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In the Supreme Court of the State of California

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

v.

LUIS RAMON MANZANO ARELLANO,
Defendant and Appellant.

Sixth Appellate District, Case No. H049413
Santa Clara County Superior Court, Case No. 159386
The Honorable Daniel Nishigaya, Judge

RESPONDENT'S CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE

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INTRODUCTION

Amici, the Office of the State Public Defender (OSPD) and the California Public Defender's Association (CPDA), argue that a court may not impose any enhancement when resentencing under Penal Code section 1172.6, subdivision (e), after a homicide conviction has been vacated and redesignated to another offense.[1] Like Arellano, OSPD argues that the text and structure of section 1172.6 support that reading. (OSPD Br. 19-22.) OSPD also contends that its reading of the statute is supported by the legislative goals of reducing the prison population, lowering costs associated with incarceration, and ameliorating sentencing disparities. (OSPD 28-34.)

As discussed in the People's principal briefing, to the extent the text and structure of section 1172.6 shed light on the scope of resentencing under the statute, they support an interpretation permitting the imposition of enhancements. And the legislative history confirms that the primary purpose of Senate Bill 1437 was to reform the law so that individuals are more equitably sentenced in accord with their individual culpability. Nothing in the legislative history of Senate Bill 1437 indicates an intent to preclude the imposition of enhancements when redesignating a conviction under section 1172.6, subdivision (e). Instead, the availability of enhancements gives resentencing courts appropriate flexibility to fashion a sentence that fairly reflects the petitioner's individual culpability, in line with the legislative

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

purpose. OSPD's reading, in contrast, would undermine that goal and could lead to markedly different sentences in similar cases.

OSPD and CPDA also urge their narrow interpretation of subdivision (e) based on the doctrine of constitutional avoidance, arguing that the imposition of enhancements in connection with redesignated convictions would pose serious and doubtful constitutional questions. (OSPD Br. 34-43; CPDA Br. 27-56.) But the same potential constitutional questions amici point to with respect to enhancements are implicated by redesignation itself, which requires a court after vacating a murder conviction to identify and impose a new conviction for an uncharged target offense or underlying felony. An interpretation of subdivision (e) prohibiting the imposition of enhancements would not avoid the questions highlighted by amici.

Moreover, the constitutional questions amici point to are not serious and doubtful. The Sixth Amendment does not apply in the context of section 1172.6, which is a legislative act of lenity that reduces punishment. And any other potential constitutional issues implicated by the redesignation process under subdivision (e)—for example, questions about notice or the standard of proof—can adequately be dealt with through appropriate judicially created procedures. While OSPD contends that such judicial rulemaking would be improper (OSPD Br. 44-51), the courts are well equipped, and properly empowered, to fashion appropriate procedures to guide the imposition of enhancements under section 1172.6, just as they have done to guide

resentencing on uncharged target offenses and underlying felonies under the same statute.

ARGUMENT

I. THE TEXT AND STRUCTURE OF SECTION 1172.6 SUGGEST THAT ENHANCEMENTS MAY BE IMPOSED IN CONNECTION WITH REDESIGNATED CONVICTIONS UNDER SUBDIVISION (E)

As explained in the People's principal briefing, section 1172.6, subdivision (e) does not clearly speak to the imposition of enhancements; its text and structure, however, suggest that it confers broad resentencing discretion, including the power to impose enhancements. (OBM 19-27; RBM 8-15.) OSPD makes several arguments similar to those put forward by Arellano in favor of a narrow interpretation prohibiting the imposition of enhancements when redesignating a conviction under subdivision (e). (OSPD Br. 18-22.) Those arguments should be rejected for the reasons explained in the People's principal briefing and as addressed here.

