

No. S273391

**In the Supreme Court of the State of California**

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CIRO CAMACHO,

*Petitioner,*

v.

THE SUPERIOR COURT OF MERCED COUNTY,

*Respondent;*

THE PEOPLE OF THE STATE OF CALIFORNIA,

*Real Party in Interest.*

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Fifth Appellate District, Case No. F082798  
Merced County Superior Court, Case No. 146207  
The Honorable Ronald W. Hansen, Judge

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**ANSWER BRIEF ON THE MERITS**

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## **ISSUE PRESENTED**

Does a defendant in a civil commitment proceeding under the Sexually Violent Predator Act establish a violation of his due process right to a timely trial based on a 15-year delay where, either personally or through counsel, the defendant asked for, agreed to, or acquiesced in all continuances and entered multiple general time waivers?

## **INTRODUCTION**

In 2006, the People filed a petition to recommit petitioner *Ciro Camacho* pursuant to the provisions of the Sexually Violent Predator Act. In 2021, with trial on the petition still pending, Camacho filed a motion to dismiss the petition, alleging a violation of his due process right to a timely trial. Though the petition had been pending for 15 years at the time Camacho filed his motion, the focus was on an eight-year period during which Camacho did not personally appear in court and his attorney entered general time waivers on his behalf. Both before and after that eight-year period, Camacho personally entered multiple time waivers.

Even so, an eight-year delay is significant. If Camacho had demonstrated in his motion to dismiss that, during the eight years at issue, his absence from the courtroom had been unknowing or involuntary, or if Camacho had demonstrated that his attorney had waived time against Camacho's wishes, the People would likely agree that Camacho suffered a due process violation. But Camacho made no such showing.

It was Camacho's burden to establish a due process violation. Yet Camacho did nothing to rebut the presumption that his attorney was communicating with him throughout the eight years in question and otherwise professionally representing his interests.

All indications are that Camacho sought to delay trial for his own benefit, hoping to progress in sex offender treatment to the point where he no longer met the criteria for commitment as an SVP. Camacho suffered no due process violation. The trial court properly denied his motion to dismiss.

## **LEGAL BACKGROUND**

### **A. Overview of the SVP Act**

The SVP Act, codified at Welfare and Institutions Code section 6600 et seq., authorizes the involuntary civil commitment of an individual who, upon the completion of a prison term, is determined by a trier of fact to meet the criteria for commitment. The criteria for commitment are a conviction for an enumerated sexually violent offense against one or more victims and a diagnosed mental disorder that makes the individual likely to engage in sexually violent criminal behavior. (Welf. & Inst. Code, § 6600, subds. (a)-(d).)

Originally, the SVP Act provided for two-year terms of commitment. (See Welf. & Inst. Code, § 6604, as added by Stats. 1995, ch. 763 (AB 888), § 3.) But, since the passage of Proposition 83 in November 2006, the SVP Act provides for indeterminate, rather than two-year, terms of commitment. (Welf. & Inst. Code, § 6604; *In re Butler* (2020) 55 Cal.App.5th 614, 628, fn. 2.)



An individual who potentially qualifies for commitment (or recommitment) as an SVP is evaluated by two doctors (psychologists or psychiatrists) designated by the State Department of State Hospitals. (Welf. & Inst. Code, §§ 6601, subd. (d), 6604.1.) If both doctors concur that the individual meets the criteria for commitment, the Department forwards a request that the designated representative of the People (usually the district attorney) file a petition for the individual's commitment. (Welf. & Inst. Code, § 6601, subds. (d) & (i).) If only one of the two doctors finds that the individual meets the criteria for commitment, the Department arranges for two independent doctors to evaluate the individual. (Welf. & Inst. Code, § 6601, subd. (e).) If both of those independent doctors determine that the individual meets the criteria for commitment, then the Department forwards a request that the People file a petition. (Welf. & Inst. Code, § 6601, subd. (f).)

Upon the People's filing of an SVP petition, the superior court is charged with making a timely determination of probable cause that the individual is in fact an SVP. (Welf. & Inst. Code, § 6602, subd. (a).) Upon a finding of probable cause, the individual is to be detained in custody in a secure facility (such as a state hospital) pending trial on the petition. (Welf. & Inst. Code, §§ 6602, subd. (a), 6602.5.)

The SVP Act does not establish a timeline by which a trial on a petition must be held subsequent to a finding of probable cause. (See Welf. & Inst. Code, § 6603.) If, before the case proceeds to trial, the attorney petitioning for commitment

determines that updated evaluations are necessary to properly try the case, the attorney may request that the Department perform updated evaluations. (Welf. & Inst. Code, § 6603, subd. (d)(1).) Consistent with the evaluation process that precedes the filing of an SVP petition, if only one of the two doctors concludes that the individual continues to meet the criteria for commitment, the Department must arrange for two independent doctors to conduct evaluations. (Welf. & Inst. Code, § 6603, subd. (d)(1).) Updated evaluations are necessary because, to conclude that the individual meets the criteria for commitment as an SVP, the trier of fact must find that the individual currently suffers from a diagnosed mental disorder that makes him likely to commit future sexually violent criminal acts. (Welf. & Inst. Code, § 6600, subds. (a)(1) & (a)(3); *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1169.)

At a trial on an SVP petition, both the individual on trial and the People have the right to a trial by jury. (Welf. & Inst. Code, § 6603, subds. (a) & (b).) The burden of proof is on the People to show beyond a reasonable doubt that the individual meets the criteria for commitment. (Welf. & Inst. Code, § 6604.)

**B. The law governing claimed speedy trial right violations in SVP cases**

Because the SVP Act does not establish a timeline by which a trial on a petition must be held subsequent to a finding of probable cause, an individual facing commitment as an SVP does not have a statutory right to a speedy trial. Moreover, the SVP Act is a civil commitment scheme, not a criminal prosecution. (*People v. Allen* (2008) 44 Cal.4th 843, 860-861.) Because it is not

a criminal prosecution, the Sixth Amendment—with its attendant right to a speedy trial—does not attach. (*Ibid.*; see also *People v. Tran* (2021) 62 Cal.App.5th 330, 347; *Butler, supra*, 55 Cal.App.5th at p. 637.) But “[b]ecause civil commitment involves a significant deprivation of a liberty, a defendant in an SVP proceeding is entitled to due process protections.” (*People v. Otto* (2001) 26 Cal.4th 200, 209.) Accordingly, as a matter of due process, an alleged SVP is entitled to a timely trial. (*Tran, supra*, at p. 347; *Butler, supra*, at pp. 637-638; *People v. DeCasas* (2020) 54 Cal.App.5th 785, 802; *People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36, 56.)<sup>1</sup>

The Courts of Appeal have consistently analyzed claimed violations of the speedy trial right in SVP proceedings under the *Barker v. Wingo* (1972) 407 U.S. 514 and *Mathews v. Eldridge* (1976) 424 U.S. 319 balancing tests. (See, e.g., *Tran, supra*, 62 Cal.App.5th at pp. 348-355; *Butler, supra*, 55 Cal.App.5th at pp. 648-664; *DeCasas, supra*, 54 Cal.App.5th at pp. 806-813; *Vasquez, supra*, 27 Cal.App.5th at pp. 60-82.)<sup>2</sup>

In *Barker*, the United States Supreme Court established a four-factor balancing test for determining whether a delay has violated a criminal defendant’s right to a speedy trial. (*Barker, supra*, 407 U.S. at pp. 530-533.) The four factors are: the length of the delay; the reason for the delay; the defendant’s assertion of

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<sup>1</sup> For convenience, the People will use “speedy trial right” to refer to the due process right to a timely trial.

