NO. S272129

In the Supreme Court of the State of California

MARIO RODRIGUEZ,
Petitioner and Defendant,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

Sixth Appellate District, Case No. H049016
Santa Clara County Superior Court,
Case Nos. C1647395, C1650275
The Honorable Eric S. Geffon, Criminal Presiding Judge

ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

Does an incompetency commitment end when a state hospital files a certificate of restoration to competency or when the trial court finds that defendant has been restored to competency?

INTRODUCTION

An incompetency *commitment* is a discrete occurrence within the larger statutory framework of competency proceedings. Just as the commitment does not begin with a trial court's finding of *incompetence*, the commitment does not end upon a trial court's finding of *competence*. Rather, the plain language of the statutory scheme evidences that the *commitment* begins when a defendant is placed in the care of the state hospital or other treatment facility to receive restoration treatment; it ends when the state hospital files a certificate of restoration, immediately triggering a return order to the court for further proceedings. [1,2] (*Rodriguez v. Superior Court* (2021) 70

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[1] A certificate of restoration is filed when a specified mental health official determines that the defendant has regained mental competence. (Pen. Code § 1372, subd. (a)(1).) While treatment for the *maintenance* of competency may continue throughout all future competency and criminal proceedings (see Pen. Code § 1372, subds. (e) and (f)), treatment for *restoration of mental competency* ceases once the hospital determines competence has been restored.

[2] If the state hospital determines restoration is substantially unlikely to occur during the commitment or is not achieved by the end of the maximum commitment time limit, the end of the commitment is governed by Penal Code section 1370, subd. (b)(1)(A) and subds. (c)(1) and (2).

Cal.App.5th 628 (*Rodriguez*), *review granted* January 5, 2022, S272129.)

The legislative history of Penal Code section 1370, subdivision (c)(1)[3], which governs the maximum time for incompetency commitments, provides overwhelming support for the position that the commitment ends when the state hospital ceases restoration treatment and files a certificate of restoration, automatically triggering a return order to the court for further proceedings. Section 1370, subd. (c)(1) was added to the statutory framework to "bring the procedure for the *commitment* of mentally incompetent defendants in accord with the decisions of the California Supreme Court in *In re Davis* (1973) 8 Cal.3d 798." (*In re Polk* (1999) 71 Cal.App.4th 1230, 1235 [emphasis added].) The evil remedied by *In re Davis* and later addressed by the Legislature in enacting section 1370, subd. (c)(1), was the indefinite holding of incompetent defendants *in treatment facilities*—not delays in judicial determinations of competency or other court proceedings when defendants are within the court's direct control. (*Id.*; *In re Davis* (1973) 8 Cal.3d 798.) In other words, the maximum commitment period enumerated in section 1370, subd. (c)(1) was intended to limit a defendant's time in the treatment facility to "the period reasonably necessary to permit treatment for incompetence." (*People v. G.H.* (2014) 230 Cal.App.4th 1548, 1559, citing *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 168.)

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[3] All subsequent statutory references are to the Penal Code unless otherwise specified.

The original intent of the statute was recently reaffirmed when the Legislature modified section 1370, subd. (c)(1) by reducing "the *term for commitment to a treatment facility*" to two years. (Stats. 2018, ch. 1008 [Senate Bill No. 1187 (2017-2018 Reg. Sess.)], Legis. Counsel's Dig., par. 2 of initial recitals, italics added.) According to the author of the bill, the reduction in commitment time was based on advances in *medicine* resulting in "committed persons attain[ing] competency in time periods far shorter than what was considered "reasonable" in 1974." (Assem. Com. On Pub. Safety, Analysis of Sen. Bill No. 1187 (2017-2018 Reg. Sess.) March 20, 2018, p. 4.) Absent from the history of both bills is any evidence the Legislature intended to include court hearings that occur when the defendant is no longer in the treatment facility within the maximum commitment period enumerated in section 1370, subd. (c)(1).

Based on the plain language of the statutory scheme and its legislative history, the lower court correctly concluded that a defendant's commitment period does not continue to run after the certificate of restoration is filed. (*Rodriguez, supra*, 70 Cal.App.5th at p. 653.) Indeed, once such a certificate is filed, a return order contained in the original order of commitment is automatically triggered, whereby the defendant is returned to the custody of the court (see § 1372, subd. (a)(2)), treatment for the *restoration of competency* is ceased, and the defendant is deemed presumptively competent. (*People v. Rells* (2000) 22 Cal.4th 860, 867-871.)

The Sixth District's holding is also consistent with that of other courts. (See *Medina v. Superior Court* (2021) 65 Cal.App.5th 1197, 1203 (*Medina*) ["In the usual case, only days actually spent in commitment at a mental institution or treatment facility are to be applied to the maximum commitment period."]; see also *People v. G.H., supra*, 230 Cal.App.4th at p. 1558, citing *In re Polk, supra*, 71 Cal.App.4th at p. 1238 ["Section 1370, subdivision (c)(1)'s … statutory limit applies to the total period actually spent in commitment at a mental institution."]; accord *People v. Reynolds* (2011) 196 Cal.App.4th 801, 809 [time spent in county jail prior to transportation to the state hospital is not counted towards the *commitment* for restoration treatment].) The sole outlier is *Carr II*, which appears to have incorrectly conflated the concepts of "commitment" with findings of competency and gives no meaning to the certificate of restoration or the presumption of competency it creates.[4] (*Carr II*, *supra*, 59 Cal.App.5th 1136; *Rodriguez, supra*, 70 Cal.App.5th at pp. 650-654; *People v. Rells, supra*, 22 Cal.4th at pp. 867-871.)

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[4] Real Party in Interest agrees that a due process violation likely occurred in *Carr II* as a result of the prolonged delay between the trial court's order of commitment and the defendant being admitted to an appropriate facility for restoration services (see e.g., *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691); however, for reasons discussed more fully herein, we disagree with the court's conclusion "that the filing of a certificate of competency [after the first commitment] did not terminate the defendant's commitment so as to prevent the three-year maximum commitment term from accruing." (*Carr II, supra*, 59 Cal.App.5th at p. 1140.)

Finally, Petitioner's interpretation of section 1370, subd. (c)(1) would lead to absurd results. At present, any delays in holding a section 1372 hearing that implicate due process concerns can be directly managed by the trial court, which has the discretion to grant or deny continuances based on findings of good cause. If this Court adopted Petitioner's position, the trial court would have no such discretion or control in balancing the needs of defense attorneys to adequately prepare on behalf of their clients with concerns of delay. Additionally, time originally designated by the Legislature to provide necessary restoration treatment would instead be arbitrarily truncated based on: (1) predicting whether the defendant will contest the hospital's certification in the future; and (2) predicting exactly how much time the defense will require to prepare for such a hearing. This approach would pit the defendant's medical needs against defendant's strategic trial needs, as the two-year maximum commitment would be divided between medical treatment and the litigation process. This haphazard rule would result in presumptively competent defendants evading prosecution based on reasonable delays which can and do occur while preparing for a contested hearing. Certainly, the Legislature did not intend for treatment time to be consumed by a defense counsel's hearing preparation or for competent defendants to evade prosecution. Accordingly, Petitioner's contentions must be rejected.