OSPD supports its narrow interpretation with the observation that subdivision (e) makes no express reference to imposing enhancements. (OSPD Br. 19.) But nothing in the text of the statute expressly precludes the imposition of enhancements either. The statute's silence on that point does not necessarily support OSPD's narrow reading, much less a literal reading based on negative implication. (See RBM 13.)[2]

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[2] Indeed, there appears to be no dispute in this case that the literal terms of the statute do not control. (See RBM 12.) Resentencing under subdivision (d)(3) is available when there are "remaining charges" after the murder conviction is vacated, and (continued…)

OSPD also points to subdivision (d)(3), which provides that if the prosecution fails to sustain its burden of proof at the evidentiary hearing, the prior conviction "and any allegations and enhancements attached to the conviction" shall be vacated. (OSPD Br. 20.) OSPD reasons that it "would make no sense for the Legislature, in the very next section of the statute, to have silently authorized enhancements—possibly even the exact same ones it just ordered vacated—to be attached to the resentencing offense." (OSPD Br. 20-21.) But an enhancement by its nature appends to the underlying conviction and does not exist independently from that conviction. (See *People v. Izaguirre* (2007) 42 Cal.4th 126, 134; *People v. Wims* (1995) 10 Cal.4th 293, 304.) Thus, an enhancement pertaining to a vacated conviction must necessarily itself be vacated. That does not imply that a similar enhancement may not be imposed in relation to a *different*, redesignated conviction. The reforms made by Senate Bill 1437 are targeted at imputed-malice theories of murder, not at any sentence enhancement that would apply to the defendant's

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(…continued)

redesignation is permissible under subdivision (e) if "the target offense was not charged." (§ 1172.6, subds. (d)(3), (e).) Here, a target offense was initially charged but later dismissed, and no charges remained after Arellano's murder conviction was vacated. A literal reading of the statute would thus preclude Arellano's resentencing altogether, producing an absurd result—one which neither Arellano nor amici defend. (See OBM 22-23; RBM 8.)

criminal conduct (such as the defendant's use of a weapon in the commission of the offense).

Indeed, OSPD does not appear to contest that, when resentencing on "remaining counts" under subdivision (d)(1), those charges may include any associated enhancements that were found true. (See OBM 23-24.)[3] OSPD's narrow interpretation would lead to an absurdity—or at least a pronounced incongruity—when resentencing in similar cases under subdivision (d) or subdivision (e). On the same facts and based upon the same conviction, an enhancement reflecting the defendant's particular level of culpability would be permitted under subdivision (d) but not under subdivision (e). The disparity would arise simply because the prosecution happened to charge an enhancement along with a target offense or underlying felony rather than charging murder generically—a decision that, prior to the enactment of Senate Bill 1437, would have been counterintuitive given the primacy of the murder (or attempted

[3] OSPD suggests that the People take the position that subdivision (d)(1) allows a resentencing court to "tack on enhancements that were not admitted or placed before the jury" when sentencing on the remaining counts. (OSPD Br. 21, fn. 7.) To the contrary, as explained in the opening brief, because the resentencing court must resentence the petitioner "on any remaining counts in the same manner as if the petitioner had not previously been sentenced" (§ 1172.6, subd. (d)(1)), if a true finding was returned on an enhancement attached to a remaining count, the resentencing court would be permitted to impose a sentence on that enhancement. (OBM 23.)

murder) charge, or at a minimum would have carried significantly lesser import. (OBM 23-25; RBM 4.)[4]

II. ALLOWING ENHANCEMENTS IN RESENTENCING ON REDESIGNATED CONVICTIONS FURTHERS THE LEGISLATIVE PURPOSE OF SECTION 1172.6

As explained in the People's principal briefing, the availability of enhancements under section 1172.6, subdivision (e), would advance the legislative purpose of ensuring that sentences for homicide offenses are commensurate with the individual culpability of the offender; conversely, precluding the imposition of enhancements would undermine that goal and produce disparate results in similar cases. (OBM 27-31; RBM 15-16.) OSPD makes a number of arguments to the contrary. Again, these arguments are unpersuasive.

