

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

MARIO RODRIGUEZ Petitioner-Defendant	Case No. S272129
v.	Sixth District
SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent.	Case No. H049016
PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest	Santa Clara County Case Nos. C1650275 and C1647395

**PETITIONER'S ANSWER TO THE AMICUS BRIEF BY THE
SAN DIEGO COUNTY DISTRICT ATTORNEY'S OFFICE**

**After Opinion by the Court of Appeal, Sixth Appellate District,
Affirming the Denial of the Motion to Dismiss,
by the Superior Court for Santa Clara County,
the Honorable Eric S. Geffon, Presiding Judge**

BRIAN C. McCOMAS
California SBN 273161
The Law Office of B.C. McComas, LLP
PMB 1605, 77 Van Ness Ave., Ste. 101
San Francisco, CA 94102
Telephone: (415) 814-2465
Facsimile: (415) 520-2310
mccomas.b.c@mccomasllp.com

Attorney for Petitioner-Defendant
MARIO RODRIGUEZ
Appointment Via the Santa Clara
County Independent Defense Office

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

INTRODUCTION..... 5

ARGUMENT 7

I. THE SAN DIEGO COUNTY DISTRICT ATTORNEY’S OFFICE UNFAIRLY BLAMES COMMITTED PERSONS AND THEIR APPOINTED COUNSEL FOR THE DYSFUNCTION IN THE RESTORATION OF COMPETENCY PROCESS WITHOUT EVIDENCE OR JUSTIFICATION 7

 A. A Person Certified as Restored to Competence is Not “Treated as Any Other Competent Person” Without Further Court Order. 7

 B. No Evidence Demonstrates that Two Years After the Commitment Order Must Lapse *Exactly* before Restored to Competence, or Not, may be Determined 8

 C. Any Claimed “Frivolous” Litigation by Either Party Can be Thwarted by Court Order, Which is also Necessary to Determine if the Certificate of Restoration is Correct 11

II. AMICUS’ BLEAK VIEW OF THE FUTURE IS UNFOUNDED; CALIFORNIA STATE COURTS HAVE CORRECTED GREATER PROBLEMS BY ORDERS ENFORCING THE LAW AND OUR CONSTITUTIONS 15

CONCLUSION 17

CERTIFICATE OF COMPLIANCE 18

PROOF OF SERVICE 19

TABLE OF AUTHORITIES

STATE CASES

Grant-Burton v. Covenant Care, Incorporated (2002) 99
Cal.App.4th 1361..... 8, 11

In Albert C. (2017) 3 Cal.5th 483..... 12

In re Davis (1973) 8 Cal.3d 798 6, 15

In re Loveton (2016) 244 Cal.App.4th 1025 12

In re Mille (2010) 182 Cal.App.4th 635 17

In re Polk (1999) 71 Cal.App.4th 1230. 12

Jackson v. Superior Court (2017) 4 Cal.5th 96..... 6

Nahrstedt v. Lakeside Village Condominium Assn. (1994) 8
Cal.4th 361..... 13

People v. Carr (2021) 59 Cal.App.5th 1136..... 5, 13

People v. Hill (1998) 17 Cal.4th 800 12

People v. Jones (1997) 15 Cal.4th 119 12

People v. Weber (2013) 217 Cal.App.4th 1041 12

Portola Hills Community Assn. v. James (1992) 4 Cal.App.4th
289 12

Stiavetti v. Clendenin (2021) 65 Cal.App.5th 691 11, 16

FEDERAL CASES

Cooper v. Oklahoma (1996) 517 U.S. 348..... 13, 14

Jackson v. Indiana (1972) 406 U.S. 715..... 6, 12

STATUTES

Penal Code § 1367..... 7

Penal Code § 1370 passim

Penal Code § 1370.01 8

Penal Code § 1372..... passim

Welf. & Inst. Code, § 5977.	8
Welf. & Inst. Code, § 5977.3	8
Welf. & Inst. Code, § 5977.4	8

