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Opinion following transfer from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re CARLOS HUERTA, On Habeas Corpus.	F088041 (Tulare Super. Ct. No. VCF215605A)

THE COURT[*]

ORIGINAL PROCEEDINGS; application for writ of habeas corpus.

Carlos Huerta, in pro. per.; Steven Schorr, under appointment by the Court of Appeal, for Petitioner.

Rob Bonta, Attorney General, Lance E. Winters and Charles C. Ragland, Chief Assistant Attorneys General, Kimberley A. Donohue, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez, Amanda D. Cary, and Ian Whitney, Deputy Attorneys General, for Respondent.

Galit Lipa, State Public Defender, Christina A. Spaulding, Chief Deputy State Public Defender, Marnie Lowe, and Brooke McCarthy, Deputy State Public Defenders, Amicus Curiae on behalf of Petitioner.

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[*] Before Levy, Acting P. J., Franson, J. and Meehan, J.

INTRODUCTION

In 2024, petitioner Carlos Huerta filed a petition for writ of habeas corpus in the superior court seeking relief under the Racial Justice Act (RJA) (Pen. Code, § 745).[1] The superior court denied the petition without appointing counsel, concluding that petitioner had failed to establish a prima facie claim for relief.

In October 2024, we issued an order to show cause (OSC) to address a threshold question: What legal showing is required to trigger the appointment of counsel in a habeas corpus petition asserting a violation of the RJA?

After we issued our OSC, the Fourth District Court of Appeal addressed this precise question. It held that, when an indigent petitioner files an RJA petition and requests counsel, the superior court must appoint counsel if the petition alleges facts that would establish a violation of the RJA. This occurs before the court conducts a prima facie review. (*McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, 39–40, 44 (*McIntosh*).) In other words, the applicable statute—section 1473, subdivision (e)—requires two procedural stages: an initial, lower threshold for appointment of counsel, and a subsequent prima facie review to determine whether the petition justifies issuance of an order to show cause and an evidentiary hearing.

Respondent concedes that *McIntosh* correctly interprets section 1473, subdivision (e), and we accept that concession. As a result, the superior court in this matter misapplied the statutory sequence by requiring petitioner to make a prima facie showing before assessing whether he met the lower pleading threshold sufficient for the appointment of counsel. Despite that misstep, respondent urges us to deny the petition on procedural grounds or, alternatively, argues that petitioner has failed to allege facts sufficient to trigger the statutory right to appointed counsel.

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

On July 29, 2025, we filed an opinion concluding that petitioner had not met the lower pleading threshold necessary for the appointment of counsel under the RJA. (§ 1473, subd. (e).) We held that the petition was facially deficient because it failed to allege facts showing a qualifying "offense" as the basis for the asserted RJA violations. We reasoned that petitioner relied on the alleged disparate charging and sentencing of gang enhancements, which we held did not fall within the scope of the relevant statutory provisions because a gang enhancement is not a substantive offense. As a result, we denied the petition and did not reach respondent's procedural objections. (*In re Carlos Huerta* (July 29, 2025, F088041), opn. vacated Nov. 4, 2025.)

On August 8, 2025, we denied a petition for rehearing.

After we filed our prior opinion, the Legislature enacted Assembly Bill No. 1071 (2025–2026 Reg. Sess.; Stats. 2025, ch. 721) (Assembly Bill 1071). This bill was signed into law by the Governor in October 2025 and took effect on January 1, 2026. In enacting Assembly Bill 1071, the Legislature expressly endorsed the broader construction of the RJA reflected in Justice Liu's dissenting statement in *In re Mendoza* (2024) ___Cal.5th___ [2024 Cal. LEXIS 7082] (*Mendoza*). (Stats. 2025, ch. 721, § 1, subd. (a).) This statement recognizes that a cognizable RJA claim may rest on statewide statistical data addressing the disparate charging and sentencing of special-circumstance allegations. (*Mendoza*, at pp. *2, *8].) By adopting that approach, the Legislature has made clear that discriminatory charging and sentencing practices involving special-circumstance allegations—and, by logical extension, conduct-based enhancements—fall within the scope of the RJA. Assembly Bill 1071 further clarifies that the RJA must be implemented broadly to remedy discriminatory charging and sentencing practices and expressly directs that counsel shall be appointed for an indigent litigant who alleges "a plausible claim" of an RJA violation. (Stats. 2025, ch. 721, § 1, subd. (b).)

