Finding the Goldilocks standard for Estrada's retroactivity inference

Overview

Courts sometimes signal to the legislature that it should resolve an ambiguity by amending the law. But the legislature does not always respond. Faced with legislative inaction, what should the judiciary do? This question arose in two recent cases, *People v. Burgos* and *People v. Aguirre*, which expose a deeper divide on the California Supreme Court over how to treat legislative silence when interpreting statutes. In *Burgos* and *Aguirre* the court resorts to a rigid, formalist framework, with two dissenting justices championing a functional inquiry. Yet under either approach lower courts would have a difficult time applying *Estrada*, reflecting the need for a middle-of-the-road, Goldilocks standard.

Analysis

Courts presume that new laws only apply prospectively unless the legislature expressly declares otherwise, legislative intent to apply the law retroactively is clear, or the statute lessens punishment for a crime. This last pathway derives from *In re Estrada*, which established in 1965 that when a statute is silent on retroactivity, certain ameliorative changes are so significant that courts must infer legislative intent for retroactive application to all cases without a final conviction.[1] Since then courts have often inferred retroactivity absent legislative guidance, but recent statutes have raised difficult questions about what "lessens punishment" within *Estrada*'s meaning. The California Supreme Court's decisions in *Burgos* and *Aguirre* resolved that question by confining *Estrada*'s retroactivity doctrine to a rigid, form-driven framework. This abandons *Estrada*'s presumption of reading ameliorative statutes broadly absent contrary indications. The dissenting opinions of justices Liu and Evans offer a more principled approach that remains faithful to *Estrada*'s historical grounding. Yet the Liu/Evans framework proves too open-ended to guide lower courts in *Estrada* analyses. Instead, *Estrada* should apply when the legislature reduces unjustified exposure to criminal punishment.

Burgos narrows the *Estrada* retroactivity standard

When the legislature amends a penal law without specifying its retroactive application, courts engage in a two-part analysis. This starts with Penal Code section 3's general presumption that no part of the code "is retroactive, unless expressly so declared."[2] The court then asks whether the legislature sought to depart from this presumption by assessing whether the law either expressly provides for retroactive application or otherwise "clearly and unavoidably" indicates the legislature intended so.[3] If no such intent appears, the court will look to whether the statute lessens punishment and is entitled to *Estrada*'s inference of retroactivity.

Yet in *Burgos* the court limited the *Estrada* lessening-punishment factor, and held that a statute lessens punishment only by reducing punishment for a criminal offense, creating discretion to reduce such punishment, or narrowing the scope of criminal liability.[4] The *Burgos* majority derived this rule by surveying its prior cases that implicated *Estrada*, concluding that the inference is limited to statutes that are "analogous to the *Estrada* situation" and by their nature implicate "*Estrada*'s logic" because they are meant to mitigate punishment in one of the three ways.[5]

In doing so the court distinguished between procedural and substantive amendments. *Estrada*'s logic has extended to substantive amendments that represent a "legislative mitigation" of criminal penalties, such as those contracting a criminal offense, giving trial courts discretion to impose lesser punishments, increasing the threshold for conviction and applying enhancements, or otherwise lessening punishment.[6] Procedural amendments such as those that modify aspects of how criminal cases are investigated or tried have not implicated *Estrada* even if they ultimately reduced punishment, as was the case in *Burgos*, which addressed trial bifurcation.[7] To apply *Estrada* broadly to any statute that might reduce punishment, the majority reasoned, would improperly expand the doctrine.[8]

In their dissents, justices Liu and Evans accused the majority of ignoring the historical development of *Estrada* and stripping legislative intent out of the retroactivity analysis. They proposed an alternative standard that asks not merely

whether a statute changes punishment, but whether the "rationale of *Estrada*" applies.[9] Under the Liu/Evans approach, a statute that by design and function provides a clear benefit to defendants regarding punishment or on the question of guilt should be afforded the *Estrada* inference and applied in every case to which it could constitutionally apply.[10]

Their key criticism is that the majority did not create a standard articulating "*Estrada*'s rationale," but instead reverse engineered a rule from past outcomes.[11] By confining *Estrada* to three categories, the majority largely drops judicial interpretation of legislative intent from the analysis and replaces it with a categorical focus on the form of the amendment. In the Liu/Evans framework, legislative intent should remain the touchstone throughout.[12] Justices Evans and Liu also contend that the majority's rule misreads or sidelines cases applying *Estrada*, which have not strictly focused on whether an amendment mitigated punishment in practice but whether the legislature's purpose in enacting a reform was ameliorative.[13] By focusing only on the narrow question of whether a statute formally mitigates punishment, they argue, the court loses sight of *Estrada*'s rationale and boxes itself into an unduly restrictive framework.