OTHER AUTHORITIES

Bartos, B., Renner, M., Newark, C., McCleary, R., & Scurich. (2017) <i>Characteristics of forensic patients in California with dementia/Alzheimer’s disease</i> , Journal of Forensic Nursing, 13(2)	10
Broderick, C., Azizian, A., & Warburton, K. (2020) <i>Length of stay for inpatient incompetent to stand trial patients: Importance of clinical and demographic variables</i> , CNS Spectrums, 25(5)	9, 10
Incompetent to Stand Trial Solutions Workgroup (November 2021) <i>Report of Recommended Solutions</i>	passim
McDermott, B., Newman, W., Meyer, J., Scott, C., & Warburton, K. (2017) <i>The Utility of an Admission Screening Procedure for Patients Committed to a State Hospital as Incompetent to Stand Trial</i> , International Journal of Forensic Mental Health, 16(4)	15, 16
McDermott, B., Warburton, K., & Auletta-Young, C. (2020) <i>A longitudinal description of incompetent to stand trial admissions to a state hospital</i> , CNS Spectrums, 25(2)	10
Renner, M., Newark, C., Bartos, B., McCleary, R., & Scurich, N. (2017) <i>Length of stay for 25,791 California patients found incompetent to stand trial</i> , Journal of Forensic and Legal Medicine, 51	9
Warburton, K., McDermott, B., Gale, A., & Stahl, S. (2020) <i>A survey of national trends in psychiatric patients found incompetent to stand trial: Reasons for the reinstitutionalization of people with serious mental illness in the United States</i> , CNS Spectrums, 25(2)	15

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

MARIO RODRIGUEZ Petitioner-Defendant	Case No. S272129
v.	Sixth District Case No. H049016
SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent.	Santa Clara County Case Nos. C1650275 and C1647395
PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest	ANSWERING BRIEF TO THE AMICUS BRIEF

TO: THE HONORABLE CHIEF JUSTICE, TANI CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

INTRODUCTION

The amicus brief by the San Diego District Attorney (herein “SDDA”) portrays California’s competency restoration process as irrevocably broken and unable to provide timely restoration services. In fact, over the last 100 years, this Court and the Legislature have corrected problems in the process, including unconstitutional delays, by steadily transferring supervision to the Judiciary, while concomitantly divesting those powers from executive agents, like the Departments of State Hospitals and Developmental Services (herein “the DSH and DDS”). Today, ending the commitment period by court order is fundamental to enforcement of “the statutory scheme [that] is replete with mandatory reviews to insure a subject will not be warehoused unduly in a mental institution.” (*People v. Carr* (2021))

59 Cal.App.5th 1136, 1143, citation omitted [herein “*Carr II*”].)

The exclusive control of the commitment period by the DSH and DDS advocated for by the SDDA led to the current problems in our system needing the “Incompetent to Stand Trial Solutions (IST) Workgroup to identify actionable solutions that address the increasing number of individuals with serious mental illness who become justice-involved and deemed Incompetent to Stand Trial (IST) on felony charges.”¹ Not one proposal by the IST Solutions Workgroup was to end the commitment period by the filing of the certificate of restoration. Court orders necessarily limit the “commitment for the purpose of determining or restoring competence to no more than [two] years.” (*Jackson v. Superior Court* (2017) 4 Cal.5th 96, 106.) The SDDA’s request that this Court restore control over the commitment period to the DSH and DDS is not a reasonable interpretation of history, Penal Code sections 1370 and 1372, or the constitutional limits imposed by *Jackson v. Indiana* (1972) 406 U.S. 715, 738 and *In re Davis* (1973) 8 Cal.3d 798, 807.²

¹ Incompetent to Stand Trial Solutions Workgroup (November 2021) *Report of Recommended Solutions*, at p. 3, available at: https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf [last accessed September 15, 2022] [herein “*IST Solutions Workgroup Report*”].)

² Further statutory references are to the Penal Code unless otherwise noted.

ARGUMENT

I. THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S OFFICE UNFAIRLY BLAMES COMMITTED PERSONS AND THEIR APPOINTED COUNSEL FOR THE DYSFUNCTION IN THE RESTORATION OF COMPETENCY PROCESS WITHOUT EVIDENCE OR JUSTIFICATION.

A. A Person Certified as Restored to Competence is Not "Treated as Any Other Competent Person" Without Further Court Order.

According to the SDDA, once an IST defendant is certified by a hospital official as competent, they no longer receive treatment and are "treated as any other competent defendant." (SDDA Brief, at p. 8.)³ Not so. Detention at the state hospital is only one of many potential legal disabilities attendant to the finding of incompetence via sections 1367 through 1370. Those facing such unfortunate circumstances as to be committed pretrial suffer from additional disabilities impacting their autonomy over fundamental rights until a *court* finds restored to competence, or not, via sections 1370 through 1372.