<sup>2</sup> Camacho does not argue that any different test or tests should apply. Nor do the People.

his right to a speedy trial; and the prejudice to the defendant caused by the delay. (*Ibid.*) “The burden of demonstrating a speedy trial violation under *Barker’s* multifactor test lies with the defendant.” (*People v. Williams* (2013) 58 Cal.4th 197, 233, citing *Barker, supra*, at p. 532.)

In *Mathews*, the United States Supreme Court articulated a three-factor balancing test for determining what process is constitutionally due prior to a governmental decision that deprives an individual of a liberty or property interest. (*Mathews, supra*, 424 U.S. at p. 335.) The three factors are: the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and the government’s interest, including burdens that the additional or substitute procedural requirements would entail. (*Ibid.*)

As the Court of Appeal recognized in *Butler*, “[t]he *Mathews* balancing test has been applied in various involuntary civil commitment and treatment proceedings.” (*Butler, supra*, 55 Cal.App.5th at p. 639, citing *Heller v. Doe* (1993) 509 U.S. 312, 330-332 [involuntary commitment of intellectually disabled persons]; *Washington v. Harper* (1990) 494 U.S. 210, 213, 229-231 [forcible administration of antipsychotic medication to state prison inmates]; *Addington v. Texas* (1979) 441 U.S. 418, 425 [civil commitment of mentally ill patients].)

## STATEMENT OF THE CASE

### A. The filing of the 2006 recommitment petition and Camacho's initial entry of a time waiver

Camacho was first adjudicated an SVP in 2005, when SVP commitments were for two-year terms. (Petn., Exh. A, 19.)<sup>3</sup> At the time of that first SVP adjudication, Deputy Public Defender Wayne Eisenhart represented Camacho. (*Ibid.*) Upon determining that Camacho met the criteria for commitment as an SVP, the court committed Camacho for a period of two years to the custody of the Department of Mental Health (the predecessor agency to the Department of State Hospitals). (*Ibid.*)

With the passage of Proposition 83 in November 2006, the SVP Act was amended to provide for indeterminate, rather than two-year, terms of commitment. (*Butler, supra*, 55 Cal.App.5th at p. 628, fn. 2.) Later that same year, in anticipation of the expiration of Camacho's two-year term of commitment, the People filed a petition for Camacho's recommitment as an SVP, this time seeking an indeterminate term of commitment. (Petn., Exh. A, 20.)<sup>4</sup> In February 2007, Camacho, still represented by

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<sup>3</sup> Citations to exhibits refer to the exhibits in support of the "Petition for Writ of Mandamus/Prohibition" that Camacho filed in the Court of Appeal. These citations use the page numbers assigned by Camacho in consecutively paginating the exhibits.

<sup>4</sup> Camacho asserts that his "case has been pending in the Merced County Superior Court for just shy of two decades." (OBM 7.) True, the initial petition to commit Camacho as an SVP was filed in 2002. (Petn., Exh. A, 15.) But the proceedings on the 2002 petition have long been concluded, with Camacho committed to a two-year term in 2005. (Petn., Exh. A, 19.) What  
(continued...)

Eisenhart, personally appeared in court and waived his right to a probable cause hearing on the recently filed SVP petition. (Petn., Exh. A, 21; see also Petn., Exh. B, 53.) The following month, Camacho again personally appeared with Eisenhart; this time, Camacho entered a general time waiver. (Petn., Exh. A, 21.)

**B. Camacho's entry of additional time waivers from 2008 through 2018**

In 2008, the Public Defender's Office declared a conflict and the court appointed William Davis from the conflict panel to represent Camacho. (Petn., Exh. A, 24.) Camacho personally appeared with counsel at numerous hearings over the next two years, including on March 11, 2010. (See Petn., Exh. A, 24-27.) Camacho raised no objection as the matter was repeatedly continued. (*Ibid.*)

Doctors prepared updated evaluations of Camacho in 2008 and then again in 2010. (See Petn., Exh. B, 54-55.) Both times, each of the two evaluators concluded that Camacho continued to meet the criteria for commitment as an SVP. (*Ibid.*) The doctors noted, though, that Camacho was participating in sex offender treatment and was making progress in that treatment. (*Ibid.*)

After March 11, 2010, Camacho did not personally appear at any hearings until July 2018. (See Petn., Exh. A, 27-39.)

However, on numerous occasions during those eight years, Davis entered general time waivers on Camacho's behalf. (See Petn.,

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(...continued)

is currently pending is the 2006 petition for Camacho's commitment as an SVP.

Exh. A, 28-29, 31-34.) Through Davis, Camacho either asked for, agreed to, or acquiesced in all continuances that the court granted during those eight years. (See Petn., Exh. A, 27-39.)

Meanwhile, in 2015, four doctors prepared evaluations of Camacho. (See Petn., Exh. B, 57.) One doctor concluded that Camacho no longer met the criteria for commitment as an SVP, citing his progress in treatment and amenability to treatment in the community. (*Ibid.*) But the other three doctors determined that Camacho continued to meet the criteria for commitment. (*Ibid.*)

**C. Camacho's October 2018 invocation of his speedy trial right**

In July 2018, still represented by Davis, Camacho appeared by video. (Petn., Exh. A, 39.) There is no indication that Camacho voiced an objection when the court found good cause to continue the matter at Davis's request. (*Ibid.*)

However, on October 4, 2018, which was the next occasion that Camacho was personally present for a hearing, by video, Camacho voiced a demand for a jury trial. (Petn., Exh. A, 40.) The court in turn set a jury trial for April 2, 2019. (*Ibid.*)

At an October 18, 2018, readiness hearing, again appearing by video, Camacho expressly invoked his speedy trial right. (Petn., Exh. A, 40.) The court in turn vacated the previously set April 2, 2019, trial date and set trial for December 11, 2018, notwithstanding Davis's expression of concern about being ready for trial by that date. (*Ibid.*)

#### **D. Camacho’s November 2018 oral motion to dismiss**

On November 6, 2018, while personally present and still represented by Davis, Camacho made an oral motion to dismiss the SVP petition based on an alleged denial of his speedy trial right. (Petn., Exh. A, 40.) The court referred the case to the contract public defender—the employer of Camacho’s current counsel—to represent Camacho on the motion; meanwhile, the court confirmed the December 11, 2018, trial date. (*Ibid.*)<sup>5</sup>

By November 8, 2018, Camacho’s current counsel was investigating the merits of a motion to dismiss. (Petn., Exh. A, 41.) On November 29, 2018, after Davis had declared a conflict, the court relieved Davis. (*Ibid.*)

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<sup>5</sup> It was unnecessary for the trial court to appoint new counsel for the limited purpose of representing Camacho with regard to his motion to dismiss. A defendant in a civil commitment proceeding has a due process right to the effective assistance of counsel—and thus the right to make motions to discharge his or her appointed counsel under *People v. Marsden* (1970) 2 Cal.2d 118—even though the Sixth Amendment right to counsel does not apply in civil commitment proceedings. (*People v. Hill* (2013) 219 Cal.App.4th 646, 652.) But a defendant is not entitled to appointment of “conflict” or “substitute” counsel “solely to evaluate a defendant’s complaint that his attorney acted incompetently.” (*People v. Sanchez* (2011) 53 Cal.4th 80, 84.) Substitute counsel should be appointed only if the defendant has made the requisite showing under *Marsden*, in which case new counsel is substituted for all purposes, including for the investigation of a motion grounded in counsel’s alleged incompetence. (*Sanchez, supra*, at pp. 84, 90, 92.) Any error by the trial court in this regard is moot, however. This is because, as described below, the court ended up relieving Davis and appointing Camacho’s current counsel to represent Camacho for all purposes after Davis had declared a conflict.