OSPD argues that prohibiting sentence enhancements under subdivision (e) would further the legislative goals of reducing the prison population, repairing the harms of mass incarceration, saving money, and ameliorating sentencing disparities. (OSPD Br. 24, 28-34.) OSPD emphasizes language in the legislative history about the goals of reducing prison overcrowding and repairing the harm of a history of mass incarceration. (OSPD Br. 28-30.) It also points to comments by the Senate Appropriations

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[4] Contrary to OSPD's assertion, the People do not claim that absurdity would arise from an interpretation that "would preclude trial courts from maximizing the punishment imposed upon successful petitioners." (OSPD Br. 23.) Absurdity would result from an interpretation of the statute that allowed starkly different punishment in similar cases. (See OBM 22-25; RBM 14-15.)

Committee about "[u]nknown, potentially major out-year or current-year savings in reduced incarceration expenses," and potential savings in the amount of millions of dollars annually. (Sen. Com. on Appropriations, Analysis of Sen. Bill 1437 (2017-2018 Reg. Sess.) introduced Feb. 16, 2018, p. 1; OSPD Br. 29.) OSPD argues that allowing enhancements on redesignated convictions "would only mean longer replacement sentences, which would be inimical to the drafters' stated purpose of reducing costs and repairing the effects of overincarceration." (OSPD Br. 31.)[5]

While OSPD emphasizes the Legislature's goal of reducing the prison population, nothing suggests that this goal was independent from or more important than Senate Bill 1437's purpose of "more equitably sentenc[ing] offenders in accordance with their involvement in homicides." (Stats. 2018, ch. 1015, § 1(b).) In the uncodified preamble to Senate Bill 1437, the Legislature declared, "It is a bedrock principle of the law and of equity that a person should be punished for his or her actions

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[5] Based on calculations made by an OSPD staff member, OSPD estimates that from January 2019 through June 2023, 834 people have been resentenced, 13,567 years have been removed from sentences, and incarceration costs have been reduced by $181 million. (OSPD Br. 30-31 & Exh. A.) The exhibit attached to OSPD's brief, reflecting its staff member's untested analysis, is evidentiary in nature and is not part of the record in this case. It is therefore not properly before this Court. In any event, even accepting the accuracy of the cost-savings calculations reflected in the exhibit, those savings do not support an interpretation of subdivision (e) prohibiting the imposition of sentence enhancements.

according to his or her own level of individual culpability." (Stats. 2018, ch. 1015, § 1(d).) The Legislature then declared: "Reform is needed in California to limit convictions and subsequent sentencing so that the law of California fairly address the culpability of the individual *and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual*." (Stats. 2018, ch. 1015, § 1(e), italics added.)

The language in the uncodified preamble shows that the principal goal of the Legislature in enacting Senate Bill 1437 was to reform the law so that punishment for homicide offenders more fairly reflects their individual culpability, and that the Legislature viewed prison population reduction as an additional benefit secondary to that overarching goal. OSPD does not identify anything suggesting a freestanding legislative goal to reduce sentences and alleviate prison overcrowding *separate from* ensuring more equitable sentencing in accordance with individual culpability. And even if the Legislature primarily had cost savings through lower sentences in mind, that does not mean that the statute should be interpreted so as to maximize cost savings in every way. (See *In re Friend* (2021) 11 Cal.5th 720, 740 ["no legislation pursues its purposes at all costs. . . . and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law"].)

OSPD additionally points to other sentencing legislation passed during the same legislative session, arguing that the

Legislature's reforms in this general area suggest that it did not intend to authorize the imposition of enhancements in the context of redesignating a conviction under section 1172.6, subdivision (e). (OSPD Br. 32-34.) More particularly, OSPD argues that Senate Bill 1393 (2017-2018 Reg. Sess.) and Senate Bill 620 (2017-2018 Reg. Sess.) "explicitly empower judges to continue to impose sentencing enhancements in appropriate cases" and that this "demonstrates that the Legislature knew how to bestow the authority to impose enhancements in an ameliorative statute when it chose to do so." (OSPD Br. 33.) The inferences that OSPD seeks to draw from these other legislative acts are overstated.