Both the majority and minority approaches are wrong

The Liu/Evans standard correctly identifies the core defect in *Burgos*'s categorical approach: by reducing *Estrada* to a checklist of prior holdings, the majority elevates form over function and converts *Estrada* from a principle of statutory interpretation into a closed set of approved fact patterns. More importantly, the dissenters' standard reflects the most fundamental rule of statutory interpretation: legislative intent is paramount.[14] But at the same time, the "clear benefit" "on the question of guilt or innocence" formulation pushes the inquiry too far in the opposite direction. Without a limiting principle tied to criminal punishment, a purely functional test risks absorbing any defendant-benefiting reform under *Estrada*, without end. Thus, while *Burgos* overly constrains *Estrada*, the Liu/Evans alternative risks dissolving it into a default rule of retroactivity. What *Estrada* demands instead is a narrower, administrable middle ground — a Goldilocks standard.

The *Estrada* majority considered whether a defendant should receive the ameliorating benefits of a criminal statute that was amended to mitigate punishment after the prohibited act was committed but before final judgment.[15] The court's core inquiry was whether — without expressly stating so — the legislature intended for the old or new statute to apply.[16] Considering *why* the legislature would amend a statute in an ameliorative way guided the court's conclusion. When the legislature amends a statute to lessen punishment, "it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper" for the offense.[17] "It is an inevitable inference that the legislature must have intended that the new statute imposing the new lighter penalty" apply to "every case to which it constitutionally could apply," including acts committed before the amendment's passage.[18]

Animating the *Estrada* majority were three modern theories of crime and punishment: deterrence, incapacitation, and rehabilitation. According to these theories, criminal punishment or treatment of offenders should meet at least one of three theoretical ends by discouraging behavior and deterring future criminal activity, confining an offender to safeguard society from harm, or correcting and rehabilitating an offender.[19] Thus, when the legislature acts to reduce punishment for a crime, it has determined that the "lesser penalty or the different treatment" is sufficient to meet the legitimate ends of criminal law.[20] Since punishment for its own sake is disallowed in modern penal theory, nothing is gained by imposing the more severe penalty, and mitigative amendments should apply as broadly as constitutionally possible because "to hold otherwise would be to conclude that the legislature was motivated by a desire for vengeance."[21]

Estrada therefore embodies a "quest for legislative intent."[22] That is the bedrock principle of statutory interpretation.[23] This requires looking not only at the plain language of a statute, but also examining "the entire substance" of a statute to determine "the scope and purpose" of a provision.[24] And when the legislature has not explicitly stated its intent, courts must look to other factors indicating intent for

retroactive application.[25] Again: the lodestar is legislative intent.

But the court's new *Burgos* framework divorces the *Estrada* analysis from legislative intent and treats the question as purely formal: does the statute mitigate punishment in a form previously recognized under *Estrada*? The result is a strict rule detached from the rationale that justified *Estrada* in the first place. Like all judicial doctrines, *Estrada* has evolved over time, and what qualifies as an ameliorative change within its meaning has expanded. *Burgos* leaves no room for further development and precludes the possibility of *Estrada* reaching future ameliorative legislation diverse in form but nevertheless embodying its rationale. Lower courts are left unable to reason by analogy to decide if a statute should have retroactive application under *Estrada*.