On October 29, 2025, the California Supreme Court granted a petition for review and transferred this matter back to us with directions to vacate our prior opinion and

reconsider the cause after affording the parties an opportunity to brief the issue of "whether a gang enhancement constitutes an 'offense' within the meaning of Penal Code section 745, subdivision (a)(3) or (a)(4)(A)." On November 4, 2025, we vacated our prior opinion in this matter. The parties subsequently filed briefing on that specific issue.

The parties agree that the term "offense" as used in the RJA should be broadly construed to include the disparate charging and sentencing of enhancement allegations, including gang enhancements. In light of the clarified legislative intent appearing in Assembly Bill 1071, and consistent with the parties' shared position, we reach a different conclusion from our prior opinion. We agree that an enhancement may form the basis of a petition for habeas relief alleging a violation of the RJA, and we hold that the current petition should be granted. We reject respondent's remaining assertions, including his procedural objections. We remand this matter to the superior court for further proceedings consistent with sections 745 and 1473, including the appointment of counsel to represent petitioner.

BACKGROUND

I. The Original Judgment Imposed in 2010.

In 2010, petitioner was convicted of three counts of premeditated attempted murder (§§ 664, 187, subd. (a)), along with accompanying felonies, such as assault with a deadly weapon (§ 245, subd. (a)(1)). The jury found true alleged gang enhancements (§ 186.22, subds. (b)(1)(A) and (b)(1)(C)). Petitioner was sentenced to a term of 53 years to life, plus 14 years in state prison.

II. In 2022, Petitioner Was Resentenced.

In 2022, petitioner was resentenced in the superior court following changes in the law concerning attempted murder. (See § 1172.6.) During the resentencing process, he reached a negotiated agreement with the prosecution that was adopted by the court. Petitioner received a determinate term of 26 years in prison. The new judgment retained

multiple gang enhancements, including a 10-year term under section 186.22, subdivision (b)(1)(C).

During the resentencing proceedings in 2022, the parties did not address the RJA.

III. In 2024, the Superior Court Denies the Petition for Writ of Habeas Corpus.

In March 2024, petitioner filed a habeas corpus petition in the superior court, raising claims under the RJA. In April 2024, the superior court denied the petition, concluding that petitioner had failed to establish a prima facie claim for relief. Counsel was not appointed to represent petitioner in the proceedings below.

IV. The Present Writ of Habeas Corpus.

In May 2024, petitioner filed the present habeas corpus petition in this court. The petition alleges that, as a Hispanic individual, petitioner was disproportionately charged and sentenced with gang enhancements, and his sentence reflects a broader pattern of racial disparity in Tulare County. He asserts that the district attorney's office more frequently charges Hispanic individuals with gang enhancements and seeks longer sentences for them compared to similarly situated individuals of other races. He also claims that his own sentence was harsher than those imposed on non-Hispanic defendants who committed comparable offenses.

The petition cites statistical data showing that 206 inmates were admitted into prison with gang enhancements between 2008 and 2022. Of these inmates, 182 were Hispanic and 10 were listed as Mexican. Only two inmates identified as "White" were admitted into prison with a gang enhancement during this period. Petitioner alleges that Hispanics make up 32.6 percent of California's population but 35.9 percent of the prison population, and 66 percent of those sentenced with felony enhancements. The petition relies on more than 140 pages of statistical evidence, reports, and articles.

Petitioner requests that counsel be appointed to represent him, and he seeks the right to discover "additional statistical data evidence from the state."