Specifically, a person certified by the DSH, but not yet certified as competent in court, cannot seek bail or diversion, execute speedy trial rights, or litigate their criminal case. (California Rules of Court, Rule 4.130, subd. (c).) They remain in a state of "legal limbo" until

³ The pagination of the SDDA's brief does not begin with page one as required by the California Rules of Court, Rule 8.74, subd. (a)(2). For the Court's convenience, petitioner has cited to the PDF page number and not the printed page number.

further court order. The limitation period must include this time to avoid practically unlimited periods of commitment, even if the treatment process may someday transition out of the criminal justice system.⁴

B. No Evidence Demonstrates that Two Years After the Commitment Order Must Lapse Exactly before Restored to Competence, or Not, may be Determined.

The SDDA argues that “due process requires incompetent defendants be allowed full use of the two years of restoration treatment, as necessary, in a state hospital to recover competence.” (SDDA Brief, at p. 15.) No evidence is provided to support the contention that two years *exactly* is needed to restore competence. Here then, we need not “scour the record for evidence to support a party’s argument,” and we “may disregard any factual contention not supported by a proper citation to the record.” (*Grant-Burton v.*

⁴ On September 14, 2022, *in Santa Clara County*, the Governor signed into law Senate Bill No. 1338, better known as the “Community Assistance, Recovery, and Empowerment (CARE) Act.” (Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1338 [last accessed September 14, 2022].) Commencing in 2023 and 2024, a person found incompetent following misdemeanor charges may be placed in the CARE court system pursuant to amended section 1370.01. Court orders are required at the beginning and end of the process under amended section 1370.01, subd. (b)(1)(D)(iv) and newly enacted Welfare and Institutions Code sections 5977 and 5977.3. “In all CARE Act proceedings, the judge shall control the proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent.” (Welf. & Inst. Code, § 5977.4, subd. (a).)

Covenant Care, Inc. (2002) 99 Cal.App.4th 1361, 1379, citations omitted.)

In fact, a full two years is almost never required to either restore a defendant to competence or determine that they are not likely to be restored. A length of stay study reviewing 25,791 IST defendants reported that “criminal defendants found incompetent to stand trial (IST) rarely approach or exceed statutory maximums or unconstitutional lengths of stay in state psychiatric hospitals.”⁵ The “mean LOS [length of stay] for all ISTs was 29.94 weeks.” (*Length of Stay for ISTs, supra*, at p. 24.) Another study of 20,040 adult patients found that:⁶

Length of stay ranged from 1 day to 1247 days with a median of 105 and a mean of 157.4 days (interquartile range 58-189). As the median and interquartile range indicate, most patients were treated and discharged rapidly; only 9.3% of patients were hospitalized for longer than 365 days.

(*Importance of Clinical and Demographic Variables, supra*, at pp. 735-736.)

⁵ Renner, M., Newark, C., Bartos, B., McCleary, R., & Scurich, N. (2017) *Length of stay for 25,791 California patients found incompetent to stand trial*, Journal of Forensic and Legal Medicine, 51, 22, 23; available at: doi:10.1016/j.jflm.2017.07.006 [last accessed September 15, 2022] [herein “*Length of Stay for ISTs*”].

⁶ Broderick, C., Azizian, A., & Warburton, K. (2020) *Length of stay for inpatient incompetent to stand trial patients: Importance of clinical and demographic variables*, CNS Spectrums, 25(5), 734-742, available at: doi:10.1017/S1092852920001273 [last accessed September 15, 2022] [herein “*Importance of Clinical and Demographic Variables*”].

Lengthier stays were needed for “psychotic disorders and cognitive disability [that resulted in] unsuccessful restoration within three months of treatment.”⁷ To wit,

[o]ver 40% of those diagnosed with a cognitive disorder were deemed unlikely to regain competence; almost 15% of those with a discharge diagnosis of a schizophrenic spectrum disorder were considered not restorable. These two diagnostic categories comprised almost 90% of the admissions ultimately determined to be unlikely to be restored to competence.

