IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

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

PETITIONER'S REPLY BRIEF ON THE MERITS

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

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

INTRODUCTION

Real Party reads "the plain language of the statutory scheme" as requiring that the commitment "end when the state hospital files a certificate of restoration, immediately triggering a return order to the court for further proceedings." (Answering Brief on the Merits ("ABM"), at p. 8, footnotes omitted.) This "plain language" argument, however, would require the substitution and insertion of words in Penal Code sections 1370 or 1372.[1] (E.g., *id.*, at pp. 8, 26, 41, 47.) Such judicial transference of statutory language does not make "sense rather than nonsense out of the *corpus juris*." (*West Virginia Univ. Hospitals, Inc. v. Casey* (1991) 499 U.S. 83, 101.) The harmonious operation of the statutes ends the commitment by court order within the constitutional rule of reasonableness.

[1] Further statutory references are to the Penal Code.

Real party did not present a similarly "plain" argument to respondent court, but instead argued that "[w]here the defendant has been found competent at the hearing, time is tolled back to that certificate of competency." (Pet. Exhibit 6, at p. 57.) On writ review another Officer of the District Attorney's Office pivoted to arguing that petitioner "Rodriguez' commitment has not exceeded two years because the commitment period is properly calculated as terminating upon the filing of a certificate of restoration." (*Rodriguez v. Superior Court* (2021) 70 Cal.App.5th 628, 643.) Real Party's argument was adopted by the Court of Appeal, which found that respondent court had erred without also finding that the statutory language was "plain." (*Id.* at p. 656.) Instead, the Court of Appeal announced a "new rule" that the "legal force and effect of the restoration certificate for a defendant who has been treated at a commitment facility includes the fixing of the end date for calculation of the commitment treatment period under section 1370(c)(1)." (*Id.* at p. 652.)

When "extrapolating broad general rules from particular holdings' caution must be exercised." (*Kimbrough v. O'Neil* (7th Cir. 1975) 523 F.2d 1057, 1067, concurring opinion of Justice Stevens, then Cir. J.) Here, the "*Rodriguez* rule" failed to consider how restoring the DSH's control over the commitment - contrary to more than 100 years of legislation and constitutional law - fails to reduce involuntary pretrial confinement by court order. Apparently recognizing this flaw in *Rodriguez*, Real Party now adds an additional gloss that "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." (ABM at p. 12.)

This argument also was not presented to the lower courts, but conflicts all the same with the constitutional rule of reasonableness applicable to restoration of competency proceedings as held by the United States Supreme Court and this Court. (*Jackson v. Indiana* (1972) 406 U.S. 715, 738; and *In re Davis* (1973) 8 Cal.3d 798, 807.) In light of these cases, and as interpreted by the Judicial Council, legislation was passed that suspends criminal proceedings until the defendant is found restored to competence by court order - *without good cause exceptions*. (Cal. Rules of Court, Rule 4.130, subd. (h)(2)(A).) That period of time is part and parcel of the disability following commitment, and thus an extension of those proceedings, during which time the committed person must wait to be certified as restored to competency by court order. (Rule 4.130, subd. (c)(1); but see *People v. Guerra* (2016) 5 Cal.App.5th 961, 966 [explaining role of the Rules of Court in statutory analysis].)

When the committed person cannot contest custody or confinement, much less assert personal rights without court order, they are in "legal limbo" that must come within the period of commitment based on a fair reading of sections 1370 and 1372 that "give[s] meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose." (*People v. Sylvester* (1997) 58 Cal.App.4th 1493, 1496, citation omitted.) Real Party's interpretation to the contrary requires a complicated judicial rewriting of the statutes to substitute "delivered" for "commitment," and insert "tolling," "terminates," and "good cause," contrary to "our

principal task [to] ascertain the intent of the Legislature." (*People v. Broussard* (1993) 5 Cal.4th 1067, 1071.) But altering the statutory scheme undermines the Legislature's effort to reduce the DSH's control over the commitment after it "systematically violated the due process rights of all IST defendants in California by failing to commence substantive services." (*Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 695.)

Nor is "good cause" to continue a *criminal trial* comparable to the rule of reasonableness, as the former is a creature of the applicable statute that is limited only by the sound discretion of the trial court. (*People v. Johnson* (1980) 26 Cal.3d 557, 570.) The constitutional rule of reasonableness, however, requires that we "consider, among other things, the nature of the offense charged, the likely penalty or range of punishment for the offense, and the length of time the person has already been confined." (*In re Davis, supra,* 8 Cal.3d at 807, emphasis added.) The constitutional rule must be enforced by court order to preserve fundamental rights within the "reasonable period of time necessary to determine whether there is a substantial probability that [the defendant] will attain that capacity in the foreseeable future." (*Jackson v. Indiana*, *supra,* 406 U.S. at p. 738.)

Petitioner Rodriguez was denied these rights when he was denied a forum for competency proceedings for more than six months without minute orders and court appearances. (See, *infra,* Argument I.) Strict interpretation of sections 1370 and 1372 within the constitutional rule of reasonableness could have avoided the violations of his rights. (See, *infra,* Argument II.A.) Indeed, the law

as evolved over the last 100 years gave respondent court the controls to correct the indefinite pretrial commitment, but those tools went unutilized. (See, *infra,* Argument II.B.) Going forward, we can only control the restoration process if the limitation period is ended by court order, not terminated without statutory authority by the DSH so that "good cause" discretion alone protects against the violation of fundamental rights. (See, *infra,* Argument II.C.)

Ending the commitment by court order harmonizes the operation of sections 1370 and 1372 within the constitutional rule of reasonableness. (See, *infra,* Argument III.) The statutes were so applied in *Carr II*, whereas *Rodriguez* violated the statutory scheme and constitutional rights. (See, *infra,* Argument IV.) At a minimum, remand is necessary to apply the statutory and constitutional rules of reasonableness. (See, *infra,* Argument V.) Otherwise, without court order over the commitment period, we cannot achieve the constitutional and legislative "purpose of determining or restoring competence to no more than [two] years." (*Jackson v. Superior Court* (2017) 4 Cal.5th 96, 106.)