STATEMENT OF THE CASE

On December 29, 2016, the Santa Clara County District Attorney filed an Information in Santa Clara County Superior

Court case number C1650275 charging Petitioner with Assault with a Deadly Weapon (§ 245, subd. (a)(1)) resulting in the Infliction of Great Bodily Injury (§ 12022.7, subd. (a)), Oral Copulation by Force, Violence, Duress, Menace, or Fear (§ 288a, subd. (c)(2)), Rape by Force, Violence, Duress, Menace, or Fear (§ 261, subd. (a)(2)), Making Threats to Commit a Crime Resulting in Death or Great Bodily Injury (§ 422), and Inflicting Corporal Injury on a Spouse, Cohabitant, Former Spouse, or Cohabitant (§ 273.5, subd. (a)). (Petition for Writ ("Pet.") Exhibit ("Exh.") 2.) [5]

On that same date, in Santa Clara County Superior Court case number C1647395, the Santa Clara County District Attorney filed an Information charging Petitioner with Making Threats to Commit a Crime Resulting in Death or Great Bodily Injury (§ 422). (Pet. Exh. 1.)

Prior to the filing of both Informations, Superior Court Judge Paul Colin held Petitioner to answer on all the stated charges at the conclusion of the preliminary hearings. (Return ("Ret.") Exhs. 28 and 29.) In case C1650275, no bail was allowed. (Ret. Exh. 28.)

On December 27, 2017, the court declared a doubt as to Petitioner's competency to stand trial and suspended proceedings in both cases. (Preliminary Opposition ("Prelim. Opp.") Exh. 1.)

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[5] The record below includes Petitioner's exhibits to his Petition for Writ of Prohibition, Real Party in Interest's exhibits to its Preliminary Opposition, and Real Party in Interest's exhibits to its Return.

On May 3, 2018, the court found Petitioner was not competent to stand trial after the parties submitted the matter on the examiners' reports. (Prelim. Opp. Exh. 2.)

On May 24, 2018, the court ordered that Petitioner be committed to the Department of State Hospitals for placement in a locked psychiatric facility for care and treatment for the incompetent under section 1370, subd. (a)(2). (Prelim. Opp. Exh. 3.) The order further specified that "The Sheriff shall redeliver the patient to the Court upon receiving from the state hospital a copy of the certification of mental competency." (Prelim. Opp. Exh. 3.)

On September 9, 2018, the Medical Director of Atascadero State Hospital certified that Petitioner was competent. (Prelim. Opp. Exh. 4.) The parties have stipulated that the Certification of Mental Competency was filed on September 9, 2018. (Pet. at p. 10, Verified Allegation 3.)

On September 20, 2018, the court found Petitioner's competency restored and reinstated criminal proceedings. The parties again submitted on the reports. (Prelim. Opp. Exh. 5.)

On January 10, 2019, the court declared a new doubt as to Petitioner's competency to stand trial and suspended criminal proceedings in both cases. (Prelim. Opp. Exhs. 6 and 7.)

On April 18, 2019, the court found Petitioner was not competent to stand trial after the parties submitted on the reports. (Prelim. Opp. Exhs. 8 and 9.)

On May 16, 2019, the court ordered that Petitioner be committed to the Department of State Hospitals for placement in

a locked psychiatric facility for care and treatment for the incompetent under section 1370, subd. (a)(2). (Prelim. Opp. Exhs. 10, 11, and 12.) The order further specified that "[t]he Sheriff shall redeliver the patient to the Court upon receiving from the state hospital a copy of the certification of mental competency." (Prelim. Opp. Exh. 12.)

On January 9, 2020, the Medical Director of Atascadero State Hospital certified that Petitioner was competent. (Prelim. Opp. Exh. 13.) The parties have stipulated that the Certification of Mental Competency was filed on January 9, 2020. (Pet. at p. 10, Verified Allegation 3.)

On January 24, 2020, the parties again appeared in the Superior Court. The court permitted a new attorney to substitute in for Petitioner, Mr. Daniel Mayfield. Mr. Mayfield requested a continuance. Petitioner's cases were set for a section 1372 competency hearing on May 21, 2020. An intervening court date of February 7, 2020 was set. (Prelim. Opp. Exhs. 14 and 15.)

On February 7, 2020, Mr. Mayfield asked for another intervening court date for the return of subpoenaed records. Another intervening court date of March 13, 2020 was set. (Prelim. Opp. Exhs. 16 and 17.)

On March 13, 2020, the court released subpoenaed records to Mr. Mayfield. Another intervening court date of April 17, 2020 was set. (Prelim. Opp. Exhs. 18 and 19.)

On March 17, 2020, the COVID-19 pandemic and the County's stay-at-home orders required the Superior Court to suspend all but its most essential operations. (Ret. Exh. 30.) As a

result, neither the intervening court date of April 17, 2020, nor the section 1372 hearing set for May 21, 2020, occurred. (Ret. Exh. 31, at p. 2.)

On July 17, 2020, following the loosening of the County's stay-at-home orders, the parties returned to court. The court released additional subpoenaed records to Mr. Mayfield. The matter was set for a section 1372 hearing on August 24, 2020. An intervening court date of August 14, 2020 was set. (Prelim. Opp. Exhs. 20 and 21; Ret. Exh. 31, at p. 2.)

On August 14, 2020, Mr. Mayfield requested a one-week continuance of the section 1372 hearing due to another court commitment. Deputy District Attorney Alisa Esser-Kahn, who was representing the People on both cases, requested a slightly longer continuance to review the subpoenaed records that had just been received and to allow sufficient time to arrange the necessary Closed-Circuit TV with the Department of State Hospitals. Mr. Mayfield also wanted additional time to subpoena updated records. At the joint request of both parties, the court reset the section 1372 hearing to September 21, 2020, with an intervening court date of August 28, 2020. (Prelim. Opp. Exhs. 22 and 23; Ret. Exh. 32, pp. 1-5; Exh. 31, at p. 2.)

On August 28, 2020, the court had not yet received the subpoenaed records. Another hearing for receipt of the records was set for September 11, 2020. (Prelim. Opp. Exhs. 24 and 25.) On that date, DDA Esser-Kahn also received the minute order that would allow her to schedule the Closed-Circuit TV with the

State Hospital for the September 21, 2020 hearing. (Ret. Exh. 31, at p. 2.)

On September 10, 2020, DDA Esser-Kahn received an email from Mr. Mayfield in which he asked for her agreement to continue the section 1372 hearing until at least September 28, 2020. He wanted to consider another possible avenue for resolving the cases. On that same date, DDA Esser-Kahn responded and informed Mr. Mayfield that the Superior Court had already automatically continued the section 1372 hearing to November 2, 2020, due to the COVID-19 pandemic and the lack of courtrooms and court resources available to conduct the hearing. (Ret. Exh. 31, at p. 3.) Earlier that week, Criminal Presiding Judge Eric Geffon had described the problematic courtroom backlog situation caused by the COVID-19 pandemic during the call of the master trial calendar. (Ret. Exh. 33, at pp. 1-6.)

On September 11, 2020, the court released subpoenaed documents to Mr. Mayfield. The section 1372 hearing remained set for November 2, 2020. (Prelim. Opp. Exhs. 26 and 27.)

On September 29, 2020, DDA Esser-Kahn met with Criminal Presiding Judge Eric Geffon and expressed the importance of locating an available courtroom to hear pending mental health cases. She was informed that the Superior Court did not presently have the resources available to conduct the hearings due to the COVID-19 pandemic and the limited trial capacity and backlog of criminal jury trials that had resulted therefrom. (Ret. Exh. 31, at p. 3.)

The November 2, 2020 hearing date never occurred, and the Superior Court automatically continued the hearing to December 14, 2020, a date that also did not occur. These were continuances the Superior Court made because of the COVID-19 pandemic and the Superior Court's limited trial capacity and backlog of criminal jury trials. (Ret. Exh. 31, at p. 4; see also Ret. Exh. 34.)