And this approach improperly exalts form over function. The statutes at issue in *Estrada* directly "lessen[ed] punishment" for the crime of escape, but California's high court has not confined itself to applying that concept so literally. Rather, the court has applied the inference liberally to statutes that implicate *Estrada*'s rationale — and expanded its application beyond strictly penalty-mitigating changes — often rejecting a formalist approach in the process.[26] The court may well be tired of detective work to decipher the legislature's intent.[27] Yet researching extrinsic intent evidence is part of the job.[28] The legislature is aware of *Estrada*, and it can correct the courts anytime.[29]

The Liu/Evans approach better follows foundational principles, and is at least consistent with the rule of lenity.[30] But that approach also misconstrues *Estrada*. By broadening the question to one of benefitting guilt determinations, the dissenters' functional inquiry is equally untethered from *Estrada*'s underpinnings. Potentially any amendment that benefits defendants in any way could be viewed as falling under *Estrada*. Retroactive application would be automatic, completely dissolving the statutory presumption of prospectivity and straining judicial resources.[31]

Thus, arguably neither standard captures the logical thread uniting *Estrada* and its progeny. *Estrada*'s reach has always been constrained by a concern with excess

criminal punishment. The precise holding of *Estrada* was that a superseding reduction in punishment for a particular criminal violation should be applied retroactively, but the inference it announced was grounded in a broader concern: the legitimacy of continuing to subject defendants to criminal punishment under a system the legislature has repudiated. Properly understood, *Estrada*'s rationale centers on legislative judgments about unjustified punishment, a principle that explains both its original holding and its subsequent application to statutes that alter not only sentence severity, but the mechanisms that contract who is subject to punishment or alter the conditions under which punishment may be imposed at all.

The court's application of *Estrada* over time confirms this understanding. One of the earliest post-*Estrada* cases applied its inference to a statute which, unlike *Estrada*, did "not revoke one penalty and provide for a lesser one" but rather vested in the trial court the discretion to impose a lesser penalty for marijuana possession. The court reasoned that even though reduced punishment was not guaranteed in every case, the *possibility* of a judge imposing reduced punishment signaled a legislative judgment that the prior penalty scheme was excessive.[32] Later, the court applied *Estrada* to an amendment creating a new affirmative defense for the crime of transporting marijuana.[33] There, the statutory punishment remained unchanged, but the inference applied because the legislature provided a possible path to acquittal for defendants transporting marijuana for medical use.[34] One purpose of the statute was to "avoid [the] unnecessary arrest and prosecution" of qualified individuals.[35] Taken together, these cases demonstrate that *Estrada* has never been confined to formal reductions in sentence length — it has also applied when the legislature reduces even possible exposure to punishment.

For example, *Lara* held that a statute requiring prosecutors to initiate juvenile cases in juvenile court rather than adult court applied retroactively. Although the statute did not reduce the punishment or possible punishment for any particular crime, the court concluded that *Estrada*'s inference applied because "[t]he possibility of being treated as a juvenile . . . can result in dramatically different and more lenient treatment."[36] *Frahs* similarly applied *Estrada* to a statute creating a diversion program for defendants with qualifying mental health disorders. The statute's aim

was to increase diversion to mitigate unnecessary entry into the criminal justice system while protecting public safety.[37] As in *Lara*, *Estrada* applied to a procedural change that reduced exposure to prosecution.

This shows that *Estrada* has always applied to procedural changes and has never been limited to direct reductions in sentence length. Thus, *Estrada* should apply whenever the legislature acts to reduce unjustified exposure to criminal punishment by any means. That inquiry is neither categorical nor free-floating: it requires courts to examine the statute's text, any express legislative findings or purpose provisions, and the remedial aims animating the reform to determine whether the legislature has repudiated the prior allocation of criminal punishment. That distillation is the proper middle-ground reading of *Estrada*.

Applying the proper middle-ground reading of *Estrada*

Estrada's best reading lies between *Burgos*'s rigidity and Liu/Evans's expansiveness. *Estrada*'s inference should apply when a statute ameliorates punishment in that it reflects a legislative judgment that the prior law exposed defendants to unjustified criminal punishment. Applying this test to the procedural amendments in *Burgos* and *Aguirre* would produce divergent results. The court characterized both as designed to enhance fairness in judicial proceedings rather than enacted to mitigate punishment.[38] But if the inquiry instead asks whether the legislature acted to reduce unjustified exposure to criminal punishment, *Burgos* would have been decided differently. *Aguirre*, by contrast, would likely remain the same.

