

No. S277072

In the Supreme Court of the State of California

IN RE VICTOR TELLEZ ON HABEAS CORPUS

Fourth Appellate District, Case No. D079716
San Diego County Superior Court, Case No. SCE369196
The Honorable Roderick W. Shelton, Judge

ANSWER TO AMICUS CURIAE BRIEF

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INTRODUCTION

The parties' briefing addresses whether the Sixth Amendment requires criminal defense counsel to advise a defendant that a guilty plea may lead to commitment proceedings under the Sexually Violent Predator Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.). Amici, the California Public Defenders Association and the Contra Costa County Public Defender, take the position that the Sixth Amendment compels such advice. Like Tellez, they principally rely on *Padilla v. Kentucky* (2010) 559 U.S. 356, in which the United States Supreme Court held that defense counsel are constitutionally obligated to provide advice about the deportation consequences of a guilty plea. (*Id.* at p. 374.) Amici reiterate arguments made by Tellez that SVP proceedings, like deportation, are "inextricably intertwined with a criminal conviction." (Public Defenders Br. 17.) Amici also argue that it is "standard practice" in California for defense attorneys to advise clients regarding potential consequences under the SVPA, and in support of that argument they submit declarations from several public defenders. (Public Defenders Br. 19-21 & Exhs. A-E.)

As explained in the People's opening brief, however, potential SVP consequences of a plea are not inextricably intertwined with the criminal process in the way that the court in *Padilla* described deportation, so as to implicate a constitutional duty to provide advice about those consequences. SVP commitment is far from an automatic result of conviction of a qualifying offense because SVP commitment occurs only after the completion of multi-step civil proceedings that screen out the

substantial majority of cases. (ABM 26-30.) Moreover, although SVP commitment results in a significant restraint on liberty, the purpose of commitment is rehabilitation, not punishment. That qualitatively distinguishes SVP commitment from deportation—a sanction that the *Padilla* court described as akin to banishment. (ABM 30-32.) And although it is generally good practice to advise a criminal defendant about the possible SVP consequences of a guilty plea—as reflected in the policies of the several public defender offices described in the declarations submitted by amici—there is no overwhelming consensus on that practice like the one that supported a categorical constitutional rule concerning immigration consequences in *Padilla*. (ABM 32-35.)

As amici candidly acknowledge, what they seek here is “a ‘whole new field of . . . plea bargaining law.’” (Public Defenders Br. 14.) But the *Padilla* court itself cautioned against the creation of new categorical rules for defense counsel under the Sixth Amendment. (*Padilla, supra*, 559 U.S. at p. 372.) The rule announced in *Padilla* was justified only because of the particularly close connection between deportation and criminal punishment. (*Id.* at pp. 363-364, 366, 373.) Potential SVP consequences do not implicate the considerations that were at issue in *Padilla* to the same degree, and the categorical Sixth Amendment rule that amici urge is consequently unwarranted.¹

¹ It would be proper, however, for this Court to exercise its inherent supervisory authority to require trial courts to inform defendants in appropriate cases that a guilty plea may result in future SVP commitment proceedings against him or her. (ABM
(continued...))

ARGUMENT

I. SVP PROCEEDINGS ARE NOT INTIMATELY RELATED TO THE CRIMINAL PROCESS LIKE THE DEPORTATION CONSEQUENCES DESCRIBED IN *PADILLA*

Amici contend that SVP consequences of a guilty plea are comparable to the deportation consequences described in *Padilla* for Sixth Amendment purposes. They argue that SVP proceedings are intimately related to the criminal process because an individual with a qualifying conviction is automatically subject to SVP screening under the Welfare and Institutions Code. (Public Defenders Br. 18.)² Amici also contend that “SVP consequences are even more bound up with the criminal process” than deportation because “the only way that someone can face SVP proceedings is if he or she has a qualifying criminal conviction.” (Public Defenders Br. 17-18.)

(...continued)

41-45.) Amici agree that this Court should exercise its supervisory power in this manner to provide added assurance that guilty pleas are knowing, intelligent, and voluntary. (Public Defenders Br. 21-24.)

² See Welf. & Inst. Code, § 6601, subd. (a) (requiring Secretary of Department of Corrections and Rehabilitation to screen an eligible inmate at least six months prior to the scheduled release date and refer the person for evaluation in accordance with section 6601 if it is determined that the inmate “may be a sexually violent predator”); Welf. & Inst. Code, § 6601, subd. (b) (requiring a full evaluation of an inmate if the Department of Corrections and Rehabilitation and the Board of Parole Hearings determine that the inmate is “likely” to meet the SVP criteria).

Amici misunderstand why *Padilla* deemed deportation to be so closely connected with the criminal process as to implicate the Sixth Amendment. *Padilla* focused on the penal nature of deportation and how changes in immigration law have made removal nearly an automatic de jure result for a broad class of noncitizen offenders. (*Padilla, supra*, 559 U.S. at pp. 364-366.) The Court explained that our country’s laws have “enmeshed criminal convictions and the penalty of deportation for nearly a century” and that “deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.” (*Id.* at pp. 364-366.) Furthermore, immigration reforms have expanded the class of deportable offenses and limited the authority of judges to provide relief so that deportation or removal “is now virtually inevitable for a vast number of noncitizens convicted of crimes.” (*Id.* at p. 360.) For these reasons, the Court found it “‘most difficult’ to divorce the penalty from the conviction in the deportation context.” (*Id.* at p. 366.)