V. Our OSC.

In October 2024, this court issued our OSC, appointing counsel to represent petitioner at the appellate level. We directed the parties to address the following three issues:

(1) What legal showing is required for appointment of counsel in an RJA petition;

(2) Is appointment of counsel to occur in the superior court proceeding prior to a review of the merits of the petition to determine if an order to show cause should issue; and

(3) Did petitioner make the requisite showing to be entitled to the appointment of counsel under the RJA.

VI. The Parties' Arguments.

After the Supreme Court returned this matter to us with directions to reconsider whether a gang enhancement constitutes an "offense" under section 745, subdivisions (a)(3) and (a)(4)(A), we invited supplemental briefing from the parties. The parties agree that an enhancement allegation may constitute an "offense" for purposes of a petition for writ of habeas corpus under section 1473, subdivision (e).

In its original return, respondent raised procedural objections that must still be resolved. In its supplemental brief, respondent agrees that a gang enhancement can form the basis of an RJA claim. Nevertheless, respondent contends the present petition should be denied. According to respondent, petitioner has not alleged facts showing that similarly situated individuals of other races were treated more favorably with respect to either the charging or the sentencing of enhancement allegations. Respondent argues this omission renders the petition insufficient even under the broadened construction of the statute.

We turn to respondent's specific arguments. We first address and reject the procedural objections. We then demonstrate why petitioner has met the pleading requirements sufficient for the appointment of counsel below.

DISCUSSION

I. The Petition Is Not Procedurally Barred.

Respondent contends that the petition should be denied on procedural grounds, presenting three specific objections. These procedural concerns are outside the issues we ordered the parties to brief in the OSC. Respondent raises them now to prevent future waiver.

Petitioner argues we should not address these procedural objections since respondent appears to be reserving these points only for future consideration and they lie outside the scope of the OSC. In any event, petitioner asserts that these procedural objections lack merit.

Given the potential dispositive impact of the procedural concerns, we exercise our discretion to address them at this juncture. (See Cal. Const., art. VI, § 10 [appellate court has original jurisdiction in a habeas proceeding; see also *In re Robbins* (1998) 18 Cal.4th 770, 780 (*Robbins*) [habeas petition may be denied for untimeliness].)

We conclude that respondent's procedural concerns are meritless.

A. *Petitioner challenges the legality of his judgment, not the validity of his plea agreement.*

In 2022, petitioner returned to the superior court for resentencing following changes in the law governing attempted murder. (See § 1172.6.) He negotiated a new sentence with the prosecutor. Pursuant to the plea agreement, the court vacated petitioner's 2010 judgment and imposed a new determinate prison sentence of 26 years. The new judgment retained multiple gang enhancements, including a 10-year term under section 186.22, subdivision (b)(1)(C).

In the first procedural challenge, respondent contends that petitioner is now barred from raising any claim under the RJA because he received the benefit of his plea bargain. Respondent relies on *People v. Hester* (2000) 22 Cal.4th 290. Respondent also points to the minute order from the 2022 change of plea hearing, which states petitioner waived "any other relief" available under the Penal Code.

Respondent's reliance on *Hester* is misplaced. Petitioner is not challenging the validity of his plea agreement. Rather, he asserts that his judgment is legally invalid under the RJA because it resulted from discriminatory charging practices. (§ 745, subds. (a), (e)(2)(A)(B).) Petitioner's claims go back to the very start of this prosecution, over 15 years ago. Specifically, petitioner alleges that the district attorney's office disproportionately files gang enhancements against Hispanic defendants as compared to similarly situated individuals of other races. He also claims that his resulting judgment reflects systemic racial bias, in violation of due process and equal protection. These allegations, if proven, would undermine the legal validity of the judgment itself, not merely the fairness of the bargained-for sentence. Consequently, the petition does not represent a prohibited collateral attack on a negotiated plea, even if the remedy sought would affect the terms of that plea. *Hester* is inapplicable in this situation.