ARGUMENTS

I. THE CLOSURE OF THE COURTROOM FOR RESTORATION OF COMPETENCE WAS NOT AUTHORIZED BY THE STATUTORY PERIOD OF COMMITMENT, EMERGENCY ORDERS, OR THE CONSTITUTIONAL RULE OF REASONABLENESS.

Real Party claims that any delays in petitioner Rodriguez' case were not due to "*institutional negligence* like in *Carr II*, but rather because of an unprecedented national emergency and the consequences on court capacity that resulted therefrom." (ABM, at p. 44, emphasis added.) No such abdication of duties is apparent in *People v. Carr II* (2021) 59 Cal.App.5th 1136, where the superior court provided the necessary restoration hearing without closing the courtroom to proof that the DSH had reported a "sham diagnosis."[2] (*Carr v. Superior Court* ("*Carr I*") (2017) 11 Cal.App.5th 264, 272.) Nor was the period of commitment tolled or terminated by that Court, as it was here, much less continued via "good cause" under the auspice of the Emergency Services Act, as encouraged by Real Party. (See AMB, at p. 43, citing Gov. Code §§ 8625 and 68115.) Instead, corrective judicial action was taken to ensure the fair and timely adjudication of Marc Carr's fundamental rights in recognition that "there is no legislative intention that the time period, within which a defendant reasonably avails himself of the opportunity to challenge the certification, would then be held against him for purposes of

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[2] There is no evidence that the Contra Costa Superior Court was negligent. "[W]e do not consider contentions unsupported by authority or argument." (*People v. Crittenden* (1994) 9 Cal.4th 83, 153, citation omitted.)

extending his maximum commitment period." (*Carr II, supra*, 59 Cal.App.5th at p. 1147, quoting the Contra Costa Superior Court].)

Such careful corrective actions were not implemented in petitioner Rodriguez' case after filing of the certificate of restoration in January 2020, when thereafter respondent court continued restoration proceedings between March and July 2020, and again between September 2020 and March 2021, *without court hearings or minute orders as conceded by Real Party*. (ABM, at pp. 15-16, 19.) The closure of the courtroom violated the "'rule of reasonableness' [requiring that we] comply with the constitutional principles which control[] th[is] case." (*In re Davis, supra,* 8 Cal.3d at p. 805.) Indeed, if the courtroom is closed, there is no reasonable "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (*Armstrong v. Manzo* (1965) 380 U.S. 545, 552, citations omitted.)

Before these *sua sponte* continuances by respondent court, it was Real Party who sought a "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." (ABM, at p. 16.) Obtaining records, appointing counsel, and preparing for trial are normal legal problems shared at all types of hearings that are resolved by court orders on a daily basis; but restoration proceedings without jury pose even less burdens to trial, particularly when remote testimony is scheduled. (See, e.g., IR Exhibit 23.) But given the fundamental rights involved, courtroom access is necessary for "reasonable relation to the purpose for which the individual is committed." (*Jackson v.*

Indiana, *supra,* 406 U.S. at p. 738.)

Nor can restoration proceedings be continued without appearances of counsel given the "rights not to be committed solely because of incompetence for longer than is reasonable." (*Jackson v. Superior Court, supra,* 4 Cal.5th at p. 105, citation omitted.) Even during the Pandemic, video appearances were permitted during which petitioner's counsel could have remotely objected to further delays pursuant to the rule of reasonableness.[3] (See California Rules of Court, Appendix I, emergency rules 3, subd. (a); Emergency Rule 5, subd. (b-d) [authorizing remote appearances].) Counsel would have done so if permitted because Petitioner Rodriguez has no interest in delay - he alone suffers from the "unfairness and possible harm that result[s] from prolonged or indefinite commitments." (*Carr II, supra,* 59 Cal.App.5th at p. 1146, citation omitted.)

A court date was eventually set after *Carr II* vindicated the rights to which Petitioner Rodriguez had been deprived in January 2021. (Pet. Exh. 10, at p. 102.) Only thereafter, could his counsel reasonably move to dismiss based on the violation of his client's rights upon "receiv[ing] a phone call from the directing attorney of IDO informing [him] that the hearing had been advanced from April 5, 2021 to March 16, 2021." (*Ibid*.) All along, the events leading to Petitioner Rodriguez' indefinite commitment were beyond his control, as he lacks autonomy over his rights, and the control of his counsel, who can only take "reasonable steps to avoid reasonably foreseeable prejudice to [their client's] rights." (*In re Edward S.* (2009) 173

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[3] On July 1, 2022, AB 199 was adopted to codify these emergency orders, with a sunset date in 2024.

Cal.App.4th 387, 415.)

Real Party cites to not a single case where closure of the courtroom - including for remote appearances in the modern era - was authorized due to "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." (ABM, at p. 43, quoting *People v. Lara* (2010) 48 Cal.4th 216, 229, citation omitted.) The NGI commitments at issue in *Lara* were continued by finding of "good cause" - *as statutorily authorized* - because "the time limits of th[at] section are not jurisdictional." (*Id.* at p. 225, italics omitted.) Likewise, continuing criminal trials based on "good cause" was *statutorily* authorized by section 1382 in each of the cases cited by Real Party, none of which apply to restoration of competency proceedings. (See ABM, at pp. 45, 47, citing *Stanley v. Superior Court* (2020) 50 Cal.App.5th 164, 166; and *Hernandez- Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108; see also *Elias v. Superior Court* (2022) 78 Cal.App.5th 926.) Nor has Pandemic ever justified multiple, extended closures of the courtroom, as in petitioner Rodriguez' case. (See, e.g., *People v. Tucker* (2011) 196 Cal.App.4th 1313, 1317-1318 [one-week delay during the H1N1 virus]; and *In re Venable* (1927) 86 Cal.App. 585, 587-588 [eight-day delay during endemic of infantile paralysis].)

