



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of August 30, 2021

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#21-435 *People ex rel. Garcia-Brower v. Kolla's Inc., S269456.* (G057831; nonpublished opinion; Orange County Superior Court; 30-2017-00950004.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Does Labor Code section 1102.5, subdivision (b), which protects an employee from retaliation for disclosing unlawful activity, apply when the information is already known to that person or agency?

#21-436 *Los Angeles Times Communications, LLC v. State Bar of California, S269401.* Original proceeding. The court issued an order to show cause why the relief sought in the petition should not be granted. This case presents the following issues: (1) Does the court have the authority to reverse a discretionary decision by the State Bar's Interim Chief Trial Counsel not to waive the confidentiality of disciplinary investigations involving alleged professional misconduct by Thomas V. Girardi, and if so, was such a waiver of confidentiality in this matter "warranted for protection of the public" within the meaning of Business and Professions Code section 6086.1, subdivision (b)(2)? (2) Are the State Bar of California's Chief Trial Counsel and Chair of the Board of Trustees authorized under Business and Professions Code section 6086.1, subdivision (b)(2) to disclose information and records regarding confidential disciplinary investigations that were closed without charges filed? (3) Is the scope of disclosures permitted under the confidentiality waiver in section 6086.1, subdivision (b)(2) limited to releases of information "confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing"?

#21-437 *Los Angeles Unified School Dist. v. Superior Court, S269608.* (B307389; 64 Cal.App.5th 549; Los Angeles County Superior Court; BC659059.) Petition for review

after the Court of Appeal granted a petition for writ of mandate. This case presents the following issue: Does Government Code section 818, which bars punitive damages against government defendants, preclude recovery under Code of Civil Procedure section 340.1, subdivision (b), which permits an award of up to treble damages after a child is sexually abused as a result of a cover up?

#21-438 *People v. Embry, S270014.* (F080697; nonpublished opinion; Kern County Superior Court; BF160677A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#21-439 *People v. O'Brien, S269997.* (E074516; nonpublished opinion; San Bernardino County Superior Court; FWV19001320.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Embry* and *O'Brien* deferred pending decision in *People v. Tirado, S257658* (#19-174), which presents the following issue: Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

#21-440 *People v. Epperson, S270107.* (F081044; nonpublished opinion; Kings County Superior Court; 14CM1949HTA.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter.

#21-441 *People v. Hernandez, S270019.* (E075834; nonpublished opinion; Riverside County Superior Court; RIF132924.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-442 *People v. Robles, S270134.* (B308432; nonpublished opinion; Los Angeles County Superior Court; BA390804.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Epperson, Hernandez, and Robles* deferred pending decision in *People v. Lopez, S258175* (#19-172), which presents the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a

natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 570 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

#21-443 *People v. Flores, S270041.* (B308289; nonpublished opinion; Los Angeles County Superior Court; BA195400.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-444 *People v. Maraglino, S270039.* (D077746; nonpublished opinion; San Diego County Superior Court; SCN304686.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-445 *People v. Perez, S270034.* (F079351; nonpublished opinion; Merced County Superior Court; SUF18323B.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-446 *People v. Simmons, S270048.* (F079610; 65 Cal.App.5th 739; Fresno County Superior Court; CF94520777.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Flores, Maraglino, Perez, and Simmons* deferred pending decision in *People v. Strong, S266606* (#21-101), which presents the following issue: Does a felony-murder special circumstance finding (Pen. Code, § 190.2, subd. (a)(17)) made before *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522 preclude a defendant from making a prima facie showing of eligibility for relief under Penal Code section 1170.95?

#21-447 *People v. Graham, S269509.* (B300167; 64 Cal.App.5th 827; Los Angeles County Superior Court; BA464605.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Braden, S268925* (#21-345), which presents the following issue: What is the latest point at which a defendant may request mental health diversion under Penal Code section 1001.36?

#21-448 *People v. Jones, S270136.* (E074846; nonpublished opinion; San Bernardino County Superior Court; FSB18003148.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Williams, S262229* (#20-189), which presents the following issue: Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from

youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?

#21-449 *People v. Kasrawi, S270040.* (D077139; nonpublished opinion; San Diego County Superior Court; SCD281382.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Tacardon, S264219* (#20-290), which presents the following issue: Was defendant unlawfully detained when the arresting officer used his spotlight to illuminate defendant's parked car and then directed a passenger who exited the car to remain outside and stay on the sidewalk near the car?

#21-450 *People v. Lavi, S270089.* (B306345; nonpublished opinion; Ventura County Superior Court; 2019031654.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Aguayo, S254554* (#19-47), which presents the following issues: (1) Is assault by means of force likely to produce great bodily injury a lesser included offense of assault with a deadly weapon? (See *People v. Aledamat* (2019) 7 Cal.5th 1, 16, fn. 5.) (2) If so, was defendant's conviction of assault by means of force likely to produce great bodily injury based on the same act or course of conduct as her conviction of assault with a deadly weapon? (3) Are Penal Code section 245, subdivision (a)(1) and section 245, subdivision (a)(4) merely different statements of the same offense for purposes of section 954? (4) If so, must one of defendant's convictions be vacated?

#21-451 *People v. Logan, S270078.* (B304591; nonpublished opinion; Los Angeles County Superior Court; A638508.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter. The court ordered briefing deferred pending decision in *People v. Duke, S265309* (#21-01), which presents the following issue: Can the People meet their burden of establishing a petitioner's ineligibility for resentencing under Penal Code section 1170.95, subdivision (d)(3) by presenting substantial evidence of the petitioner's liability for murder under Penal Code sections 188 and 189 as amended by Senate Bill No. 1437 (Stats. 2018, ch. 1015), or must the People prove every element of liability for murder under the amended statutes beyond a reasonable doubt?

#21-452 *People v. Marshall, S269639.* (B305530; nonpublished opinion; Santa Barbara County Superior Court; 1026041.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. The court ordered briefing deferred pending decision in *People v. Federico, S263082* (#20-231), which presents the following issue: Did defendant's resentencing pursuant to Penal Code section 1170, subdivision (d)(1) "reopen" the finality of his sentence, such that he was entitled to the retroactive application of Proposition 57 and Senate Bill No. 1391 on an otherwise long-final conviction? and pending decision in *People v. Padilla, S263375*

(#20-232), which presents the following issue: When a judgment becomes final, but is later vacated, altered, or amended and a new sentence imposed, is the case no longer final for the purpose of applying an intervening ameliorative change in the law?

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.