IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF AMICI CURIAE CALIFORNIA PUBLIC DEFENDERS ASSOCIATION AND CONTRA COSTA COUNTY PUBLIC DEFENDER OFFICE IN SUPPORT OF PETITIONER MARIO RODRIGUEZ

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APPLICATION OF CONTRA COSTA COUNTY PUBLIC DEFENDER OFFICE AND CALIFORNIA PUBLIC DEFENDERS ASSOCIATION TO APPEAR AS AMICI CURIAE ON BEHALF OF PETITIONER MARIO RODRIGUEZ

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

California Public Defender's Association (CPDA) and the Contra Costa County Public Defender Office (CCPD) apply, under California Rules of Court, Rule 8.520(f) for permission to appear as amici curiae on behalf of Mario Rodriguez. This application summarizes the nature and history of your amici and our interest in the issue presented in this case. It also demonstrates that our

proposed brief will assist the court in the analysis and consideration of the issues presented.

I. IDENTIFICATION OF CPDA

With more than 4,000 members, the California Public Defenders Association is the largest association of criminal defense attorneys and public defenders in California. We are an important voice of the criminal defense bar. CPDA has been a leader in continuing legal education for defense attorneys for almost 40 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education, Criminal Law Specialization Education, and Appellate Law Specialization Education. The CPDA is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, §6070, subd. (b).)

The courts have granted CPDA leave to appear as amicus curiae in numerous important California cases. (See, e.g., *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691 [statewide deadline for admission of incompetent to stand trial individuals to mental health facilities for provision of competency restoration services]; *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-preliminary hearing discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal]; *People v. Nelson* (2008) 43

Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [Pitchess procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable "parole search" without knowledge of the suspect's parole status]; *Manduley v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as amicus curiae in the United State Supreme Court. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

CPDA is also involved in legislative solutions. Members of the CPDA Legislative Committee and our lobbyists attend key state Senate and Assembly committee meetings on a weekly basis, and CPDA takes positions on nearly every bill relating to criminal justice, including bills relating to the treatment of defendants deemed incompetent to stand trial. Over the past three years, CPDA has supported amendments to Penal Code section 1370 thereby reducing the three-year maximum commitment to two years as well as for the diversion of mentally ill inmates to community-based treatment. CPDA has also partnered with other statewide organizations including the American Civil Liberties Union (ACLU), Disability Rights

California (DRC), and California Attorneys for Criminal Justice (CACJ) to provide recommendations to the California Department of State Hospitals (DSH), relating to timely admission of individuals found incompetent to stand trial during the COVID-19 pandemic.

II. IDENTIFICATION OF THE CONTRA COSTA COUNTY PUBLIC DEFENDER.

CCPD represents many incompetent to stand trial (IST) individuals in all stages of competenc litigation. Over the past several years, CCPD has successfully advocated for an admission deadline for our mentally ill and incompetent clients and for sanctions when DSH has failed to comply the court's order. (See *In re Loveton* (2016) 244 Cal.App.4th 1025; *People v. Hooper* (2019) 40 Cal.App.5th 685.)

CCPD represents thousands of indigent defendants each year, many of whom are similarly situated to Petitioner Mario Rodriguez. We represented Marc Carr in *People v. Carr* (2021) 59 Cal.App.5th 1136 (*Carr II*), which the Sixth District Court of Appeal disagreed with in *Rodriguez v. Superior Court* (2021) 70 Cal.App.5th 628.

III. STATEMENT OF INTEREST OF AMICI.

The membership of CPDA and CCPD have a significant interest in the subject matter of this case. CPDA's members include thousands of California deputy public defenders and defense attorneys who represent nearly every indigent criminal defendant who is committed for competency restoration

treatment pursuant to state law. Rules governing the length of time mentally ill persons may remain confined based on incompetency alone, and what constitutes confinement for purposes of calculating maximum commitment time, greatly impact these highly vulnerable clients. Indigent defendants represented by CPDA, CCPD and other public defenders statewide would be negatively impacted by the definition and calculation of commitment at issue in this case.