No such continuances are authorized for persons committed as incompetent to stand trial, but not yet found restored by order of the court, because the jurisdictional questions posed "cannot be waived by defendant or his counsel." (*People v. Hale* (1988) 44 Cal.3d 531, 541.) The Emergency Services Act does not authorize such orders, so "local courts cannot issue rules that are inconsistent with statutory

time limits." (*In re MP* (2020) 52 Cal.App.5th 1013, 1021.) Otherwise, we ignore the Legislature's intended omission of competency proceedings so as to protect those most vulnerable during Pandemic due to mental illness. (See *People v. Standish* (2006) 38 Cal.4th 858, 870, citation omitted ["[W]here exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed' unless a contrary legislative intent is evident."].) The statutory and constitutional rules of reasonableness must be strictly enforced via hearings in open (and even remote) court so that "petitioner[] and others similarly situated may be entitled to relief under *Jackson* [*v. Indiana*] even though they remain incompetent." (*In re Davis, supra,* 8 Cal.3d at p. 806, fn. 6.)

II. THE COMPREHENSIVE AND ORDERLY STATUTORY PROCESS FOR RESTORATION TO COMPETENCE ENDS THE COMMITMENT BY COURT ORDER AS INTENDED BY THE LEGISLATURE.

Real Party admits that: "[t]he Penal Code does not expressly define the end of the statutory incompetency commitment contemplated in section 1370." (AMB, at p. 22.) Notwithstanding, Real Party makes the "plain" argument that "the commitment ends when the state hospital files a certificate of restoration." (ABM, at p. 22, citing *Rodriguez, supra*, 70 Cal.App.5th 628.) Language cannot be ambiguous and plain at the same time, nor can claiming so be "the most reasonable reading of" the law. (*People v. Jones* (1993) 5 Cal.4th 1142, 1150.) All language in sections 1370 and 1372 must be considered to divine "the intent of the Legislature[, which] is the end and aim of all statutory construction." (*Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 95.) And, "there is wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on 'superficial examination.'" (*Harrison v. Northern Trust Co.* (1943) 317 U.S. 476, 479.)

A. Neither Penal Sections 1370 nor 1372 Read "the Commitment Ends by the Filing of the Certificate of Restoration," Which Explains Why Real Party Did Not Present its "Plain Language" Interpretation Previously.

"If the statute's text evinces an *unmistakable* plain meaning, we need go no further." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 803, citation omitted and emphasis added.) Here though, the defense had no prior

notice of any "plain reading" theory (*People v. Brown* (2004) 33 Cal.4th 892, 901), so as to deny the "right to assign error on appeal." (*In re Alexander A* (2011) 192 Cal.App.4th 847, 859.) All the same, the State's belated argument undermines the claim that its reading of section 1370 was "unmistakably plain" all along.

A similarly "plain" argument was rejected in *Carr II* that it "'goes without saying' that certification terminates a commitment because competency restoration treatment ceases upon the defendant's return to court (see § 1372, subd. (a)(3)(C)) [a]s strikingly unpersuasive." (*Carr II*, *supra,* 59 Cal.App.5th at p. 1146.) Respected were the unique statutory and constitutional constraints on competency proceedings without "guise of interpretation, [by] insert[ing] qualifying provisions not included in the statute." (*Estate of Griswold* (2001) 25 Cal.4th 904, 917.) Real Party, to the contrary, takes on the interpretive problem "as if it were a purely logical game, like a Rubik's Cube." (*Burris v. Superior Court* (2005) 34 Cal.4th 1012, 1017, citation omitted.)

For instance, Real Party substitutes "delivered" for "commitment." (AMB, at pp. 24, 26.) Taking "delivered" from section 1370, subdivision (a)(1)(B)(i), to substitute with "commitment" in subdivision (c)(1), overlooks the different use of the words in both sections 1370 and 1372. (ABM, at p. 8.) The Legislature also used "*confined*," specifically when referencing time at the state hospital, treatment facility, or outpatient status (§ 1370, subds. (a)(5)), but also "*custody,*" specifically as to the committing county where it "shall remain with the county until further order of the court." (§ 1370, subd. (c)(1).) Similar focus on "custody" and "confinement" in

other subdivisions demonstrates that the "commitment" includes all time during which the committed person lacks the ability to contest custody or confinement without restoration of their fundamental rights.[4] (See §§ 1370, subd. (a)(1)(H)(i); (a)(2)(B)(II); (b)(1)(A); and (b)(4); and 1372, subds. (a)(3) and (d).) Indeed, it makes sense to speak of a "period of commitment," as the legislature has done in section 1370 and 1372, or a "maximum confinement period" as referenced in *Medina v. Superior Court* (2021) 65 Cal.App.5th 1197; but no sense to refer to a "period after delivery" like Real Party.

Thus, both in meaning and use, delivered cannot be substituted for custody, confinement, or commitment so that the location of the committed person somehow alters "the maximum term of commitment in accordance with subdivision (c)." (§ 1370, subd. (a)(3)(B).) The period of commitment does not depend on location of the committed person, but upon court orders, within the "plain

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[4] Generally the legal terms of "custody," "confinement," and "committed" have more in common with each other than with "delivered," like "incarcerated" does with "jailed." (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 17.) "Custody" pertains to "the state of physically holding or controlling a person or piece of property, or of having the right to do so." (Black's Law Dictionary Online, *Custody*, available at: https://the lawdictionary.org/?s = custody [last accessed July 2, 2022].) "Confinement" is the "physical restraint of the person." (*Ibid.* [query "confinement"].) Both terms are encapsulated by the legal meaning of commitment, which is "to be held in court by the order of a judge." (*Id.* [query "commitment"].) Nor does the verb "delivered" have a legal meaning, like the nouns "custody," "confinement," and "commitment," but instead ordinarily describes how we "take and hand over to or leave for another." (Merriam-Webster Dictionary Online, *Delivered*, Available at: https://www.merriam-webster .com/dictionary/ delivered [last accessed July 2, 2022].)

meaning of the statute[s]." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) The limitation period is thereby applied with fair warning to all persons awaiting court order of restored, or not, to competence, "in the aggregate relating to the same charges." (*In re Polk* (1999) 71 Cal.App.4th 1230, 1242.)

B. More than 100 Years of Legislative History has Shifted Control over the Commitment to the Judiciary to Correct the Repeated Violation of Constitutional Rights by the Department of State Hospital.

