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March 24, 2025

The Honorable Jorge E. Navarrete
Clerk and Executive Officer
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

**RE: Letter of Amicus Curiae, Office of the State Public
Defender, Requesting Depublication of *People v.*
Villagrana (2025) 108 Cal.App.5th 200**

Dear Mr. Navarrete:

Pursuant to California Rules of Court, rule 8.1125, the Office of the State Public Defender (OSPD) asks this Court to order depublication of the opinion in *People v. Villagrana* (2025) 108 Cal.App.5th 200 [329 Cal.Rptr.3d 170] (*Villagrana*), issued by the Court of Appeal, Second Appellate District, Division Six. In a relatively brief opinion, the majority in *Villagrana* committed the following significant and facially apparent errors, each of which will have pernicious effects on the consideration of Penal Code¹ section 1172.6 petitions in the lower courts:

- (1) The opinion mischaracterizes the legal standard at a section 1172.6 evidentiary hearing. Although the law required the prosecution to prove Javier Villagrana “is guilty” of murder under the amended murder laws, the trial court found him ineligible for relief because he “*could be found guilty* of murder if he were tried under the new law.” (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 174] *italics added*.) The *Villagrana* majority held no error in the trial court’s application of this erroneous, “could be found guilty” legal standard, and the lower court reiterated the faulty standard throughout the opinion.
- (2) The opinion improperly relies on Mr. Villagrana’s admission to a firearms enhancement under section 12022.5, subdivision (a)(1), and the lack of such an admission by his codefendant, as evidence that

¹ Further unspecified references are to the Penal Code.

Mr. Villagrana was the actual shooter or a direct aider and abettor. (See *Villagrana*, *supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 173].) However, as the Attorney General concedes, Mr. Villagrana’s admission to the firearms allegation was insufficient to preclude his eligibility for relief under section 1172.6 because the enhancement did not require him to have fired a gun. (*Ibid.*) Nor did the dismissal of the firearms allegation as part of the negotiated plea bargain for Mr. Villagrana’s codefendant constitute evidence of anything.

- (3) The opinion erroneously relies on Mr. Villagrana’s no contest plea to voluntary manslaughter—an offense that is, by definition, a killing *without* malice—as evidence that he committed the shooting *with* malice and was therefore ineligible for relief under section 1172.6. (*Villagrana*, *supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 173].)

Mr. Villagrana filed a Petition for Review (S289527) on February 27, 2025. OSPD supports Mr. Villagrana’s request for review for the reasons stated in his petition and the errors described herein. We also ask this Court to depublish the opinion in the interim to guard against a proliferation of erroneous decisions at pending section 1172.6 proceedings. Depublication protects the rights of defendants seeking resentencing relief under section 1172.6 and serves judicial economy.

INTEREST OF AMICUS CURIAE

OSPD represents indigent people in their appeals from criminal convictions in both capital and non-capital cases. (Gov. Code, § 15421.) The Legislature has instructed OSPD to “engage in related efforts” to “improv[e] the quality of indigent defense.” (Gov. Code, § 15420, subd. (b).) OSPD is also “authorized to appear as a friend of the court[.]” (Gov. Code, § 15423.) We have a longstanding interest in the fair and uniform administration of California criminal law, especially regarding prosecutions for murder, and more generally in the protection of the constitutional and statutory rights of those convicted of crimes.

OSPD has represented and currently represents many petitioners appealing superior court decisions, like the decision in the instant case, under section 1172.6. Since the Legislature passed Senate Bill No. 1437 (Stats. 2018, ch. 1015) (“SB 1437”), OSPD has also provided amicus input and briefing in several cases involving SB 1437 and/or section 1172.6, including *People v. Gentile* (2020) 10 Cal.5th 830, *People v. Lopez* (2021) 286 Cal.Rptr.3d 246, *People v. Strong* (2022) 13 Cal.5th 698, *People v. Delgadillo* (2022) 14 Cal.5th 216, *People v. Reyes* (2023) 14 Cal.5th 981, *People v. Curiel* (2023) 15 Cal.5th 433, and *People v. Arellano* (2024) 16

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, Mr. Villagrana pleaded no contest to voluntary manslaughter pursuant to a negotiated plea bargain (§ 192, subd. (a)). (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 171].) He also admitted allegations that the offense was committed for the benefit of a criminal street gang and that he personally used a firearm during the commission of the offense (§§ 186.22, subd. (b)(1)(C), 12022.5, subd. (a)(1)). (*Ibid.*) Mr. Villagrana's codefendant pleaded no contest to voluntary manslaughter and admitted a gang enhancement allegation (§§ 192, subd. (a), 186.22, subd. (b)(1)(C)). (*Ibid.*, fn. 2.)