Senate Bill 1393 deleted former section 1385, subdivision (b), which prohibited a judge from striking a prior serious felony conviction, and it made conforming changes to section 667. (Stats. 2018, ch. 1013, § 2.) Otherwise, no significant changes were made to section 667. Similarly, Senate Bill 620 deleted the prohibition on striking a firearm allegation or finding in sections 12022.5 and 12022.53, and added provisions allowing a court, in the interest of justice, to strike or dismiss an enhancement under those sections. (Stats. 2018, ch. 682, §§ 1, 2.) The remaining provisions in sections 12022.5 and 12022.53 were left intact.

Senate Bill 1393 and Senate Bill 620 thus did not "bestow . . . authority to impose enhancements" (OSPD Br. 33), but kept in place pre-existing authority to impose enhancements and gave sentencing courts more discretion by permitting them to strike enhancements in the interest of justice. In short, the Legislature

chose not to eliminate the enhancements altogether, but instead provided courts with more sentencing flexibility. To be sure, the Legislature has recently sought to ameliorate criminal sentencing laws in various ways, but that general legislative sentiment does not shed light on the particular contours of resentencing on a redesignated conviction under section 1172.6. Indeed, that the Legislature increased flexibility under Senate Bills 1393 and 630 without eliminating those enhancements tends to support, not undermine, the People's interpretation of section 1172.6 as affording courts flexibility to impose punishment commensurate with culpability.

OSPD further contends that the imposition of enhancements in connection with redesignated convictions under subdivision (e) could "render the intended benefit of the statute illusory" because courts could impose enhancements that "erase any practical benefit from getting one's invalid murder sentence vacated." (OSDP Br. 26.) But the extent of any practical benefit under section 1172.6 depends on the defendant's personal culpability under otherwise applicable law as applied to the facts of the case. If that culpability under the particular facts and circumstances warrants a sentence close to the original one, even after vacating the murder conviction, then the statute has served its purpose.

In any event, it is unlikely that the imposition of an enhancement or enhancements when resentencing under section 1172.6, subdivision (e) would result in a sentence equal to the original sentence for murder, especially given recent reforms. Resentencing courts must now apply Senate Bill No. 81 (2021-

2022 Reg. Sess.), which amended section 1385 to provide that "the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute." (§ 1385, subd. (c)(1).) Section 1385 now sets forth mitigating circumstances that weigh "greatly in favor" of dismissing an enhancement, unless the sentencing court finds that dismissal of the enhancement "would endanger public safety." (§ 1385, subd. (c)(2).) This makes it even less likely that the imposition of enhancements on redesignated convictions would result in sentences negating any practical benefit of section 1172.6.

Finally, OSPD argues that identifying and proving enhancements to be applied when resentencing under subdivision (e) would present "complexities" that the Legislature is unlikely to have sanctioned. (OSPD Br. 25-26.)[6] But the same complexities are already implicated in the redesignation process that the statute expressly calls for—that is, resentencing courts must grapple with how to identify and adjudicate an uncharged

[6] OSPD states that the People have contended that identifying an applicable enhancement would be "obvious" and therefore would not result in any complexity. (OSPD Br. 25.) The People have only pointed out, in response to Arellano's argument that identifying an uncharged target offense would be "relatively definite," that "there is no reason why identifying an applicable enhancement would not also be 'relatively definite' in some, or even many, cases" like this one. (RBM 17, fn. 3.) The People do not dispute that it might be more challenging in some cases than in others to identify an uncharged enhancement, as it may be to identify an uncharged target offense or underlying felony.

underlying felony or target offense, which might be especially difficult where there was no trial. (OBM 25-26; RBM 17.) Given that the Legislature's resentencing scheme necessarily contemplates those complexities, there is little reason to conclude that it must necessarily have intended to exclude the possibility of sentence enhancements under subdivision (e) because of parallel potential complexities. (RBM 17.)

