even though “the trial court made express findings that Earl Enmund had planned the robbery.” (*Banks, supra*, 61 Cal.4th at p. 805, fn. 6, citations omitted.)

treat *any* participation in such crimes as entailing “knowledge by the defendant of a grave risk of death” and thus as evincing “reckless indifference to human life.” Absent further explication, the “grave risk of death” formulation is simply too porous to prevent those who (although felons) cannot fairly be adjudged as murderers from being convicted and punished as such.

As this Court has acknowledged, the definitional language that was and still is set out in CALCRIM No. 703 expresses an “outdated legal standard[].” (*Strong, supra*, 13 Cal.5th at p. 720.) Nonetheless, in its efforts to impart “a deeper understanding of the governing test” (*Banks, supra*, 61 Cal.4th at pp. 800-801), the Court chose to offer lists of “considerations” rather than setting forth a more precise standard for what constitutes “reckless indifference.” (*Id.* at pp. 800-801, 803; see also *Clark, supra*, 63 Cal.4th at pp. 618-623.) As a result, criminal jury instructions have continued to reflect the view expressed in *Estrada* and *Proby* – that the statutory language is clear in itself, and if more definition is wanted, the “grave risk of death” formulation is all that is necessary. Even today, the only instruction required to be given is: “When the defendant participated in the crime, (he/she) acted with reckless indifference to human life.” (CALCRIM No. 703.) The trial court, in its discretion may, upon request, flesh that out with the “grave risk of death” formulation (*ibid.*)<sup>8</sup> – which reviewing courts have continued to

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<sup>8</sup> The optional language is as follows: “A person acts with reckless indifference to human life when he or she engages in criminal activity that a reasonable person would know involves a

treat as the sole definition of what constitutes “reckless indifference to human life.”<sup>9</sup> (See, e.g., *In re Bennett* (2018) 26 Cal.App.5th 1002, 1021; *In re Loza* (2017) 10 Cal.App.5th 38, 51.)

As this Court noted, “[t]he jury instruction on the special circumstance, CALCRIM No. 703, was not amended after *Banks* and *Clark* to require instruction on the factors discussed. Instead, these factors were [also] included in brackets as optional additions

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grave risk of death and he or she knows that the activity involves a grave risk of death.” (CALCRIM No. 703.)

<sup>9</sup> The lack of a clear definition of the term “reckless indifference to human life” makes it far easier for aiders-and-abettors to be found liable under a felony murder theory than if they were prosecuted for implied malice murder. As this Court has recently confirmed, liability for implied malice murder requires proof beyond a reasonable doubt that the defendant, though not the actual killer, deliberately acting with conscious disregard for human life, did something that gave “rise to a high probability that death will result.” (*Reyes, supra*, 14 Cal.5th at pp. 989-992.) Finding “reckless indifference to human life,” and hence felony murder liability, on the basis that the defendant was present and participated in a simple armed robbery that went bad, and did not stay to assist the victim, requires far less. Yet, felony murder is murder in the first degree, while implied malice supports only a second-degree murder conviction, and felony murder exposes the accomplice to far more severe punishment – including the death penalty. (See *People v. Johnson* (2016) 243 Cal.App.4th 1247, 1284-1285.) As the *Johnson* court observed, the test for holding felony murder accomplices liable for a murder they did not intend must necessarily be stricter than the test for implied malice. (*Ibid.*) In this light, the lack of a clear standard for aiding and abetting felony murder is particularly anomalous.

for the trial court to consider giving in its discretion.”<sup>10</sup> (*Strong, supra*, 13 Cal.5th at p. 719, fn. 4, citations omitted.) Thus, it is also up to the trial court whether or not to inform the jury of those factors; if it does, the jurors are told that they may, but need not, apply any or all of them.

This reliance on optional lists of non-mandatory factors to ensure proper interpretation of the essential element has yielded mixed results. It remains a problem that jurors may not be informed at all of the “reckless indifference” factors – and in cases tried before the pattern instruction was revised (in April 2020), they most likely were not. But the far greater problem is that, as applied by reviewing courts, the protections of the *Banks/Clark* factors have proved susceptible to widely varying and often contradictory interpretations. As will be shown in the next section of this brief, lower courts have regularly managed to cite some aspect of one or another of the factors as a justification for denying relief to precisely the sort of individuals that this Court and the Legislature had in mind in separating those who merely participate in a serious felony from those who can justly be labeled and punished as murderers.