By December 6, 2018, the trial court had appointed Camacho's current counsel to represent Camacho for all purposes. (Petn., Exh. A, 41; see also Petn., Exh. B, 59.) On December 6, 2018, the court vacated the December 11, 2018, trial date and set trial for February 19, 2019. (*Ibid.*) Camacho, who was personally present, entered a general time waiver. (*Ibid.*)

Though personally present, in person or by video, at numerous hearings over the next two-plus years, Camacho voiced no objection when trial was continued multiple times, with the majority of the requests for continuances brought by counsel for Camacho. (See Petn., Exh. A, 41-45.) This includes continuances on October 11, 2019, and February 13, 2020, when Camacho personally entered general time waivers. (Petn., Exh. A, 43-44.)

**E. Camacho's March 2021 written motion to dismiss**

On March 11, 2021, Camacho, through counsel, filed a motion to dismiss the SVP petition based on an alleged denial of his due process right to a timely trial. (Petn., Exh. B, 47-72; see also Petition, Exh. A, 46.) Camacho asserted "that the court, the District Attorney's office, and prior counsel(s) violated his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution due to the excessive delay in bringing his matter to trial." (Petn., Exh. B, 48.) Camacho asserted that the pertinent legal framework was that set forth in *Barker, supra*, 407 U.S. 514 and *Mathews, supra*, 424 U.S. 319. (Petn., Exh. B, 61-62.) Camacho discussed the factors delineated in each case and argued that he was entitled to relief under both tests. (Petn., Exh. B, 62-71.)

Camacho did not offer any exhibits in support of his motion. He did not provide a declaration from any of the attorneys who had represented him in this case. Most notably, Camacho did not provide a declaration from Davis, who had represented him from 2010 to 2018, which was the time period central to Camacho's motion. Camacho also did not provide his own declaration. Nor did Camacho request an evidentiary hearing.

The People opposed the motion to dismiss. (Petn., Exh. C, 73-92.) The People prepared a "Procedural Summary" of the case, based on "the court's public historical documents and court file." (Petn., Exh. A, 15-46.) Then, addressing the relevant factors one by one, the People argued that, under both *Barker* and *Mathews*, no speedy trial violation had occurred. (Petn., Exh. C, 75-77, 84-91.)

At a May 7, 2021, hearing, the trial court heard argument on and denied Camacho's motion to dismiss. (See Petn., Exh. D, 93-105 [transcript of hearing on motion to dismiss]; see also Petition, Exh. E, 106-107 [corresponding minute order].) In doing so, the court expressly addressed each of the *Barker* factors. (Petn., Exh. D, 101-102.)<sup>6</sup>

As to the length of the delay (*Barker, supra*, 407 U.S. at pp. 530-531), the trial court acknowledged that "the length of delay is significant." (Petn., Exh. D, 101.) As to the reason for the delay

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<sup>6</sup> The trial court did not expressly address the *Mathews* factors in denying the motion to dismiss. (Petn., Exh. D, 101-103.)

(*Barker, supra*, at p. 531) and the assertion of the right to a speedy trial (*id.* at pp. 531-532), the trial court stated:

. . . [M]ost of those delays were at the request of defense counsel, . . . and/or mutually agreed upon by the parties for various reasons: Either defense counsel wasn't ready to proceed, having difficulty obtaining expert opinions and evaluations and/or . . . was unavailable.

. . . Mr. Camacho was present . . . on many occasions. He either—by video or was personally present on many occasions in this case, and . . . it wasn't until October of 2018 that he personally first asserted a right to speedy trial.

. . . [T]here's no evidence to support a systemic breakdown in the appointed-counsel system . . . .

(Petn., Exh. D, 101.) The court then observed that Camacho had been evaluated on multiple occasions by mental-health experts; he had had at least two findings of probable cause (one in association with the 2002 petition for Camacho's initial commitment and one in association with the 2006 petition for his recommitment); and he had been previously committed as an SVP. (Petn., Exh. D, 102.)

The court next acknowledged that it was “troubling . . . the length of time that this case has lingered without a trial on the merits,” but it also found that “most of that is attributable to Mr. Camacho or his counsel.” (Petn., Exh. D, 102.) The court observed that Camacho had not personally “expressed any objection to . . . the multiple continuances until October of 2018.” (*Ibid.*) To that point, current counsel for Camacho responded as follows: “[Camacho] had no opportunity to do so, Your Honor.

He'd never been before the Court.” (*Ibid.*) The court countered: “[H]e had counsel representing him; and, presumably, in some type of communication with them; and so, you know, that’s still a basis of impugning the reasons for the continuances to him based on his counsel’s multiple requests.” (*Ibid.*)

Turning to the prejudice due to the delay (*Barker, supra*, 407 U.S. at pp. 532-533), the trial court asserted:

. . . [T]he other factor is the risk of prejudice, the length of his hospitalization . . . is a loss of a significant right; but . . . as far as preparing for the defense . . . in an SVP trial, I don’t find any prejudice.

. . . [I]t’s still going to be based on expert opinions, based on the nature of the defense, based on whether he continues to suffer from a mental disorder, whether he presents a substantial danger to the public, and at least from the reports which are available, . . . those conditions all still exist, so the motion to dismiss is denied.

(Petn., Exh. D, 103.)

The trial court concluded the hearing by confirming the previously set June 15, 2021, trial date. (Petn., Exh. D, 103.)

#### **F. The proceedings in the Court of Appeal**

Camacho filed a “Petition for Writ of Mandamus/Prohibition” in the Court of Appeal, which that court summarily denied. The Court of Appeal also denied Camacho’s request for a stay of the trial.

Camacho then filed a petition for review in this Court. After receiving an answer to the petition and a reply, the Court granted the petition and transferred the matter to the Court of Appeal with directions to vacate its order denying the writ and to

issue an order directing the respondent superior court to show cause why the relief sought in the petition should not be granted. At the same time, the Court stayed the proceedings in the trial court.

Following the issuance of an order to show cause and further briefing in the Court of Appeal, that court again denied Camacho's petition for writ relief. (Opn. 2, 23.) In an unpublished opinion, the Court of Appeal held that, under both *Barker* and *Mathews*, Camacho had failed to establish a violation of his speedy trial right. (Opn. 12-23.) This Court granted review.<sup>7</sup>

## ARGUMENT

### I. CAMACHO'S MOTION TO DISMISS FAILED TO ESTABLISH A SPEEDY TRIAL RIGHT VIOLATION

Highlighting the fact that the 2006 petition for his commitment as an SVP had been pending for 15 years when he filed his 2021 motion to dismiss, Camacho claims that the trial court—and in turn the Court of Appeal—erred in concluding that he did not suffer a violation of his due process right to a timely trial. (OBM 14.) To the contrary, Camacho's unsupported motion to dismiss failed to establish a speedy trial right violation.

From 2006 to 2018, Camacho, either personally or through counsel, requested, agreed to, or acquiesced in all continuances in the case. During that same time, Camacho, either personally or through counsel, entered numerous time waivers.

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<sup>7</sup> The trial court proceedings remain stayed, pursuant to an order issued by this Court at the time it granted review.

In October 2018, after years of expressing no desire for his case to proceed to trial, Camacho changed course and sought dismissal based on the same delay to which he had acceded. Camacho then changed course yet again and waived time for over two years while newly appointed counsel prepared a motion to dismiss on his behalf.