III. THE IMPOSITION OF ENHANCEMENTS UNDER SUBDIVISION (E) DOES NOT RAISE SERIOUS AND DOUBTFUL CONSTITUTIONAL QUESTIONS OR REQUIRE UNSANCTIONED JUDICIAL RULEMAKING

Both amici argue that the doctrine of constitutional avoidance supports a narrow reading of subdivision (e) that does not allow the imposition of enhancements on redesignated convictions. (OSPD Br. 35-43; CPDA Br. 32-56.) OSPD also argues that this narrow interpretation of subdivision (e) is necessary to avoid impermissible judicial rulemaking and the "chaotic" effect of ad hoc determinations by individual trial courts. (OSPD Br. 44-51.) Neither argument is persuasive.

A. The doctrine of constitutional avoidance does not require amici's construction of subdivision (e)

Under the doctrine of constitutional avoidance, "If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable." (*People v.*

Gutierrez (2014) 58 Cal.4th 1354, 1373, internal quotation marks omitted.) CPDA argues that the imposition of enhancements on redesignated convictions under subdivision (e) implicates the constitutional right to trial by jury. (CPDA Br. 32-56.) OSPD additionally focuses on due process, evidentiary standards, and burdens of proof. (OSPD Br. 35-43.)

Preliminarily, the doctrine of constitutional avoidance would not be satisfied here, even under an interpretation of subdivision (e) disallowing enhancements. (See RBM 16-17.) CPDA acknowledges that the potential Sixth Amendment questions it points to would also be implicated when identifying and adjudicating an uncharged target offense or underlying felony under subdivision (e). (CPDA Br. 25-26, 53.) For its part, OSPD argues that redesignating a murder conviction under subdivision (e) does not pose the same constitutional questions as the imposition of enhancements because "under the previously allowable murder theories, the underlying felony or target offense was legally essential to the determination of guilt" that was made by the trial jury. (OSPD Br. 40.)[7] But OSPD ignores situations

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[7] Elsewhere in its brief, CPDA appears to suggest a similar theory in arguing that the Legislature envisioned that resentencing under subdivision (e) would encompass only the target offense or underlying felony "necessarily subsumed within the murder conviction." (CPDA Br. 58, internal quotation marks omitted; see also CPDA Br. 52-53 [Legislature must have expected that identifying an uncharged target offense or underlying felony would involve examination of record of conviction to determine its basis as a matter of law, similar to prima facie inquiry].)

in which a defendant pleads guilty to a generic murder charge, or where alternative theories were submitted to a jury at trial regarding an uncharged target offense or underlying felony. Under those circumstances, it cannot be determined from the record of the prior conviction what finding was "legally essential" to the verdict so as to satisfy constitutional principles under OSPD's theory. Precluding sentence enhancements under subdivision (e) will therefore not avoid the issues highlighted by amici, which are already implicated by the redesignation process itself.

Moreover, the constitutional concerns raised by amici are not "serious and doubtful" and thus do not require resort to the doctrine of constitutional avoidance. First, as discussed in the People's reply brief on the merits, resentencing under section 1172.6 does not implicate the Sixth Amendment. (RBM 18.) That provision requires that any fact (other than the fact of a prior conviction) that *increases the penalty* for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. (*People v. Perez* (2018) 4 Cal.5th 1055, 1063, citing *Apprendi v. New Jersey* (2000) 530 U.S. 466.) Because the purpose of a section 1172.6 proceeding is to provide retroactive *reduction* of an otherwise valid conviction and sentence through an act of lenity by the Legislature, the Sixth Amendment does not apply in such proceedings. (See *Dillon v. United States* (2010) 560 U.S. 817, 828; *People v. Perez*, at p. 1064.)

In *Dillon*, the United States Supreme Court held that sentence-modification proceedings did not implicate the Sixth Amendment. (*Dillon*, *supra*, 560 U.S. at p. 828.) It reasoned that the proceedings were undertaken pursuant to "a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the [Sentencing] Guidelines," and any facts found by a judge in the modification proceedings would not serve to increase the prescribed range of punishment. (*Ibid*.) Similarly, in *Perez*, this Court held that "Proposition 36's resentencing scheme, though different in various ways from the sentence modification scheme at issue in *Dillon*, is also an enactment intended to give inmates serving otherwise final sentences the benefit of ameliorative changes to applicable sentencing laws." (*Perez*, *supra*, 4 Cal.5th at p. 1064.) Thus, the Sixth Amendment did not prohibit trial courts from relying on facts not found by a jury in determining Proposition 36's resentencing criteria. (*Ibid*.)