Following the Legislature's enactment of SB 1437, Mr. Villagrana petitioned for resentencing under section 1172.6. (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 171].) The trial court appointed Mr. Villagrana counsel, issued an order to show cause, and conducted an evidentiary hearing. (*Id.* at pp. 171-172.) Although the prosecution opposed Mr. Villagrana's petition, they elected not to introduce any new evidence at the evidentiary hearing. (*Id.* at p. 172.) Instead, they asked the trial court to take judicial notice of the information, the plea and sentencing transcripts, and portions of the preliminary hearing transcripts. (*Ibid.*)

In a recitation undisputed by the *Villagrana* majority, the dissent described the facts adduced from the documentary evidence submitted at the evidentiary hearing as follows: (1) in 2013, Juan Vasquez died from multiple gunshot wounds; (2) law enforcement found several bullet casings at the scene; (3) the prosecution charged Mr. Villagrana and his codefendant with Mr. Vasquez's murder, along with gang and firearms enhancements; (5) Mr. Villagrana pleaded no contest to voluntary manslaughter and admitted the gang allegation and a firearm enhancement; and (6) Mr. Villagrana's codefendant pleaded no contest to voluntary manslaughter and admitted the gang allegation. (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 175] (dis. opn. of Baltodano, J.)) From this evidence, the trial court found “ ‘that the People have proven beyond a reasonable doubt that Mr. Villagrana *could be found guilty* of murder if he were tried under the new law.’ ” (*Id.* at p. 174, italics added.) The trial court therefore denied Mr. Villagrana's petition. (*Id.* at p. 171.)

Although the Attorney General conceded there was insufficient evidence to support the trial court's ruling, the Court of Appeal affirmed the denial of Mr. Villagrana's resentencing petition. (*Villagrana, supra*,

108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 171].) In a majority opinion authored by Justice Yegan, the court perceived no error in the evidentiary standard applied by the trial court, and it repeatedly framed the issue as whether substantial evidence supported an inference that Mr. Villagrana “could” now be convicted of murder. (*Id.* at pp. 173-174.) Under this standard, the court below held that Mr. Villagrana’s admission to the firearms allegation, and the absence of his codefendant’s admission to the firearms allegation, supported an inference that Mr. Villagrana was the actual shooter or a direct aider and abettor. (*Ibid.*) The *Villagrana* court also relied on Mr. Villagrana’s plea to voluntary manslaughter as proof that he committed the killing with malice. (*Ibid.*)

In a dissenting opinion, Justice Baltodano emphasized that Mr. Villagrana’s plea to voluntary manslaughter was a plea to a killing “*without* malice.” (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 175] (dis. opn. of Baltodano, J.)) Moreover, Mr. Villagrana was not the sole perpetrator of the crime, and his admission to the use of a firearm did not require him to have personally fired the weapon. (*Ibid.*) Although Mr. Villagrana’s codefendant did not admit the use of a firearm as part of his negotiated plea disposition, the dissent declined to speculate as to why the parties agreed that certain allegations would be admitted while others dismissed. (*Id.* at p. 176.) Consequently, the evidence the trial court relied on did not prove, beyond a reasonable doubt, that Mr. Villagrana was guilty of Mr. Vazquez’s murder. (*Ibid.*)

REASONS FOR DEPUBLICATION

The *Villagrana* opinion should be depublished because its erroneous characterization of the standard of proof at a section 1172.6 evidentiary hearing risks widespread misapplication of the law. Moreover, in its substantial evidence review, the majority relied primarily on the following three facts to support its conclusions: (1) Mr. Villagrana pleaded no contest to voluntary manslaughter; (2) Mr. Villagrana admitted a firearms allegation under section 12022.5, subdivision (a); and (3) the codefendant did not admit a firearms allegation as part of his negotiated plea bargain. (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 173].) From this evidence, the *Villagrana* court made a series of sweeping assumptions about the factual bases underlying the plea agreement, including that Mr. Villagrana acted with malice as the actual shooter or a direct aider and abettor. The majority relied on these assumptions to support the denial of Mr. Villagrana’s petition. This Court has repeatedly cautioned against such speculation, and depublication is necessary to guard against the risk of similarly inappropriate analyses at future section 1172.6 proceedings.