On November 28, 2020, the Santa Clara public health officer issued Mandatory Directives in light of the "number of patients hospitalized with Covid-19," noting that "[i]f these trends continue, hospitals in the County will reach or exceed their capacity within the next few weeks."[6] The Mandatory Directives reduced capacity for facilities open to the public to 10% capacity indoors. (*Id.*) On December 3, 2020, the state public health officer issued a new regional stay-at-home order restoring many of the earlier restrictions in an effort to slow the spread of COVID-19 and avoid overwhelming the state's hospitals in response to an unprecedented surge in the level of community spread of COVID-19.[7]

On December 15, 2020, DDA Esser-Kahn again met with Criminal Presiding Judge Eric Geffon regarding the court's pending section 1369 and 1372 hearings. Though she

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[6] (See Santa Clara Health Officer Mandatory Directive (Nov. 28, 2020), <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/executive-summary-order-11-28-2020.pdf> [as of March 7, 2022].)

[7] (See California Department of Public Health, Regional Stay At Home Order (Dec. 3, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf> [as of Mar. 3, 2022].)

emphasized the importance of finding available courtrooms for the pending section 1372 hearings, she was informed that all available courtroom resources were being used to hear time-not-waived jury trials and that no additional resources were available due to the COVID-19 pandemic. (Ret. Exh. 31, at p. 4.)

According to the Superior Court's online portal, the section 1372 hearing was reset to January 25, 2021, and then again to March 8, 2021. Neither of these court dates occurred. (Ret. Exh. 31, at p. 4.)

On January 25, 2021, the California Department of Public Health announced the Bay Area Region was no longer subject to the State's regional stay-at-home order.[8] The Santa Clara health officer nevertheless issued revisions to her Mandatory Directives that continued to limit indoor operations to 20% of capacity for business that are allowed to open. (*Id.*) All other "indoor gatherings of any kind remained prohibited." (*Id.*)

On March 8, 2021, Petitioner filed a motion to dismiss the charges against Petitioner pursuant to section 1385. (Pet. Exh. 3.) On March 16, 2021, Criminal Presiding Judge Eric Geffon denied Petitioner's motion, finding:

> [T]he days between the restoration certificate and the restoration hearing will only count towards the two-year maximum commitment if, in fact, it is determined that the defendant is not restored to competence. [¶] If the defendant is restored to competence, then the date on the certificate of restoration will serve as the date

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[8] (See Santa Clara Health Officer Mandatory Directive (Jan. 25, 2021) <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/executive-summary-order-1-25-2021.pdf> [as of Mar. 7, 2022].)

> of restoration for purposes of counting the days towards the maximum commitment. [¶] With that – almost as if to prove my point – I believe this case is not ready for a hearing, Mr. Mayfield, and we need to discuss the issue of getting the records that you need from the jail.

(Pet. Exh. 6, at pp. 71-75.)

Mr. Mayfield thereupon requested a continuance to obtain updated records. (Pet. Exh. 6, at p. 75.)

On April 16, 2021, Petitioner filed a Petition for Writ of Prohibition seeking a dismissal. Petitioner argued the trial court no longer had authority to hold a section 1372 hearing because the two-year statutory maximum for commitment included time spent in county jail after a certificate of restoration had been filed with the court and had therefore run. (Pet.; *Rodriguez, supra.* 70 Cal.App.5th at p. 635.) On April 28, 2021, the Sixth District Court of Appeal (H049016) issued a stay of proceedings in the Responding court and requested preliminary opposition. (*Rodriguez, supra*, at p. 641.) On May 18, 2021, Real Party in Interest (the People) filed a preliminary opposition. (Prelim. Opp.)

On July 20, 2021, the Sixth District Court of Appeal issued an Order to Show Cause why a peremptory writ should not issue as requested by Petitioner. On August 3, 2021, Real Party in Interest filed a Return. (Ret.)

On October 26, 2021, the Sixth District Court of Appeal filed a published opinion agreeing with Real Party in Interest that the commitment period ended when Petitioner's certification

of restoration was filed. (*Rodriguez, supra*, 70 Cal.App.5th at pp. 635-36; see Ret. at pp. 37-46.)

On January 5, 2022, this Court granted review and denied Petitioner's request for an order directing depublication of the Sixth District's opinion. (*Rodriguez v. Superior Court* (2022) 502 P.3d 2.)

ARGUMENT

Petitioner was promptly returned from Atascadero State Hospital to the trial court's custody following the filing of a certificate of restoration, which occurred well within the two-year maximum commitment period enumerated in section 1370, subd. (c)(1). Following his return, Petitioner elected to contest the certificate of restoration by way of a section 1372 competency hearing. In addition to delays arising from the current global pandemic, the trial court repeatedly continued the hearing at the request of Petitioner's attorney who was awaiting the receipt of subpoenaed documents he deemed necessary for the hearing. Petitioner then moved for a dismissal of the criminal case, claiming that the trial court lost jurisdiction to hold such a hearing. Specifically, Petitioner alleged he remained "committed" within the meaning of section 1370, subd. (c)(1) *until the court* made a finding of competency pursuant to section 1372, subds. (c) and (d). As a result, Petitioner claims his *commitment* exceeded the two-year time limit and that the procedures in section 1370, subd. (c), rather than those in section 1372, apply. At the time of the court's denial of the motion to dismiss, Petitioner was still not ready to proceed with a section 1372 hearing.

Petitioner incorrectly conflates the concepts of "competency" proceedings with that of the "commitment," while misinterpreting the statutory scheme and relevant case law. An incompetency *commitment* is a discrete occurrence within the larger statutory framework of competency proceedings, where the defendant is committed to, or placed in the care of, the state hospital for purposes of restoration treatment. Just as the commitment does not begin with a trial court's finding of incompetence[9], the commitment does not end upon a trial court's finding of competence. Rather, the *commitment* ends when the state hospital files a certificate of restoration. (*Rodriguez, supra*, 70 Cal.App.5th 628.) For the reasons discussed herein, the Sixth District Court of Appeal's rejection of Petitioner's contentions is supported by the plain language of the statutory scheme, the legislative history of the enumerated time restriction imposed for incompetency commitments, relevant case law, and common sense.

I. THE PLAIN LANGUAGE OF THE STATUTORY SCHEME DEMONSTRATES THAT THE LENGTH OF THE *COMMITMENT* IS NOT DEFINED BY COURT FINDINGS OF COMPETENCY OR INCOMPETENCY

The Penal Code does not *expressly* define the end of the statutory incompetency commitment contemplated in section 1370. Thus, courts must apply cannons of statutory construction to understand the legal confines of the commitment, including

[9] Although a finding of incompetence is necessary to order a defendant committed, the finding itself is neither the order of commitment nor the beginning of the commitment.

what the "commitment" is and is not. "[T]he objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] In determining intent, we look first to the words themselves. [Citations.]" (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007.) "When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]" (*Id.* at p. 1008.) Here, the plain language of the statutory scheme clearly demonstrates that the length of the commitment is not defined or bound by court findings of competency or incompetency.