Real Party addresses only two amendments to the competency statutes occurring in 1974 and 2018. (ABM, at p. 31.) Overlooked are "the 'wider historical circumstances' of the enactment[s]" (*People v. Cruz* (1996) 13 Cal.4th 764, 782, 783), revealing the "intent of the Legislature as a whole in adopting a piece of legislation." (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062.) Over a century of statutory and constitutional history, culminating most recently in SB 1187 and 317, shifted control of the commitment to the courts so that involuntary "detention [bears] a sufficiently reasonable relation to the purpose of [the] detention." (*In re Albert C.* (2017) 3 Cal.5th 483, 495, citation omitted)

For instance, Real Party "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[, supra,]* 65 Cal.App.5th 691." (ABM, at p. 11 fn. 4.) Aware of these and other problems posed by the DSH, the Legislature resolved to limit "*pre-trial involuntary confinement of a person*,

solely based on his or her mental incapacity to stand trial, for no longer than two years." (Assem. Com. On Pub. Safety, Analysis of Sen. Bill No. 1187 (2017-2018 Reg. Sess.) March 20, 2018, p. 5, emphasis added.) The Legislature thereby "shortened the maximum time period before an unrestored mentally incompetent defendant *must be released*, [so as to] accelerate local government's existing duty to provide appropriate community-based mental health care and supportive services and, in some cases, conservatorship over the person." (*Ibid,* emphasis added.)

There is also "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)." (ABM, at p. 10.) For 35 years, courts have recognized that the numerous references in section 1372 to "a hearing indicate a legislative intention that such a hearing be afforded." (*People v. Murrell* (1987) 196 Cal.App.3d 822, 826.) At the turn of the second millennium, this Court did not abrogate that right in *People v. Rells* (2000) 22 Cal.4th 860, 867. Nor, in 2018, did the Legislature eliminate the hearing required by section 1372 via SB 1187, even while eliminating from section 1370, subdivision (b)(1) the hearing required within 18 months of the commitment order.

In 2021, the First District Court of Appeal found "that the filing of a certificate of competency 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.) Later that year, the Legislature did not counteract *Carr II* in SB 317,

much less eliminate the hearing required by section 1372 during the midst of litigation in *Rodriguez*. Thus, we cannot conclude that the Legislature "silently, or at best obscurely, decided so important . . . a public policy matter and created a significant departure from the existing law." (*In re Christian S.* (1994) 7 Cal.4th 768, 782.) "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.'" (*Estate of McDill* (1975) 14 Cal.3d 831, 837-838, citations omitted.)

Nor as a matter of policy - because no other authorization exists in the law - can we take up Real Party's demand to "[i]mply[] a good cause exception to section 1370, subd. (c)(1) [a]s only necessary if section 1372 hearings are subject to a statutory time limit." (ABM, at p. 47 fn. 17.) As Real Party concedes, "good cause" findings are omitted from section 1370, subdivision (c)(1), and section 1372. (*Id.* at pp. 41, 47.) However, "good cause" extensions are permitted for orders requiring the involuntary administration of medication during the period of commitment. (§ 1370, subd. (a)(2)(D)(vii).) Similar "good cause" findings cannot be read into subdivision (c)(1), nor section 1372, when doing so "contravenes the settled principle against reading language used in one place into places where it is not used." (*People v. Orozco* (2020) 9 Cal.5th 111, 120, citation omitted.)

The constitutional and legislative history of sections 1370 and 1372 thereby support recent reforms not limited to addressing "the indefinite holding of incompetent defendants in treatment facilities[, as opposed to] delays in judicial determinations of competency or

other court proceedings when defendants are within the court's direct control." (ABM, at p. 9, citation omitted.) The Legislature has amended the statutes so that court orders end the commitment pursuant to "constitutional limits defining when a *detention* becomes so lengthy or unjustified as to violate due process." (*Albert C., supra,* 3 Cal.5th at p. 494, emphasis added.) While *Jackson v. Indiana* and *Davis* "do not preclude the Legislature from establishing time limits for the commitment of incompetent adults" (*ibid*), the Legislature has done so by steadily marking the limits on commitment by court order via enaction and amendment of sections 1370 and 1372. (See, e.g., *Zinermon v. Burch* (1990) 494 U.S. 113, 131 [confinement at state hospital for five months without hearing infringed liberty interests].)

C. Reading Sections 1370 and 1372 in Harmony, Without Substituting or Inserting Words Omitted by the Legislature, Ends the Period of Commitment by Court Order Within the Constitutional Rule of Reasonableness.

Sections 1370 and 1372 incorporate each other, but any partial overlap does not render the latter as superfluous as Real Party would like. (See *J. E. M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc.* (2001) 534 U.S. 124, 144.) "[I]nterrelated statutory provisions should be harmonized and that, to that end, the same word or phrase should be given the same meaning within the interrelated provisions of the law." (*People v. Elliott* (1993) 14 Cal.App.4th 1633, 1641, fn. 7.) Petitioner does so via "the most reasonable reading of" the statutes. (*People v. Jones* (1993) 5 Cal.4th 1142, 1150.)

Real Party's logic, however, would center on debunking whether "the commitment does not begin with a trial court's finding of

incompetence, [so] the commitment does not end upon a trial court's finding of competence." (ABM, at p. 8.) But as conceded, "the finding of incompetence is the triggering event that permits the court to order the commitment." (*Id.* at p. 24.) Real Party also admits that the order finding restored to competency triggers resumption of criminal proceedings. (See *id.* at pp. 23-24.) Thus, the period of commitment must include the time before that court order so that "the fact that a hearing presupposes an earlier finding by the court or a jury of mental in competence is balanced by the fact that the hearing itself is triggered by the later filing by a specified mental health official of a certificate of restoration to mental competence." (*Rells, supra,* 22 Cal.4th at p. 867, citation omitted.)