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<sup>10</sup> Specifically, the standard instruction was revised in February 2016, to also give trial courts the option of informing jurors of the factors listed in *Banks*, regarding the “major participant” element, but the *Clark* factors, bearing on the “reckless indifference” element, were not included until 2020. (*Compare* CALCRIM No. 703 (2020), adopted April 2020, *with* its predecessors CALCRIM No. 703 (2019 & Supp. 2019); see <<https://www.courts.ca.gov/partners/4907.htm>> [as of June 12, 2024].)

Thus, the *Clark* factors, when applied without the limitation of a precise objective standard, invite jurors and reviewing courts to make essentially subjective determinations regarding the mental states of specific defendants. (Cf. *Scoggins, supra*, 9 Cal.5th at p. 683 [reiterating that “[d]etermining a defendant’s culpability [for felony murder] ... requires a fact-intensive, individualized inquiry.”].) This in turn feeds the likelihood that the resulting decisions will be tainted by implicit biases against Black and Latine defendants. One very recent study, specifically examining the effects of implicit bias in the prosecution of accomplices for felony murder, concludes that “research and empirical study results raise grave concerns that police, prosecutors, and juries will impute *mens rea* for Black and Latino defendants, and that these defendants may face heightened risks of wrongful conviction.” (Cohen et al. *Racial Bias, Accomplice Liability, and the Felony Murder Rule: A National Empirical Study* (2023) 101 Denv. L.Rev. 65, 116; see also *id.* at p. 113 [noting implicit biases of judges].) Anything that perpetuates such discrimination in our criminal justice system is of course intolerable. (See Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2, subd. (g) [findings and declarations].) The susceptibility to implicit bias as well as the radical variation in case outcomes, depending on the inclinations of the jurists reviewing them, call out for a clear standard by which every case can be tested.

**THE INSTANT CASE AND OTHERS  
DEMONSTRATE THE NEED FOR FURTHER  
GUIDANCE REGARDING WHAT DOES – AND DOES  
NOT – CONSTITUTE RECKLESS INDIFFERENCE  
TO HUMAN LIFE**

This Court has reiterated the *Clark* factors, pertaining to the “reckless indifference to human life” element of accomplice liability for felony murder, as follows:<sup>11</sup>

[1] Did the defendant use or know that a gun would be used during the felony? How many weapons were ultimately used? [2] Was the defendant physically present at the crime? Did he or she have the opportunity to restrain the crime or aid the victim? [3] What was the duration of the interaction between the perpetrators of the felony and the victims? [4] What was the defendant's knowledge of his or her confederate's propensity for violence or likelihood of using lethal force? [5] What efforts did the defendant make to minimize the risks of violence during the felony? (*Clark, supra*, 63 Cal.4th at pp. 618–623.) “[N]o one of these considerations is necessary, nor is any one of them necessarily sufficient.” (*Id.* at p. 618.)

(*Scoggins, supra*, 9 Cal.5th at p. 677.)

Those factors have surely been helpful in cases where courts have properly understood the fundamental concept to which they are applied. But without a clear lodestar, to provide direction, the factors can be used to rationalize results that defy the basic teaching of *Banks*, *Clark*, and their progeny.

The case at bench is a prime example. As the Court of Appeal opinion recounts, Louis Emanuel and his friend Whitley set out to

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<sup>11</sup> Numbers reflecting how the factors were grouped and ordered in *Clark* have been added for ease of reference.

rob a drug supplier of a pound of marijuana. (*People v. Emanuel* (May 12, 2023, H049147) 2023 WL 340949 at \*2, review granted Sept. 13, 2023, S280551 [nonpub. opn.] (*Emanuel*)). “[T]here was no evidence in the record demonstrating that, prior to the robbery, Emanuel knew Whitley possessed a gun, would bring that gun to the robbery, or ‘was likely to use lethal force.’” (*Id.* at \*7.) When Whitley did produce a gun, the victim resisted; the unrebutted evidence was that Mr. Emanuel then urged Whitley, “Let’s go,” and started to walk away. (*Id.* at \*4, \*8.) Whitley, however, persisted and in the ensuing struggle shot and killed the victim. (*Id.* at \*4.) Mr. Emanuel panicked and fled. (*Ibid.*)

In *Banks*, this Court explained that for an accomplice to be liable for felony murder in such circumstances, “[t]he defendant must be aware of and willingly involved in the violent manner in which the particular offense is committed, demonstrating reckless indifference to the significant risk of death his or her actions create.” (*Banks, supra*, 61 Cal.4th at p. 801.) As appellant’s briefs ably demonstrate, no rational interpretation of the established facts of this case satisfies that description. Mr. Emanuel was willingly involved in a garden-variety robbery – not even an *armed* robbery so far as he was aware – and tried to end it, or at least extricate himself, when it turned violent. His actions did not *create* “a significant risk of death” to any greater extent than do those of any participant in any robbery, and when that risk appeared he was not indifferent to it – he tried to avoid it and urged the shooter to do the same.