Recognizing the problem that it creates for him that he did not invoke his speedy trial right until 2018, Camacho points to the fact that, from 2010 to 2018, he was not personally present for any of the hearings in his case. (OBM 16-18, 38-40.) Camacho suggests that Davis, who was his attorney during this time, may have been acting contrary to Camacho's wishes in waiving time and not taking the case to trial. (OBM 40.) Camacho further suggests that his access to the court may have been restricted during this time. (OBM 40-43.) Yet Camacho did not support his motion to dismiss with any proof to rebut the presumption that Davis remained in communication with Camacho and otherwise acted in a professional manner throughout his representation of Camacho. The delays at the hands of Davis are attributable to Camacho.

Camacho also assigns fault to the People and the trial court, arguing that they bear primary responsibility for his case not proceeding to trial. (OBM 15-16, 19, 22-38.) While the People and the trial court do bear a degree of responsibility for the delay in this case, the primary delay is attributable to Camacho.

In the end, Camacho established no speedy trial violation. The trial court properly denied his motion to dismiss.

**A. Camacho failed to establish a speedy trial violation under the *Barker* test**

The trial court's ruling on a motion to dismiss for pretrial delay is reviewed for an abuse of discretion. (*DeCasas, supra*, 54 Cal.App.5th at p. 801; *Vasquez, supra*, 27 Cal.App.5th at p. 55; see also *People v. Jones* (2013) 57 Cal.4th 899, 921-924 [trial court's denial of motion to dismiss based on violation of due process right to timely adjudication is subject to review for abuse of discretion].) Under the abuse of discretion standard, the trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious. (*DeCasas, supra*, at pp. 801-802; *Vasquez, supra*, at p. 55.)

The trial court did not abuse its discretion in denying Camacho's motion to dismiss under *Barker, supra*, 407 U.S. 514. A review of the four factors under *Barker* shows that Camacho failed to establish a speedy trial violation.

**1. Length of the delay**

Beginning with the first factor—the length of the delay (*Barker, supra*, 407 U.S. at pp. 530-531)—the time at issue here in a broad sense is 15 years, which is the time that passed between the filing of the 2006 petition for Camacho's commitment and Camacho's 2021 motion to dismiss the petition. But Camacho makes no real effort to establish that he was denied his speedy trial right between 2006 and 2010. During those four years, Camacho was personally present in court on multiple occasions; on at least one occasion, he personally entered a general time waiver; and the record contains no indication that

Camacho expressed any dissatisfaction with the pace at which his case was proceeding. (Petn., Exh. A, 20-27.)

Camacho also does not argue that he was denied his speedy trial right between October 2018, when he first asserted that right, and March 2021, when he filed his motion to dismiss. In fact, Camacho personally entered multiple time waivers during that time. (Petn., Exh. A, 40-46.)

Thus, in assessing whether there was a speedy trial violation in this case, the proper focus is on the eight years between 2010 and 2018, which is the time when Camacho did not make any personal court appearances. Nevertheless, the People concede that the length of the delay weighs in Camacho's favor, whether characterized as eight years or 15 years.

## **2. Reasons for the delay**

Turning to the second factor under *Barker*—the reasons for the delay (*Barker, supra*, 407 U.S. at p. 531)—the goal is to determine “whether the government or the . . . defendant is more to blame for th[e] delay.” (*Doggett v. United States* (1992) 505 U.S. 647, 651.) Here, Camacho carries more of the blame.

### **a. Through counsel, Camacho requested, agreed to, or acquiesced in all continuances during the eight years**

In denying Camacho's motion for a new trial, the trial court remarked, “Most of [the] delays were at the request of defense counsel . . . and/or mutually agreed upon by the parties for various reasons.” (Petn., Exh. D, 101.) Indeed, the record reflects that, through Davis, Camacho requested, agreed to, or acquiesced in all the continuances during the relevant time—i.e.,



from 2010 to 2018. (Petn., Exh. A, 27-39.) And Davis entered multiple general time waivers on Camacho’s behalf during the same period. (Petn., Exh. A, 27-29, 31-34.)

**b. Under *Vermont v. Brillon*, continuances at the request of defense counsel are chargeable to the defendant**

In *Vermont v. Brillon* (2009) 556 U.S. 81, the United States Supreme Court held that counsel’s failure to move a case forward is attributable to the defendant. (*Id.* at pp. 91-92.) This is because the attorney is the defendant’s agent when acting, or when failing to act, in furtherance of the litigation. (*Id.* at pp. 90-91.) The same principle applies whether counsel is privately retained or court-appointed. (*Id.* at p. 91.) Attributing to the defendant delay caused by counsel’s failure to move the case forward is in accord with the reality that the defendant may have incentives to use delay for a tactical purpose. (*Id.* at p. 90, citing *Barker, supra*, 407 U.S. at p. 521.)

The United States Supreme Court in *Brillon* carved out an exception for situations in which counsel’s failure to move the case forward resulted from a systemic breakdown in the public defender system. (*Brillon, supra*, 556 U.S. at p. 94.) Examples of such systemic problems include “unreasonable resource constraints, misallocated resources, [and] inadequate monitoring or supervision.” (*Williams, supra*, 58 Cal.4th at p. 249.) In cases of a systemic breakdown, counsel’s failure to move the case forward is attributable to the government, not the defendant. (*Brillon, supra*, at p. 94.) But, as Camacho at least implicitly acknowledges (OBM 19), “the record before us contains no facts

about the public defender system that would support a finding of a systemic breakdown.” (*Williams, supra*, at p. 249.)<sup>8</sup> Thus, *Brillon* requires that the delay in this case resulting from defense counsel’s lack of progress be charged to Camacho. (*Ibid.*)

**c. Camacho failed to show that counsel acted contrary to Camacho’s wishes in delaying the case**

Camacho asserts that there are circumstances short of a systemic breakdown in the public defender system where “the actions of appointed counsel can be charged to the state.” (OBM 20.) He “urges the [C]ourt to adopt *Butler*’s sound reasoning” in this regard. (OBM 21.) Even assuming that *Butler, supra*, 55 Cal.App.5th 614, was correctly decided on this point—and that delays at defense counsel’s request may in some instances be chargeable to the government even absent a systemic breakdown in the public defender system—Camacho fails to establish that the circumstances of this case are such that it is fundamentally unfair to attribute Davis’s actions to Camacho.

In *Butler*, the People filed the SVP petition in November 2006. (*Butler, supra*, 55 Cal.App.5th at pp. 625, 629.) In March 2009, the defendant sent the assistant public defender then assigned to his case a letter expressly stating that he wanted to go to trial as soon as possible. (*Id.* at pp. 630-631.) Yet the case was still pending over nine years later when, in December 2018,

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<sup>8</sup> Camacho expressly states that “[t]he gravamen of [his] claim is not that there was a breakdown in the public defender system.” (OBM 19.)

the court held a *Marsden* hearing. (*Id.* at p. 634.) During the *Marsden* hearing, the assistant public defender assigned to the case at that time acknowledged that the defendant's file indicated that, from the start, the defendant had requested that his case proceed to trial. (*Ibid.*) And the same assistant public defender related that the defendant had repeatedly expressed to him personally his desire to go to trial. (*Ibid.*)

The public defender in *Butler* declared a conflict of interest in January 2019. (*Butler, supra*, 55 Cal.App.5th at p. 634.) The court appointed new counsel, and, in April 2019, with trial on the SVP petition still pending, newly appointed counsel filed a petition for writ of habeas corpus alleging that the defendant had been denied his due process right to a timely trial. (*Ibid.*) The defendant drafted a declaration in support stating, inter alia, that he had never waived his right to a timely trial and that he had never authorized an attorney to waive it on his behalf. (*Ibid.*)

At an evidentiary hearing, the habeas court in *Butler* heard the testimony of the assistant public defender to whom the defendant had sent the letter in March 2009 invoking his speedy trial right. (*Butler, supra*, 55 Cal.App.5th at p. 634.) Ultimately, the habeas court found no evidence that the attorney had informed the trial court about the letter or of the fact that the defendant had asserted his right to a timely trial. (*Id.* at p. 630.) More generally, the habeas court found that the defendant had "made sincere and repeated demands for a speedy trial . . . throughout his 12-year period of detention awaiting trial." (*Id.* at p. 635.) And the habeas court determined that the defendant's

attorneys “essentially ignored and disregarded his demands for a timely trial.” (*Id.* at p. 636.)