Carr II reached a similar conclusion after considering *Rells, supra,* 22 Cal.4th p. 868, contrary to Real Party's claims. (ABM, at p. 37.) Specifically, *Carr II* held that despite the presumption of competence, courts must still "decide[] whether to approve the certification." (*Carr II, supra,* 59 Cal.App.5th at p. 1144, citing *In re Taitano* (2017) 13 Cal.App.5th 233, 242.) "[T]he numerous references in that statute to a hearing indicate a legislative intention that such a hearing be afforded." (*Carr II, supra,* at p. 1144, quoting *Murrell, supra,* 196 Cal.App.3d at p. 826; and citing *Rells, supra,* 22 Cal.4th at pp. 867-868.)

In this manner, the Legislature has marked the start of the commitment by court order via incorporation of section 1372 in section 1370, subdivisions (a)(1)(C) and (a)(1)(H)(ii), and end of the commitment after hearing by way of 1372, subdivisions (a)(2) and (b), which incorporate section 1370. In between, the return of the

defendant to the committing county vis-a-vis section 1370, subdivision (c)(1), is not a "remedy" as respondent claims (ABM, at p. 37), but a constitutional necessity to attend the critical restoration hearing that may end the commitment, alleviate confinement, and even result in dismissal of charges (i.e., custody). (See, e.g., *Sturgis v. Goldsmith* (9th Cir. 1986) 796 F.2d 1103, 1108.) Otherwise, the Legislature would have amended section 1370 to end the commitment by certificate of restoration, *notwithstanding* section 1372. (See, e.g. *Molenda v. Department of Motor Vehicles* (2009) 172 Cal.App.4th 974, 995.)

Real Party further errs by equating restoration of competency with the "*maintenance* of competency [that] may continue throughout all future competency and criminal proceedings (see Pen. Code § 1372, subds. (e) and (f)), [while] treatment for restoration of mental competency ceases once the hospital determines competence has been restored." (ABM, at p. 8, fn. 1.) During the preceding commitment, the certificate of restoration does not terminate the involuntary administration of medication. (§ 1370, subd. (a)(2)(B)(i)(III).) The order for involuntary administration of medication terminates upon court finding of restored, or not, to competence and bail determination via subdivisions (c) and (d) of section 1372. Once the commitment ends, however, maintenance of competency may begin by way of further court order endorsing the "recommendation" of the DSH. (§ 1372, subd. (e).) The orderly operation of the statutes is thereby enforced by court orders, much like how the courts must grant, or not, the DSH's under-utilized power to "recommend[] to the court that the person's commitment for

treatment and the underlying criminal charges be suspended for compassionate release." (§ 1370.015.)

Ultimately, the length of the commitment must be marked by court order even "[i]f 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)." (ABM, at p. 8 fn. 2.) Court orders are as necessary to find not restorable in the foreseeable future (§§ 1370, subd. (b)(1)(A) and subd. (A)(1)(B)(vi)), as they are for ending the commitment, recommitment, dismissal of charges, or conservatorship. (§§ 1370, subd. (b)(1)(A); subd. (a)(1) and subd. (e).) The courts thereby reenforce the constitutional and legislative intent that we not "allow the statute's [two]-year limit on commitment to be so easily evaded." (*Jackson v. Superior Court*, *supra,* 4 Cal.5th at p. 106.)

III. DUE PROCESS, EQUAL PROTECTION, EFFECTIVE ASSISTANCE OF COUNSEL, AND PROSCRIPTIONS ON CRUEL AND UNUSUAL PUNISHMENT ARE VIOLATED BY RETROACTIVELY TERMINATING THE PERIOD OF COMMITMENT BASED ON THE FILING OF THE CERTIFICATE OF RESTORATION.

A. Petitioner's Continuing Involuntary Commitment Without Ability to Challenge Confinement or Custody is Cruel and Unusual.

Real Party suggests that "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.)." (ABM, at p. 37, fn. 14.) Here though, petitioner Rodriguez could only contest the denial of the request to dismiss charges pursuant to section 1370, subdivision (d), by way of peremptory writ review. Habeas corpus is a last resort (*In re Mazoros* (1977) 76 Cal.App.3d 50, 55), specifically authorized for issues concerning medication. (§ 1370, subd. (h) [authorizing habeas to challenge medication orders].)

Forcing incompetent persons to resort to habeas corpus procedures outside the period of commitment to secure a hearing (see Rules of Court, Rule 4.551) is exactly the type of unreasonable delay the Legislature has sought to eliminate by strict implementation of the commitment period. Indeed, the Legislature was aware that habeas was the only remedy for delay due to transportation when the commitment period was reduced from three to two years. (See, e.g., *In re Mille* (2010) 182 Cal.App.4th 635, 640.) The need to resort to habeas corpus, and the statutory and constitutional questions presented here, are avoidable by strict application of the period of

commitment within the rule of reasonableness. (See, e.g., *People v. Anderson* (1987) 43 Cal.3d 1104, 1139.)

B. Retroactive Tolling and Termination of the Commitment by Unforeseeable Judicial Expansion of Statutory Language Undermines the General Administration of the Law in Violation of Due Process.

The Sixth District failed to address the fact that the retroactive termination of the commitment "some 19 months before [its] publish[ed] opinion violate[d] fair warning." (Petition for Rehearing, at p. 18.) Nor how its "new rule" could apply retroactively when doing so "would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law." (*Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 983.) As a result, the Court failed to correct the "deprivation of the right of fair warning [that] can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language." (*Bouie v. City of Columbia* (1964) 378 U.S. 347, 352.)

To the contrary, the Fourth District Court of Appeal did not retroactively terminate the period of commitment, as Real Party claims, to "days actually spent in commitment at a mental institution or treatment facility are to be applied to the maximum commitment period." (ABM, at p. 11, quoting *Medina, supra,* 65 Cal.App.5th at p. 1203.) The Fourth District remanded for the superior court to consider "all days since the date of the commitment order in which Medina has been in jail, prison, or treatment." (*Ibid.*) Otherwise,

"Medina will have suffered a due process violation if he [was] in *custody or treatment* for longer than the maximum commitment period." (*Id.* at p. 1203, emphasis added.)