In *Burgos*, the court held that Penal Code section 1109 — the bifurcation provision enacted as part of Assembly Bill 333 — did not apply retroactively.[39] Section 1109 permits a defendant to request that gang enhancement evidence be tried separately from the underlying offense.[40] The statute declares that "[g]ang enhancement evidence can be unreliable and prejudicial to a jury because it is lumped into evidence of the underlying charges," thereby perpetuating unfair prejudice and leading to "convictions of innocent people."[41] The legislative history shows an intent to reduce wrongful conviction risks: the bill analysis demonstrates gang evidence "may be so extraordinarily prejudicial, and of so little relevance to guilt, that it

threatens to sway the jury to convict regardless of the defendant's actual guilt."[42]

Under the proposed Goldilocks standard, section 1109 is a legislative judgment that the prior legal regime exposed defendants to criminal punishment in ways the legislature no longer considers justified.[43] By identifying the admission of gang evidence during the guilt phase as a systemic source of unreliable verdicts and inflated sentencing pressure, the legislature concluded that the existing trial structure increased the likelihood that criminal punishment would be imposed where it should not be imposed at all.[44] A reform designed to correct that distortion necessarily reduces defendants' exposure to criminal punishment within the meaning of *Estrada*, and should apply retroactively.

This conclusion aligns with the court's prior applications of *Estrada*. In *Wright*, the court applied the inference to a statute that left penalties unchanged but expanded the possibility of acquittal through an affirmative defense that a defendant could invoke. In *Lara* and *Frahs*, the court likewise reasoned from the possibility, not the certainty, of avoiding punishment, concluding that legislative reforms altering the mechanisms of punishment reflect judgments about unjustified punishment. Section 1109 operates in the same manner. By reducing the risk that guilt determinations will be skewed by inflammatory and minimally probative evidence, it increases the likelihood of acquittal and the possibility of punishment being avoided where warranted.

California's treatment of judicial retroactivity further reinforces this analysis. Under *In re Johnson*, a procedural rule whose primary purpose is to remedy serious distortions in the fact-finding process is applied retroactively when it works to ensure reliable and accurate guilt determinations.[45] Although this doctrine concerns judicial decisions rather than legislative intent, it underscores a principle central to *Estrada*: procedural rules affecting the reliability of guilt determinations can materially change exposure to punishment.[46] Section 1109 addresses that concern by correcting a trial structure that distorted fact-finding and increased the likelihood of conviction independent of actual guilt. If a judicial decision remedying such inequities compels retroactive application, surely a legislative amendment aimed at

the same compels an equally broad application under *Estrada*.[47]

Under the *Burgos* framework, section 1109 falls outside *Estrada* because it does not reduce sentencing ranges, narrow substantive liability, or confer sentencing discretion in the recognized sense. Under the proposed standard, however, the analysis turns on whether the legislature acted to reduce unjustified exposure to criminal punishment. Because section 1109 was enacted to correct a trial framework that systematically increased the risk of conviction and inflated sentencing outcomes, it satisfies that inquiry. Assuming as *Burgos* does that the legislature meant to preclude retroactivity wrongly assigns a legislative intent to maintain for nonfinal cases a system it has found to be overly harsh.

Aguirre presents the limiting case under the Goldilocks approach to *Estrada*. There, the court held that new section 352.2, requiring a particularized inquiry for a challenge to the admissibility of evidence of creative expression (most often rap lyrics), did not apply retroactively.[48] When a party seeks to introduce such evidence, courts must balance the probative value of that evidence against the substantial danger of undue prejudice, specifically considering whether the evidence might inject racial bias into proceedings.[49]

The legislature explained that section 352.2 was intended to "provide a framework by which courts can ensure" that creative expression "will not be used to introduce stereotypes or activate bias against the defendant, nor as character or propensity evidence," and to recognize that the use of such expression as circumstantial motive or intent is insufficient to overcome the "substantial risk of unfair prejudice."[50] But importantly, the amendment does not bar using creative expression where it was previously admitted. Unlike section 1109, which mandates bifurcation upon request, section 352.2 preserves judicial discretion and permits admission where the evidence was "created near in time to the charged crime or crimes, bears a sufficient level of similarity to the charged crime or crimes, or includes factual detail not otherwise publicly available."[51]

This makes *Aguirre* distinct from *Burgos* in that the change does not reflect a legislative judgment that the prior evidentiary regime unjustifiably exposed

defendants to criminal punishment. Courts were already required to exclude evidence where the probative value was substantially outweighed by the prejudicial effect.[52] Section 352.2 refines that balancing inquiry by directing courts to attend more explicitly to bias and stereotyping, but it does not reflect a legislative correction to a system that punishes more broadly or severely than justified. This improves the quality of adjudication without changing defendants' exposure to unjustified criminal punishment. That makes *Estrada* inapplicable to *Aguirre*, and the result is the same even under the middle-ground approach.