This brief is not offered to restate respondents' arguments but rather to provide an additional perspective in support of the superior court's balance of interests and resulting order. Proposed amici are well-positioned to offer this analysis, having successfully litigated *Carr II,* where the First District Court of Appeal held that a court order, not a restoration certificate, terminates a commitment. (*Carr II, supra*, 59 Cal.App.5th at 1140.)

No party, or counsel for any party, in this matter has authored any part of the accompanying proposed Amici Curiae brief, nor has any person or entity made any monetary contributions to fund the preparation or submission of this brief.

Dated: July 18, 2022

Respectfully submitted,

_____/s/_____
Diana Garrido
Deputy Public Defender,
Contra Costa County, and
California Public Defenders
Association

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

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

PROPOSED AMICUS CURIAE BRIEF OF CONTRA COSTA COUNTY PUBLIC DEFENDER AND CALIFORNIA PUBLIC DEFENDERS ASSOCIATION ON BEHALF OF PETITIONER MARIO RODRIGUEZ

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

California Public Defender's Association (CPDA) and the Contra Costa County Public Defender Office (CCPD) hereby submit this proposed amicus curiae brief on behalf of Mario Rodriguez, under California Rules of Court, Rule 8.520(f).

INTRODUCTION

"The Legislature has provided a comprehensive and orderly process for evaluating defendants who are incompetent to stand trial and returning them to court when their competence is regained." (*People v. Carr* (2021) 59 Cal.App.5th 1136, 1142-1143 (*Carr II*).) If a criminal defendant is found incompetent to stand trial (IST), they may be committed to a mental institution to receive treatment and competency restoration services. (Penal Code[1] §§ 1370 [mental illness], 1370.1 [developmental disability].) Bail must be exonerated upon commitment. (§ 1371.) The commitment may last no longer than two years. (§ 1370, subd. (c)(1); § 1370.1, subd. (c)(1)(A).) If a designated health official determines the IST individual has regained competence, the official must file a certificate of restoration with the committing court. (§ 1372, subd. (a)(1).) The court must then decide whether to approve the certificate by determining whether the IST individual has in fact regained competence. (§ 1372, subd. (c).) If the court finds the individual is now competent, it must convene a bail hearing (§ 1372, subd. (d)) and determine whether placement in a facility for competency maintenance services is appropriate (§ 1372, subd. (e)).

On January 19, 2021 the First District Court of Appeal held that a restoration certificate initiates further competency proceedings, but the commitment does not terminate until there

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[1] Hereinafter, all undesignated statutory references are to the Penal Code.

is a judicial determination of competency. (*Carr II, supra,* 59 Cal.App.5th 1136 at 1140, 1144.[2]) This is because "it is the trial court, not a state health official, that determines whether the defendant has been restored to competence." (*Id.* at 1145.) If a restoration certificate terminates the commitment, there would be no reason to require the committing court to approve the certification, as is expressly required by the statutory scheme. (*Id*.) The fact that bail, or alternatively placement in a facility for competency maintenance services, is only authorized upon a judicial finding of competence militates toward terminating commitment only after such a finding is made. (*Id*.) Permitting a restoration certificate to terminate a commitment undercuts the overarching goal of the incompetency commitment scheme, which is "to address concerns of unfairness and possible harm that result from prolonged or indefinite commitments." (*Id.* at 1146-1147; see also *In re Davis* (1973) 8 Cal.3d 798.)

In *Rodriguez v. Superior Court*, the Sixth District Court of Appeal disagreed with *Carr II* and held that a restoration certificate terminates a commitment, and that the commitment is defined as time during which an IST individual is actively receiving competency restoration services (i.e., time actually in the hospital). (*Rodriguez, supra*, 70 Cal.App.5th at 652-653.) *Rodriguez* was wrongly decided and should be reversed.

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[2] On April 28, 2021 this Court denied a request to depublish *Carr II* and declined to review the matter on its own motion. (Case No. S267742.)

ARGUMENT

I. RODRIGUEZ UNCONSTITUTIONALLY CONDEMNS UNCOMMITTED MENTALLY ILL INDIVIDUALS TO BE HELD WITHOUT BAIL DURING THE INDEFINITE PERIOD BETWEEN THE FILING OF A RESTORATION CERTIFICATE AND JUDICIAL DETERMINATION OF COMPETENCE.