To the contrary, the new "*Rodriguez* rule" retroactively terminates the commitment period in violation of "core due process concepts of notice, foreseeability, and, in particular, the right to fair warning." (*People v. Sandoval* (2007) 41 Cal.4th 825, 855, citation omitted.) Retroactive termination of such orders is not permitted simply because restoration of competency proceedings may "take so long as [to] arise out of the same act or right." (*Slater v. Shell Oil Co.* (1943) 58 Cal.App.2d 864, 869.) The committed person must be able to rely on court orders fairly issued with notice during the competency restoration process. (§ 1372, subds. (c) & (d).) Otherwise, due process is violated by "construction of a criminal statute [that] was so unforeseeable as to deprive [the defendant] of the fair warning to which the Constitution entitles him." (*Bouie, supra,* 378 U.S. at p. 354.)

C. Ending the Term of Commitment Without Court Order Denies the Committed Person the Effective Assistance of Counsel Necessary to Reasonably Challenge the Certificate of Restoration.

Retroactively terminating the period of commitment also fails to provide fair warning to "defense attorneys to adequately prepare on behalf of their clients with concerns of delay." (ABM, at p. 12.) Nor does eliminating the time limit on restoration hearings help either party "subpoena records and hire their own experts to evaluate the defendant and rebut the findings of the state hospital." (*Id.* at p. 41.) Indeed here, both parties reasonably prepared for trial, but were

shut out of the courtroom for hearing within the commitment period. (See, *supra,* Argument I.) The delay was avoidable by strict application of the statutory period of commitment within the constitutional rule of reasonableness (*Carr II, supra,* 59 Cal.App.5th 1136), which would have also preempted petitioner Rodriguez' placement on suicide watch just days before his first courtroom appearance in six months in March 2021. (Pet. Exhibit, at p. 62.)

To avoid such calamities, the law requires preparation by the courts and counsel before the committed person is returned to the committing county within 90 days of two years from issuance of the commitment order. (§ 1370, subd. (c)(1).) Sufficient time is thereby provided for monitoring and investigation, such as when there is "evidence that the defendant is no longer taking his medication and is again exhibiting signs of incompetence will generally establish such a change in circumstances [that] will call for additional, formal investigation before trial may proceed." (*People v. Rodas* (2018) 6 Cal.5th 219, 223.) Or, if the DSH does its job correctly, either counsel "may validly submit a competency determination on the available psychiatric reports." (*People v. Weaver* (2001) 26 Cal.4th 876, 905.) But all participants in the criminal justice and mental health systems must act within statutory deadlines so that the courts can reasonably determine whether the committed person is capable of "meaningfully participat[ing] in the process." (*Odle v. Woodford* (9th Cir. 2001) 238 F.3d 1084, 1089.)

Enforcing the committed person's statutory and constitutional rights does not yield "strategic advantage when [they are] facing serious charges carrying a lengthy prison sentence or [defeat]

legitimate preparation for a contested hearing." (ABM, at p. 38, citing *Carr II, supra*, 59 Cal.App.5th at p. 1146.) The time lines set by Sections 1370 and 1372 allow for "a reasonable attorney [with] a sound basis to question his client's competency and press for further evaluations." (*Hummel v. Rosemeyer* (3rd Cir. 2009) 564 F.3d 290, 301.) But even where counsel reasonably believes further evaluations are unwarranted, the "acquiescence of counsel is no substitute for judicial consideration after a hearing." (*United States v. Giron-Reyes* (1st Cir. 2000) 234 F.3d 78, 81.) The courts thereby ensure that the committed person has the "mental acuity to see, hear and digest the evidence, and the ability to communicate with counsel in helping prepare an effective defense." (*Ogle, supra,* at p. 1089, citation omitted.) In this manner, the statutory and constitutional rules of reasonableness prevent the "tragic breakdown in the [state] criminal justice system" presented here. (*Brown v. Sternes* (7th Cir. 2002) 304 F.3d 677, 680.)

D. Distinguishing Between Persons Based on Confinement at State Hospitals, Treatment Facilities, Outpatient Status, or in Jails Violates Equal Protection Because All Such Persons Await Court Orders to End the Period of Commitment.

Real Party relies on outdated cases calculating custody credits for persons "in the care of a treatment facility." (ABM, at p. 25, citing *In re Banks* (1979) 88 Cal.App.3d 864, 867.) Those laws have been substantially abrogated by the Legislature so as to address equal protection violations. (See generally, *People v. Yang* (2022) 78 Cal.App.5th 120, 124.) There are no reasonable, much less

compelling, justifications for violating equal protection where a defendant "faces a longer period of confinement than a hypothetical defendant charged with the same exact crime and found incompetent under the same exact standard, based on variables such as bed availability." (*Id.* at p. 134.) The period of commitment, just like the credit scheme, must be applied equally to those held as incompetent at hospitals, treatment facilities, on outpatient status, or in jails because "[e]very defendant found incompetent to stand trial meets the same standard for commitment (§ 1367, subd. (a))." (*Id.* at p. 137.)

The issue is not "precommitment confinement attributable to the same criminal prosecution." (*In re Banks*, *supra,* 88 Cal.App.3d at p. 866.) The question is whether the disparate treatment of persons awaiting finding of restored, or not, to competence is justified because "[i]f they do not regain competence within the statutory period, or if there is no substantial likelihood competence will be regained, the court will order the public guardian to initiate LPS proceedings." (*Conservatorship of Eric B.* (2022) 12 Cal.5th 1085, 1096, citing Pen. Code, § 1370, subd. (c)(2).) By distinguishing between committed persons awaiting such court orders, "we run the risk of mistakenly cutting off potentially meritorious equal protection claims." (*Id.* at p. 1117, conc. opn. Kruger J.)

Nor is there a basis to treat "the defendants [that] are before the court" differently from the "[d]efendants committed at treatment facilities, far from the court, without active representation and presumably incompetent." (ABM, at p. 37 fn. 14.) The former persons are not in a better position because they are "being actively

represented by an attorney," if their counsel cannot obtain a hearing for finding of restored, or not, to competence. (*Ibid.*) Nor are the latter persons in a worse position because they too could remain stuck in the hospital or jail of the committing county after "attaining the two-year maximum prescribed by section 1370(c)(1)." (*Id.* at p. 50, quoting *Rodriguez, supra,* at pp. 656, citations omitted.) And Real Party overlooks those in between who may be substantially delayed to transport from the jail, or never transported at all. (See, e.g., *Medina, supra,* 65 Cal.App.5th at p. 1203.) Each of these persons, whose competence has not yet been restored by court order, is worthy of equal treatment because they cannot challenge their custody, alleviate confinement via bail, or personally exercise fundamental rights until end of the commitment.