Unfortunately, the Court of Appeal did not take the quoted language from *Banks* (or the similar “willingness to kill” formulation in *Clark*, *Scoggins* and *Strong*) as a binding statement of the legal standard. Instead, the lower court trained its attention on the “*Clark* factors” and found in them justification for upholding the denial of Mr. Emanuel’s section 1172.6 petition.

The court below began by acknowledging “that some of the *Banks* and *Clark* factors are either neutral or do not support a finding of reckless indifference, such as Emanuel’s knowledge and involvement as to the use of weapons in the robbery, as well as his knowledge of Whitley’s likelihood of using deadly force.” (*Emanuel, supra*, 2023 WL 340949 at \*7, citing *Clark, supra*, 63 Cal.4th at p. 618.)<sup>12</sup> But the lower court homed in on another of the listed factors – the second listed in *Clark* – namely, the defendant’s “physical presence at the crime and opportunities to restrain the crime and/or aid the victim.” (*Clark, supra*, 63 Cal.4th at p. 619.)

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<sup>12</sup> The lower court elided another pertinent factor listed in *Clark* – the third one: “the duration of the felony.” (*Clark, supra*, 63 Cal.4th at p. 620.) Although by all accounts the fatal confrontation unfolded very quickly, the court below concluded that “Emanuel had enough time to tell Whitley, ‘Let’s go’ and even begin to walk away from the scene. Given Emanuel’s proximity to the scene, the trial court could have reasonably inferred that there was at least a brief window of opportunity for Emanuel to intervene or attempt to deescalate the violence.” (*Emanuel, supra*, 2023 WL 340949 at \*8.) As appellant aptly observes, this was a far cry from the situation in *Tison*, “a protracted encounter in which the participants had time to carefully plot their next moves.” (Appellant’s Brief on the Merits (ABOM) at p. 26.)

Applying that factor, the Court of Appeal found substantial evidence of “reckless indifference to human life” in the fact that Mr. Emanuel did not prevent the crime from happening in the first place, nor (once it started) did he do *more* to try to “intervene or attempt to deescalate the violence” – “perhaps by trying to take the gun from Whitley or distracting him.” The lower court found it similarly significant that “Emanuel made no effort to assist [the victim], even by calling for an ambulance, after the shooting itself.” (*Emanuel, supra*, 2023 WL 340949 at \*\*7-8.)<sup>13</sup>

Can we reasonably expect that a “mere participant in a garden-variety armed robbery” will attempt to wrest the weapon from his murderous cohort, or similarly intervene when the confrontation turns fatal? And what ordinary person, who has agreed to assist in a low-level crime, is going to risk arrest and a long prison sentence by staying behind to aid the victim when events unexpectedly turn fatal?<sup>14</sup> Both of those things would be decent and commendable – arguably heroic – things to do. But surely neither this Court nor the Legislature intended to require defendants to engage in such extraordinary conduct or be labeled and punished as murderers.<sup>15</sup>

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<sup>13</sup> The Court of Appeal sort of acknowledges, in a footnote, that calling an ambulance likely would have made no difference – the bullet had perforated the victim’s carotid artery, and he was dead within minutes. (*Emanuel, supra*, 2023 WL 340949 at \*7, fn. 15.)

<sup>14</sup> Panicking and fleeing is undoubtedly more consistent with ordinary human nature.

<sup>15</sup> As the author of the pertinent legislation observed in her amicus letter, urging the Court to grant review, this “case could well

As appellant ably argues, the lower court’s analysis is not how this Court intended the factors it limned in *Clark* to be applied. But more fundamentally, the Court of Appeal’s opinion demonstrates a failure to understand what does and does not constitute “reckless indifference to human life” as that phrase is used in *Banks*, *Clark* and their progeny and as codified by the Legislature.<sup>16</sup>

This analytical failure is not confined to the case at bench. Rather, as the Court’s grant of review suggests, it betokens a more general confusion that has split the lower appellate courts. The result is that how a given case is resolved – and whether the defendant/petitioner is freed from murder liability or consigned to

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have been an exemplar as to why Senate Bill 1437 was needed when the bill was before the Legislature.” (Sen. Skinner, letter of Senator Nancy Skinner as Amicus Curiae Supporting Petition for Review, *People v. Emanuel*, No. S280551,” p. 2.)