If at any point during a criminal proceeding a doubt arises as to a defendant's competence to stand trial, and that doubt is supported by substantial evidence, the court shall suspend criminal proceedings and order a competency hearing. (§§ 1368, 1369; *People v. Lightsey* (2012) 54 Cal.4th 668, 691.) Prior to the hearing, the court shall appoint one or more psychiatrists or licensed psychologists to evaluate the defendant and prepare a report regarding his or her competence. (§ 1369, subd. (a).) Unless an agreement can be reached by the parties, the issue of the defendant's competence is to be decided by the court or a jury, and the defendant's incompetence must be proved by a preponderance of the evidence. (§ 1369.) If a defendant is determined to be competent, the court resumes criminal proceedings. (§ 1370, subd. (a)(1)(A).) If a defendant is found to

be incompetent, criminal proceedings "shall be *suspended until the person becomes mentally competent*." (§ 1370, subd. (a)(1)(B) [emphasis added].)

Upon a finding of incompetency, the court shall order the defendant be "*delivered*" to the appropriate treatment facility for restoration treatment. (§ 1370, subd. (a)(1)(B)(i).) This order of "deliver[y]" for restoration treatment is alternatively referred to as "the order directing that the defendant be *committed* to the State Department of State Hospitals or other treatment facility …." (§ 1370, subd. (a)(2) [emphasis added].)

The statute's synonymous use of the words "delivered" and "committed," alone, distinguishes the *commitment* from *findings* of competency or incompetency. However, even without the use of the word "delivered," the plain meaning of the word "commitment" or "commit" is simply not equivalent to "findings" of "competency" or "incompetency." Thus, without explicit statutory guidance to the contrary, the definition of the "commitment" is not and should not be conflated with the period of court-adjudged incompetency. (*People v. Leal* (2004) 33 Cal.4th 999, 1009 ["courts are bound to give effect to statutes according to the usual, ordinary import of the language used"], quoting *People v. Pitmon* (1985) 170 Cal.App.3d 38, disapproved of on other grounds by *People v. Soto* (2011) 51 Cal.4th 229.)

Furthermore, as the statute makes clear, a finding of incompetence, itself, is neither the order of commitment nor the commitment. Rather, the finding of incompetence is the triggering event that permits the court to *order* the commitment.

Indeed, the court can only issue a commitment order *after* the court conducts additional hearings and makes findings and orders pursuant to section 1370, subd. (a)(2)(A)-(D).

Unlike court findings of incompetence and competence, which take place while the court has direct control of the defendant (see § 1369), an incompetency commitment—wherein the defendant is physically placed in the care and custody of the state hospital for restoration treatment—is governed by an enumerated time limit found in section 1370, subd. (c)(1).[10] When providing for the two-year maximum period, section 1370, subd. (c)(1), refers to the "commitment," not the total period of incompetency nor the period in which competency is determined or litigated. The language used is the following: "At the end of two years from the date of *commitment* or a period of *commitment* equal to the maximum term of imprisonment…." (§ 1370, subd. (c)(1), emphasis added.) Courts have consistently interpreted this language to mean that the start of the maximum commitment period is that in which the defendant is committed or placed in the care of a treatment facility. (See, e.g., *People v. Reynolds, supra*, 196 Cal.App.4th at p. 807; *In re Banks* (1979) 88 Cal.App.3d 864, 867.) Thus, the word "commitment" in that section refers to the commitment *at the treatment facility*, not the total period of incompetence or proceedings to determine competency. (*Ibid.*)

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[10] Conversely, there is no enumerated time limit for court findings when a doubt is declared, when a section 1369 trial must take place, or when a section 1372 hearing must take place.

Once "delivered" or "committed," to the treatment facility pursuant to the court's order, the statutory scheme provides four ways in which restoration treatment is terminated and the defendant is returned to court: (1) the hospital files a certificate of restoration to competence, which triggers an order for the return of the defendant to the court for further proceedings (§ 1372, subds. (a)(1) and (a)(3)(C)), (2) the treatment provider determines the defendant is not likely to regain competence in the foreseeable future, in which case the defendant is returned to the court for further proceedings (§ 1370, subd. (b)(1)(A)), (3) the court determines that treatment for the defendant's mental impairment is not being provided, in which case the defendant is returned to the court for further proceedings (§ 1370, subd. (b)(4)), or (4)

> [a]t the end of two years from the date of *commitment* or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant *who has not recovered mental competence shall be returned to the committing court*.

(§ 1370, subd. (c)(1) [emphasis added].)

Under the first scenario, once the defendant has been returned to the committing court following a certificate of restoration, either party has the option of contesting the hospital's finding at a hearing. (§ 1372, subds. (c) and (d); *People*

v. Murrell (1987) 196 Cal.App.3d 822, 826.) As with the initial competency hearing prescribed by section 1369, the defendant is presumed to be competent, and the burden is on the proponent of incompetence to prove that the defendant is not competent by a preponderance of the evidence. (*People v. Rells, supra*, 22 Cal.4th at p. 868.) If the court finds the defendant competent, criminal proceedings resume. (*In re Taitano, supra*, 13 Cal.App.5th 233.)

Rather than recognizing separate mechanisms for the return of the defendant to the committing court, Petitioner's proposed reading impermissibly attempts to mix and match in arguing that the enumerated time limit found in section 1370, subd. (c)(1) applies to section 1372 proceedings that occur *after* the defendant has already been returned to the committing court. In addition to there being no mention of section 1370, subd. (c)(1)'s time limit in discussing the discretionary hearing contemplated in section 1372, subds. (c) and (d), Petitioner's reading of the statutory scheme is simply illogical.

The return mechanism found in 1370, subd. (c)(1) specifically states, "a defendant who has not recovered mental competence *shall be returned* to the committing court." In other words, the remedy for reaching the maximum commitment period is to return the defendant to the committing court. If, however, the medical director of the state hospital determines that the defendant has regained mental competence during the commitment, the director shall immediately certify that fact by filing a certificate of restoration with the court, which automatically triggers a return order that must be executed

within ten days. (§ 1370, subd. (a)(1)(C); § 1372, subds. (a)(1)-(3).) It would make little sense for the time limit in section 1370, subd. (c)(1) to apply to court hearings after the defendant has been returned to the court pursuant to section 1372, given that the remedy *is* to return the defendant to the committing court - an event that has already occurred. Second, concluding that a court's competency finding is necessary to terminate the commitment would lead to indefinite commitments for defendants returned to the court pursuant to sections 1370, subd. (b)(1)(A) or 1370, subd. (c)(1). As *People v. Taitano* (2017) 13 Cal.App.5th 233, 250, 253, and *People v. Quiroz* (2016) 244 Cal.App.4th 1371, 1380, demonstrate, section 1367 *et seq.* does not permit a competency hearing to approve or contest a hospital's determination that restoration is not likely to occur in a reasonable time or that restoration has not occurred within the two-year time limit. Thus, *if* Petitioner was correct that a court finding or approval of the hospital's determination is necessary to terminate the incompetency commitment, rather than the cessation of treatment and return to court, then defendants returned pursuant to section 1370, subd. (b)(1)(A) or section 1370, subd. (c)(1) would *remain indefinitely committed* notwithstanding enumerated time limit of section 1370, subd. (c)(1). Of course, this is not the case.

If the "clock" for the commitment does not start when the court finds a defendant incompetent, common sense dictates that it does not stop when the court finds a defendant competent. From the synonymous use of the words "delivered" and

"committed," to the individual mechanisms for the cessation of treatment and return of the defendant, the plain language of the statutory scheme demonstrates that the period of *commitment* is not bound by the period of *incompetency*. Nothing in the plain language of the statutory scheme suggests that the discretionary hearing contemplated by section 1372[11] falls within the commitment time enumerated in section 1370, subd. (c)(1).