*(Longitudinal Study of IST Admissions, supra, at p. 230.)*⁸

As of November 2021, the IST Solutions Workgroup reported that “the department has reduced the average length of stay (ALOS) for IST patients to 148.7 days in a state hospital bed and 69.7 days in a jail-based competency bed.” *(IST Solutions Workgroup Report,*

⁷ McDermott, B., Warburton, K., & Auletta-Young, C. (2020) *A longitudinal description of incompetent to stand trial admissions to a state hospital*, *CNS Spectrums*, 25(2), 223, 225, available at: doi:10.1017/S1092852919001342 [last accessed September 15, 2022] [herein “*Longitudinal Study of IST Admissions*”].

⁸ “The rate of patients hospitalized longer than a year was 9.3% for all diagnoses, 22.5% for patients with a neurocognitive disorder, and 12.4% for those with a primary diagnosis of schizophrenia.” *(Importance of Clinical and Demographic Variables, supra, at p. 739.)* In another study, “[t]he mean length of stay for IST patients with some form of dementia diagnosis was 426.2 days (median = 300 days), compared with a mean of 194.9 days (median = 112 days) for all other ISTs.” (Bartos, B., Renner, M., Newark, C., McCleary, R., & Scurich (2017) *Characteristics of forensic patients in California with dementia/Alzheimer’s disease*, *Journal of Forensic Nursing*, 13(2), 77, 79; available at: doi:10.1097/JFN.000000000000143 [last accessed September 15, 2022].)

supra, at p. 15.) Nevertheless, delays have continued, even while Amici “added a total of 1,380 beds between State Hospitals (SH), Jail Based Competency Treatment (JBCT) programs, and the Community Based Restoration (CBR) program.” (*Id.* at p. 12.)

Strictly implemented, sections 1370, subdivisions (c)(1), and 1372, subdivision (c) and (d), promote speedy operation of this process by requiring a person’s return to the committing county 90 days prior to the lapse of the two year commitment period, as marked by court orders. Only in the rare case exceeding the “ALOS” (average length of stay) will court orders issue near the end of the limitation period, but by so ending the commitment period in all cases, court orders can stop “most IST patients [from] looping through the criminal justice system and DSH.” (*IST Solutions Workgroup Report, supra*, at p. 11.) Thus, ending the commitment period by court order coincides with

the Legislature’s determination that [DSH and DDS] do not have an unlimited period of time in which to admit IST defendants, given that those defendants must begin receiving substantive services quickly enough for [DSH and DDS] to be able to evaluate their progress and determine the likelihood that competency will be restored within 90 days.

(*Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 726.)

C. Any Claimed “Frivolous” Litigation by Either Party Can be Thwarted by Court Order, Which is also Necessary to Determine if the Certificate of Restoration is Correct.

Within the six years that petitioner Rodriguez’ case has been pending, the Legislature has recognized what science proved decades

ago - IST treatment can be accomplished in a relatively short time. (Assembly Floor Analysis of SB 1187 (August 23, 2018) at p. 3.) The statutory deadlines encourage speedy restoration, as in one case where DSH Napa was able to produce a 90 day report within 17 to 20 days after admission. (*In re Loveton* (2016) 244 Cal.App.4th 1025, 1043.) The DSH is also capable of finding that a person is “unrestorable” before expiration of the commitment period. (See, e.g., *In re Polk* (1999) 71 Cal.App.4th 1230.)

Yet, the SDDA’s main contention is that manipulative defendants have gamed the legal system via unethical attorneys and, paradoxically, will do so even more under increased judicial supervision of the commitment period. (SDDA Brief, at pp. 11-12.) There is no factual basis for the SDDA’s argument, which also overlooks how state judges are uniquely equipped to deal with dilatory tactics - by the prosecution, defense, or DSH and DDS - going back now for centuries.⁹ The SDDA offers no modern-day assistance.

The judicial system neutralizes vexatious litigants, so we need not fear to “indulge petulant litigants.” (*Portola Hills Community*

⁹ See, e.g., *People v. Jones* (1997) 15 Cal.4th 119, 150, overruled on another ground in *People v. Hill* (1998) 17 Cal.4th 800, 823 [“A primary issue at the competency trial was whether defendant was malingering by exaggerating the symptoms of his mental illness”]; *In re Albert C.* (2017) 3 Cal.5th 483, 488 [“On February 4, 2014, the court found ‘overwhelming evidence to suggest that the minor ha[d] been exaggerating his responses’ and concluded that Albert had attained competence”]; and *People v. Weber* (2013) 217 Cal.App.4th 1041, 1052 [“The evidence at the competency hearing indicates that defendant’s bizarre motions and objections were not the result of delusions but were intentional efforts to thwart the proceedings”].)