<sup>16</sup> It is instructive to compare this case to the facts of *Enmund*, the oft-cited paradigm of what does *not* constitute “reckless indifference to human life.” Enmund planned and set up the armed robbery (it was his idea) – and thus had ample opportunity to prevent it from happening. Unlike in the instant case there was no question that Enmund knew his confederates were armed. Nor did Enmund (to paraphrase the lower court in this case) “make any effort to assist the victims, even by calling for an ambulance, after the shooting itself” – instead, he sped off with the shooters and helped them dispose of their weapons. (See *Banks*, *supra*, 61 Cal.4th at pp. 799, 805, fn. 6.) The only difference that weighs against Mr. Emanuel was his actual presence at the scene, which can be an important opportunity “to dissuade the actual killer, [or] to aid the victim[.]” (*Id.* at p. 803, fn. 5.) But the weight of that factor is surely vitiated by the fact that Mr. Emanuel *did* attempt “to dissuade the actual killer,” and the certainty that no aid to the victim (whose carotid artery was punctured by the bullet) would have been availing.

serving out a life sentence – depends on the fortuity of which particular reviewing court is hearing their case. The point can be illustrated by examples of some of the other cases in which this Court has granted review pending the decision in the instant case:<sup>17</sup>

**A. *People v. Jones* (July 20, 2023, B320040) 2023 WL 4633093, review granted Sept. 27, 2023, S281508 [nonpub. opn.] (*Jones*):**

On May 23, 1996, Marcus Jones and his cousin, Melvin, were both 15 years old and both drunk, when Melvin decided to rob a corner store. (*Jones, supra*, 2023 WL 4633093 at \*\*1-5.) Marcus attempted to talk Melvin out of it (*id.* at \*\* 5, 16) but ultimately covered his face and joined in the robbery. “The plan was to go into the store, tell everyone in there to get down on the floor, ‘rush the cash register,’ get the money and leave.” (*Id.* at \*3.) But almost immediately after entering the store, Melvin shot the proprietor in the face. The boys grabbed some money and fled. In a “surreptitious recording” made by police after the two were apprehended, Marcus

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<sup>17</sup> The unpublished opinions mentioned in this brief are not cited as persuasive legal authority but solely for illustration; as such discussing them does not violate the proscriptions of California Rules of Court, rule 8.1115. (See *Conrad v. Ball Corp.* (1994) 24 Cal.App.4th 439, 443, fn. 2 [citing examples from this Court for the principle that “unpublished opinions may be cited if they are not ‘relied on.’”]; *McArthur v. McArthur* (2014) 224 Cal.App.4th 651, 656, fn. 5; *Pacific Gas & Electric Co. v. City and County of San Francisco* (2012) 206 Cal.App.4th 897, 907; see also, *People v. Mumin* (2023) 15 Cal.5th 176, 219-220 & appen. A (conc. opn. of Liu, J. [collecting and discussing opinions evaluating “kill zone” instructions]).)

repeatedly remonstrated Melvin for shooting the victim, reminding his cousin that he did not want to do the robbery to begin with but, “You still made me go in there, and I couldn’t even stop you from busting that n\*\*\*\*. Fucked my life up.” (*Ibid.*)

Marcus Jones was convicted of murder and sentenced to 25 years to life, plus a year for a vicarious firearm enhancement. (*Jones, supra*, 2023 WL 4633093 at \*7.) In 2019, still in prison, he filed a petition for resentencing pursuant to what is now section 1172.6. In affirming the denial of that petition, the Court of Appeal held there was substantial evidence to support a finding of “reckless indifference to human life” based on several of the *Clark* factors: Marcus knew that his cousin had a loaded gun to use in the robbery (factor 1); he was present at the scene and had an opportunity (however brief) to “exercise a restraining effect on the crime” (*id.* at \*\*14-15, citation omitted), but neither intervened nor stayed to try and aid the victim (factor 2); he knew “Melvin posed a danger with the weapon”<sup>18</sup> (factor 4); and – though he tried to talk Melvin out of committing the robbery and “schedule[ed] the robbery when the store was closed to minimize risks to employees” (*id.* at \*16) – Marcus did not do *enough* to “minimize the risk of violence.” (*Ibid.*)

Amicus leaves it to counsel to argue, and the Court to determine, whether the Court of Appeal properly applied the *Clark* factors in Mr. Jones’ case. What is significant for present purposes is

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<sup>18</sup> This factor is assertedly supported by the fact that Marcus had seen Melvin with the gun but didn’t try to take it away because he was concerned that one of them could be “accidentally shot ... [b]oth of us drunk, tussling with a gun.” (*Jones, supra*, 2023 WL 4633093 at \*14, referenced at *id.* at \*15.)

that the lower court managed to find *something* in four out of five of those factors to justify the conclusion that a drunk 15-year-old who reluctantly went along on a run-of-the-mill armed robbery, and who was shocked and appalled when his companion committed a senseless killing, evinced a “reckless indifference to human life” and so is properly consigned to a sentence of life in prison for murder.