Moreover, a waiver of a statutory right in a plea agreement must be knowing, intelligent and voluntary. (*People v. Panizzon* (1996) 13 Cal.4th 68, 80.) When petitioner was resentenced in 2022, the RJA was never discussed. The reporter's transcript shows that petitioner only waived certain rights—such as the right to contest a possible disposition in the juvenile court, relitigation of the facts underlying the gang allegations, or seeking an evidentiary hearing as part of the resentencing under section 1172.6. Under the totality of the record, nothing establishes that petitioner knowingly and intelligently waived any rights under the RJA when he entered his plea in 2022.

Finally, we reject respondent's argument that the waiver language in the 2022 plea forecloses relief under the RJA. Section 1016.8 declares that any plea provision purporting to waive future statutory benefits is not knowing and intelligent and is void as against public policy. (§ 1016.8, subds. (a)(4) & (b).)

When petitioner entered his change of plea in 2022, the original version of the RJA—effective January 1, 2021—was in effect. That version only applied *prospectively* to cases in which judgment was entered on or after January 1, 2021. (§ 745, former subd. (j); Assembly Bill No. 2542 (2019–2020 Reg. Sess.), Stats. 2020, ch. 317, § 3.5 (Assembly Bill 2542).) At the time of petitioner's resentencing, Assembly Bill No. 256 (2021–2022 Reg. Sess.) (Assembly Bill 256) had been enacted, but it did not go into effect until January 1, 2023. Assembly Bill 256 explicitly added retroactive habeas relief under the RJA. (§ 745, subd. (j)(2)–(5), as amended by Stats. 2022, ch. 739, § 2.) Because the amended RJA had not yet taken effect, petitioner could not have knowingly waived a right that had not yet vested. (See § 1016.8, subd. (b).)

Respondent's first procedural objection does not warrant denial of the petition. Petitioner is not attacking the validity of his plea agreement but, rather, the underlying legality of this prosecution, going back to 2010. He did not waive his RJA rights when he was resentenced in 2022, and section 1016.8 invalidates any assertion that he relinquished future statutory rights not yet in effect. This first objection is meritless.

B. *Petitioner did not forfeit his RJA claims in failing to raise them in 2022*.

For the second procedural objection, respondent contends that petitioner should have raised his RJA claims during resentencing in 2022. Respondent notes that the RJA requires a defendant to make a motion at trial as soon as practicable upon the defendant learning of an alleged violation. (See § 745, subd. (c).) Failure to do so can result in forfeiture. (*People v. Lashon* (2024) 98 Cal.App.5th 804, 815–816 (*Lashon*). Respondent argues that petitioner is precluded from now raising his RJA claims.

Respondent's forfeiture arguments are unpersuasive. When petitioner was resentenced, the original version of the RJA—Assembly Bill 2542—was in effect and applied only prospectively to judgments entered on or after January 1, 2021. (See § 745, former subd. (j); Stats. 2020, ch. 317, § 3.5.) Petitioner's original judgment was in 2010, so he was ineligible to seek RJA relief until that judgment was vacated.

When petitioner returned to the superior court in 2022, he did so under the authority of section 1172.6. The focus under that statute was on his continued legal culpability for attempted murder following major retroactive changes in the law. (See § 1172.6, subd. (a)(1)–(3); former § 1170.95, subd. (a)(1)–(3).) Nothing in the Penal Code expressly authorized or required petitioner to raise a potential RJA claim as part of his petition for resentencing.

Once petitioner's original sentence was vacated and a new judgment was imposed, events that occurred on the same day in November 2022, he may have technically been able to file a motion or habeas petition under the original version of the RJA. (See § 745, former subds. (b) & (j).) However, no provision of law required petitioner to raise such a claim at that time, and the applicable statute, Assembly Bill 256, had not yet become operative. Assembly Bill 256, which significantly expanded the scope of the RJA to include retroactive habeas claims, took effect on January 1, 2023. (Stats. 2022, ch. 739, § 2.) Petitioner was resentenced shortly before this amendment took effect. Given the timing of petitioner's resentencing and the subsequent statutory developments, there is no basis to conclude that he forfeited his RJA claims by not raising them in 2022.