II. THE LEGISLATIVE HISTORY OF THE COMMITMENT TIME LIMITATION CONTRADICTS PETITIONER'S INTERPRETATION OF THE STATUTE

The legislative history of the enumerated time limit found section 1370, subd. (c)(1), provides overwhelming support that the period of *commitment* is determined by the actual time spent in a treatment facility, and does not include court proceedings or time spent preparing for said proceedings *after* the defendant has been returned to the court.

Section 1370, subd. (c)(1) was added to the statutory framework to "bring the procedure for the *commitment* of mentally incompetent defendants in accord with the decisions of the California Supreme Court in *In re Davis* (1973) 8 Cal.3d 798." (*In re Polk, supra*. 71 Cal.App.4th at 1235 [emphasis added].) Prior to this addition,

> mentally incompetent defendants could be *committed to a state hospital or other treatment facility indefinitely* unless they regained competence, a

[11] Such a hearing only takes place when the defendant has been returned to the court pursuant to its original commitment order, is no longer receiving treatment to restore competence, and is presumed competent.

> practice that could effectively result in a lifetime sentence without a determination of guilt. That practice was ended by our Supreme Court's decision in *In re Davis* [citation omitted], which applied the rule of *Jackson v. Indiana* (1972) 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 and held that "no person charged with a criminal offense and *committed to a state hospital* solely on account of his incapacity to proceed to trial may be *so confined* more than a reasonable period of time necessary to determine whether there is a substantial likelihood that he will recover that capacity in the foreseeable future." (*Davis*, at p. 8-1, 106 Cal.Rptr. 178, 505 P.2d 1018.)

(*In re Taitano, surpa*, 13 Cal.App.5th at p. 241 [emphasis added]; *In re Polk, supra*, at p. 1235, citing *Conservatorship of Hofferber, supra*, 28 Cal.3d at p. 167.)

The evil remedied by *In re Davis* and later addressed by the Legislature in enacting section 1370, subd. (c)(1), was the languishing of incompetent defendants *in treatment facilities*, not delays in judicial determinations of competency or other court business when defendants are within the court's direct control. (*In re Davis, supra*, 8 Cal.3d 798; *In re Polk, supra*, 71 Cal.App.4th at p. 1235.) Therefore, the maximum commitment period enumerated in section 1370, subd. (c)(1) was intended to limit a defendant's time *in the treatment facility* to "the period reasonably necessary to permit treatment for incompetence." (*People v. G.H., supra*, 230 Cal.App.4th at p. 1559, citing *Conservatorship of Hofferber, supra*, 28 Cal.3d at p. 168.)

In recently reducing the maximum time a defendant may be committed to a state hospital pursuant to section 1370, subd. (c)(1), the Legislature specified that it was reducing "the term for

commitment *to a treatment facility*….” (Stats. 2018, ch. 1008 [Senate Bill No. 1187 (2017-2018 Reg. Sess.)], Legis. Counsel’s Dig., par. 2 of initial recitals, italics added.) While bill summaries provided by the Legislative Counsel’s Digest are not binding, “they are entitled to great weight. It is reasonable to presume that the Legislature amended those sections with the intent and meaning expressed in the Legislative Counsel’s digest.” (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1169-1170.) Furthermore, the Committee on Public Safety noted that the reduction in commitment time was based on advances in *medicine* resulting in “committed persons attain[ing] competency in time periods far shorter than what was considered “reasonable” in 1974.” (Assem. Com. On Pub. Safety, Analysis of Sen. Bill No. 1187 (2017-2018 Reg. Sess.) March 20, 2018, p. 4.)

Absent from the history of either bill is any evidence the Legislature intended the maximum commitment to include court hearings that occur when the defendant is no longer receiving restoration treatment and is no longer in the care and custody of the state hospital. To the contrary, the legislative history of section 1370, subd. (c)(1) supports the conclusion that the cessation of treatment to restore competency and the order to return the defendant to the court’s custody ends the commitment period. Per the plain language of the statute, this occurs when (1) the state hospital files a certificate of restoration, (2) the treatment provider determines the defendant is not likely to regain competence in the foreseeable future, *or* (3) according to the state hospital, the defendant has not regained competency

within 90 days prior to the expiration of the maximum term of commitment.

III. THE LOWER COURT'S HOLDING IS SUPPORTED BY RELEVANT CASE LAW

In addition to comporting with the plain language of the statutory scheme and the legislative history of section 1370, subd. (c)(1), the Sixth District's holding that a defendant's "commitment period under section 1370(c)(1) did not continue to run after the certification of restoration to competence was filed," is consistent with conclusions reached by other courts. (*Rodriguez, supra*, 70 Cal.App.5th at p. 654; see *Medina, supra*, 65 Cal.App.5th at p. 1203 ["In the usual case, only days actually spent in commitment at a mental institution or treatment facility are to be applied to the maximum commitment period."]; see also *People v. G.H., supra*, 230 Cal.App.4th at p. 1558, citing *In re Polk, supra*, 71 Cal.App.4th at p. 1238 ["Section 1370, subdivision (c)(1)'s … statutory limit applies to the total period actually spent in commitment at a mental institution."]; accord *People v. Reynolds, supra*, 196 Cal.App.4th at p. 809 [time spent in county jail prior to transportation to the state hospital is not counted towards the *commitment* for restoration treatment].) As previously noted, the sole outlier is *Carr II, supra*, 59 Cal.App.5th 1136, which incorrectly conflated the concepts of "commitment" with findings of competency and gives no meaning to the certificate of restoration or the presumption of competency it creates.

In *Medina*, the Fourth District explained that "[i]n the usual case, *only days actually spent in commitment at a mental*

institution or treatment facility are applied to the maximum commitment period." (*Medina, supra*, 65 Cal.App.5th at 1203 [emphasis added].) Notwithstanding, Petitioner relies on *Medina*'s ultimate decision, which was explicitly limited to the facts of that case, and inapplicable to the circumstances here.

In *Medina*, the defendant was confined "for a period time far longer than necessary to permit treatment, and no certificate of restoration has been filed." (*Medina, supra*, 65 Cal.App.5th at 1229.) This unique set of facts arose because the Regional Center and the Department of Developmental Services disagreed with the trial court's determination that Medina had a developmental disability and therefore refused to offer him services or recommend placement, even though the trial court's incompetency order was binding on them. (*Id.* at 1201.) The resulting standoff caused Medina to have "languished in jail for years without treatment and without the ability to accrue credit towards his term of commitment." (*Id.*) Under those *unusual* facts, the Fourth District held that the usual calculation for the incompetency commitment should not apply. Specifically, the court found that Medina's due process rights would be violated unless he received credit for all the days he spent confined since the date of the court's commitment order. (*Id.* at 1230.) In its order, however, the *Medina* Court directed that the trial court could decline to apply any period of time during which the second competency hearing was continued at the defense request against the commitment clock. (*Id.*)

The unique circumstances which lead to an *unusual* calculation of credits is simply inapplicable to the present case. As discussed above, Petitioner in this case was promptly committed, restored, and returned. Thus, the usual rule acknowledged by the *Medina* Court would apply such that only his actual days in the treatment facility should count towards the maximum commitment period.

The holdings of *People v. Reynolds, supra*, 196 Cal.App.4th at p. 809 and *People v. G.H., supra*, 230 Cal.App.4th at p. 1558 lend further support for the lower court's rejection of Petitioner's contentions. In *People v. Reynolds*, the Fourth District Court of Appeal, Division 2, concluded that "[i]n determining whether defendant's previous confinement exceeded the maximum [commitment period], the [trial] court correctly disregarded defendant's precommitment custody credits…." (*Rodriguez, supra*, 70 Cal.App.5th at p. 654, quoting *People v. Reynolds, supra*, at p. 809.) The same court similarly found in *People v. G.H.* that "precommitment custody credits should not be applied to reduce the … maximum period of commitment if the maximum term of imprisonment is greater than three years." (*People v. G.H., supra*, at p. 1559.)