**B. *People v. Pantoja* (June 23, 2023, F083581) 2023 WL 4142029, review granted Sept. 27, 2023, S281228 [nonpub. opn.] (*Pantoja*):**

Daniel Pantoja was another teenager<sup>19</sup> convicted of murder on the basis of an impulsive killing committed by his companion in the course of an armed robbery. After smoking a quantity of marijuana and drinking a few cans of an alcoholic energy drink, Daniel and two other juveniles – identified as T.D. and J.P. – went to a convenience store to buy some cigars to be used for smoking more marijuana. (*Pantoja, supra*, 2023 WL 4142029 at \*\*6-8.) There was no plan to commit a robbery or other crime there. (*Id.* at \*8.)

When they arrived, however, T.D. pulled out a gun that Daniel had let him borrow and put it in the face of a customer who was coming out of the store. T.D. demanded the keys to the customer’s car, which was parked in front of the store door.

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<sup>19</sup> The Court of Appeal quoted the briefing filed on Mr. Pantoja’s behalf as describing him as an “intoxicated teenager,” and noted that evidence supporting both aspects of that description had been submitted to the trial court. (*Pantoja, supra*, 2023 WL 4142029 at \*17.) Although the appellate court’s decision did not specify Mr. Pantoja’s age, briefing filed by the parties in this Court establishes that he was 18 years old at the time of the murder for which he was held liable.

(*Pantoja, supra*, 2023 WL 4142029 at \*\*3, 8.) When the customer hesitated, T.D. cocked the gun and threatened to “blast” him. (*Id.* at \*3.) The man still did not surrender his keys but instead started backing into the store. (*Id.* at \*\*4, 8.) T.D. pointed the gun toward J.P. and Daniel, who were standing near the store entrance, telling them to stop him. (*Id.* at \*8.) After a brief tussle with J.P., the intended victim went back into the store and told the clerk to call the police. (*Id.* at \*\*4, 8.)

In the meantime, T.D. went over to the man’s car and put the gun on another man – a passenger of the initial victim – and demanded money. The second victim took out some cash and threw it in T.D.’s face. In response, T.D. shot him, fatally. (*Pantoja, supra*, 2023 WL 4142029 at \*8.) There was testimony that Daniel was yelling at T.D. as this was happening, but *what* he was yelling is unclear. (*Ibid.*) “The time between T.D. pulling out the firearm [to threaten the first victim] and his firing of the fatal shots [into the second victim] was ... just under one minute.” (*Id.* at \*16) After the shooting all three fled. (*Id.* at \*8.)

T.D. and Daniel were both convicted of murder and attempted carjacking, and Daniel was sentenced to 25 years to life plus 2 years, 6 months. In affirming the denial of Daniel Pantoja’s section 1172.6 petition, the Court of Appeal justified a finding of “reckless indifference to human life” by applying the *Clark* factors: Daniel had supplied the gun (factor 1); he was present at the scene, and although he had no opportunity to intervene in the fatal confrontation with the second victim, he “had opportunities to restrain the offense” when T.D. was threatening the first victim

(factor 2); he “declined” to provide aid after the shooting (factor 2); although the “duration of the felony” was brief ... “the perpetrators had extensive interactions with the victims” – specifically, Daniel “stood near T.D. as T.D. demanded money from [the second victim] and ultimately shot him” (factor 3); although Daniel had no prior reason to think that T.D. would engage in fatal violence, once T.D. cocked the gun and threatened to “blast” the first victim, he “had notice of T.D.’s likelihood of killing” (factor 4); Daniel did not minimize the risk of violence; on the contrary he had earlier urged T.D. (in a different context) “not to go soft” and his yelling at T.D. during the fatal confrontation “only served to escalate the risk of violence” (factor 5). (*Pantoja, supra*, 2023 WL 4142029 at \*\*16-17.)