Respondent's reliance on *Lashon* is misplaced. In *Lashon*, the defendant failed to raise an RJA claim during trial before judgment was entered. (*Lashon, supra,* 98 Cal.App.5th at p. 808.) The appellate court concluded that the defendant had not demonstrated that she was unable to object or that an objection would have been futile. As a result, the forfeiture doctrine was imposed. (*Id.* at pp. 815–816.)

Unlike in *Lashon*, petitioner returned to the superior court under the specific authority of section 1172.6 for resentencing after the law modified his potential liability for attempted murder. Before his original judgment was vacated, petitioner was precluded from seeking RJA relief. (See § 745, former subd. (j).) When he was resentenced in 2022, Assembly Bill 256 was about to take effect, which gave petitioner a clear future path to raise a retroactive RJA claim. *Lashon* was decided in a different procedural context—trial and not resentencing—making it distinguishable.

Finally, some of petitioner's statistical data supporting his RJA claims are derived from reports dated after his 2022 resentencing. Although it is unclear to what extent, if any, this data was available to petitioner in 2022, the attached exhibits show that the relevant information was constantly evolving. The petition's reliance on such data demonstrates that the evidentiary basis for this RJA claim could not have been fully raised in 2022. This further undermines respondent's argument that we should deny the petition on procedural grounds and not reach its merits. (See *Robbins, supra*, 18 Cal.4th at p. 780 [habeas petition can be reviewed on its merits if delay occurred from petitioner conducting an ongoing investigation].)

Under the totality of the circumstances, petitioner has not forfeited his RJA claims. Respondent's arguments fail in light of the context in which petitioner returned to the superior court in 2022, the statutory evolution of the RJA, and the evidentiary development supporting petitioner's claims. Consequently, we reject respondent's assertion that we should deny the present petition without reaching its merits.

C. *This petition was not substantially delayed.*

In California, a habeas petition must be filed without "substantial delay." (*In re Reno* (2012) 55 Cal.4th 428, 459–460.) Delay is measured from the time a petitioner or counsel knew, or reasonably should have known, of the facts and legal basis for the claim. (*Robinson v. Lewis* (2020) 9 Cal.5th 883, 897.)

For the final procedural challenge, respondent contends that we should deny the petition because it is untimely. According to respondent, petitioner delayed more than a year to file his writ, and he failed to justify the delay. In part, respondent cites section 745, subdivision (c)(2)(A), to argue that petitioner could have sought immediate review of his sentence in 2022 under the RJA.

We reject respondent's position. Respondent fails to account for the statutory evolution governing retroactive relief under the RJA, the prompt action taken once petitioner became legally authorized to file, and the developing nature of the evidence supporting this petition.

The provision respondent cites, section 745, subdivision (c)(2)(A), does not exist. It appears respondent intended to cite subdivision (c), which requires a defendant to raise an RJA claim "as soon as practicable upon the defendant learning of the alleged violation." But that requirement applies to trial-stage preservation, not the filing of postconviction habeas petitions. (See § 745, subds. (c), (j)(2)–(5).) In any event, this version of subdivision (c) did not exist when petitioner was resentenced in 2022. (See § 745, former subd. (c).)

The statute authorizing retroactive habeas relief for incarcerated individuals, Assembly Bill 256, did not become operative until January 1, 2023. Based on his custodial status, petitioner was ineligible to file an RJA clam until January 1, 2024. (§ 745, subd. (j)(3).) Less than three months later, on March 20, 2024, he filed his RJA writ in the superior court. He filed the instant petition in this court less than two months after the lower court denied relief. These facts do not demonstrate substantial delay.

Respondent cites *People v. Singh* (2024) 103 Cal.App.5th 76 (*Singh*) and *Lashon, supra,* 98 Cal.App.5th 804, to suggest that petitioner's RJA claims are forfeited because they were not raised earlier. Both of these opinions are distinguishable.

