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IN THE SUPREME COURT OF CALIFORNIA

MARIO RODRIGUEZ,
Petitioner,

vs.

SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent,

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

After a Decision by the Sixth Appellate District, No. H049016
Santa Clara Superior Court, Nos. C1650275 and C1647395

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF SILICON VALLEY DE-BUG IN SUPPORT OF PETITIONER MARIO RODRIGUEZ

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*Justin R. Sarno, No. 229803
justin.sarno@us.dlapiper.com
DLA PIPER LLP (US)
550 S. Hope Street, Ste. 2400
Los Angeles, CA 90071-7769
Telephone: (213) 330-7735
Facsimile: (213) 330-7535

Attorneys for Amicus Curiae,
SILICON VALLEY DE-BUG

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

Under California Rules of Court, rule 8.520(f), Silicon Valley De-Bug requests leave to file the attached amicus curiae brief.[1]

[1] Silicon Valley De-Bug certifies that no person or entity other than Silicon Valley De-Bug and its counsel authored this proposed brief in whole or in part and that no person or entity other than Silicon Valley De-Bug, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

I. IDENTIFICATION OF SILICON VALLEY DE-BUG

Silicon Valley De-Bug (www.siliconvalleydebug.org) is a non-profit organization that uses community organizing, advocacy, and storytelling to work for racial and economic justice. Since 2001, Silicon Valley De-Bug operated under a fiscal sponsor called "New America Media," until 2014, when Silicon Valley De-Bug formed its own non-profit entity.

Silicon Valley De-Bug creates and leads campaigns and policy initiatives focusing on police accountability, justice reform, immigration reform, and economic rights. Silicon Valley De-Bug's local organizing of families impacted by incarceration has centered their work in challenging detentions in Santa Clara County jails. Although its community efforts are primarily local, including the San Jose and Santa Clara County areas, Silicon Valley De-Bug's work also encompasses impact and effect of emerging state legislation, while also embracing a national reach through a community organizing model known as "Participatory Defense."

Through this model, families can partner with public defenders to impact the outcome of cases where their loved ones are facing the complexities of the criminal court system. Silicon Valley De-Bug has also started training other community organizations across the country, including the National Participatory Defense Network, which represents over 40 organizations in over 35 cities.

II. STATEMENT OF INTEREST OF AMICI

While the issue confronting this Court addresses a discrete question of law regarding when an incompetency commitment period "ends," it invariably implicates the rights of incarcerated defendants across the state of California with respect to the statutory requirements that exist for the protection of their due process rights. Silicon Valley De-Bug anticipates that the Court's decision will ultimately impact the rights of countless incarcerated litigants across the state.

Silicon Valley De-Bug provides this brief to explain why appellate courts throughout the state of California should follow the already well-established statutory procedures which govern the adjudication of restoration to competency proceedings as provided by Penal Code sections 1372(c) and (d)—and, as interpreted correctly by the First District in *People v. Carr* (2021) 59 Cal.App.5th 1136, 1140, 1144—rather than embrace the unprecedented departure from the statutory scheme as advocated by the Sixth District Court of Appeal.

Respectfully submitted,

Dated: August 8, 2022 DLA PIPER LLP (US)

By: _____

Justin Reade Sarno

Attorneys for Amicus Curiae,
SILICON VALLEY DE-BUG

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PROPOSED AMICUS CURIAE BRIEF OF SILICON VALLEY DE-BUG

INTRODUCTION

Frantz Kafka's famous dystopian novel *The Trial* tells the story of Josef K., a chief cashier of a bank, who is arrested and prosecuted by a remote, inaccessible agency, while the nature of his crime is revealed neither to him nor the reader. While told through the lens of absurdism, *The Trial* offers a poignant commentary on the absence of procedural due process protections for the accused, and the unpredictable results that ensue when such protections are conspicuously absent from ordered society.

Against the backdrop of Kafka's existential search for meaning, numerous unfortunate realities remain conspicuously present in the state of California. Among them are the complex issues facing California's prison system, as well as the care and maintenance of those suffering from mental illness.

In the 1950s and 1960s, policymakers in California, and elsewhere, began reducing the use of state hospitals to treat people with mental illness—a policy known as "deinstitutionalization." However, the lack of robust treatment options led to a growing number of people with mental health conditions becoming homeless and, in many cases, incarcerated.[2]

Sadly, this trend continues today. According to the *Prison Policy Initiative*, California has an incarceration rate of 549 per 100,000 people. (https://www.prisonpolicy.org/profiles/CA.html). Furthermore, according to data accumulated by the California Department of Corrections and Rehabilitation, "[t]he June 30, 2021 institution population of 98,472 inmates is expected to increase 4.5 percent to 102,945 inmates by June 30, 2022, and then increase again by 1.4 percent, reaching 104,409 inmates on June 30, 2023." (https://www.cdcr.ca.gov/research/wp-

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[2] E. Fuller Torrey, et al., The Treatment of Persons With Mental Illness in Prisons and Jails: A State Survey (Treatment Advocacy Center and National Sheriffs' Association: April 8, 2014), pp. 11-13; Jen Rushforth, "Guilty by Reason of Insanity: Unforeseen Consequences of California's Deinstitutionalization Policy," Themis: Research Journal of Justice Studies and Forensic Science 3 (Spring 2015), pp. 30-35; Matt Vogel, Katherine D. Stephens, and Darby Siebels, "Mental Illness and the Criminal Justice System," Sociology Compass 8 (June 2014), pp. 629-630.

content/uploads/sites/174/2022/05/Spring-2022-Population-Projections.pdf).