Again, Daniel Pantoja’s counsel will detail, and the Court will decide, whether the lower courts made appropriate use of the *Clark* factors – though it seems plain enough that only the first factor (awareness of the gun) fairly applies.<sup>20</sup> The point, once again, is that the court below was able to find so much in those factors to justify a murder conviction and life sentence for a very young defendant based on his companion’s impulsive killing of a person in the course of an extremely brief and completely unplanned crime.

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<sup>20</sup> It was clearly only a matter of a few seconds between the time T.D. turned his attention to the second victim and when he impulsively shot him – so to say that appellant had a meaningful opportunity to “restrain” T.D. from doing so is a stretch. And the fact that, after threatening to “blast” the first victim, T.D. just let him walk into the store and call the police surely indicated to Daniel that T.D. was *not* inclined to use fatal force. It is also unclear how the fact that Daniel was yelling at T.D. “served to escalate the risk of violence” given that we do not know what he was yelling.

**C. *In re Wright* (Nov. 14, 2022, C094514) 2022 WL 16917715, rehearing denied Dec. 1, 2022, review denied Feb. 22, 2023, S277820 [nonpub. opn.] (*Wright*):<sup>21</sup>**

One day in 1993, Cheval Wright and three companions were driving to the store to buy more liquor when a convertible passed going in the other direction. (*Wright, supra*, 2022 WL 16917715 at \*2.) Mr. Wright told the person driving his car<sup>22</sup> to turn around; the driver did so and cut off the convertible. Mr. Wright and another man, Christian Abernathy, got out and approached the convertible. (*Id.* at \*\*2-4.) Abernathy had a gun; pointing it at the occupants of the convertible he first demanded to know their gang affiliation (which they denied having) and then demanded their money. (*Ibid.*) When they were slow in complying, Abernathy shot and killed a man sitting in the back seat. (*Ibid.*)

At that point, Mr. Wright grabbed Abernathy in a bear hug from behind, struggled with him for the gun and said something to the effect of “what’s wrong with you?” Abernathy got off another shot, wounding the driver of the convertible who nonetheless managed to drive the car away and find aid. The driver survived and credited Mr. Wright with saving his life. (*Wright, supra*, 2022 WL 16917715 at \*\*2-4.)

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<sup>21</sup> This differs from the preceding examples in that it came to this Court after the Court of Appeal reversed a grant of habeas corpus relief regarding a felony murder special circumstance finding, and before this Court granted review in *Emanuel*. However, the pertinent inquiry, regarding the proper application of the “reckless indifference” element, is the same.

In 2001, Mr. Wright was convicted of attempted robbery and murder, and the jury found true a felony murder special circumstance pursuant to section 190.2. However, the jury acquitted him of the attempted murder of the driver of the convertible and “rejected all allegations that defendant personally used a firearm.” (*Wright, supra*, 2022 WL 16917715 at \*1.) He was sentenced to life without the possibility of parole. (*Ibid.*) After the passage of SB 1437, Mr. Wright filed a petition for resentencing, which was denied on the ground that the true finding on the felony-murder special circumstance allegation rendered him ineligible for relief. He accordingly filed a habeas corpus petition, challenging the special circumstance finding. (*Id.* at \*2.) The Superior Court granted his petition, concluding that, whatever his part in the underlying robbery attempt, he had not acted with “reckless indifference to human life” but instead “by his heroic act, to his own peril, ... prevent[ed] Abernathy from killing anyone else.”<sup>23</sup> The District Attorney appealed the grant of relief, and the Court of Appeal reversed. (*Id.* at \*1.)

According to the Court of Appeal, whatever the positive effects of Mr. Wright’s actions may have been, he still evinced reckless indifference under the *Clark* factors. Specifically, even if he did not know about the gun before, he was aware that a gun was being used when Abernathy brandished it after they got out of the car and “tacitly approved of the use of the gun as a threat of force behind the

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<sup>23</sup> The Superior Court’s order is quoted and discussed more fully in Mr. Wright’s Petition for Review and Reply to Answer to Petition for Review, on file in this Court in case no. S277820.

robbery” (factor 1); he was present at the scene and – although he did restrain Abernathy after the first shot was fired<sup>24</sup> – he could and should have tried to stop him before then; he also fled without rendering aid to the victim (factor 2).<sup>25</sup> (*Wright, supra*, 2022 WL 16917715 at \*\*14-16.)