The Court of Appeal in *Butler* acknowledged the general rule under *Brillon* that delay caused by defense counsel is charged to the defendant. (*Butler, supra*, 55 Cal.App.5th at p. 658.) But the Court of Appeal agreed with the habeas court “that it would be fundamentally unfair to hold [the defendant] personally and solely accountable for delays caused by his counsel under such circumstances.” (*Ibid.*) The court concluded: “[G]iven the habeas court’s express findings that [the defendant]’s public defenders ignored his demands for a timely trial and waived time without his authorization, we do not believe it was improper under *Brillon* and *Barker* to give [the fact that the delays were at the request of defense counsel] diminished weight.” (*Id.* at p. 662.)

In the case at bar, in contrast to *Butler*, there is simply no evidence in the record that Camacho made any demands for a timely trial that counsel failed to convey to the court or failed to heed. Camacho did not provide his own declaration in support of his motion to dismiss. Nor did he provide a declaration by Davis. Camacho did not provide copies of any letters that it seems logical he would have written to either Davis or the court if in fact the delay had been unacceptable to him or if he had been otherwise dissatisfied with Davis’s representation. Camacho also did not request an evidentiary hearing in his motion to dismiss.<sup>9</sup>

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<sup>9</sup> Camacho did not request an evidentiary hearing until, in his traverse to the People’s return to the order to show cause in  
(continued...)

Instead of providing the trial court with evidence that supported his version of events, Camacho sought to benefit from the absence of evidence.

But there is a strong presumption that counsel represented his or her client in a professional manner. (See *People v. Stanley* (2006) 39 Cal.4th 913, 954.) Given Camacho’s failure to produce any evidence to the contrary, there is no reason to depart from the presumption that Davis’s actions in this case—including his actions in seeking to delay trial—were in accord with Camacho’s wishes. (See *Burt v. Titlow* (2013) 571 U.S. 12, 23 [“It should go without saying that the absence of evidence cannot overcome the ‘strong presumption that counsel’s conduct [fell] within the wide range of reasonable professional assistance’”].)

Indeed, there are good reasons why Camacho would have sought to delay trial on the 2006 petition to recommit him as an SVP. In 2005, a court had determined beyond a reasonable doubt that Camacho qualified as an SVP. (Petn., Exh. A, 19.) In 2008,

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(...continued)

the Court of Appeal, he fleetingly asked as an alternative to writ relief that the court remand the matter to the trial court with instructions to take additional evidence. (Traverse 22.) Even then, though, Camacho did not specify what additional evidence he believed could help him establish a speedy trial violation. Nor did he explain why he had not succeeded in procuring such evidence despite having had over two years to investigate and prepare his motion to dismiss. Camacho makes a brief reference to the suspension of jury trials prompted by the COVID-19 pandemic. (OBM 12.) But that should not have hampered his ability to investigate his motion and produce any information favorable to his motion.

and then again in 2010, both doctors who evaluated Camacho concluded that he continued to qualify as an SVP. (See Petn., Exh. B, 54-55.) The doctors noted, though, that Camacho was participating in sex offender treatment and making progress. (*Ibid.*)

The record thus suggests that Camacho made a strategic decision to delay trial until he progressed in sex offender treatment to the point that he had a realistic hope that a finder of fact would determine he no longer presented a substantial danger to the health and safety of others upon his release from custody. At a trial on the 2006 recommitment petition, the stakes would be even higher than they were when Camacho went to trial on the earlier commitment petition given the change in SVP commitments from two-year terms to indeterminate terms. Thus, it makes sense that Camacho still did not want to go to trial in 2015, when only one doctor concluded that Camacho had progressed in treatment to the extent that he no longer met the criteria for commitment as an SVP. (See Petn., Exh. B, 57.) While this was certainly hopeful news for Camacho, the fact remained that three out of four doctors continued to believe that Camacho met the criteria for commitment. (*Ibid.*)

Camacho is therefore wrong to say that *Butler* involved “very similar facts” to those of this case. (OBM 20.) In *Butler*, the record was clear that the defendant wanted his case to proceed to trial as soon as possible and that his attorneys pursued a strategy of delay over his objections. The record in this case includes no such indications, leaving un rebutted the presumption

that Davis represented Camacho in a professional manner in all respects. Thus, unlike in *Butler*, the delays caused by his attorney are attributable to Camacho.

**d. The continuances at counsel’s request are attributable to Camacho even though Camacho did not personally appear**

Camacho “argues that it is manifestly unfair to place significant weight on the delays sought by his attorneys when he was not present in court to object to them.” (OBM 19.) He represents that he was “denied the ability to be personally present in court for 8 years.” (OBM 43.) The problem for Camacho, though, is that he provides no evidence that he was denied access to the court. In the absence of any such evidence, the presumption is that his absence was by his own, informed choice.

There is a strong presumption that counsel represented his or her client in a professional manner. (*Stanley, supra*, 39 Cal.4th at p. 954.) Moreover, an attorney has the duty “[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” (Bus. & Prof. Code, § 6068, subd. (m); see also *Rose v. State Bar* (1989) 49 Cal.3d 646, 653, fn. 6.)

The record here does not undermine a presumption that Davis was in regular communication with Camacho during the eight years in question. Nor does the record refute that Davis was acting in accord with Camacho’s wishes—and in accord with his professional obligations toward Camacho in general—when

he sought to delay trial and entered time waivers on Camacho's behalf. Indeed, Camacho is presumed to have instructed Davis that he wanted to remain in the state hospital rather than being transported to the county jail for hearings at which the intent was for Davis to merely continue the case.

Camacho came forward with no evidence to rebut these presumptions, as was his obligation in order to overcome them. He did not provide his own declaration. He did not provide a declaration by Davis. And he did not provide copies of letters to Davis or the court, which he would presumably have written if his absence from court had contravened his wishes.

The fact that Camacho was not present in court for routine continuances does not establish that he was somehow denied the ability to be present. (*Burt, supra*, 571 U.S. at p. 23 ["It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance'"].) Camacho's eight-year absence from court notwithstanding, the continuances sought by Davis on Camacho's behalf are attributable to Camacho.

**e. By all indications, the People and the trial court were acceding to Camacho's desire for delay**

After disavowing an argument that the delay in his case was attributable to a systemic breakdown in the public defender system (OBM 19), Camacho seems to argue that there was a different type of systemic breakdown in his case. Specifically, Camacho assigns blame to the trial court and the prosecutor.



(OBM 19-20, 22-38.) He “urges this Court to conclude that the official negligence of the prosecution and trial court resulted in a systemic, institutional failure so grave that it denied [Camacho] due process.” (OBM 15.) Though it is true that the trial court and the People did not insist that Camacho’s case proceed to trial in a timely manner, Camacho was, on balance, more to blame for the delay.

“A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” (*Barker, supra*, 407 U.S. at p. 531, fn. omitted.)

Here, Camacho has made no allegation—nor does the record contain any evidence to support one—that the People engaged in a deliberate attempt to delay the trial in order to hamper the defense. Indeed, the nature of an SVP proceeding belies such an allegation because the focus at trial is on the individual’s current mental condition and dangerousness as opposed to historical facts that might become more difficult to prove with the passage of time.