Amici argue that the reasoning of *Dillon* and *Perez* does not apply here. OSPD points out that the courts in those cases "were considering lesser sentences for historical criminal convictions that were themselves left intact." (OSPD Br. 39.) CPDA similarly contends that the cases are inapposite because they involved ameliorative legislation whereby sentences could be reduced, but did not involve a "resentencing process that increased the defendant's judgment in any way." (CPDA Br. 38-39.) CPDA argues that, in resentencing under subdivision (e), a court may "increase a defendant's judgment by adding

convictions and enhancements not subsumed within those returned by the defendant's jury or admitted by the defendant." (CPDA Br. 25-26.)

Although *Dillon* and *Perez* did not involve ameliorative schemes that could alter a conviction, their reasoning applies equally here. (See *People v. James* (2021) 63 Cal.App.5th 604, 609 [section 1172.6 implicates act of lenity principle even though prescribed relief "differs in kind" from provisions at issue in other lenity cases].) Section 1172.6 represents an act of legislative lenity in that there is no constitutional *right* to the reduction of a valid murder conviction obtained before Senate Bill 1437. (See *People v. Conley* (2016) 63 Cal.4th 646, 656 ["the Legislature . . . may choose to modify, limit, or entirely forbid the retroactive application of ameliorative criminal-law amendments if it so chooses"].) Further, relief under section 1172.6 cannot result in a sentence greater than the initial one. (§ 1172.6, subd. (d)(1).) Nor does the redesignation of a conviction, including the imposition of any enhancements, "increase" the petitioner's judgment. When a petitioner is entitled to relief under section 1172.6, the murder conviction is vacated and, if subdivision (e) applies, the new conviction and sentence *replace* the prior judgment. (§ 1172.6, subd. (d)(1).) As in *Dillon* and *Perez*, the Sixth Amendment is not implicated because this scheme involves only amelioration of criminal punishment as an act of lenity.

Moreover, unlike a criminal prosecution initiated by the State, the procedure under section 1172.6 is voluntary. (See *People v. Njoku* (2023) 95 Cal.App.5th 27, 45 [seeking relief under

section 1172.6 "is a completely voluntary endeavor on defendant's behalf"]; *People v. Mitchell* (2022) 81 Cal.App.5th 575, 588 [section 1172.6 procedure "is the *opposite* of a criminal prosecution"]; § 1172.6, subd. (a) [person convicted of qualifying offense "*may* file a petition"], italics added.) A person seeking relief under the statute knows that the remedy may be to redesignate a vacated conviction to an uncharged offense and that the statute does not call for any jury findings. Voluntarily seeking vacatur of a final, valid murder conviction under this scheme therefore necessarily accepts the accompanying statutory remedy.[8]

CPDA additionally argues that allowing resentencing courts to impose uncharged enhancements when redesignating a conviction implicates the Sixth Amendment inasmuch as the redesignated conviction could later be used to enhance the petitioner's sentence under recidivist sentencing schemes. (CPDA Br. 48-62; see also OSPD Br. 42-43.) CPDA reasons that, under *People v. Gallardo* (2017) 4 Cal.5th 120, the Sixth Amendment prohibits increasing a sentence under recidivist sentencing laws based upon a prior conviction that was obtained in a proceeding where the defendant was not afforded Sixth Amendment protections. (CPDA Br. 48-56.) Thus, according to CPDA, any redesignation must at a minimum comply with the

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[8] Even if an *express* waiver of Sixth Amendment rights were required (see OSPD Br. 41; CPDA Br. 60), courts in fashioning appropriate rules governing this voluntary procedure could simply require such a waiver. (See Arg. II. B., *post*.)

restrictions on interpreting a prior record of conviction identified in *Gallardo*: "It must involve a legal inquiry based on the charges, verdicts and jury instructions (or the defendant's admissions in plea cases), not a factual inquiry about the criminal conduct the evidence in the record shows." (CPDA Br. 52-53.)