What emerges from the Court of Appeal’s opinion is the apparent view that Mr. Wright’s presence and participation in an armed robbery was enough, in and of itself, to constitute reckless indifference to human life. (See *Wright, supra*, 2022 WL 16917715 at \*16.) Amicus submits that the same view animates the lower courts’ decision in Mr. Emanuel’s case, in the other cases discussed, and in many other similar cases – some of which are also pending on review and others of which are already final. (See, e.g., *People v. Mitchell* (2022) 81 Cal.App.5th 575 and *id.* at pp. 597-602 (dis. opn. of Stratton, J.)) That way of understanding accomplice liability for felony murder is precisely what *Banks* and *Clark* disapproved and

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<sup>24</sup> The Court of Appeal also noted some testimony that Mr. Wright was the shooter and was the one being restrained. (*Wright, supra*, 2022 WL 16917715 at \*14.) As the opinion acknowledges elsewhere, however, this testimony was incompatible with the jury’s finding at trial that Mr. Wright did *not* personally use a firearm and hence was not the shooter. (*Id.* at \*11.) The opinion further suggests that Mr. Wright may have grabbed the shooter and wrestled with him for the gun as part of an effort to flee the scene (*ibid.*), although there was no testimony to that effect nor any apparent reason why Mr. Wright would have thought that would expedite his flight.

<sup>25</sup> The opinion did not explain how Mr. Wright could have done so, given the apparently undisputed evidence that the victims’ car had sped away while Mr. Wright was still grappling with the shooter. (*Wright, supra*, 2022 WL 16917715 at \*3.)

set out to change. And yet, as the case at bar and the above examples illustrate, lower courts have had little difficulty citing the guiding considerations set forth in *Clark* to rationalize these retrograde outcomes.

To be sure, some appellate panels have applied the considerations set out in *Banks* and *Clark* in a manner that reflects the fundamental teaching of those cases. (See, e.g., *People v. Underwood* (2024) 99 Cal.App.5th 303, 317-321; *People v. Guiffreda* (2023) 87 Cal.App.5th 112, 124-130; *People v. Keel* (2022) 84 Cal.App.5th 546, 558-562.) But others continue to apply those factors without orienting them toward the goal they were designed to achieve – ensuring that liability for felony murder, and the resulting punishment, is reserved for those who are truly culpable for the most serious of crimes. What is missing is consistency and predictability in the interpretation of “reckless indifference to human life” and thus in the outcomes of cases in which that is an essential element.

The problem is not with the articulated factors but with the absence of a distinct and clearly defined goal towards which the factors are to be applied. Amicus respectfully submits that there would be little profit in attempting to educate the lower courts further regarding the specific application of the *Banks/Clark* factors. What is needed is a legal standard toward which the factors are to be applied – a standard that clearly defines what it means to harbor “reckless indifference to human life.” Fortunately, this Court has already articulated one.

**THE COURT SHOULD ANNOUNCE A CLEAR  
DEFINITION OF RECKLESS INDIFFERENCE TO  
HUMAN LIFE AND REQUIRE THAT IT BE PROVED  
BEYOND A REASONABLE DOUBT**

*Banks* and *Clark* proceed from the recognition that neither the statutory phrase, “reckless indifference to human life,” nor the existing definition that is (sometimes) provided – knowingly engaging in criminal activities that involve a “grave risk of death” – provides sufficient guidance to ensure that accomplice liability for felony murder is reserved for those who are truly culpable of the most serious of crimes. (See *Strong, supra*, 13 Cal.5th at p. 705; *Banks, supra*, 61 Cal.4th at p. 800.) It was for this reason that the Court set forth the *Clark* factors to help distinguish between the “Enmunds” and the “Tisons.” But the factors are not meant to, and do not, define that distinction.<sup>26</sup> They are tools designed to help determine whether a legal test has been met – but they provide no additional clarity regarding what, exactly, that legal test *is*. And the instant case and the others discussed (and the many others they reflect) demonstrate that many lower courts (and jurors) remain confused.<sup>27</sup>

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<sup>26</sup> In this sense, the *Banks/Clark* factors recall the similar set of factors announced by this Court in *People v. Anderson* (1968) 70 Cal.3d 15, 26, as a general guide for appellate review of the issue of “premeditation and deliberation.” As the Court made clear in that context, such lists of factors are *not* themselves a legal standard, nor do they replace one. (See *People v. Moon* (2005) 37 Cal.4th 1, 31, and cases discussed therein.)

<sup>27</sup> It bears noting that each of the appellate decisions discussed in the previous section originates from a different appellate district.