(See *People v. Collins* (2025) 17 Cal.5th 293, 316, fn. 7 (*Collins*) [inferences “‘may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work.’”].)

I.
**THE OPINION MISCHARACTERIZES THE STANDARD OF PROOF
AT SECTION 1172.6 EVIDENTIARY HEARINGS, RISKING
WIDESPREAD MISAPPLICATION OF THE LAW**

Effective January 1, 2022, Senate Bill No. 775 (Stats. 2021, ch. 551) (“SB 775”) clarified the burden of proof at a section 1172.6 evidentiary hearing. The law requires that “the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner *is* guilty of murder” under the amended murder laws. (§ 1172.6, subd. (d)(3), italics added.) Under this standard, “[t]he trial court, acting as an independent fact finder, must determine, beyond a reasonable doubt, whether the defendant is guilty of murder under a theory that remains valid after [SB 1437].” (*People v. Garcia* (2022) 82 Cal.App.5th 956, 966.) The prosecution’s burden at the evidentiary is not hypothetical; they do not meet their burden by proving that the petitioner *could* be ineligible for resentencing. (*People v. Clements* (2022) 75 Cal.App.5th 276, 296 (*Clements*).

Contrary to the plain language of section 1172.6, subdivision (d)(3), the *Villagrana* court perceived no error in the trial court’s finding “‘that the People have proven beyond a reasonable doubt that Mr. Villagrana *could* be found guilty of murder if he were tried under the new law.’” (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 175] italics added.) The majority repeatedly framed the issue before it as whether substantial evidence supported the trial court’s finding that Mr. Villagrana “could” now be convicted of murder.² In its discussion of the evidence that supported the trial court’s inferences, the court concluded, “a rational trier of fact *could* reasonably have found [Mr. Villagrana] guilty, beyond a reasonable doubt, as a direct aider and abettor to murder, if not as the actual shooter.” (*Id.* at p. 173, italics added.) The court also concluded that

² In the legal background section of the *Villagrana* court’s discussion, the majority correctly states that section 1172.6, subdivision (d)(3), requires the prosecution to prove the petitioner is guilty of murder under the amended law, and that the trial court must act as an independent trier of fact. (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 172].) However, as shown herein, the court repeatedly deviated from these standards.

the trial court reasonably inferred Mr. Villagrana, “*could* still be found guilty of murder, at the very least, as a direct aider and abettor.” (*Id.* at pp. 173-174, italics added.) Finally, in its discussion of the dissent’s analysis, the majority concluded, “[t]here is no question but that, even with the changes to murder laws, [Mr. Villagrana] *could* now be convicted of murder.” (*Id.* at p. 174, italics added.)

The *Villagrana* court’s endorsement of the improper “could be found guilty” standard conflicts with the plain language of section 1172.6, which required the prosecution to prove Mr. Villagrana “*is* guilty of murder” under the amended murder laws. (§ 1172.6, subd. (d)(3), italics added; see also *Clements, supra*, 75 Cal.App.5th at p. 296 [at the section 1172.6 evidentiary hearing, the prosecution must prove the petitioner “is guilty under current law *as a matter of fact* and beyond a reasonable doubt.”].) The erroneous standard applied by the courts below effectively lowered the burden of proof for the prosecution at Mr. Villagrana’s evidentiary hearing. The *Villagrana* court’s departure from the correct evidentiary standard risks misapplication of the law at future section 1172.6 proceedings in the trial courts. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Should Courts of Appeal cite *Villagrana* with approval, this risk is compounded exponentially. Depublication is necessary to guard against such widespread harm.

II.