If the dissenters' approach had been adopted and the question was instead whether the statutes, by design and function, provided a clear benefit to defendants as to punishment or on the question of guilt or innocence, *Aguirre* would have been decided differently. The idea that creative expression evidence might be excluded, potentially giving less force to the prosecutor's argument, could possibly benefit defendants as to punishment or guilt. Indeed, it's difficult to imagine any legislative reform that benefits defendants and would not be deemed retroactive under the Liu/Evans framework, underscoring that standard's impracticability.

How all this might play out in future cases

Burgos and *Aguirre* illustrate that applying formal categories — unmoored from *Estrada*'s connection to legislative judgments about criminal punishment — will likely exclude reforms that warrant the judicial inference. This matters because *Estrada* requires courts to give effect to legislative judgments when the legislature has spoken through reform but remained silent as to retroactivity. Recent reforms, for example, reflect a broader legislative effort to confront what the legislature itself has described as the "deleterious effect" of racial bias "not only on individual criminal defendants but on our entire legal system," requiring "bold, concerted, and ongoing efforts to undo."[53] That effort extends beyond any single statute and is likely to continue through future procedural and sentencing reforms. The following hypotheticals illustrate what is at stake.

Suppose the legislature enacts an amendment to the Three Strikes Law that revises sentencing provisions to require the prosecution to plead and prove new

disqualifying factors before a defendant may receive a strike sentence.[54] The legislature explains that the reform is intended to address evidence that enhanced sentences have been imposed in a racially disparate manner absent proof of facts justifying that punishment, and to correct instances in which strike sentences were imposed without adequate procedural safeguards. Under the Goldilocks standard, *Estrada* would apply because the change reflects a legislative judgment that defendants were being subjected to more severe punishment without sufficient justification. Under *Burgos*, however, the amendment would likely be deemed prospective because it does not reduce sentence ranges, narrow substantive liability, or grant sentencing discretion in the recognized sense.

Next, consider a hypothetical amendment to the Racial Justice Act requiring a mandatory postconviction evidentiary hearing at which the prosecution must affirmatively demonstrate that a conviction or sentence was not tainted by racial bias, accompanied by express legislative findings that the reform is necessary to eliminate wrongful convictions and disparate sentencing based on race. The legislature explains it enacted the amendment to eliminate bias at every stage in criminal prosecution. *Estrada* would apply under the Goldilocks standard because the change reflects a legislative judgment that criminal punishment has been imposed under conditions the legislature now deems illegitimate. Yet the amendment's procedural form would likely preclude retroactivity under *Burgos*, despite the legislature's express repudiation of the prior punishment regime.

Conclusion

When the legislature does not state whether it intends for an amendment to apply retroactively, a Goldilocks standard requiring courts to apply *Estrada* to legislative judgments remedying unjustified criminal punishment best accords with the doctrine's history and rationale. Competing visions for how courts should construe legislative silence have produced approaches occupying opposite ends of the spectrum on the California Supreme Court. Under the overbroad Liu/Evans approach, *Estrada*'s inference would apply whenever the legislature enacts a reform benefiting defendants as to punishment or guilt. Under the miserly *Burgos* approach, *Estrada* applies only to amendments that fall within three narrowly defined punishment-mitigating categories. One framework is too rigid, constraining lower

courts and foreclosing principled evolution. The other is too expansive, offering no real limit on *Estrada*'s reach.

All this is a powerful argument for the legislature to speak clearly on retroactivity, because the inference that once filled legislative silence has been substantially narrowed. Whether this retrenchment reflects an intentional signal to the legislature or something else, the resulting framework alters the judiciary's traditional role under *Estrada*. Courts now have far less power to effectuate the legislature's remedial judgments, with the result that future procedural reforms likely will not apply retroactively.