> These decisions rely on the distinction between commitment for treatment to restore a defendant to competences and other custodial periods related to the criminal offense. They suggest that a defendant's days in custody in which he or she is not being

> treated for restoration to competence do not count toward the maximum commitment period.[12]

(*Rodriguez, supra*, at p. 654.)

The sole outlier of these cases is *Carr II, supra*, 59 Cal.App.5th 1136. While the ultimate outcome of the case was likely correct[13], the ruling was based on a flawed analysis of the statute and its history. *Carr II* incorrectly reasoned that "the certificate of competency serves only to initiate proceedings by which the court will hear and decide the question of the defendant's competency," and concluded that because the trial court must hold a hearing under the statute to determine whether defendant has regained competency to initiate the start of criminal proceedings, it is actually "the trial court, not a state

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[12] Petitioner dismisses *People v. G.H., supra*, contending the case was decided "upon custody credits, not the commitment period…" (Petitioner's Opening Brief on the Merits ("OBM"), at p. 56.) Petitioner ignores the context in which the court was deciding the issue of credits in reaching his conclusion. Further, Petitioner's argument that *People v. G.H., supra*, was abrogated by section 4019, subd. (a)(8) is incorrect. As *Rodriguez, supra*, noted, "time spent in custody since [the certificate of restoration was filed] will be considered as part of his custody credits toward any eventual sentence (if he is convicted), but it does not count toward the two-year commitment maximum under section 1370(c)(1). (See § 1375.5.)" (*Rodriguez, supra,* at p. 656.) Petitioner's briefing does not cite or address *People v. Reynolds, supra*.

[13] Though the prolonged delay between the trial court's order of commitment and the defendant being admitted to an appropriate facility for restoration services was error deserving of a remedy, the error was not statutory in nature.

health official, that determines whether the defendant has been restored to competence." (*Carr II, supra*, 59 Cal.App.5th at pp. 1144-1145.) Thus, the *Carr II* Court concluded "that the filing of a certificate of competency [after the first commitment] did not terminate the defendant's commitment so as to prevent the three-year maximum commitment term from accruing." (*Id.* at p. 1140.)

Carr II's analysis is flawed because it fails to give "significance to every word, phrase, sentence, and part of an act" (*Carr II, supra*, 59 Cal.App.5th at p. 1145, quoting *In re Ogea* (2004) 121 Cal.App.4th 974, 981-981) insomuch as it ignores (1) section 1370, subd. (a)(1)(B)(i)'s use of the word "delivered" when referring to the court's order of commitment, (2) the fact that the time limit in section 1370, subd. (c)(1) refers to the "commitment," not the period of incompetency, and (3) that the statute directs as its remedy that the defendant be "returned to the committing court." (§ 1370, subd. (c)(1).)

The analysis similarly fails to give weight to the legislative history of section 1370, subd. (c)(1). As explained *ante*, the legislative history demonstrates that the period of *commitment* is not bound by the period of *incompetency*. If the concern of the legislature was the length of time that defendants are in prolonged competency proceedings, the legislature would have also amended subdivision (c)(1) to change the *starting point* of the maximum period to either the declaration of a doubt or the finding of incompetence by the judge. It did not do so, despite the fact that the courts' interpretation of the starting point of "commitment" was well settled. (*Stone Street Capital, LLC v.*

California State Lottery Comm. (2008) 165 Cal.App.4th 109, 118 [it is presumed "that the legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules"]; see *People v. Reynolds, supra*, 196 Cal.App.4th 801, 807; *In re Banks, supra*, 88 Cal.App.3d at p. 867.) This again reflects that it is the prolonged and indefinite commitments *to treatment facilities* at issue; interpreting the statute by its plain meaning does not run afoul of this concern.[14]

Carr II's analysis further fails to account for this Court's holding that a certificate of restoration "has legal force and effect in and of itself," and that the filing "triggers a presumption of mental competency under section 1372." (*Rodriguez*, 70 Cal.App.5th at p. 652, citing *People v. Rells*, *supra*, 22 Cal.4th at

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[14] Real Party in Interest recognizes that there might be a separate, legitimate concern about prolonged incarceration during the pendency of competency proceedings. These proceedings are often prolonged– especially *before* a defendant's first commitment– because it can take a substantial period of time for the appointed doctors to complete their examinations and file their reports, for parties to prepare for the relevant hearing, and for the question of competence to be determined. However, in those circumstances the defendants are before the court, and the court has direct oversight. These defendants are also in a substantially better position should matters be unduly prolonged in that they are being actively represented by an attorney. Defendants committed at treatment facilities, far from the court, without active representation and presumably incompetent, are in a far worse position. Furthermore, should a situation arise where the court refuses to hold the 1372 hearing within a reasonable period, a defendant can seek relief through a petition for writ of habeas corpus, as was done in the case underlying *Carr II*. (§ 1473 *et seq*.)

p. 868.) Indeed, the "issuance of the restoration certificate and the subsequent court hearing have distinct statutory objectives in light of the overall competency statutory scheme." (*Id.*) Namely, the designated health official "certifies restoration to competence" and the trial court "decides whether to approve the certificate and resume the criminal prosecution." (*Id.* at 655.) Thus, the certification by the health official and consequent "prompt return to the trial court vindicates the defendant's right not to remain longer than two years in the treatment facility," while the "judicial determination of restoration of competency ensures that defendant is not tried if incompetent." (*Id.*) Because the incompetency scheme's overall intent is "to provide *treatment* to promote the defendant's speedy restoration to mental incompetence," (*id.* at 652) and because the return to court does not include "a mechanism for the provision of treatment to alleviate incompetence after the certification is filed," "the period when the defendant is returned to court after having been certified as competent but before the trial court makes its own determination of competency does not count towards the two-year maximum commitment period referenced in section 1370(c)(1)." (*Id.* at 653.)

Finally, *Carr II* dismisses the People's very real concern that, if the incompetency commitment does not terminate when a defendant is certified competent and returned to court, 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, either to seek

strategic advantage when facing serious charges carrying a lengthy prison sentence or for legitimate preparation for a contested hearing. (*Carr II*, *supra*, 59 Cal.App.5th at p. 1146.) The *Carr II* Court's response that we should not be concerned with this because "that was not the case" in *Carr II* is cold comfort to those now bound by its precedent. (*Ibid.*)

With the exception of *Carr II*, which was wrongly decided, the Sixth District's holding in this case is consistent with well-reasoned and legally supported conclusions reached by other courts that have addressed the issue.

IV. PETITIONER'S INCLUSION OF TIME NECESSARY TO HOLD A SECTION 1372 HEARING WITHIN THE COMMITMENT PERIOD WOULD LEAD TO ABSURD AND UNINTENDED CONSEQUENCES

Even if this Court were to find a plain reading of the statutory scheme supports Petitioner's position, "the courts will not give statutory language a literal meaning if doing so would result in absurd consequences that the Legislature could not have intended." (*In re J.W.* (2002) 29 Cal.4th 200, 210; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276; *People v. Ledesma* (1997) 16 Cal.4th 90, 95.) "In the end, a court must adopt the construction most consistent with the apparent legislative intent and most likely to promote rather than defeat the legislative purpose and to avoid absurd consequences." (*In re J.W., supra*, at p. 213.) Including section 1372 hearings within the *commitment* time contemplated by § 1370, subd. (c)(1) would indeed lead to absurd and unintended results.