Assn. v. James (1992) 4 Cal.App.4th 289, 294, disapproved on another ground in *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 386.) Nor is there any evidence that dysfunction in the restoration of competence process is the fault of persons with symptom invalidity or their appointed counsel. Indeed, in *Carr II*, the First District Court of Appeal found that delays were not the result of the defense:

The People argue as a matter of policy that, if commitment time continues to accrue during section 1372 litigation, ‘there is nothing to prevent a defendant from requesting continuances of the competency hearing until he is no longer subject to any incompetency confinement on the criminal charges.’ But they fail to mention the trial court’s express finding that there is no basis in this case to infer Carr’s efforts to oppose the certification contributed to his commitment exceeding the three-year maximum. More generally speaking, as we noted in *Carr I*, the incompetency commitment scheme was primarily created to address concerns of unfairness and possible harm that result from prolonged or indefinite commitments. A conclusion that the treating facility’s certification alone stops the maximum commitment time from accruing is at odds with those goals.

(*Carr, supra*, 59 Cal.App.5th at pp. 1146-1147, citations omitted.)

Similarly, the United States Supreme Court has acknowledged the danger of accrediting invalid symptoms, but held that “the injury to the State of the opposite error—a conclusion that the defendant is incompetent when he is in fact malingering—is modest.” (*Cooper v. Oklahoma* (1996) 517 U.S. 348, 365.) “We presume, however, that it is unusual for even the most artful malingerer to feign incompetence

successfully for a period of time while under professional care.”

(Ibid.) “Moreover, there is no reason to believe that the art of dissimulation is new. Eighteenth and nineteenth century courts, for example, warned jurors charged with making competency determinations that ‘there may be great fraud in this matter[.]’”

(Ibid., citations omitted.)

The California Public Defender’s Association and the American Civil Liberties Union further refute the SDAA’s unsubstantiated claims. (ACLU Amicus Brief, Exhibit A, at p. 2.) For instance, the ACLU relies on *evidence* (not just argument like the SDDA) to prove that “[n]umerous public defenders reported that certificates of restoration have been provided after only brief evaluations which do not meaningfully explore an individual’s ability to rationally assist in their defense.” *(Ibid.)* As a result, “[a]n independent judicial determination, where defendant’s counsel has an opportunity to be heard and present additional evidence, is both required by the statutory regime and more reliably protects the interests at stake.” *(Id. at p. 10.)* Moreover, the DSH and DDS’ “fiscal and political pressures mean [they are] subject to alternative incentives, further emphasizing the importance of judicial oversight.” *(Id. at p. 26.)*

To provide greater supervision, the Legislature amended the law “to reduce the maximum commitment of IST patients to DSH from 3 years to 2 years. This change was intended to discharge patients from limited DSH beds more expeditiously to admit additional IST patients and increase the potential number of IST patients served in a year.” *(IST Solutions Workgroup Report, supra, at p. 16.)* The

process is enhanced by judges who “exercise sound discretion in deciding whether, in a particular case, sufficient progress is being made to justify continued commitment pending trial.” (*Davis, supra*, 8 Cal.3d 798, 807.) Court orders must end the statutory commitment period to protect against cruel and unusual punishment and promote “constitutional principles of equal protection and due process.” (*Id.* at p. 801.)

II. AMICUS’ BLEAK VIEW OF THE FUTURE IS UNFOUNDED; CALIFORNIA STATE COURTS HAVE CORRECTED GREATER PROBLEMS BY ORDERS ENFORCING THE LAW AND OUR CONSTITUTIONS.

The process of deinstitutionalization “has been termed ‘one of the most well-meaning but poorly planned social changes ever carried out in the United States’: the closing of long-term psychiatric hospitals.”¹⁰ The crisis was further exacerbated by “the economic downturn in 2008, [when] the U.S. saw massive cuts in mental health spending, with numerous states eliminating services and hospital beds.”¹¹ Yet, at the same time, “referrals to the state hospitals for

¹⁰ Warburton, K., McDermott, B., Gale, A., & Stahl, S. (2020) *A survey of national trends in psychiatric patients found incompetent to stand trial: Reasons for the reinstitutionalization of people with serious mental illness in the United States*, *CNS Spectrums*, 25(2), 245, 246, citation omitted, available at: doi:10.1017/S1092852919001585 [last accessed September 15, 2022].