But even if a petitioner's voluntary request for relief under section 1172.6 did not satisfy Sixth Amendment concerns as to resentencing under subdivision (e), the issue of whether a redesignated conviction can be used in *future* proceedings to increase sentences is a separate question that need not be decided in this case. That issue is not relevant to resolution of the question now before the Court because "a decision as to whether a prior offense qualifies as a 'strike' is not made as of the date of the conviction on that offense, but rather at the time of the conviction on the future offense." (*People v. Watson* (2021) 64 Cal.App.5th 474, 489.) And a number of events would have to occur before a redesignated conviction would become relevant to future punishment. (*Id.* at pp. 489-490.) "'A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.'" (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230-231; see also *People v. Brown* (2003) 31 Cal.4th 518, 534 ["'It is well established that "we do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us"'"].)

CPDA advances several reasons why the Court should decide this newly raised question now instead of later, none of which is persuasive. CPDA argues that: (1) a conviction cannot effectively provide deterrence if the defendant does not know the extent to which the conviction could result in additional punishment in the future; (2) a "defendant who may be innocent of murder under post-SB 1437 law may nonetheless choose to forgo petitioning for relief for that reason" and "should not have to risk suffering additional strike and serious-felony convictions in the process" of attempting to clear his or her record of a now-invalid conviction; and (3) "[i]f the determination is not made until after the defendant has recidivated, the determination will be too late to qualify the conviction as a 'prior' conviction that can be used to enhance the defendant's sentence." (CPDA Br. 51-55.) These arguments overlook that the conviction being vacated under section 1172.6—murder, attempted murder, or voluntary manslaughter—would itself necessarily qualify as a serious felony for purposes of Three Strikes and other recidivist laws. (See §§ 667, subd. (a)(4), 1172.6, subd. (a), 1192.7, subd. (c).)[9] A

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[9] Involuntary manslaughter is not a "serious felony." (§ 1192.7, subd. (c).) But an involuntary manslaughter conviction does not involve malice. (*People v. Butler* (2010) 187 Cal.App.4th 998, 1008-1009.) Relief under section 1172.6 is therefore unavailable for an involuntary manslaughter conviction since that crime was unaffected by the changes to section 188 affecting imputed-malice theories of criminal liability. (See §§ 188 ["Malice shall not be imputed to a person based solely on his or her participation in a crime"], 1172.6, subd. (a) [relief available for those prosecuted on "theory under which malice is imputed to

(continued…)

petitioner seeking section 1172.6 relief is thus *already* potentially subject to future recidivist treatment, which will not change on resentencing, except possibly to the petitioner's benefit.

B. The imposition of enhancements under subdivision (e) would not require improper judicial rulemaking

OSPD contends that an interpretation of subdivision (e) disallowing the imposition of enhancements is necessary to avoid improper judicial rulemaking that would be required in connection with identifying and adjudicating applicable enhancements. (OSPD Br. 44-51.) To the contrary, as explained in the People's reply brief, to the extent resentencing courts will have to formulate procedures governing the imposition of enhancements, they are empowered to fill in the gaps left unaddressed by section 1172.6. (RBM 20-22.) The exercise of that authority does not constitute improper judicial rulemaking.

(…continued)

a person based solely on that person's participation in a crime"]; 1172.6, subd. (a)(3) [relief available if petitioner "could not presently be convicted of murder . . . because of changes to Section 188 or 189"].) In contrast, voluntary manslaughter, which is a serious felony, does come within the scope of section 1172.6 because a conviction for that offense can arise from a prosecution on a malice theory resulting in a plea to the lesser offense of voluntary manslaughter. (See § 1172.6, subd. (a)(2) [relief available if petitioner "accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of murder or attempted murder"]; *People v. Schuller* (2023) 15 Cal.5th 237, 252-253 [relationship between murder and voluntary manslaughter is "unique," involving negation of what would otherwise constitute malice by the presence of imperfect self-defense or heat of passion].)