In *Singh,* this court applied the forfeiture doctrine to a defendant who failed to raise an RJA claim at trial but then asserted it on direct appeal. (*Singh, supra,*

103 Cal.App.5th at pp. 112–113.) In *Lashon*, the appellate court similarly held that a defendant forfeited an RJA claim by not filing a motion in the superior court before judgment was entered. (*Lashon, supra,* 98 Cal.App.5th at pp. 815–816.)

In contrast to *Singh* and *Lashon*, petitioner is not asserting an RJA claim on direct appeal following a trial in which he could have raised his concerns. Instead, he asserts that a significant disparity exists in the charging and sentencing of Hispanic defendants facing gang enhancements compared to similarly situated individuals of other races. This claim is rooted in the RJA's retroactive habeas provisions going back to his original judgment, which was imposed in 2010. Petitioner was not eligible to file such a claim until January 1, 2024. (§ 745, subd. (j)(3).) The holdings and analysis in *Singh* and *Lashon* are inapplicable here.

Finally, based on public data available in 2022, respondent suggests that petitioner could have filed his writ sooner. This assertion ignores the nature of petitioner's claims. The petition relies on more than 140 pages of statistical evidence, reports, and articles. While some data was certainly available in 2022, petitioner's evidence is complex and evolving. Notably, the most recent document supporting the petition is a report from the California Department of Corrections and Rehabilitation. This report was released on February 12, 2024. Petitioner filed in the lower court about five weeks later. Petitioner's ongoing investigation justifies any alleged delay. (See *Robbins, supra,* 18 Cal.4th at p. 780.)

This record demonstrates that petitioner proceeded promptly after becoming legally eligible to file a retroactive habeas claim, and he relied on evolving statistical evidence. Under these circumstances, substantial delay did not occur. There is no basis for dismissal on procedural grounds. In any event, respondent identifies no prejudice to the state resulting from the timing of petitioner's filing. The state has had a full and fair opportunity to respond to the petition on the merits. We therefore reject respondent's timeliness objection and proceed to the merits of the petition.

II. The Petition Alleges Facts Sufficient for the Appointment of Counsel.

Petitioner asserts RJA claims under section 745, subdivisions (a)(3) and (a)(4)(A).[2] Subdivision (a)(3) applies when a person was "charged or convicted of a more serious offense" than similarly situated individuals of other races "who have engaged in similar conduct and are similarly situated." For this claim, it must also be shown that the prosecution more frequently sought or obtained convictions in the applicable county "for more serious offenses" against people who share the same race, ethnicity, or national origin as the defendant. (§ 745, subd. (a)(3); § 1473, subd. (e).)

Subdivision (a)(4)(A) of section 745 applies when a person received a "longer or more severe sentence" than similarly situated individuals of other races convicted of the same offense. It must also be shown that longer or more severe sentences were more frequently imposed in the applicable county for the same offense on people who share the same race, ethnicity, or national origin as the defendant. (§ 745, subd. (a)(4)(A); § 1473, subd. (e).)

Section 1473, subdivision (e), governs the appointment of counsel when a petitioner raises a claim under the RJA in a petition for writ of habeas corpus. The statute sets forth two procedural stages: the first directs the court to determine whether counsel must be appointed, and the second requires an assessment of whether the petition presents a prima facie case for relief. At the initial stage, if a petitioner cannot afford counsel, the court must appoint counsel when either (1) the petition "alleges facts that would establish a violation" of the RJA, or (2) the State Public Defender invokes its authority to request

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[2] The petition briefly mentions due process and equal protection principles, which we do not address. We evaluate his allegations solely under the statutory standards set forth in the RJA, which governs claims of racial bias in charging and sentencing. (§ 745, subd. (a)(3)–(4)(A).)

counsel.[3] (§ 1473, subd. (e).) The appointment of counsel precedes any prima facie determination, and that review is based on a lower pleading threshold. (*McIntosh, supra,* 110 Cal.App.5th at pp. 39–40, 44.)