Similarly, in *Eric B.,* this Court was asked whether those facing conservatorship due to an inability to care for themselves should enjoy the same protection from compelled testimony at trial that is promised to persons committed as not guilty by reason of insanity. (*Eric B., supra,* 12 Cal.5th at p. 1092.) The Court found that for "purposes of the right against compelled testimony, the groups are sufficiently similar that equal protection principles require the government to justify its disparate treatment of these proposed conservatees." (*Ibid.*) Justice Kruger agreed on behalf of the concurring justices that, as applied in *Eric B.,* the analysis did "not cut off inquiry into the core question, whether an admitted difference in treatment of two groups is justified under the law." (*Id.*, at pp. 1116-1117, conc. opn. of Kruger, J.)

Here, much like conservatees and NGI commitments, the most

striking and decisive similarity between those awaiting court finding of restored, or not, to competence - whether housed at State Hospitals, treatment facilities, or jails - "is the potential loss of liberty both face in the proceedings at issue." (*Conservatorship of Eric B., supra*, 12 Cal.5th at p. 1103.) These persons are similarly situated because without further court order they cannot assert fundamental rights to challenge their confinement, let alone custody, even if a certificate is filed. Nor can they exercise fundamental rights without court order despite what the DSH reports.

For instance, petitioner Rodriguez remains in custody, confined, and committed for more than two years under section 1370, without finding of restored, or not, to competence pursuant to section 1372. Medication may involuntarily continue via section 1370, but he cannot seek release from confinement until the commitment period ends after hearing with notice to the DSH and the parties pursuant to subdivisions (c) and (d) of section 1372. Nor can he challenge continuing custody other than by seeking dismissal of charges via subdivision (d) of section 1370 or conservatorship via section 1372, subdivision (f), despite any previously filed certificate lacking further court order. Indeed, even the Medical Director for Atascadero agreed that further court order was required, without claiming that his certificate ended the commitment, by advising: "It is important that [petitioner Rodriguez] remain on his medication for his own personal benefit and to enable him to be certified under Section 1372 of the Penal Code." (Attachment A to Motion for Judicial Notice [Filed November 9, 2021].)

Persons similarly committed as petitioner Rodriguez while

awaiting court finding of restored, or not, to competence cannot be distinguished by the "delivery" or "transport" of their body to the hospital or jail, much like this Court could not distinguish between persons in *Eric B.* due to "the long wait times LPS conservatees had to endure before state hospital admission." (*Conservatorship of Eric B., supra,* 12 Cal.5th at p. 1103.) Otherwise, those found incompetent are unfairly treated "with respect to the countervailing interest in accurate determinations." (*Id.* at p. 1116, conc. opn. Kruger, J.) All such persons must be treated equally by ending the period of commitment by court order so as to ensure that no errors associated with restoration of competency "go[] to the fundamental integrity of the court's proceedings." (*People v. Harris* (1993) 14 Cal.App.4th 984, 987.)

IV. THE FOREGOING STATUTORY AND CONSTITUTIONAL ISSUES ARE AVOIDABLE BY ENDING THE COMMITMENT BY COURT ORDER, OR REMAND IS NECESSARY TO APPLY THE RULE OF REASONABLENESS TO THE CONTINUING CUSTODY AND CONFINEMENT OF PETITIONER RODRIGUEZ.

If the term of commitment is not marked by court orders, as Real Party would have, then "no court or treatment facility would be able to accurately estimate the actual time available to provide treatment." (ABM, at p. 41.) Retroactively terminating the period of commitment makes impossible the tracking of time from the date of the original order - as opposed to some past or future certificate - contrary to section 1370, subdivision (a)(3)(B). Ending the commitment by court order ensures that all time in custody and confinement "conforms in fact with the certificate of restoration filed by the specified mental health official." (*Rells, supra,* 22 Cal.4th at p. 867, emphasis omitted.)

Reading the statutes to the contrary as Real Party would like by substituting "delivered" for "commitment" would end all commitments upon transportation of the committed person to or from the committing county, with at least 90 days left before the lapse of the two-year period of commitment. (§ 1370, subd. (c)(1).) Then, upon finding of not restored, those committed persons would have to be sent back to the hospital for 90 days *exactly* before the State would concede the commitment lapsed by time *actually spent at the hospital.* What is lacking from this interpretation is assurance that the nature and duration of treatment are related to the purpose of restoring the defendant's competency to stand trial. (*Jackson v.*

Indiana, supra, 406 U.S. at p.738.) Indeed, when faced with a similar statutory predicament, the Ohio Supreme Court held that requiring the committed person to serve an exact amount of time at a state hospital violated *Jackson v. Indiana*. (See *State v. Sullivan* (Ohio 2001) 739 N.E.2d 788, 791.)

The federal courts also end the commitment after hearing to avoid violating constitutional rights. (See *United States v. Nevarez-Castro* (9th Cir. 1997) 120 F.3d 190, 191.) For instance, in *Giron-Reyes, supra,* 234 F.3d at p. 81, the Court of Appeal for the First Circuit recognized that "the need for a hearing on competency is greater at the later stage of proceedings governed by [18 U.S.C. § 4241] subsection (e)." Such hearings, "place[] the court in a better position to assess the credibility of witnesses and the rationales of their seemingly opposing opinions." (*Ibid.*) To end the commitment without court finding of restored to competency would "negate protections Congress enacted to give substance to a defendant's right to due process." (*Id.* at p. 82.) Doing so also risks reversal of later judgments. (See, e.g., *Sena v. New Mexico State Prison* (10th Cir. 1997) 109 F.3d 652, 655; *Gibson v. State* (Fla. 1985) 474 So.2d 1183; *State v. Green* (La. App. 1994) 632 So.2d 1187, 1191; and *Byrd v. State* (Tex.App. 1986) 719 S.W.2d 237, 238 ["We hold that these documents are evidentiary only; they cannot operate as a substitute for a judicial fact-finding of appellant's competency to stand trial"].)