When IST individuals are committed for competency restoration treatment, bail is exonerated. (§ 1371.) They are held in lieu of bail to protect the public. (*Department of Mental Hygiene vs. Hawley* (1963) 59 Cal.2d 247, 255.) No bail hearing is permitted unless and until a court determines that the individual has been restored to competency; mere filing of a restoration certificate does not trigger a bail hearing. (§ 1372, subd. (d).) Substantial delays often occur between the filing of the restoration certificate and the competency restoration hearing, as occurred in this case. During this period, because the individual is still committed, she is held without bail.

Rodriguez designates this period as one in which the individual is not committed yet is still treated as a committed person for purposes of bail. Thus, according to *Rodriguez*, for a statutorily unlimited period, uncommitted individuals are confined without the right to request bail or release on their own recognizance (OR). But barring unusual cases where public safety is at risk if the individual is released, confinement without affordable bail or non-monetary release conditions offends equal protection and due process. (*In re Kenneth Humphrey* (2021) 11 Cal.5th 135, 143.) The unconstitutional nature of this period of

indefinite commitment without bail or OR is compounded by the likelihood that many of these individuals will later be found by a court to have been IST all along. (§ 1372.) Of course, indefinite commitment based on incompetence to stand trial violates equal protection and due process. (*In re Davis* (1973) 8 Cal.3d 798, 801 [citing *Jackson v. Indiana* (1972) 406 U.S. 715].) It also undermines the purpose of the competency statutes, which is to reduce prolonged commitments. (*Carr II*, *supra*, 59 Cal.App.5th at 1146; *In re Davis, supra.*)

II. THE ONLY "LEGAL FORCE AND EFFECT" A RESTORATION CERTIFICATE HAS IS TO RETURN A DEFENDANT TO COURT FOR A COMPETENCY RESTORATION HEARING.

In deciding that the restoration certificate fixes the end date of the commitment period, *Rodriguez* relied on this Court's holding in *People v. Rells* that a restoration certificate "'has legal force and effect in and of itself'" and that the filing of the certificate "triggers a presumption of mental competency under section 1372." (*Rodriguez, supra*, 70 Cal.App.5th at 652 [quoting and citing *People v. Rells* (2000) 22 Cal.4th 860, 867-871].) *Rodriguez* both selectively quoted and oversimplified the *Rells* holding, which concerned the burden of proof at a competency restoration hearing. The *Rells* Court explained:

> To trigger a hearing on a defendant's recovery of mental competence, a specified mental health official must have filed a certificate of restoration thereto. . . in this regard the official is not an expert witness and the certificate is not testimonial opinion. The official's filing of the certificate

> has legal force and effect in and of itself. It causes the defendant to be returned to court for further proceedings. (*Id*. at 868.)

Thus, the restoration certificate's "legal force and effect" is not to terminate the commitment, but rather to return the defendant to court for a competency restoration hearing. Nor does the presumption of competence upon filing a restoration certificate support the *Rodriguez* holding. As the *Rells* Court explained, the presumption of competence unless proved by a preponderance to be otherwise applies at any trial on a defendant's competency. (*Id*. at 867.) The presumption is always the same whether at an initial trial on competency, mandatory retrial for persons committed for 18 months, or a competency restoration hearing. (*Ibid*.) The presumption is the same whether it conflicts with doubts expressed by the court, opinions of counsel, and state health officials who have not certified restoration at 18 months, or whether it is consistent with the filing of a competency restoration certificate. (*Ibid*.)

III. THE LEGISLATIVE HISTORY AND STATUTORY CONSTRUCTION CLARIFY THAT THE LEGISLATURE INTENDED TO END COMMITMENT UPON JUDICIAL APPROVAL OF A RESTORATION CERTIFICATE.