—o0o—

Morgan Mitruka is a senior research fellow at the California Constitution Center.

1. *In re Estrada* (1965) 63 Cal.2d 740, 745. ↑
2. Pen. Code § 3. ↑
3. *People v. Aguirre* (2025) 18 Cal.5th 629, 688–89. ↑
4. *Id.* at 690. ↑
5. *People v. Burgos* (2024) 16 Cal.5th 1, 16 (internal citations omitted). ↑
6. See, e.g., *People v. Tran* (2022) 13 Cal.5th 1169, 1206 (modifying elements of the gang offense and enhancement); *People v. Stamps* (2020) 9 Cal.5th 685, 692 (creating trial court's discretion to strike serious felony enhancement); *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 301 (specifying certain death-penalty qualifying special circumstances must be intentional); *People v. Rossi* (1976) 18 Cal.3d 295, 298 (decriminalizing the commission of certain sexual acts); *People v. Francis* (1969) 71 Cal.2d 66, 76 (providing discretion to impose a lesser sentence). ↑
7. See, e.g., *People v. Brown* (2012) 54 Cal.4th 314, 325 (increasing prison conduct credits which "functioned in practice to reduce punishment" did not mitigate criminal penalties); *Tapia*, 53 Cal.3d at 299–300 (amending

procedures addressing "the conduct of trials" affected trial preparation, not criminal behavior); *People v. Robertson* (1989) 48 Cal.3d 18, 51 (prohibiting consideration of nonstatutory factors in aggravation under new death penalty law "had no bearing on the criminality of defendant's conduct or the severity of punishment"). ↑

8. See *Burgos*, 16 Cal.5th at 15. ↑
9. See *id*. at 36 (Evans, J., dissenting). ↑
10. *Id*. at 36–37 (Evans, J., dissenting). ↑
11. See *Aguirre*, 18 Cal.5th at 728 (Liu, J., dissenting). ↑
12. See *id*. (Liu, J., dissenting). ↑
13. See, e.g., *People v. Prudholme* (2023) 14 Cal.5th 961, 963 (limiting probation to two years for most felonies); *People v. Frahs* (2020) 9 Cal.5th 618, 624–25 (creating pretrial diversion program for defendants with qualifying mental health disorders); *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303 (prohibiting prosecutors from directly filing criminal charges against minors in adult court). ↑
14. Code Civ. Proc. § 1859; *People v. Murphy* (2001) 25 Cal.4th 136, 142 (as in any case involving statutory interpretation the fundamental task is to determine the legislature's intent so as to effectuate the law's purpose). ↑
15. *Estrada*, 63 Cal.2d at 742. ↑
16. *Id*. at 744. ↑
17. *Id*. at 746. ↑
18. *Id*. ↑
19. *Id*. ↑
20. *Id*. ↑

21. *Id.* ↑

22. *In re Pedro T.* (1994) 8 Cal.4th 1041, 1045; *see also People v. Esquivel* (2021) 11 Cal.5th 671, 679 ("The *Estrada* doctrine is one of presumed legislative intent, not constitutional law."); *People v. Conley* (2016) 63 Cal.4th 646, 656 ("the *Estrada* rule reflects a presumption about legislative intent, rather than a constitutional command"); *People v. Nasalga* (1996) 12 Cal.4th 784, 792 (internal quotation omitted) ("To ascertain whether a statute should be applied retroactively, legislative intent is the paramount consideration."). ↑

23. *Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1135 (he fundamental principle of statutory interpretation is the ascertainment of legislative intent so that the purpose of the law may be effectuated); *French v. Teschemaker* (1864) 24 Cal. 518, 553 ("To construe a statute, is to search after the legislative intent as expressed in the language of the statute."). ↑

24. *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040. ↑

25. *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 508 (if a statute is ambiguous courts may consider a variety of extrinsic sources to identify the interpretation that best effectuates the legislative intent); *People v. Easley* (1983) 34 Cal.3d 858, 883 (examining ballot argument to determine prospective or retroactive effect). ↑