Camacho’s position is that the People, as well as the trial court, were negligent. (OBM 16.) Under the circumstances, though, the actions of the People, and those of the trial court, are

more properly characterized as acceding in Camacho's desire to delay trial rather than as negligence.

After all, the People had nothing to gain by delaying trial—other than the prospect of not having to try the case at all because Camacho had progressed in treatment to the point that he no longer met the criteria for commitment as an SVP. But that would have been a favorable outcome for Camacho as much as it would have been for the People.

But even if this Court concludes that the trial court and the People acted with negligence, that would not mean that the second factor under *Barker* weighs in Camacho's favor. The goal is to determine “whether the government or the . . . defendant is more to blame for th[e] delay.” (*Doggett v. United States* (1992) 505 U.S. 647, 651.)

Camacho compares his case to three other cases in which the Court of Appeal attributed a speedy trial violation in part to a failure by the trial court and the prosecutor to insist that the case proceed to trial in a timely manner: *Vasquez, supra*, 27 Cal.App.5th 36; *DeCasas, supra*, 54 Cal.App.5th 785; and *Butler, supra*, 55 Cal.App.5th 614. (OBM 28-33.) These cases are of no help to Camacho. In fact, they highlight what is missing in his case—any evidence that the delay in Camacho's case was against his wishes.

In both *DeCasas* and *Vasquez*, the Court of Appeal held that the delays caused by defense counsel were not chargeable to the defendant because staff reductions in the public defender's SVP unit constituted a systemic breakdown in the public defender

system. (*DeCasas, supra*, 54 Cal.App.5th at pp. 808-811; *Vasquez, supra*, 27 Cal.App.5th at pp. 73-74.) Here, Camacho raises no challenge to the trial court’s determination that “there’s no evidence to support a systemic breakdown in the appointed-counsel system.” (Petn., Exh. D, 101; see OBM 19.)

In *Butler*, the defendant presented affirmative evidence that he had wanted his case to proceed to trial as soon as possible and yet his attorneys had pursued a strategy of delay over his objections. (*Butler, supra*, 55 Cal.App.5th at pp. 630-631, 634-636.) It was in that context that the Court of Appeal in *Butler* decided to give diminished weight to the fact that a portion of the delay was chargeable to defense counsel and, under agency principles, to the defendant himself. (*Id.* at p. 662.)

Camacho has done nothing to rebut the presumption that Davis represented Camacho in a professional manner in all respects and that, as Davis represented to the court and the People, Camacho wanted to delay trial while he continued to progress through sex offender treatment. Thus, unlike in *Butler*, it is fair to attribute to Camacho the delays caused by his attorney.

### **3. Assertion of the speedy trial right**

In regard to the third *Barker* factor—assertion of the speedy trial right (*Barker, supra*, 407 U.S. at pp. 531-532)—the Court in *Barker* stated: “[T]he defendant’s assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for

a defendant to prove that he was denied a speedy trial.” (*Id.* at pp. 531-532.) This Court later stressed that the issue is not as simple as the number of times the defendant acquiesced in or objected to a continuance. (*Williams, supra*, 58 Cal.4th at p. 238.) Rather, the focus is on the totality of the circumstances, including the reasons the defendant acquiesced, the timeliness and persistence of his objections (if any), and whether counsel represented the defendant. (*Ibid.*) The goal is to determine whether the defendant actually wanted a speedy trial. (*Ibid.*)

The record shows that Camacho did not invoke his speedy trial right until October 2018. (Petn., Exh. A, 40.) Until that time, Camacho entered numerous time waivers, either personally or through counsel. (Petn., Exh. A, 21, 23, 27-29, 31-34.) This included the time waivers that Davis entered on Camacho’s behalf between 2010 and 2018. (Petn., Exh. A, 28-29, 31-34.)

Camacho tries to minimize the significance of the personal time waivers that he entered in this case. (OBM 38-40.) To that end, Camacho asserts that this Court should refrain from holding that he waived his due process right to a timely trial without an affirmative showing in the record that he entered a knowing and intelligent waiver of the right. (OBM 39-40.) But the People do not contend that Camacho at any point waived his due process right to a timely trial. The People’s position is simply that Camacho did not assert his speedy trial right until October 2018. In *Barker*, the United States Supreme Court acknowledged the distinction:

We reject . . . the rule that a defendant who fails to demand a speedy trial forever waives his right. This

does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right.

(*Barker, supra*, 407 U.S. at p. 528, fn. omitted.)

Moreover, Camacho did not assert his speedy trial right the first time he was back before the court after an eight-year absence. In July 2018, still represented by Davis, Camacho personally appeared by video. (Petn., Exh. A, 39.) The record contains no indication that Camacho objected when Davis requested to continue the matter or otherwise voiced any frustration over the fact that his case had not yet proceeded to trial. (*Ibid.*) It would seem logical to expect that, if Camacho had wanted to assert his speedy trial right earlier but his absence from court had somehow prevented him from doing so, he would have spoken up at his first opportunity. But he did not do so.

Camacho had several options available to him if he had wanted to assert his speedy trial right at any point between 2010 and 2018. Most obviously, he could have simply advised Davis that he wanted to go to trial. Camacho has done nothing to rebut the presumption that Davis was in regular communication with Camacho during those eight years and was otherwise providing him with professional representation.

It was not until October 2018 that Camacho asserted his speedy trial right. (Petn., Exh. A, 40.) This was one month after the decision in *Vasquez, supra*, 27 Cal.App.5th 36, in which the Court of Appeal determined that the defendant in that case had

suffered a speedy trial violation due to a 17-year delay caused by a systemic breakdown in the public defender system.

The timing of Camacho's assertion of his speedy trial right is significant for this reason: It supports the presumption that, from 2010 to 2018, Davis was acting in accord with Camacho's wish to delay trial when he entered time waivers on Camacho's behalf. Seemingly, it was the September 2018 decision in *Vasquez* that prompted Camacho to change his strategy of delay and assert his speedy trial right.

And, even then, the record is clear that Camacho did not actually want his case to proceed to trial in a timely manner at that point—what he wanted was for the court to conclude that he had suffered a due process violation and to dismiss the proceedings for his commitment altogether. Indeed, Camacho, though claiming that he had suffered a violation of his speedy trial right between 2010 and 2018, appears to have had no qualms with waiving time to allow his current counsel over two years to prepare and file what turned out to be a 25-page motion to dismiss. (Petn., Exh. A, 41-46.) These do not appear to be the actions of an individual sincerely concerned with a timely resolution of his status as an SVP.

#### **4. Prejudice due to the delay**

Turning to the fourth factor under *Barker*—prejudice due to the delay (*Barker, supra*, 407 U.S. at pp. 532-533)—the prejudicial effect of pretrial delays is assessed in light of the interests the speedy trial right was designed to protect. (*Williams, supra*, 58 Cal.4th at p. 235.) *Barker* identified three

such interests: (1) the prevention of oppressive pretrial incarceration; (2) the minimization of anxiety and concern on the part of the accused; and (3) the limitation of the possibility that the defense will be impaired. (*Barker, supra*, at p. 532.)

The nature of the proceedings at issue informs the assessment of prejudice. (*Barker, supra*, 407 U.S. at p. 532.) In criminal cases, “The time spent in jail [awaiting trial] is simply dead time,” in part because “[m]ost jails offer little or no recreational or rehabilitative programs.” (*Id.* at pp. 532-533, fn. omitted.) By contrast, in an SVP proceeding, the time spent in the custody of the state hospital awaiting trial on an SVP petition can be spent participating in the sex offender treatment program—the same treatment provided to an individual committed as an SVP. And if, over time, the individual is able to progress in treatment to the point that the doctors conclude that he no longer meets the criteria for commitment as an SVP, the individual may avoid trial altogether.