Section 1372 does not explicitly state that a commitment ends upon judicial approval of a restoration certificate. However, the legislative history clarifies this intent. From enactment in 1872 to 1980, a restoration certificate terminated commitment. (*Ex parte Phyle* (1947) 30 Cal.2d 838, 843-844; *People v. Lindley*

(1945) 26 Cal.2d 780, 788-789; *People v. Ashley* (1963) 59 Cal.2d 339, 359.) In 1974, Assembly Bill No. 1529 amended section 1372 to provide for a bail hearing once the certificate terminated the commitment but continued to vest the health official with the exclusive authority to terminate commitment. (Stats. 1974, ch. 1511, § 8.) In 1980, the legislature added subdivision (d) to section 1372 so that the reinstatement of criminal proceedings and bail hearing occurred after the "court approves the certificate of restoration." (See Stats. 1980, ch. 547, § 14.) The shift in autonomy suggests the Legislature intended the court, as opposed to the health official, to terminate commitment once it reinstates criminal proceedings. *Rodriguez* did not examine this history, instead focusing on inapposite legislative history from a bill reducing the maximum period of commitment from three years to two. (*Rodriguez, supra*, 70 Cal.App.5th at 653-654.)

In cases where a defendant is certified as restored to competency but is later found incompetent by a judge at a section 1372 hearing, *Rodriguez* has the effect of tolling the commitment time between the certificate and judicial finding. But section 1372 does not provide for such tolling. Competency proceedings are "special proceedings," in which jurisdiction is derived solely by statute. (*People v. Quiroz* (2016) 244 Cal.App.4th 1371, 1379.) In other civil commitment statutes, the Legislature specifies tolling procedures when it expects time to toll. (See § 1600.5 [commitment time tolled for individuals committed pursuant to Welf. & Inst. Code § 6316 (Mentally Disordered Sex Offenders), § 1026.5 (Not Guilty by Reason of Insanity), or § 2972 (Mentally

Disordered Offender) while placed on outpatient treatment], and § 4011.6 [statutory time limits for arraignment and trial tolled while person is detained in a facility under the Lanterman-Petris-Short Act].) If the Legislature intended for time to toll between the filing of a restoration certificate and a judicial determination of competency, it certainly knew how to include such a provision. The Legislature's silence on tolling speaks to its intent that the commitment time does not toll. (See *Quiroz*, *supra*, 244 Cal.App.4th at 1380 [the Legislature's silence confirmed that it did not intend to require a hearing once a defendant exceeded the maximum commitment].)

A competency commitment thus begins with a court-issued commitment order and ends with a court finding that IST individual is competent, and therefore the commitment is no longer necessary. Contrary to Real Party in Interest's argument, this straightforward rule does not in any way alter the settled procedures for return to court when there is no substantial likelihood of restoration to competence within 90 days of commitment (§ 1370, subd. (b)(1)(A)) or 90 days prior to the end of the two-year commitment (§ 1370, subd. (c)(1)). (Answer Brief on the Merits (ABM) at pp. 27-28, 40.) Far from resulting in indefinite commitment, those procedures provide for prompt return to court within 10 days. (§ 1370, subd. (b)(1)(A).) The IST individual is then subject to further order of the court, which may include investigation of conservatorship or dismissal pursuant to section 1385. (§ 1370, subds. (b)(1)(A), (c)(1), (c)(3), (d).)

IV. "COMMITMENT" INCLUDES ALL TIME FROM THE COMMITMENT ORDER UNTIL A JUDICIAL DETERMINATION REGARDING COMPETENCY, AND NOT JUST TIME IN A MENTAL HEALTH TREATMENT FACILITY.

Rodriguez erred in defining commitment as consisting only of time in the hospital while actively receiving competency restoration services. (*Rodriguez, supra*, 70 Cal.App.5th at 654 [citing *People v. G.H.* (2014) 230 Cal.App.4th 1548 and cases cited therein].) Unfortunately, the *G.H.* court sowed considerable confusion by stating the following: "Section 1370, subdivision (c)(1)'s three-year statutory limit applies to the total period actually spent in commitment at a mental institution. (*In re Polk* (1999) 71 Cal.App.4th 1230, 1238.)" (*G.H.*, *supra*, 230 Cal.App.4th at 1558-1559.) Though *G.H.* cited *Polk* for this proposition, *Polk* does not anywhere state such a rule. Rather, *Polk* held that in cases where a defendant is committed multiple times on the same charges, the three-year commitment time limit applied to the aggregate commitments (i.e., the time did not start to run anew upon each commitment). (*Polk*, *supra*, 71 Cal.App.4th at 1232.) *G.H.* paraphrased this holding in a manner that distorted its actual meaning.