26. See, e.g., *Tran*, 13 Cal.5th at 1207 (applying *Estrada* to statute increasing the threshold for criminal conviction and imposition of enhancements); *Prudholme*, 14 Cal.5th at 968 (applying *Estrada* to a statute reducing the maximum allowable probation term for a wide range of offenses); *Stamps*, 9 Cal.5th at 699 (discretion to strike an enhancement); *Nasalga*, 12 Cal.4th at 795 (applying *Estrada* to an amendment that increased the dollar amount of property loss required for criminal enhancements); *see also Californians for Disab. Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 230–31 (internal citations omitted) ("In deciding whether the application of a law is prospective or retroactive, we look to function, not form."); *Tapia*, 53 Cal.3d at 289 ("we also made it clear that it is the law's effect, not its form or label,

which is important"). ↑

27. *Burgos*, 16 Cal.5th at 31–32 (Groban, J., concurring). ↑
28. See, e.g., *People v. Lopez* (2003) 31 Cal.4th 1051, 1056. ↑
29. See also Raphael, *The Finality Line*, Daily Journal (Dec. 10, 2021) ("The Legislature is presumed aware of *Estrada*, so legislative silence represents acquiescence in *Estrada*'s rule."). ↑
30. See *People ex rel. Lungren v. Superior Court*, 14 Cal.4th 294, 312–13. ↑
31. See *Brown*, 54 Cal.4th at 324 ("*Estrada* is today properly understood [as not] weakening or modifying the default rule of prospective operations codified in Section 3"). ↑
32. See *Francis*, 71 Cal.2d at 76. ↑
33. See *People v. Wright* (2006) 40 Cal.4th 81, 93 (enacting affirmative defense to transporting medical marijuana). ↑
34. See *id.* ↑
35. *Id.* at 88. ↑
36. *Lara*, 4 Cal.5th at 303. ↑
37. *See Frahs*, 9 Cal.5th at 631. ↑
38. *See Aguirre*, 18 Cal.5th at 691; *Burgos*, 16 Cal.5th at 26. ↑
39. *See Burgos*, 16 Cal.5th at 29. ↑
40. Pen. Code § 1109. ↑
41. 2021 Cal. Legis. Serv. Ch. 699 (A.B. 333) § 2, subd. (d)(6). ↑
42. Sen. Com. on Public Safety, Analysis of Assem. Bill No. 333 (2021-2022 Reg. Sess.) as amended March 30, 2021, p. 6. ↑

43. See *Frahs*, 9 Cal.5th at 631; *Lara*, 4 Cal.5th at 309; *Wright*, 40 Cal.4th at 93. ↑

44. See *In re Johnson* (1970) 3 Cal.3d 404, 413 (the "ultimate test of the integrity of the judicial process" is "its capacity to ensure the acquittal of the innocent") ↑

45. *In re Milton* (2022) 13 Cal.5th 893, 915; *see also Johnson,* 3 Cal.3d at 413. ↑

46. See, e.g., *People v. Guerra* (1984) 37 Cal.3d 385,390 (bar on admission hypnotic testimony fully retroactive); *People v. Thomas* (1977) 19 Cal.3d 630 (requirements of proof beyond a reasonable doubt and jury unanimity in narcotics addicts commitment proceedings fully retroactive); *People v. Gainer* (1977) 19 Cal.3d 835 (judicial error in giving the "*Allen* instruction" to potentially deadlocked juries fully retroactive). ↑

47. See *Evangelatos v. Superior Court*, 44 Cal.3d 1188, 1241 (Kaufman, J., concurring and dissenting). ↑

48. *Aguirre*, 18 Cal.5th at 690. ↑

49. Evid. Code § 352.2. ↑

50. 2022 Cal. Legis. Serv. Ch. 973 (A.B. 2799) § 1, subd. (b). ↑

51. Evid. Code § 352.2. ↑

52. See *Aguirre*, 18 Cal.5th at 693–99 (holding section 352.2 not retroactive and finding no abuse of discretion in trial court's denial of defendant's motion to exclude creative expression under section 352). ↑

53. 2026 Cal. Legis. Serv. Ch. 721 (A.B. 1071) § 1 ("Like a metastatic cancer, racial bias in one part of a criminal prosecution infects the whole and cannot be remedied by removing a single diseased cell."). ↑

54. *See Conley*, 63 Cal.4th at 659–60 (considering a similar scenario but finding *Estrada* did not apply because the electorate set out specific mechanism resentencing, thus indicating contrary intent for retroactive application). ↑