This is not to say that the People dispute the notion that pretrial incarceration is oppressive for those awaiting trial in an SVP commitment proceeding and that the incarcerated individual is bound to experience anxiety. The People’s point is that pretrial incarceration in SVP cases is not as oppressive or as anxiety producing as it is in criminal cases. That is particularly apparent in a case like this where, in his motion to dismiss, Camacho failed to assert much less establish that he told Davis that he wanted to take his case to trial and that Davis ignored his wishes. (Cf. *Butler, supra*, 55 Cal.App.4th at p. 651 [“[The

defendant]’s forced confinement in a state hospital for 13 years while he awaited a trial on his SVP petition—a trial he pleaded with his counsel and the court to set as soon as possible—is unquestionably an oppressive experience”].)

With respect to the possibility that the defense was impaired by the delay, this is the most serious of the interests the speedy trial right is designed to protect. (*Barker, supra*, 407 U.S. at p. 532.) That is because a defendant’s inability to adequately prepare his case for trial “skews the fairness of the entire system.” (*Ibid.*; see also *Doggett, supra*, 505 U.S. at p. 654.) “If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.” (*Barker, supra*, at p. 532.) But no such concerns are implicated here.

At issue in an SVP commitment proceeding is whether the individual meets the criteria for commitment as an SVP *at the time of trial*. (Welf. & Inst. Code, § 6600, subds. (a)(1) & (3); *Hubbart, supra*, 19 Cal.4th at p. 1169.) Accordingly, “many of the typical concerns triggered by delayed criminal prosecutions—faded memories, lost evidence, and missing or deceased witnesses [citations]—may not be as pressing in SVP trials.” (*Butler, supra*, 55 Cal.App.5th at p. 651.)

Camacho contends that this Court should presume that he suffered prejudice due to the length of delay in his case proceeding to trial. (OBM 43-45.) Quoting from *Doggett, supra*, 505 U.S. at page 655, Camacho asserts: “[C]ourts ‘generally have to recognize that excessive delay presumptively compromises the



reliability of a trial in ways that neither party can prove or, for that matter, identify.” (OBM 43.) If this were a criminal case, Camacho would be on firmer ground in relying on a presumption of prejudice due to the length of the delay. But Camacho provides no reason why such a presumption should apply in the context of a civil commitment scheme like the SVP Act where the question at trial focuses on the events as they exist at the time of trial, not at a time in the past.

In any event, the United States Supreme Court has made clear that the presumption of prejudice that arises from pretrial delay varies depending on the reason for the delay. (*Doggett, supra*, 505 U.S. at pp. 656-657; see *Williams, supra*, 58 Cal.4th at pp. 236-237.) As discussed above (see Arg. I.A.2), the majority of the responsibility for the delay in this case lies with Camacho. Under this Court’s own jurisprudence, Camacho “cannot benefit from the presumption of prejudice because the record does not show that the state was responsible for the delay.” (*Williams, supra*, at p. 252.)

**5. Camacho failed to establish a speedy trial violation under *Barker***

Under *Barker*, none of the four factors “is ‘either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” (*Williams, supra*, 58 Cal.4th at p. 233, quoting *Barker, supra*, 407 U.S. at p. 533.)

Here, the first factor (length of delay) admittedly weighs in Camacho's favor, even when viewed, as it should be, in the context of the eight-year delay (between 2010 and 2018). The second factor (the reasons for the delay), on the whole, weighs against Camacho as his counsel, presumptively acting in Camacho's best interests and with Camacho's assent, requested, agreed to, or did not object to the continuances and entered multiple time waivers on Camacho's behalf. The third factor (assertion of the speedy trial right) weighs against Camacho, as Camacho did not assert his right to a speedy trial until October 2018. The fourth factor (prejudice) weighs against Camacho given that Camacho will not suffer an impaired defense. Balancing these four factors, the trial court's conclusion that Camacho failed to establish a speedy trial violation under *Barker* was proper.

**B. Camacho failed to establish a speedy trial violation under the *Mathews* test**

The trial court did not set forth on the record an evaluation of Camacho's speedy trial claim under the *Mathews* test. (Petn., Exh. D, 101-103.) The record is unclear as to whether the trial court did in fact perform an analysis of the claim under *Mathews*. In their moving papers, both Camacho and the People represented that Camacho's due process speedy trial claim should be evaluated under the *Mathews* factors as well as under the *Barker* factors. (Petn., Exh. B, 61-64; Petition, Exh. C, 75-76, 90-91.) Yet, in announcing its ruling, the trial court at least arguably expressed a belief that the only test that applied was *Barker*. (See Petn., Exh. D, 101.) To be sure, though, a review of

the *Mathews* factors shows that Camacho did not suffer a speedy trial violation.

Beginning with the first factor—the private interest at stake (*Mathews, supra*, 424 U.S. at p. 335)—the People acknowledge that freedom from involuntary commitment, albeit civil in nature, is a significant liberty interest. The People also acknowledge that an involuntary commitment results in more than a loss of physical freedom. “[I]t is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual. Whether we label this phenomenon ‘stigma’ or choose to call it something else is less important than that we recognize that it can occur and that it can have a very significant impact on the individual.” (*Addington, supra*, 441 U.S. at pp. 425-426.) To be sure, though, the private interest is lessened where, as here (Petn., Exh. A, 19), a court has previously adjudicated the individual an SVP.

Turning to the second *Mathews* factor—the risk of an erroneous deprivation of the private interest (*Mathews, supra*, 424 U.S. at p. 335)—that risk is particularly low in this case. As described by the trial court in performing the *Barker* analysis (Petn., Exh. D, 102), Camacho had been evaluated numerous times by mental health experts to determine whether he met the criteria for commitment as an SVP; he had had two probable cause findings; and he had been previously committed as an SVP. The fact of the prior SVP commitment distinguishes this case from those upon which Camacho primarily relied in support of his motion to dismiss. (See *Butler, supra*, 55 Cal.App.5th at pp.

629-634, 663-664 [no prior, beyond-a-reasonable-doubt determination of SVP status]; *DeCasas, supra*, 54 Cal.App.5th at p. 813 [same]; *Vasquez, supra*, 27 Cal.App.5th at pp. 40-41, 81-82 [same].)

Moreover, Camacho's desire to delay trial speaks to his acknowledgment that, if he went to trial too soon, a trier of fact would almost certainly once again conclude that he met the criteria for commitment as an SVP. Camacho's goal in delaying trial would have been to take it to the point where, if the matter proceeded to trial, the trier of fact would determine that he no longer met the criteria for commitment as an SVP.<sup>10</sup> But a determination at that point that Camacho did not qualify as an SVP would not necessarily have meant that he had suffered an erroneous deprivation of his liberty. This is because at issue in an SVP commitment proceeding is whether the individual meets the criteria for commitment as an SVP *at the time of trial*, not at the time the petition is filed. (Welf. & Inst. Code, § 6600, subds. (a)(1) & (3); *Hubbart, supra*, 19 Cal.4th at p. 1169.) Unlike a

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<sup>10</sup> If it had gotten to the point that both updated evaluations prepared in anticipation of trial concluded that Camacho no longer met the criteria for commitment as an SVP, the People could have dismissed the matter altogether rather than proceed to trial. Along the same lines, if this Court affirms the judgment of the Court of Appeal and lifts the stay that has been in place since June 2021, mental health professionals will need to perform updated evaluations of Camacho before the case can proceed to trial. If both evaluators conclude that Camacho no longer meets the criteria for commitment as an SVP, the People could simply dismiss the SVP petition.

defendant's guilt in a criminal trial, an individual's status as an SVP can be fluid.