THE OPINION’S IMPROPER SPECULATION THAT MR. VILLAGRANA WAS THE ACTUAL SHOOTER BASED ON HIS ADMISSION, AND HIS CODEFENDANT’S LACK OF ADMISSION, TO A FIREARMS ENHANCEMENT, RISKS WIDESPREAD EVIDENTIARY ERRORS IN THE TRIAL COURTS

Over two decades ago, this Court established that a firearms enhancement under section 12022.5, subdivision (a), does not require an individual to have fired a weapon. (*People v. Jones* (2003) 30 Cal.4th 1084, 1120 (*Jones*).) The Court in *Jones* explained, “[i]f two robbers display guns to intimidate robbery victims and one shoots and kills a victim, both robbers could be found to have personally used a gun in the robbery . . . even though only one is the actual killer.” (*Ibid.*) Thus, without more, an admission to a firearms enhancement under section 12022.5, subdivision (a), does not preclude eligibility for resentencing relief under section 1172.6. (*People v. Davenport* (2021) 71 Cal.App.5th 476, 485, disapproved of on other grounds by *People v. Patton* (Mar. 3, 2025, S279670) ___ Cal.5th ___ [2025 WL 666005 at *10]; cf. *People v. Offley* (2020) 48 Cal.App.5th 588, 598 [even where a petitioner admits an allegation they personally and

intentionally discharged a firearm under section 12022.53, subdivision (d), this fact “does not require that the [petitioner] acted with the intent to kill or with a conscious disregard to life” such that they are categorically ineligible for resentencing relief[.]

Based on the long-standing precedent established in *Jones*, the Attorney General properly conceded that Mr. Villagrana’s admission to the firearms enhancement did not establish he was the actual shooter involved in Mr. Vasquez’s killing. (*Villagrana*, *supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 173].) The evidence submitted at the evidentiary hearing did not include any evidence that connected Mr. Villagrana to the bullet casings found at the scene or the gun that killed Mr. Vasquez. (See *Id.* at p. 175 (dis. opn. of Baltodano, J.).) Nor did the prosecution seek to introduce any new evidence that Mr. Villagrana fired the weapon involved in Mr. Vasquez’s shooting. (*Ibid.*) As the dissent noted, “the allegations that could have shown that [Mr.] Villagrana fired his weapon were jettisoned by prosecutors” as part of the negotiated plea bargain. (*Ibid.*)

Nevertheless, the *Villagrana* court rejected the Attorney General’s concession. (*Villagrana*, *supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 174, fn. 3].) The majority distinguished *Jones* because, here, Mr. Villagrana admitted to the firearms allegation as part of a negotiated plea bargain, whereas his codefendant did not admit the allegation. (*Id.* at pp. 173-174.) From the codefendant’s lack of admission to the firearms allegation, the court reached the ungrounded inference that the codefendant did not, in fact, “personally use a firearm to murder [Mr.] Vasquez.”³ (*Id.* at p. 171, fn. 2.)

The evidence that Mr. Villagrana’s codefendant entered into a beneficial plea bargain that did not require him to admit the firearms allegation is not substantial evidence of any fact; rather, it is the absence of evidence. The plea agreement and related plea colloquy provided no

³ Although the majority opinion posits in a footnote that Mr. Villagrana’s codefendant was “not charged with nor did he admit any personal use of a firearm enhancement allegation,” the opinion states in its procedural background section that Mr. Villagrana and his codefendant were *both* charged with the firearms enhancements. (*Villagrana*, *supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 171].) The dissent confirms that both Mr. Villagrana and his codefendant were charged with murder, along with the gang and firearms allegation. (*Id.* at p. 175 (dis. opn. of Baltodano, J.).)

insight into why certain allegations were dismissed and others were not. As the dissent noted, Mr. Villagrana and his codefendant were initially facing “50-year-to-life sentences.” (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 176] (dis. opn. of Baltodano, J.)) There is a myriad of considerations that would motivate a particular plea disposition under such circumstances.

The majority’s conclusion ultimately permits courts to deny a section 1172.6 petition based on the admission of a firearms allegation that does not require a person to fire a weapon. And under *Villagrana*, lower courts may surmise specific conduct based on the dismissal of allegations as part of a negotiated plea bargain. This Court has repeatedly cautioned against such speculative conclusions, holding that inferences “‘may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work.’” (*Collins, supra*, 17 Cal.5th at p. 316.) It should ensure the same here and order *Villagrana* depublished.

III.

THE OPINION IMPROPERLY RELIES ON MR. VILLAGRANA’S PLEA TO VOLUNTARY MANSLAUGHTER AS EVIDENCE HE ACTED WITH MALICE, CONTRARY TO THE LEGISLATIVE INTENT THAT SUCH PETITIONERS ARE ELIGIBLE FOR RELIEF UNDER SECTION 1172.6

In 2022, SB 775 clarified that resentencing relief under section 1172.6 is available to petitioners who pleaded guilty to manslaughter. (Stats. 2021, ch. 551, § 1.) The statute makes clear that a plea to voluntary manslaughter does not statutorily disqualify a petitioner from relief under section 1172.6. (See § 1172.6, subd. (a).) Nor does such a plea otherwise establish murder liability because the plea does not establish that the petitioner “acted with malice.” (*People v. Gaillard* (2024) 99 Cal.App.5th 1206, 1213.)