¹¹ McDermott, B., Newman, W., Meyer, J., Scott, C., & Warburton, K. (2017) *The Utility of an Admission Screening Procedure for Patients Committed to a State Hospital as Incompetent to Stand Trial*, *International Journal of Forensic Mental Health*, 16(4), 281, 281, available at: doi:10.1080/14999013.2017.1356890 [last accessed September 15, 2022].

restoration almost doubled from fiscal year 2013/2014 to 2015/2016.”
(*The Utility of an Admission Screening Procedure, supra*, at p. 282, citation omitted.) In response, the courts have enforced constitutional limits to protect individual rights:

Considering the evidence of long-standing and continuing delays in admission of IST defendants, the absence thus far of legislative action on this specific issue, and the necessarily piecemeal nature of the remedies imposed by the Courts of Appeal of this state, we conclude the trial court reasonably determined that a uniform statewide deadline is necessary to ensure the commencement of substantive services for these defendants within a ‘reasonable period of time.’

(*Stiavetti, supra*, 65 Cal.App.5th at p. 714, citations omitted.)

The problems presented are, in many ways, similar to the overcrowding of California’s prison system in violation of constitutional mandates. (See, e.g., *Brown v. Plata* (2011) 563 US 493, 501.) “For years the medical and mental health care provided by California’s prisons ha[d] fallen short of minimum constitutional requirements and ha[d] failed to meet prisoners’ basic health needs.” (*Ibid.*) “California’s correctional facilities held some 156,000 persons. This is nearly double the number that California’s prisons were designed to hold, and California [was] ordered to reduce its prison population to 137.5% of design capacity.” (*Ibid.*)

“Construction of new facilities, in theory, could [have] alleviate[d] overcrowding, but the three-judge court found no realistic possibility that California would be able to build itself out of this crisis.” (*Id.* at p. 528.) Instead, the population was capped and reduced by court order to the “Total In-Custody/CRPP Supervision”

CERTIFICATE OF COMPLIANCE

Pursuant to the California Rules of Court, Rules 8.520(c), I hereby certify that the attached memorandum for points and authorities is written in Century725 BT in 13 point font and contains 3,170 words.

DATED: September 16, 2022 Respectfully Submitted,

/s/ B.C. McComas

BRIAN C. McCOMAS

PROOF OF SERVICE

I, Brian C. McComas, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the above referenced action. My place of employment and business address is PMB 1605, 77 Van Ness Ave., Ste. 101, San Francisco, CA 94102.

On September 16, 2022, I served the attached **PETITIONER’S ANSWER TO THE AMICUS BRIEF BY THE SAN DIEGO COUNTY DISTRICT ATTORNEY’S OFFICE** by placing a true copy thereof in an envelope addressed to the person named below at the address shown, and by sealing and depositing said envelope in the United States Mail in San Francisco, California, with postage thereon fully prepaid or by electronic filing:

Mario Rodriguez PFN: DRC910 Elmwood Jail 701 S Abel St., Milpitas, CA 95035	Daniel M. Mayfield Attorney At Law Carpenter and Mayfield 730 N. First Street San Jose, CA 95112
---	--

On September 16, 2022, I served the attached **PETITIONER’S ANSWER TO THE AMICUS BRIEF BY THE SAN DIEGO COUNTY DISTRICT ATTORNEY’S OFFICE** by transmitting a PDF version of this document by electronic mailing to each of the following:

Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102-7004 SFAG.Docketing@doj.ca.gov	Sixth District Appellate Program 95 South Market St., Ste. 570 San Jose CA 95113 sdapattorneys@sdap.org
Honorable Judge Eric S. Geffon C/O Clerk of the Court, Santa Clara County Superior Court 190 W Hedding St.,	Sixth District Court of Appeal C/O Clerk of the Court 333 W. Santa Clara, Ste. 1060