Further, *G.H.* concerned calculation of custody credit for sentencing purposes, as did the cases therein that *Rodriguez* also relied on. (*G.H.*, *supra*, 230 Cal.App.4th at 1553; Slip Opn., p. 25-26 [also citing *People v. Reynolds* (2011) 196 Cal.App.4th 801].) *People v. Reynolds* focused on whether section 2900.5 and 4019

conduct credits should be awarded toward an IST commitment.[3] In *Reynolds*, less than three years had elapsed between the offense, when Reynolds was taken into custody, and the date the court rejected his argument that he should be entitled to conduct credits. (*Id*. at 804-806.) Reynolds nonetheless urged the court to find he exceeded the three-year maximum by applying conduct credits, as was done in *In re Banks* (1979) 88 Cal.App.3d 864. (*Id*. at 807.) The *Reynolds* court found equal protection was not offended because unlike in *Banks*, Reynolds' maximum sentence for the charged crimes exceeded the maximum IST commitment of three years. Thus, there was no danger Reynolds would serve more time than similarly situated defendants because of the then-prohibition against application of conduct credits against commitment time. (*Id*. at 808-809.)

Rodriguez thus erroneously conflated custody credits for sentencing purposes with custody credits for commitment purposes. The two are distinct and conceptually unrelated calculations. The former forbade award of pre-sentence good time credits while a defendant was being treated in the hospital because such an award would reduce the therapy period, and was thus inconsistent with competency treatment goals (*G.H.*, *supra*,

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[3] Real Party in Interest's ABM cites *Reyolds* for the proposition that "time spent in county jail prior to transportation to the state hospital is not counted towards the *commitment* for restoration treatment." (ABM, p. 11.) *Reynolds* nowhere states this alleged holding.

230 Cal.App.4th at 1558)[4]; the latter includes all judicial commitment time to ensure IST individuals are not indefinitely confined solely because of their incompetency (*Carr II*, *supra*, 59 Cal.App.5th at 1146). Whether custody good time credits are awarded toward a future potential sentence is simply not germane when deciding whether custody credits count toward a maximum commitment that is based on incompetence. *Rodriguez* erred in relying on sentencing cases in analyzing whether time inside or outside the hospital counts toward the maximum commitment.

Rodriguez did not address the substantial delays that often occur between the time IST individuals are committed to a mental institution and the time they are admitted. (See, e.g., *In re Williams* (2014) 228 Cal.App.4th 989; *In re Loveton* (2016) 244 Cal.App.4th 1025; *People v. Kareem A.* (2020) 46 Cal.App.5th 58; *People v. Hooper* (2019) 40 Cal.App.5th 685; *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) A rule that fixes commitment as encompassing only time in a mental institution risks extending IST individuals' commitments by months or even years beyond the statutory maximum. (See, e.g., *Carr II*, *supra*, 59 Cal.App.5th at 1140-1142 [two judicial findings of incompetence were made and over two years elapsed without Carr having been placed in a mental institution]; *Medina v.*

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[4] SB 317 amended section 4019 to award good time credits for time in a state hospital or other mental health treatment facility as of January 1, 2022.

Superior Court (2021) 65 Cal.App.5th 1197, 1201-1202 [Department of Developmental Services disagreed with judicial finding of incompetence pursuant to developmental disability and refused to place Medina for over three years].)