Here, Mr. Villagrana’s no contest plea to voluntary manslaughter did not provide a basis on which to infer malice, and the limited documentary evidence submitted at the evidentiary hearing provided no facts to support such a finding. As the dissent noted, voluntary manslaughter is, by definition, “the killing of a person *without* malice.” (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 175] (dis. opn. of Baltodano, J.)); see § 192 [“manslaughter is the killing of a human being without malice”].) Mr. Villagrana’s no contest plea was, therefore, no more than an admission that he acted “without malice” during the commission of the offense.

Yet, contrary to the plain language of the statute defining manslaughter, the majority relied on Mr. Villagrana's no contest plea and his admission to the firearms enhancement as evidence that he acted *with* malice. (*Villagrana, supra*, 108 Cal.App.5th __ [329 Cal.Rptr.3d 170, 174] ["The uncontested facts show murder and necessarily, malice."].) In support of its conclusion, the majority posited that Mr. Villagrana "admitted he was responsible for Vazquez's death as indicated by his plea to voluntary manslaughter." (*Id.* at p. 173.) But a no contest plea does not, in itself, constitute evidence of any particular underlying facts, including whether Mr. Villagrana harbored the intent to kill or acted with actual malice. (See *People v. Rivera* (2021) 62 Cal.App.5th 217, 234-235.)

The majority's decision erroneously precluded resentencing relief based, in part, on Mr. Villagrana's plea to a charge expressly eligible for resentencing under section 1172.6. The lower court's reliance on Mr. Villagrana's no contest plea as proof of his ineligibility for resentencing is inconsistent with the Legislature's intent to allow relief for petitioners who pleaded guilty to manslaughter to avoid an aggravated murder conviction. (See § 1172.6, subd. (a); Stats. 2021, ch. 551, § 1.) If *Villagrana* remains published, lower courts may similarly improperly rely on a petitioner's plea to voluntary manslaughter as evidence of their ineligibility for resentencing relief under section 1172.6. Depublication is necessary to guard against a result the Legislature would never have intended.

CONCLUSION

The application of *Villagrana* at future section 1172.6 proceedings risks widespread misapplication of the law. OSPD asks this Court to depublish the opinion to protect the rights of petitioners seeking resentencing relief and guard against similarly erroneous decisions in the lower courts.

Dated: March 24, 2025

Respectfully submitted,

GALIT LIPA
State Public Defender

/s/

L. Alexandra McDonald
Deputy State Public Defender

Attorneys for Amicus Curiae

DECLARATION OF SERVICE

Case Name: ***People v. Villagrana***
Case Number: **Supreme Court Case No. S289527**
2DCA, Div 6, Case No. B331439
Los Angeles Sup. Ct. No. TA128922

I, **Christopher Gonzalez**, declare as follows: I am over the age of 18 and not party to this cause. My business address is 770 L Street, Suite 1000, Sacramento, California 95814. I served a true copy of the following document:

**LETTER OF AMICUS CURIAE, OFFICE OF THE
STATE PUBLIC DEFENDER, REQUESTING
DEPUBLICATION OF *People v. Villagrana* (2025) 108
Cal.App.5th 200**

The aforementioned document(s) were served electronically (via TrueFiling) to the individuals listed below on **March 24, 2025**:

Stefanie Yee Attorney General's Office 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102 stefanie.yee@doj.ca.gov docketinglaawt@doj.ca.gov	James M. Crawford Attorney at Law 528 N. Glassell Street, Orange, CA 92867 jcraw78898@aol.com
California Appellate Project, Los Angeles 520 S. Grand Avenue, 4th Floor Los Angeles, CA 90071 capdocs@lacap.com	Court of Appeal, Second Appellate District, Division 6 200 East Santa Clara Street, Ventura, CA 93001 <i>Served electronically via TrueFiling to 2DCA Docket B331439</i>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **March 24, 2025**, at Sacramento County, California.

Christopher
Gonzalez

Digitally signed by
Christopher Gonzalez
Date: 2025.03.24
15:14:03 -07'00'

CHRISTOPHER GONZALEZ