In a typical habeas petition, a court does not appoint counsel until the petitioner first establishes a prima facie claim for relief. (See Cal. Rules of Court, rule 4.551(d)(1); *People v. Lewis* (2021) 11 Cal.5th 952, 973.) *McIntosh* held that, in enacting section 1473, subdivision (e), the Legislature diverted the RJA from the standard writ process. (*McIntosh, supra,* 110 Cal.App.5th at p. 46.)

Respondent concedes that *McIntosh* correctly interprets section 1473, subdivision (e), and we accept that concession. In Assembly Bill 1071, the Legislature recently reaffirmed the standard announced in *McIntosh*. The threshold for appointment of counsel "does not require a prima facie showing" and must be construed as a "minimal pleading requirement." (Stats. 2025, ch. 721, § 1, subd. (b).) According to the bill, courts "shall appoint counsel to all indigent postconviction litigants who allege a plausible claim of an RJA violation, and whenever the State Public Defender requests." (*Ibid.*)

In this matter, the superior court erred when it conducted the prima facie analysis without first determining whether petitioner satisfied the lower pleading threshold for the appointment of counsel. As we explain, the petition meets the minimum pleading requirement, and we will remand this matter for further proceedings.

A. *We agree with the parties that a gang enhancement constitutes an "offense" under the RJA.*

The RJA prohibits racial bias in the seeking, obtaining, or imposing of a criminal conviction or sentence. (§ 745, subd. (a); § 1473, subd. (e).) Section 745,

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[3] In this matter, the State Public Defender is not invoking its statutory authority to appoint counsel. (See § 1473, subd. (e).) Instead, it argues that petitioner has independently met the pleading standard for counsel to be appointed.

subdivisions (a)(3) and (a)(4)(A), address racial disparities in charging "a more serious offense" or imposing a harsher sentence than on similarly situated individuals. The term "offense" is not defined in the RJA.

In our prior opinion, we adopted a narrow construction of the statutory language. We concluded that a gang enhancement could not form the basis of a validly pleaded RJA claim because an enhancement is not, in the strictest sense, a substantive offense. Based on that view, we held that petitioner had not met the pleading requirement for the appointment of counsel under section 1473, subdivision (e), because he alleged only disparate charging and sentencing of gang enhancements, not disparities tied to an underlying offense. (*In re Carlos Huerta*, *supra,* F088041.)

Following remand, and in light of subsequent legislative clarification, we now reach a different conclusion. The statutory text is reasonably susceptible to more than one interpretation. Section 745 uses the word "offense" in a manner that could plausibly encompass either (1) the base crime alone or (2) the combination of the underlying charge along with special-circumstance allegations or conduct-based enhancements. Because more than one plausible view exists, ambiguity is present.

Assembly Bill 1071, enacted after our prior opinion, confirms the ambiguity. In this bill, the Legislature found that courts across the state have misconstrued the RJA "to apply procedural barriers or otherwise impose impediments to relief, discordant with the legislative intent of the RJA, and improperly insulate convictions and sentences tainted by racial bias." (Stats. 2025, ch. 721, § 1, subd. (a).) The Legislature's comments implicitly acknowledge that the RJA's operative terms have been subject to competing interpretations.

In Assembly Bill 1071, the Legislature expressly cited with approval Justice Liu's dissenting statement in *Mendoza, supra,* ___Cal.5th___ [2024 Cal. LEXIS 7082]. (Stats. 2025, ch. 721, § 1, subd. (a).) *Mendoza* concerned a petitioner who alleged an RJA violation based on the charging and sentencing of three felony-murder special-

circumstance allegations. (*Mendoza*, at p. *2].) Justice Liu concluded that the petitioner had stated a plausible RJA claim warranting the appointment of counsel and the ability to obtain discovery because the petitioner had proffered statewide data which showed "disparities in LWOP sentencing" for people of color. (*Id.* at pp. *2, *8.)