Section 1172.6, subdivision (e), provides for redesignation of a conviction to an uncharged target crime or underlying felony, but it does not specify any particular procedure for identifying and adjudicating the redesignated conviction. Therefore, even under a restrictive interpretation of subdivision (e)'s resentencing authority, courts must "create new forms of procedures in the gaps left unaddressed" by the statute. (*People v. Arredondo* (2019) 8 Cal.5th 694, 706-707, internal quotation marks omitted.) That will not be avoided by the interpretation advanced by amici, and those same procedures that courts have already formulated, or that may be formulated in future cases, may govern imposition of related enhancements. (See, e.g., *People v. Silva* (2021) 72 Cal.App.5th 505, 520-526 [1172.6 petitioner is entitled to explicit notice of proposed redesignated offense as well as opportunity to be heard].)[10]

Pointing to *People v. Collie* (1981) 30 Cal.3d 43 and *Reynolds v. Superior Court* (1974) 12 Cal.3d 834, OSPD argues that

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[10] OSPD criticizes *Silva* as an example of "an incomplete formulation of judicially established rules" resulting from the court's "strained" reading of subdivision (e) as allowing redesignation of a conviction to more than one underlying felony. (OSPD Br. 48-49.) But *Silva* fashioned the rules it did based on the premise that petitioners have a due process right to notice and the opportunity to be heard in section 1172.6 resentencing proceedings, not because Silva's single murder conviction was redesignated to multiple felonies. (*Silva*, *supra*, 72 Cal.App.5th at p. 523 ["In light of the liberty interest at stake, a petitioner facing resentencing under section 1170.95, subdivision (e), should not be left in the dark as to what uncharged 'target offense' or 'underlying felony' the court may be contemplating"].)

judicial rulemaking to effectuate resentencing under section 1172.6 would be improper because there is "no *necessity* for courts to create rules and procedures allowing the imposition of enhancements." (SPD Br. 45-46.) Those cases held that new prosecutorial discovery rules formulated by trial courts were not supported by any statutory authority and were not necessary to "protect some fundamental constitutional principle or to effectuate some specific guarantee of individual liberty." (*Reynolds*, at p. 846.) But again, it *is* necessary for courts to create procedures for the imposition of redesignated target offenses or underlying felonies even under amici's interpretation of section 1172.6, subdivision (e). And "further intervention by this Court when conflicting rules are adopted" (OSPD Br. 44; see also OSPD Br. 49) will thus not be avoided by amici's proposed prohibition against enhancements.

Indeed, Senate Bill 1437 more broadly has given rise to numerous issues requiring judicial interpretation or other resolution. For example, even though the Legislature set out some procedures pertaining to evidentiary hearings under former section 1170.95, subdivision (d)(2), initial uncertainty led trial courts to formulate rules about the applicable burden of proof and whether hearsay evidence could be admitted in an evidentiary hearing, resulting in conflicting decisions. (See SPD Br. 49-50, fn. 25.) Those issues were ultimately resolved by Senate Bill 775 (2021-2022 Reg. Sess.) (Stats. 2021, ch. 551), which clarified the proper burden of proof and the applicability of the Rules of Evidence. (See also *People v. Lewis* (2021) 11 Cal.5th 952, 960-

967 [resolving conflicting decisions regarding whether a prima facie showing under section 1172.6 is a one-step or two-step process].) Judicial determination of appropriate procedures for redesignating convictions under subdivision (e) would not present any more difficult problems.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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April 24, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE** uses a 13-point Century Schoolbook font and contains 4,562 words.

ROB BONTA
Attorney General of California

/s/ Christine Y. Friedman
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Attorneys for Plaintiff and Respondent

April 24, 2024

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Arellano**
Case No.: **S277962**

I declare:

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

On April 24, 2024, I electronically served the attached **RESPONDENT'S CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on April 24, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Clerk of the Court
Hall of Justice
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

I declare under penalty of perjury under the laws of the State of California

and the United States of America the foregoing is true and correct and that this declaration was executed on April 24, 2024, at San Diego, California.

C. Endozo	
Declarant	Signature

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