In a case out of Arizona, the Court of Appeal rejected the "State['s] interpret[ation that] the twenty-one month time period as applying only to the actual time in which a defendant is undergoing restoration treatment, not any time spent waiting for hearings or

appointments." (*Nowell v. Rees* (Ariz.App. 2009) 199 P.3d 654, 657.) The Court could not "ignore the repeated statutory references to restoration of competency within twenty-one months after the date of the original finding of incompetency." (*Ibid.*) The Court "disagree[d] with the trial court's conclusion that it has the implied authority to toll the time or start anew the clock because it makes sense to do so given that the realities of litigation sometime result in justified delays." (*Ibid.*) Nor was the Court "persuaded that any delays caused by Nowell should override the specific time limit contained in the statutes." (*Ibid.*)

Thus, *Carr II* is not an "outlier," as claimed by Real Party (AMB, at p. 11); the underlying principles and reasoning are supported by federal and state law. Indeed, other civil commitment proceedings in this State require court orders to endorse DSH petitions and reports (see, *People v. Litmon* (2008) 162 Cal.App.4th 383), based on statutes that cannot be judicially amended even if release of the committed person is required. (See, e.g., *Myers v. Superior Court* (2022) 78 Cal.App.5th 1127, 1141; and *People v. Cobb* (2010) 48 Cal.4th 243, 252, citation omitted.) Equally then, the pretrial commitment of the incompetent, whose rights must be treated as jurisdictionally and constitutionally special, must also end by court order to respect the "massive curtailment of liberty." (*Humphrey v. Cody* (1972) 405 U.S. 504, 509.)

V. REMAND IS NECESSARY TO APPLY THE RULE OF REASONABLENESS TO THE CONTINUING CUSTODY, CONFINEMENT, AND COMMITMENT OF PETITIONER RODRIGUEZ.

By reliance on *Carr II*, petitioner Rodriguez has not "conflate[d] the concepts of 'commitment' with findings of competency and give[] no meaning to the certificate of restoration or the presumption of competency it creates." (ABM, at p. 11, footnote omitted.) Marc Carr sought and obtained a restoration hearing within the statutorily authorized period of commitment as envisioned by the Legislature, which demonstrated that the certificate was entitled to no presumption of correctness. Disregarding the time he spent in custody and confinement so as to permit further commitment contravened statutory operation. (*Carr II, supra,* 59 Cal.App.5th 1136.)

Petitioner Rodriguez was denied the same hearing before the statutory commitment expired, then retroactively tolled and terminated in violation of his statutory and constitutional rights. (See, *supra,* Arguments I-III.) He continues to await court orders, but cannot be "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." (*In re Davis, supra,* 8 Cal.3d at p. 801.) To remedy the violation of his rights, strict application of the statutory commitment period within the rule of reasonableness is necessary in line with "the duty and prerogative of courts to independently interpret constitutional principles." (*Albert C., supra,* 3 Cal.5th at p. 494. p. 493.) At a minimum, the matter should be remanded for application of that rule with recognition that

"not only did the Legislature intend that a defendant be afforded a hearing under § 1372, but it also intended that such a defendant would not be held beyond his maximum commitment period." (*Carr II, supra,* 59 Cal.App.5th at p. 1147.)

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that after remand the motion to dismiss must be granted, with release, refiling of charges, bail determination, and/or conservatorship proceedings to be considered thereafter.

DATED: July 8, 2022

Respectfully Submitted,

/s/ B.C. McComas

BRIAN C. McCOMAS

CERTIFICATE OF COMPLIANCE

Pursuant to the California Rules of Court, Rules 8.520(c), I hereby certify that the attached memorandum for points and authorities is written in Century725 BT in 13 point font and contains 8,356 words.

DATED: July 8, 2022

Respectfully Submitted,

/s/ B.C. McComas

BRIAN C. McCOMAS

PROOF OF SERVICE

I, Brian C. McComas, declare as follows:

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

On July 8, 2022, I served the attached **PETITIONER'S REPLY BRIEF ON THE MERITS** by placing a true copy thereof in an envelope addressed to the person named below at the address shown, and by sealing and depositing said envelope in the United States Mail in San Francisco, California, with postage thereon fully prepaid or by electronic filing:

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

On July 8, 2022, I served the attached **PETITIONER'S REPLY BRIEF ON THE MERITS** by transmitting a PDF version of this document by electronic mailing to each of the following:

Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102-7004 SFAG.Docketing@doj.ca.gov Honorable Judge Eric S. Geffon C/O Clerk of the Court, Santa Clara County Superior Court 190 W Hedding St., San Jose, CA 95110 egeffon@scscourt.org	Sixth District Appellate Program 95 South Market St., Ste. 570 San Jose CA 95113 sdapattorneys@sdap.org Sixth District Court of Appeal C/O Clerk of the Court 333 W. Santa Clara, Ste. 1060 San Jose, CA 95113 Sixth.District@jud.ca.gov

Santa Clara County DA Office Appeals Division 333 W Santa Clara St #1060, San Jose, CA 95113 motions_dropbox@dao.sccgov.org Sixth District Court of Appeal C/O Clerk of the Court 333 West Santa Clara Street Suite 1060 San Jose, CA 95113 (Via Truefiling)	CPDA Diana Alicia Garrido Office of the Public Defender 800 Ferry Street Martinez, CA 94553 Diana.Garrido@pd.cccounty.us

I declare under penalty of perjury that the foregoing is true and correct. Signed on July 8, 2022 at San Francisco, California.

/s/ B.C. McComas

BRIAN C. McCOMAS

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. S.C. (PEOPLE)**
Case Number: **S272129**
Lower Court Case Number: **H049016**

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

7/8/2022

Date

/s/Brian McComas

Signature

McComas, Brian (273161)

Last Name, First Name (PNum)

Law Office of B.C. McComas

Law Firm