In construing the RJA, our fundamental task is to ascertain the lawmakers' intent so as to effectuate the purpose of the law. (*People v. Albillar* (2010) 51 Cal.4th 47, 54–55.) Nothing in the statutory text or its structure suggests a meaningful distinction between special-circumstance allegations and conduct-based sentencing enhancements. Both increase the legal consequences of a conviction, both reflect discretionary charging decisions, and both frequently result in significantly harsher punishment. The Legislature's explicit endorsement of the dissenting statement in *Mendoza* therefore carries particular interpretive weight to the pleading before us. That endorsement signals that plausible RJA claims may rest on the alleged racially disparate charging and sentencing of conduct-based enhancements, including gang enhancements.

Taken together, the statutory structure, the Legislature's findings in Assembly Bill 1071, and the Legislature's express reliance on the dissenting statement in *Mendoza* compel the conclusion that conduct-based enhancements may serve as the basis for a validly pleaded RJA claim. Accordingly, we no longer adhere to our prior narrow construction. Consistent with the parties' agreement and the Legislature's directive, we hold that the term "offense" in section 745 encompasses all aspects of charging and sentencing, including the alleged racially disparate imposition of enhancements. Therefore, a gang enhancement may form the basis for a validly pleaded claim under the RJA.

B. ***Petitioner's allegations satisfy the pleading standard.***

Petitioner, who is Hispanic, alleges that he was disproportionately charged and sentenced with gang enhancements, and his sentence reflects a broader pattern of racial

disparity in Tulare County. He asserts that the district attorney's office more frequently charges Hispanic individuals with gang enhancements and seeks longer sentences for them compared to similarly situated individuals of other races. He also claims that his own sentence was harsher than those imposed on non-Hispanic defendants who committed comparable offenses.

Despite agreeing with petitioner that an RJA claim is validly pleaded if it alleges the disparate application of enhancements, respondent nevertheless argues that the present petition must be denied. According to respondent, RJA petitioners are still required to plead facts showing disparate treatment of similarly situated defendants with respect to enhancements. Respondent contends that petitioner has failed to allege any facts regarding similarly situated defendants with respect to either his charges or his sentence. Respondent takes the position that, regardless of how the term "offense" is construed, petitioner has not met the requirements for appointed counsel. We disagree.

Respondent's position applies a level of factual specificity that is incompatible with the current standard governing the appointment of counsel under section 1473, subdivision (e). As clarified by Assembly Bill 1071, the threshold at this stage is a minimal pleading requirement, not a prima facie showing. (Stats. 2025, ch. 721, § 1, subd. (b).) The Legislature expressly found that courts have misconstrued the RJA by applying procedural barriers. The Legislature directed that indigent petitioners must receive counsel upon alleging a plausible claim of a violation. (*Ibid.*) That directive forecloses any requirement that a petitioner—at the pleading stage before counsel is appointed and discovery is available—describe with specificity the circumstances of similarly situated individuals. Indeed, the current Judicial Council form for habeas petitions raising RJA claims (HC-001) permits a petitioner to assert an RJA claim without identifying comparator-level facts. The statutory framework does not demand more at the pleading stage for an RJA claim.

Because we are at the pleading stage of an RJA claim, which does not follow the traditional path of a habeas petition, we do not evaluate the materials attached to the petition. Whether petitioner's exhibits and statistical data ultimately meet the evidentiary requirements of section 745 is an issue for later proceedings, after counsel is appointed and petitioner has the opportunity to develop an appropriate record.

The present petition alleges racially disparate treatment, and it identifies the statutory subsections implicated as the basis for the RJA claims. Petitioner's allegations—that he received a gang enhancement and a longer sentence because of alleged racial disparities in the charging and sentencing practices in Tulare County—meet the minimal pleading threshold because it shows a plausible violation. Accordingly, petitioner is entitled to the appointment of counsel and to further proceedings under the RJA.

DISPOSITION

The petition for writ of habeas corpus is granted. This matter is remanded to the superior court with directions to (1) appoint counsel for petitioner pursuant to section 1473, subdivision (e), and (2) conduct further proceedings consistent with sections 745 and 1473. The order to show cause previously issued in this matter is discharged.