Carr II is instructive. Carr was committed in August 2015, following an earlier finding that he was IST. (*Carr II, supra*, 59 Cal.App.5th at 1140.) For several months, the Department of Developmental Services and DSH refused the court's commitment order. (*Id.* at 1140-1141.) Instead, in March 2016, a DSH psychiatrist issued a restoration certificate, without ever having placed or treated Carr. (*Id.* at 1141.) Carr argued the certificate was a sham. (*Id.*) The competency restoration hearing began in February 2018. In June 2018, the court *again* found Carr incompetent to stand trial. (*Id.*) According to *Rodriguez*, the time between August 2015 and June 2018 should have been excluded from Carr's commitment time, though the court repeatedly found Carr was incompetent and had never found to the contrary. Real Party in Interest dismisses this set of facts as sufficiently unusual that habeas procedures are equipped to deal with it. (ABM, p. 35, fn. 13; p. 37, fn.14.) But all evidence indicates that DDS and DDS routinely and intransigently violate IST individuals' rights to prompt placement and treatment, no matter how many courts order them to comply with their statutory and constitutional obligations, and regardless of IST individuals' own attempts to reduce delays. (See, e.g., *Stiavetti v. Clendenin, supra,* 65 Cal.App.5th at 694.)

The *Rodriguez* holding thus not only violates due process (*In re Davis, supra*), it creates perverse incentives for health officials to simply refuse to place and treat IST individuals for years and leaves the IST individuals without recourse to challenge their confinement on the basis that the maximum commitment has been exceeded.

V. THE *RODRIGUEZ* RULE IS UNWORKABLE AND INVITES SUBSTANTIAL LITIGATION AS TO ITS EXCEPTIONS.

The substantial delays in *Rodriguez* were primarily due to courtroom unavailability because of the COVID-19 pandemic. (*Rodriguez, supra*, 70 Cal.App.5th at 636-639.) The *Rodriguez* holding avoided releasing Mr. Rodriguez and would also avoid releasing similarly situated individuals, whose charges are very serious and whose competency restoration hearings were delayed by the pandemic. It is hard cases like these that make bad law. *Rodriguez* announced an unworkable standard that, if left undisturbed, will be riddled with exceptions in short order. Indeed, *Rodriguez* already announced two foreseeable exceptions to the rule: additional time may count toward commitment if a defendant is wrongfully denied competency restoration treatment or if a defendant is not transported to and from the treatment facility in a timely manner. (*Id*. at 653.) Given that IST defendants are rarely transported in a timely manner, the exceptions already threaten to swallow the rule. At the least, the two enumerated exceptions will require time consuming and

unwieldy litigation about when denial of services is wrongful and whether transportation delays warrant extra commitment credits.

Courts need a bright-line, workable rule that is based in statute and reason. That rule is set forth in *Carr II*. Commitments should start with a commitment order and end with a judicial determination of competency, i.e., a judicial finding that commitment is no longer warranted.

CONCLUSION

Carr II's holding that a commitment terminates upon a judicial finding of competence is commonsense, is consistent with the statutory scheme, and avoids constitutional violations. It stands to reason that a commitment based on a defendant's incompetency ends *after* a defendant is found competent, not *before*.

For the reasons stated above, amici CPDA and CCPD respectfully request this Court reverse.

Dated: July 18, 2022

Respectfully submitted,

_____/s/_____
Diana Garrido
Deputy Public Defender,
Contra Costa County, and
California Public Defenders
Association

CERTIFICATION OF WORD COUNT

I certify that the word count for the application and proposed amicus curiae brief, including footnotes and excluding the tables, signature blocks and this certificate, is 4,006 words as determined by Microsoft Word.

Executed on July 18, 2022, at Martinez, California.

_____/s/_____
Diana Garrido
Deputy Public Defender,
Contra Costa County, and
California Public Defenders
Association

CERTIFICATE OF ELECTRONIC SERVICE

I, Diana Garrido, the undersigned, declare that I am over the age of eighteen years, employed in the County of Contra Costa, State of California, and not a party to the cause described in the affixed document. My business address is 800 Ferry Street, Martinez, California 94553

On July 18, 2022, I served a true copy of the digitally attached Application for Leave to File Amicus Brief and Proposed Amicus Brief of Amici Curiae California Public Defenders Association and Contra Costa County Public Defender Office, in the matter of *Mario Rodriguez v. Superior Court* (No. S272129) by and through the Court's TrueFiling system as follows:

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

Executed on July 18, 2022, at Martinez, California.

_____/s/_____
Diana Garrido

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

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

7/18/2022

Date

/s/Diana Garrido

Signature

Garrido, Diana (243343)

Last Name, First Name (PNum)

Contra Costa County Public Defender

Law Firm