<p>San Jose, CA 95110 egeffon@sccscourt.org</p> <p>Santa Clara County DA Office Appeals Division 333 W Santa Clara St #1060, San Jose, CA 95113 motions_dropbox@dao.sccgov.org</p> <p>Sixth District Court of Appeal C/O Clerk of the Court 333 West Santa Clara Street Suite 1060 San Jose, CA 95113 (Via Truefiling)</p> <p>Kimberly Nicole Pederson Disability Rights California 1831 K Street Sacramento, CA 95811</p> <p>Justin Reade Sarno DLA Piper LLP (US) 550 South Hope Street, suite 2400 Los Angeles, CA 90071</p>	<p>San Jose, CA 95113 Sixth.District@jud.ca.gov</p> <p>CPDA Diana Alicia Garrido Office of the Public Defender 800 Ferry Street Martinez, CA 94553 Diana.Garrido@pd.cccounty.us</p> <p>Jennifer Rebecca Kaplan Office of the District Attorney 325 S. Melrose Drive, Suite 5000 Vista, CA 92081</p> <p>Emilou H. MacLean ACLU Foundation of Northern California 39 Drumm Street San Francisco, CA 94111</p> <p>Kevin L. Quade Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550</p>
---	--

I declare under penalty of perjury that the foregoing is true and correct. Signed on September 16, 2022 at San Francisco, California.

/s/ B.C. McComas

BRIAN C. McCOMAS

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. S.C. (PEOPLE)**

Case Number: **S272129**

Lower Court Case Number: **H049016**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **mccomas.b.c@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S272129_Amicus Brief to SDDA_Rodriguez

Service Recipients:

Person Served	Email Address	Type	Date / Time
Diana Garrido Office of the Public Defender 243343	diana.garrido@pd.cccounty.us	e-Serve	9/16/2022 10:54:58 AM
Emilou Maclean ACLU Foundation of Northern California 319071	emaclean@aclunc.org	e-Serve	9/16/2022 10:54:58 AM
Alicia Morales DLA Piper LLP (US)	alicia.morales@us.dlapiper.com	e-Serve	9/16/2022 10:54:58 AM
Brian Mccomas Law Office of B.C. McComas 273161	mccomas.b.c@gmail.com	e-Serve	9/16/2022 10:54:58 AM
Justin Sarno DLA Piper LLP (US) 229803	justin.sarno@us.dlapiper.com	e-Serve	9/16/2022 10:54:58 AM
Attorney Attorney General - San Francisco Office Office of the Attorney General	sfagdocketing@doj.ca.gov	e-Serve	9/16/2022 10:54:58 AM
Kassandra Dibble ACLU of Northern California	kdibble@aclunc.org	e-Serve	9/16/2022 10:54:58 AM
Brian Mccomas The Law Office of B.C. McComas, LLP	lawofficeofb.c.mccomasllp@gmail.com	e-Serve	9/16/2022 10:54:58 AM
Alexandra Gadenberg Office of the District Attorney of Santa Clara County 271567	agadeberg@dao.sccgov.org	e-Serve	9/16/2022 10:54:58 AM
Stephanie Regular	stephanie.regular@pd.cccounty.us	e-	9/16/2022

Contra Costa County Public Defender 210115		Serve	10:54:58 AM
Kimberly Pederson Disability Rights California 234785	kim.pederson@disabilityrightsca.org	e-Serve	9/16/2022 10:54:58 AM
Kevin Quade Office of the Attorney General 285197	kevin.quade@doj.ca.gov	e-Serve	9/16/2022 10:54:58 AM
Ellen McDonnell Contra Costa County Public Defenders Office	diana.garrido@pd.ccounty.us	e-Serve	9/16/2022 10:54:58 AM
Jennifer Kaplan Office of the District Attorney 240602	jennifer.kaplan@sdcca.org	e-Serve	9/16/2022 10:54:58 AM
Sixth District Appellate Program	sdapattorneys@sdap.org	e-Serve	9/16/2022 10:54:58 AM
Honorable Judge Eric S. Geffon	egeffon@scscourt.org	e-Serve	9/16/2022 10:54:58 AM
Sixth District Court of Appeal	Sixth.District@jud.ca.gov	e-Serve	9/16/2022 10:54:58 AM
Santa Clara County DA Office	motions_dropbox@dao.sccgov.org	e-Serve	9/16/2022 10:54:58 AM
Daniel M. Mayfield	daniel_mayfield@att.net	e-Serve	9/16/2022 10:54:58 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/16/2022

Date

/s/Brian McComas

Signature

McComas, Brian (273161)

Last Name, First Name (PNum)

Law Office of B.C. McComas

Law Firm