As mentioned previously, section 1367 *et seq*. does not permit a competency hearing following the return of a defendant pursuant to sections 1370, subd. (b)(1)(A) or 1370, subd. (c)(1). (*People v. Taitano, supra*, 13 Cal.App.5th at p. 250, 253; *People v. Quiroz, supra*, 244 Cal.App.4th at p. 1380.) Thus, *if* Petitioner was correct that a court finding is necessary to terminate the incompetency commitment, rather than the cessation of treatment and return to court, then defendants returned to court pursuant to section 1370, subd. (b)(1)(A) or section 1370, subd. (c)(1) would *remain indefinitely committed* - notwithstanding enumerated time limit of section 1370, subd. (c)(1). Of course, this is not the case.[15]

Furthermore, the right to effective assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as section 15 of article I of the California Constitution. (U.S. Const., 6th & 14th Amends.; Cal. Const. art. I, § 15.) In order to effectively and competently

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[15] If it appears that the defendant is "gravely disabled" under the Lanterman-Petris-Short Act (LPS) (Welf. & Inst. Code, § 5000 *et seq*.) because he (1) remains incompetent for trial, (2) is charged by an undismissed indictment or information with a violent felony, and (3) is still dangerous (Welf. & Inst. Code, § 5008, subd. (h)(1)(B); *Conservatorship of Hofferber, supra*, 28 Cal.3d at pp. 176-177), the court must order the commencement of LPS Act conservatorship proceedings. (Welf. & Inst. Code, § 5350 et seq.). "On the other hand, if the defendant remains incompetent but is not a dangerous accused violent felon, the court must release him from confinement. [Citations.]" (*People v. Waterman* (1986) 42 Cal.3d 565, 568.) Neither of the findings constitute continued commitment pursuant to § 1370, subd. (c)(1).

prepare for a contested section 1372 hearing, wherein the defendant is presumed competent and the burden is on the defendant to overcome that presumption, defense attorneys often have to subpoena records and hire their own experts to evaluate the defendant and rebut the findings of the state hospital. The time needed to prepare varies widely and can be lengthy. At present, any delays that implicate other competing due process concerns can be directly managed by the trial court, which has the discretion to grant or deny continuances based on good cause findings. If this Court were to adopt Petitioner's position, the trial court would have no ability to balance the needs of defense attorneys to adequately prepare with any due process concerns of delay. Under Petitioner's analysis, even delays predicated on defense counsel's need to effectively assist their client would result in the court losing jurisdiction. (OBM, at p. 48-49.)

Additionally, time originally intended by the Legislature to provide necessary restoration treatment would be unpredictably limited based on possibly inaccurate predictions regarding (1) whether the defendant will contest the hospital's certification in the future; and/or (2) how much time it will take for the defense to prepare for such a hearing. Under these circumstances, no court or treatment facility would be able to accurately estimate the actual time available to provide treatment. This haphazard approach would further result in presumptively competent defendants evading prosecution based on reasonable delays that can and do occur while preparing for a contested hearing.

Certainly, the Legislature did not intend for treatment time to be consumed by a defense counsel's hearing preparation or for competent defendants to evade prosecution. Adopting Petitioner's approach would pit the medical needs addressed by the statute against strategic trial needs, leading to worse medical decisions; indeed, the two-year maximum commitment now dedicated to medical treatment would have to be divided between medical treatment and the litigation process. This dangerous and absurd consequence of Petitioner's interpretation of the statute must be rejected.

V. PETITIONER'S ARGUMENTS CONCERNING THE COVID-19 PANDEMIC ARE MISPLACED

Assuming for the sake of argument that section 1372 hearings are included within the commitment period enumerated in section 1370, subd. (c)(1), the trial court was not required to choose between (1) dismissing multiple serious and violent felonies and (2) exposing the defendant, the attorneys, and court personnel to the risk of contracting a lethal virus that was rapidly spreading throughout our state. The ongoing countywide shelter-in-place orders and restrictions on mass gatherings, at a time when no vaccine or reliable treatment was available, established good cause to continue section 1372 hearings.

To be subject to an indefinite commitment solely based on incompetence is a violation of due process rights. (*Jackson v. Indiana*, *supra*, 406 U.S. at p. 731.) However, although "[a] 'root requirement' of due process is that an individual be given an opportunity for a hearing before being deprived of any significant liberty or property interest," there is an exception for

"extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." (*People* v. *Lara* (2010) 48 Cal.4th 216, 229.) The current global pandemic and resulting state of emergency is such an extraordinary situation.

There was, and currently is, a global pandemic of COVID-19 that began affecting California in 2020. In response to this pandemic, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency for the state of California pursuant to Government Code section 8625. (Ret. Exh. 35.) The declaration stated, *inter alia*, that, "under the provisions of Government Code section 8571," the Governor finds that strict compliance with various statutes and regulations specified in this order would prevent, hinder or delay appropriate actions to prevent and mitigate the effects of COVID-19." (*Id*. at p. 2; see Gov. Code, § 8571.)

On March 17, 2020, acting pursuant to Government Code section 68115, the Chief Justice and Chair of the Judicial Council, Tani G. Cantil-Sakauye (hereinafter "Chief Justice"), ordered the Santa Clara County Superior Court to "extend the time period provided in section 859b of the Penal Code for holding of a preliminary examination from 10 court days to not more than 15 court days pursuant to Government Code section 68115(a)(9)." (Ret. Exh. 36.) The order applied to cases in which the statutory deadline otherwise would expire from March 16,

2020 to April 7, 2020, inclusive.[16] On March 18, acting on this order, Santa Clara County Presiding Judge Deborah A. Ryan (hereinafter Presiding Judge Ryan) issued a general order implementing the Chief Justice's order of March 17. (Ret. Exh 37.)

Presiding Judge Ryan continued to issue identical orders in 30-day intervals, pursuant to subsequent corresponding orders from the Chief Justice, through the date of the motion to dismiss in these cases in March of 2021. (Ret. Exh. 34.)

It is undisputed that the continuances in these cases and, most significantly, the final continuance past the two-year mark from the date of commitment, were not due to gamesmanship by either party, or institutional negligence like in *Carr II*, but rather because of an unprecedented national emergency and the consequences on court capacity that resulted therefrom. The COVID-19 pandemic is an "extraordinary situatio[n] where [a] valid governmental interest is at stake that justifies postponing the hearing until after the event." (See *People v. Lara*, *supra*, 48 Cal.4th at p. 229.)

Indeed, in the context of jury trials, California courts have long recognized, "there appears to be no absolute right of a

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[16] In that same order, the Chief Justice also extended the time period of section 825 to bring someone arrested and charged with a felony offense before a magistrate from 48 hours to not more than 7 days, deemed the time period from March 16, 2020 to April 7, 2020 to be holidays for purposes of computing the time period under section 825, and extended the time period provided in section 1382 to bring a defendant to trial to not more than 30 days.

defendant to be tried within the 60-day statutory period [under section 1382] if the delay is not unreasonable and good cause is shown for not bringing defendant to trial within that time." (*People* v. *Superior Court (Lerma)* (1975) 48 Cal.App.3d 1003, 1007 citing *People v. McFarland* (1962) 209 Cal.App.2d 772, 776.) "Public health concerns trump the right to a speedy trial." (*Stanley v. Superior Court* (2020) 50 Cal.App.5th 164, 169, quoting *People* v. *Tucker* (2011) 196 Cal.App.4th 1313, 1314.) "A contrary holding would require trial court personnel, jurors, and witnesses to be exposed to debilitating and perhaps life threatening illness." (*Stanley v. Superior Court, supra*, at p. 169, quoting *People* v. *Tucker, supra*, at p. 1314.)