In arguing that the trial court and the Court of Appeal erroneously concluded that no due process violation had occurred, Camacho contends that “the lower courts fail[ed] to consider whether a process which does not require the defendant's periodic physical presence in court satisfies the second prong of *Mat[h]ews*.” (OBM 16.) He argues: “The risk of an erroneous deprivation of the speedy trial right obviously increases each time a continuance is granted in the defendant's absence because the defendant lacks an opportunity to correct any error.” (OBM 42.) Camacho then asks this Court to hold that “due process is violated where a defendant is denied the ability to be personally present in court for 8 years.” (OBM 43.)

There are at least two problems with Camacho's argument. First, Camacho misreads the second factor of the *Mathews* test. The factor is not the risk of an erroneous deprivation of Camacho's speedy trial right. Instead, the factor focuses on the risk that Camacho would erroneously be committed as an SVP. (See, e.g., *Heller*, *supra*, 509 U.S. at p. 331 [in civil commitment context, second factor under *Mathews* is risk of erroneous deprivation of liberty interest in being free from confinement].)

Second, as discussed above (see Arg. I.A.2.d), Camacho's representation that he was “denied the ability to be personally present in court for 8 years” (OBM 43) finds no support in the record. By all indications, Camacho's absence from court for those eight years was by his own, informed choice.

Lastly, as to the third *Mathews* factor—the government’s interest (*Mathews, supra*, 424 U.S. at p. 335)—the government has a legitimate interest in the confinement and treatment of persons who are mentally ill to protect the community from their violent tendencies. (*Addington, supra*, 441 U.S. at p. 426.) That interest becomes particularly compelling when, as in this case, a trier of fact has previously determined that the individual suffered from a diagnosed mental disorder that made him likely to commit sexually violent criminal acts. And by Camacho’s own acknowledgment (OBM 44), as of 2015, three out of four doctors who evaluated him concluded that he continued to meet the criteria for commitment as an SVP. (See Petn., Exh. B, 57.)

Under the circumstances of this case, the weighing of the *Mathews* factors results in the same conclusion as a weighing of the *Barker* factors—Camacho suffered no violation of his due process right to a timely trial.

**C. Because Camacho failed to establish a violation of his speedy trial right, both the trial court and the Court of Appeal properly denied relief**

The People understand and agree that, at first blush, cases such as this one, in which trial on an SVP commitment petition remained pending for a number of years with little to no affirmative steps taken to get the case to trial, raise legitimate concerns. But SVP cases are different from criminal trials, because the issue is the individual’s mental condition and dangerousness at the present time. At least until the September 2018 decision in *Vasquez*, the People were amenable in many cases—including Camacho’s—to the defendant’s desire to delay

trial for the purpose of progressing in treatment. If, before the case went to trial, the individual progressed in treatment to the point where he was no longer a danger to public safety, the People could simply dismiss the case.

Of course, this assumes that the individual defendant did in fact want to delay trial for his benefit. All indications and presumptions are that Camacho did indeed want to delay his trial. And Camacho provided no evidence to rebut that conclusion.

The United States Supreme Court in *Barker* stated: “We do not hold that there may never be a situation in which an indictment may be dismissed on speedy trial grounds where the defendant has failed to object to continuances.” (*Barker, supra*, 407 U.S. at p. 536.) “There may be a situation in which the defendant was represented by incompetent counsel, was severely prejudiced, or even cases in which the continuances were granted *ex parte*,” the Court posited. (*Ibid.*) “But,” the Court continued, “barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates . . . that the defendant did not want a speedy trial.” (*Ibid.*)

Here, the record strongly indicates that Camacho did not want a speedy trial. And in his motion to dismiss, which was unsupported by any declarations or other similar evidence, Camacho failed to establish any extraordinary circumstance. The trial court properly denied Camacho’s motion to dismiss. The

Court of Appeal in turn properly denied Camacho's petition for writ relief.

**II. IN 2019, THE LEGISLATURE AMENDED THE SVP ACT TO PROSPECTIVELY ENSURE THAT SVP MATTERS WILL PROCEED TO TRIAL IN A TIMELY MANNER**

The People acknowledge that it is far from ideal for SVP proceedings to remain pending for as long as this one did, and such delays can raise substantial concerns. Indeed, it is in the People's interest that an individual who meets the criteria for commitment as an SVP remain in custody for necessary treatment rather than be released because of a due process violation.

A scenario like the one in this case, however, is unlikely to recur in the future. In 2019, the Legislature amended the SVP Act out of concern that dangerous individuals had gained their release from custody due to speedy trial violations in SVP commitment proceedings. (See Assem. Public Safety Com., Analysis of Assem. Bill No. 303 (2019-2020 Reg. Sess.) as introduced January 29, 2019, pp. 3-7.) The Legislature was prompted to act by the decision in *Vasquez, supra*, 27 Cal.App.5th 36. (Assem. Public Safety Com., Analysis of Assem. Bill No. 303 (2019-2020 Reg. Sess.) as introduced January 29, 2019, pp. 5-7.)

Effective January 1, 2020, Assembly Bill No. 303 added a new subdivision (c) to Welfare and Institutions section 6603, which sets forth in detail new requirements for continuances in SVP cases. (See Welf. & Inst. Code, § 6603, as amended by Stats. 2019, ch. 606 (AB 303), § 1.) A motion for a continuance must now be in writing; the court can grant a continuance only on a



finding of good cause; the court must set forth on the record the facts that justify the continuance; and a stipulation of the parties cannot in and of itself establish good cause for a continuance.

(Welf. & Inst. Code, § 6603, subd. (c).)

This salutary legislation does not suggest, however, that any *constitutional* violation arose in Camacho's case. For the reasons discussed in the previous section, under a proper evaluation of all the relevant circumstances, Camacho did not show that his speedy trial right was violated.

## CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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September 13, 2022

**CERTIFICATE OF COMPLIANCE**

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 10,646 words.

ROB BONTA  
*Attorney General of California*

*/s/ Sally Espinoza*

SALLY ESPINOZA  
*Deputy Attorney General*  
*Attorneys for Real Party in Interest*

September 13, 2022

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**DECLARATION OF ELECTRONIC SERVICE**  
**AND SERVICE BY U.S. MAIL**

Case Name:        ***Camacho v. Superior Court (Merced)***  
No.:                **S273391**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On September 13, 2022, I electronically served the attached **ANSWER BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on September 13, 2022, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

**Douglas C. Foster, Esquire**  
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**139 W. El Portal Drive, Suite D**  
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[Attorney for Petitioner]  
[Courtesy Copy for Counsel's Client]

**Clerk of the Court  
Criminal Division  
Merced County Superior Court  
2260 N Street  
Merced, CA 95340**

**The Honorable Kimberly Lewis  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340**

Additionally, the following were served electronically via the TrueFiling electronic filing system:

**Court of Appeal, Fifth Appellate District  
Central California Appellate Program**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 13, 2022, at Sacramento, California.

M. Latimer  
\_\_\_\_\_  
Declarant

/s/ *M. Latimer*  
\_\_\_\_\_  
Signature

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

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

Case Number: **S273391**

Lower Court Case Number: **F082798**

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: **Sally.Espinoza@doj.ca.gov**

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9/13/2022

Date

/s/Michelle Latimer

Signature

Espinoza, Sally (234061)

Last Name, First Name (PNum)

DOJ Sacramento/Fresno AWT Crim