The solution to that confusion is plainly set forth in this Court's opinions. Providing more precision to *Tison's* "grave risk" formulation, the Court has repeatedly explained that:

Examples include "the person who tortures another not caring whether the victim lives or dies, or the robber who shoots someone in the course of the robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim as well as taking the victim's property." [Citation.] Reckless indifference "encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions."

(*Scoggins, supra*, 9 Cal.5th at pp. 676-677, quoting *Clark, supra*, 63 Cal.4th at p. 617, quoting *Tison, supra*, 481 U.S. at p. 157; see also *Strong, supra*, 13 Cal.5th at p. 706 ["[T]he core of *Clark's* holding rested on the reckless indifference element. Once again looking to high court precedent for guidance, we concluded that "'reckless indifference,' ... encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions""].)

This is a precise description of what separates an accomplice who is culpable for "major participation" in an armed felony – but nothing more – from one who may be held liable for a murder that occurs in the course of that crime. It expresses exactly what the high court was getting at in *Enmund* and *Tison*, this Court's effort in *Banks* and *Clark*, and what the Legislature intended in enacting SB

1437. Each sought to limit an enhanced measure of liability<sup>28</sup> to those accomplices who proceed with a willingness to assist both in the underlying crime and resulting killing. Amicus submits that no conscientious jurist applying this test – or juror so instructed – could impose felony murder liability on Louis Emanuel, or Marcus Jones, or Daniel Pantoja, or Cheval Wright or others caught up in routine armed robberies that, to their surprise and distress, turned fatal.

But jurors are not instructed on the clear definition set out in this Court’s precedent and – despite the fact the Court has emphasized it in three opinions – reviewing courts frequently appear to treat it as mere dicta, if they acknowledge it at all.<sup>29</sup> A possible explanation for the lower courts’ diffidence may be that they take the word “encompasses” as signaling that the phrase “willingness to kill or assist another in killing to achieve a distinct aim” describes only one of an untold number of variations on “reckless indifference to human life,” rather than the core of that element. Regardless, more is needed if this essential articulation is to be given meaningful effect.

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<sup>28</sup> The high court was limiting death penalty eligibility; this Court extended the analysis to felony murder special circumstance liability more generally, and the Legislature applied those limitations to felony murder simpliciter – but the same principles apply.

<sup>29</sup> For instance, the “willingness to kill” formulation is quoted – but not discussed or applied – in *Pantoja, supra*, 2023 WL 4142029 at \*14, and *Jones, supra*, 2023 WL 4633093 at \*11; it is not even mentioned in *Emanuel* or *Wright*.

## CONCLUSION

Amicus respectfully suggests that this Court instruct the lower courts – and direct that juries be instructed – that the element of “reckless indifference to human life” *requires* proof beyond a reasonable doubt of a “willingness to kill, or assist another in killing, to achieve a distinct aim, even if the defendant does not specifically desire that death as an outcome of his or her actions.” Applying that standard, the judgment in the instant case should be reversed.

DATED: June 12, 2024

Respectfully submitted,

GALIT LIPA  
State Public Defender

/s/

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**CERTIFICATE OF COUNSEL**  
**(Cal. Rules of Court, rule 8.360(b)(1))**

I, AJ Kutchins, conducted a word count of this brief using our office's computer software. Based on that computer-generated word count, I certify that this brief is 8,720 words in length, excluding tables and certificates.

DATED: June 12, 2024

/s/ \_\_\_\_\_  
AJ KUTCHINS  
Supervising Deputy State Public Defender

**DECLARATION OF SERVICE**

Case Name: *People v. Louis Sanchez Emanuel*  
Case Number: **Cal. Supreme Ct. No. S280551**  
**6DCA No. H049147**  
**Santa Clara Co. Super. Ct. No. C1246799**

I, **Margarita Maiz**, declare as follows: I am over the age of 18, and not party to this cause. I am employed in the county where the mailing took place. My business address is 1111 Broadway, Suite 1000, Oakland, California 94607. I served a true copy of the following document:

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PUBLIC DEFENDER IN SUPPORT OF APPELLANT  
LOUIS SANCHEZ EMANUEL**

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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. Signed on **June 12, 2024**, at Oakland, California.

Margarita  
Maiz Vazquez  
Digitally signed by  
Margarita Maiz Vazquez  
Date: 2024.06.12  
09:32:48 -07'00'  

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MARGARITA MAIZ

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v. EMANUEL**  
Case Number: **S280551**  
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6/12/2024

Date

/s/Margarita Maiz

Signature

Kutchins, AJ (102322)

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Last Name, First Name (PNum)

Office of the State Public Defender

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Law Firm