Stanley v. Superior Court concerned the very same global pandemic at issue in the present case. The petitioner in *Stanley* argued that the Governor's executive order and the Chief Justice's statewide emergency orders, which effectively continued the statutory last day for defendant's trial by 90 days, are unauthorized by statute and violate separation of powers principles. In rejecting the petitioner's arguments, the First District Court of Appeal doubted "that the orders are unlawful," and found "we need not engage in an extended analysis of defendant's contentions because the severity of the COVID-19 pandemic and the impact it has had within this state *independently* support the trial court's finding of good cause to continue defendant's trial under Penal Code section 1382." (*Stanley v. Superior Court, supra*, 50 Cal.App.5th at p. 166 [emphasis added].) The *Stanley* Court further acknowledged the

same common sense recognized by the Chief Justice for why conducting a trial under these circumstances poses a risk to public health:

> [C]ourts are clearly places of high risk during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries – well in excess of the numbers allowed for gathering under current executive and health orders.

(*Id*. at p. 170.) "Under these circumstances, the trial court was unquestionably justified in finding that the COVID-19 pandemic constitutes good cause to continue defendant's trial…." (*Id.*)

Moreover, any court congestion directly resulting from these extraordinary circumstances similarly constituted good cause to continue trials. (*People* v. *Johnson* (1980) 26 Cal.3d 557) Quoting from the American Bar Association's Standards for Speedy Trial, this Court in *Johnson* stated:

> "[D]elay arising out of the chronic congestion of the trial docket should not be excused .... [¶] But, while delay because of a failure to provide sufficient resources to dispose of the usual number of cases within the speedy trial time limits is not excused, the *standard does recognize congestion as justifying added delay when 'attributable to exceptional circumstances.'* Although it is fair to expect the state to provide the machinery needed to dispose of the usual business of the courts promptly, *it does not appear feasible to impose the same requirements when certain unique, nonrecurring events have produced an inordinate number of cases for court disposition*."

(*Id*. at p. 571 [emphasis added.])

Applying this rational to the current pandemic, the First District Court of Appeal, Division 3, found while the stay-at-home and social distance requirements had been lifted as of June 2021, the accumulated backlog from the prior pandemic health orders constituted good cause to continue the jury trial beyond the statutory last day for trial. (*Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108.) Specifically, the First District found that the court's backlog was attributable to exceptional circumstances connected to the COVID-19 pandemic, not chronic conditions in the superior court. (*Id.* at p. 1127 ["From early March 2020 to June 28, 2021—when respondent court fully reopened—respondent court was unable to operate at its usual capacity to approximately fifteen months due to safety orders imposed by health officers in response to the pandemic"].) The Appellate Court concluded, "[t]he COVID-19 pandemic has been a unique, nonrecurring event which has produced an inordinate number of cases for court disposition, and thus exceptional circumstances justifying delay of petitioner's trial." (*Id.*, internal citations and quotations omitted.)

While section 1370 *et seq*. does not explicitly provide for a "good cause" continuance past the last day of the maximum commitment period, it is worth emphasizing that section 1370 *et seq*. does not expressly provide for a section 1372 hearing.[17]

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[17] Implying a good cause exception to section 1370, subd. (c)(1) is only necessary *if* section 1372 hearings are subject to a statutory time limit. The omission of section 1372 hearings amongst the list of proceedings ordered extended by the recent

(continued…)

(§§ 1370, 1372.) The right to a hearing, the procedures at that hearing, the standard of proof at that hearing – all have been considered "implied" in that statute by the courts to further the aims of the statute and to render the procedures workable. (See, e.g., *People v. Murrell, supra,* 196 Cal.App.3d at p. 826; *People v. Rells*, *supra*, 22 Cal.4th at p. 868.)

Real Party in Interest maintains that - unlike the time limitations imposed for jury trials pursuant to section 1382, there are no statutory time limits for when a discretionary section 1372 hearing must occur. However, even if section 1372 hearings were bound by the time limit of section 1370, subd. (c)(1), the same principles which apply to jury trials should equally apply to section 1372 hearings. Under the "extraordinary situation" created by the COVID-19 pandemic, which authorized the continuances of jury trials, preliminary hearings, arraignments, and every other hearing where a firm statutory deadline was contemplated, the trial court should have been permitted to continue the section 1372 hearing until such time as conditions were safe and it had the capacity to hold the hearing. (See *People v. Lara*, *supra*, 48 Cal.4th at p. 229; Ret. Exhs. 34-37.)

(…continued)
emergency orders suggests that this Court did *not* believe that the time for section 1372 *hearings* were included in the enumerated time limit of section 1370, subd. (c)(1).

VI. PETITIONER'S FUNDAMENTAL RIGHTS HAVE NOT BEEN VIOLATED

Petitioner has raised no new specific claims or arguments with respect to his fundamental rights. With respect to Petitioner's previous arguments, the Sixth District correctly found:

> We discern no separation of powers violation under our interpretation of sections 1370(c)(1) and 1372 because the two relevant actors—the designated health official and the trial court—each rightfully exercise distinct powers provided to them by the Legislature under the statutes. The former certifies restoration to competence and the latter decides whether to approve the certificate and resume the criminal prosecution. That the calculation of the statutory commitment period rests on the action of an official in the executive branch does not invade the province of the judiciary to decide the ultimate question of competency and resumption of prosecution under section 1372.

(*Rodriguez, supra*, 70 Cal.App.5th at 655.)

With respect to Petitioner's due process argument:

> [B]ecause he was certified as competent, is no longer receiving treatment to restore competence, and a contested hearing on the competency issue is required only upon a request of one or both of the parties, his custodial commitment has transmuted. He is presumed competent, and the burden is on the defense (if either the defendant or defense counsel chooses to challenge a defendant's restoration to competence) to prove he is incompetent. Given that the certification of competency in this case was filed well before the two-year period had run, [Petitioner] is not being "held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain [competence] in the foreseeable

> future." (*Jackson v. Indiana* (1972) 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435.)

(*Id*. at pp. 655-656.)

> Similarly, the constitutional proscription against cruel and/or unusual punishment is not violated because [Petitioner] has not been and will not be held indefinitely due to incompetency and without any treatment. [Citation omitted.] He has received treatment to restore his competency and will receive additional treatment in the future—up to the two-year maximum—if he now proves he is incompetent. [¶] Finally, our conclusion that the commitment period ended with the filing of the certification in this case … does not violate [Petitioner's] equal protection rights because a defendant like him, who has been certified as having regained mental competence by a designated official, is not similarly situated to a defendant who has not been so certified before attaining the two-year maximum prescribed by section 1370(c)(1). (See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253-254, 127 Cal.Rptr.2d 177, 57 P.3d 654; *People v. Guzman* (2005) 35 Cal.4th 577, 591-592, 25 Cal.Rptr.3d 761, 107 P.3d 860.)

(*Id*. at pp. 656.)

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: May 19, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 10,836 words.

Dated: May 19, 2022

JEFFREY F. ROSEN
District Attorney
County of Santa Clara

Alexandra Gadeberg

ALEXANDRA W. GADEBERG
Deputy District Attorney
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S272129**
Lower Court Case Number: **H049016**

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