SVP commitment, on the other hand, is far from an assured legal consequence of a criminal conviction. As discussed in the People’s answer brief, the SVP commitment process involves a number of steps and requirements, including an initial screening and determination that the individual is “likely” to meet the SVP criteria; an evaluation by two doctors, who must concur that that the individual meets the criteria for commitment; the filing of a commitment petition; and a trial on the petition with procedural safeguards, such as the right to a jury trial and the requirement

that the People prove the SVP commitment criteria beyond a reasonable doubt. (ABM 26-29; see Welf. & Inst. Code, §§ 6601, 6602, subd. (a), 6603, 6604.) In the vast majority of cases where individuals are initially screened, commitment petitions are not ultimately filed. (ABM 27-28.)

Nor is SVP commitment akin to a penal consequence, like deportation. Instead, the SVPA creates a civil scheme that has as its goal the treatment of mentally ill individuals. (ABM 30-31.) Certainly, civil commitment entails a significant restraint on liberty, but it does not compare to the permanent sanction of deportation, which the *Padilla* court described as “the equivalent of banishment or exile.” (*Padilla, supra*, 559 U.S. at pp. 373-374.) Because the purpose of SVP commitment is treatment, not punishment, a committed patient is reevaluated every year and may petition the court for conditional release or unconditional discharge, which is the ultimate goal of the regime. (Welfare & Inst. Code, §§ 6604.9, 6605, 6608; ABM 29.)

In *Padilla*, the United States Supreme Court observed that “we must be especially careful about recognizing new grounds for attacking the validity of guilty pleas.” (*Padilla, supra*, 559 U.S. at p. 372.) It nonetheless held that the Sixth Amendment requires advice about deportation consequences of a guilty plea because those consequences are so closely related to the criminal conviction and resulting punishment. (*Id.* at pp. 365-366, 372.) There is no comparably close relationship, however, between a criminal conviction and potential SVP commitment. And there is accordingly no strong reason to expand the Sixth Amendment to

require defense attorneys to advise their clients of potential SVP consequences of a guilty plea.

II. PROVIDING ADVICE ABOUT POTENTIAL SVP CONSEQUENCES IS GOOD PRACTICE, BUT THAT DOES NOT MEAN IT IS CONSTITUTIONALLY COMPELLED

Amici also contend that the weight of professional norms favors a Sixth Amendment requirement that defense attorneys provide advice about the potential SVP consequences of a guilty plea. (Public Defenders Br. 19-21.) In support of that argument, amici submit declarations from the Contra Costa County, Los Angeles County, San Bernardino County, and San Francisco County public defenders as well as a policy statement from the Ventura County Public Defender. (Public Defenders Br. Exhs. A-E.) According to the declarations, these public defender offices train their attorneys to advise clients of potential consequences under the SVPA. (*Ibid.*) Some offices also have experts on the SVPA who can advise other attorneys. (*Ibid.*)³

As the People acknowledged in the answer brief, “if counsel can provide accurate and helpful advice about potential future civil commitment proceedings under the SVPA it is good practice

³ California Rules of Court, rules 8.204(d) and 8.520(g) permit certain citable materials—such as local or out-of-state regulations or rules—to be attached to an appellate brief. The public defender declarations, however, are evidentiary in nature and are not part of the record in this case, not having been submitted during the habeas proceedings below. They are therefore not properly before this Court. In any event, the declarations do not support amici’s argument that advice about potential SVP consequences of a plea is constitutionally compelled.

to give such advice.” (ABM 35.) But the Sixth Amendment does not compel every good practice. (ABM 35-38; see also *Jones v. Barnes* (1983) 463 U.S. 745, 754, fn. 6 [“In any event, the fact that the ABA may have chosen to recognize a given practice as desirable or appropriate does not mean that that practice is required by the Constitution”].) The imposition of numerous, detailed rules for criminal defense attorneys is undesirable because, among other things, it would interfere with the independence of counsel and “could distract counsel from the overriding mission of vigorous advocacy of the defendant’s cause.” (*Strickland v. Washington* (1984) 466 U.S. 668, 689; see ABM 35-36.)

In *Padilla*, the Court gave weight to the practices and expectations of the legal community because “authorities of every stripe,” including the American Bar Association, defense and public defender organizations, treatises, and state and local bar publications, “universally require defense attorneys to advise as to the risk of deportation consequences for non-citizen clients” (*Padilla, supra*, 559 U.S. at p. 367; see also *id.* at pp. 367-368 [standards have been “adapted to deal with the intersection of modern criminal prosecutions and immigration law” and universally require defense attorneys to advise clients about the risk of deportation].) Amici have not made a comparable showing with respect to advice about potential SVP consequences. The guidance of some bar organizations along with the practices of a handful of public defender offices, while laudable, do not amount to the type of overwhelming consensus

that would support a categorical Sixth Amendment rule under the rationale of *Padilla*. (See ABM 32-35.)

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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November 30, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO AMICUS CURIAE BRIEF uses a 13 point Century Schoolbook font and contains 2,010 words.

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N. Rodriguez
Declarant

N. Rodriguez
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Case Name: **TELLEZ (VICTOR RAUL) ON
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Case Number: **S277072**

Lower Court Case Number: **D079716**

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