Amidst this staggering increase in state and local incarcerations—and especially among those suffering from mental illness—is the complex interrelationship between two dynamics: (1) a criminal defendant's due process rights, and (2) his or her competency to stand trial.

Review was granted by this Honorable Court to settle—what, at first blush, may appear to be—a discrete question of law. This question focuses on whether an incompetency commitment "ends" when a state hospital files a certificate of restoration to competency, or, alternatively, when the trial court finds that defendant has been restored to competency.

Silicon Valley De-Bug, as amicus curiae on behalf of Petitioner Mario Rodriguez, hereby urges the Court to conclude that the commitment period must end, as a matter of law, when the trial court holds a hearing and makes a determination that the criminal defendant has been restored to competency. Such a result not only comports with the provisions of Penal Code sections 1372(c), and (d), but it would do so in a manner that upholds the sanctity of due process rights for all mentally ill criminal defendants in the State of California.

LEGAL ARGUMENT

I. Well-established statutory procedures govern restoration to competency determinations in California.

Whether a defendant is deemed to be mentally incompetent to stand trial is governed explicitly by the Penal Code. This process is codified in part 2, title 10, chapter 6 of the Penal Code, sections 1367 through 1376.

Specifically, a defendant is mentally incompetent to stand trial "if, as a result of a mental health disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (Pen. Code, § 1367, subd. (a).)

The process starts when doubt arises in the judge's mind as to the mental competence of the defendant, and defendant's counsel informs the court that he or she believes the defendant is or may be incompetent. (*Medina v. Superior Court* (2021) 65 Cal.App.5th 1197, 1203-1204.) In that situation, the court must order the question of defendant's competence to be determined in a hearing held pursuant to sections 1368.1 and 1369. (Pen. Code, § 1368, subds. (a), (b).)

Once an order for a hearing to determine the defendant's mental competence has been issued, "all proceedings in the criminal prosecution shall be suspended until the question of the

present mental competence of the defendant has been determined." (*Id.*, subd. (c).)

The maximum period of commitment under section 1370 is "two years from the date of commitment." (§ 1370(c)(1).)[3]

"The purpose of section 1370 is to provide a defendant the maximum term possible, not to exceed [two] years or the maximum period of imprisonment for a charged crime such as a misdemeanor offense ... to restore his or her competency." (*People v. G.H.* (2014) 230 Cal.App.4th 1548, 1559; see also *In re Albert C.* (2017) 3 Cal.5th 483, 491 ["A defendant making progress toward attaining competency may be committed ... for [two] years or the length of the maximum term of imprisonment for the most

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[3] At the time the trial court ruled on Rodriguez's objection and motion to dismiss, section 1370(c)(1) provided: "At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders." (Stats. 2018, ch. 1008, § 2 [former § 1370(c)(1)].)

The current version of section 1370(c)(1) further provides that "custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court," and "[t]he court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment." (Stats. 2021, ch. 143, §§ 343 [current § 1370(c)(1)], 424 [effective July 27, 2021].)

serious charged offense, whichever is shorter."].) The two-year commitment period "applies to the total period actually spent in commitment at a mental institution." (*G.H.*, at p. 1558, italics added.) Further, the two-year period is measured by "the aggregate of all commitments on the same charges." (*In re Polk* (1999) 71 Cal.App.4th 1230, 1238.)

"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.) 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. (Pen. Code,[4] §§ 1370 (mental illness), 1370.1 (developmental disability).) Bail must be exonerated upon commitment. (§ 1371.) As noted above, that 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).) Specifically, the official must "immediately certify that fact to the court by filing a certificate of restoration with the court," and "the date of filing shall be the date on the return receipt." (§ 1372, subd. (a)(1).) The court must then decide whether to approve the certificate by determining if the subject

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

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)).

Once received, the certificate of restoration is not definitive on the issue of competency. Rather, the trial court may hold a hearing—albeit without a jury—on the issue of whether the certificate should be approved. (§ 1372, subds. (c) & (d); see *People v. Murrell* (1987) 196 Cal.App.3d 822, 826-827 [hearing under section 1372 is a special proceeding for which there is no statutory right to a jury]; see *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1480.)

Specifically, Penal Code section 1372(c) provides that:

> "When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence."

(Pen. Code, § 1372(c).)

Next, Penal Code section 1372(d) states that:

> "If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings."

(Pen. Code, § 1372(d).)

Courts have reasoned that "the numerous references in that statute to a hearing indicate a legislative intention that such a hearing be afforded." (*People v. Murrell* (1987) 196 Cal.App.3d 822, 826.)

As held by the Fourth Appellate District in *Medina*:

> If a statutorily designated health official determines during the commitment that the defendant has "regained mental competence," that official must "immediately certify that fact to the court by filing a certificate of restoration with the court." (§ 1372, subd. (a)(1).) **The filing of the certificate of restoration does not establish competence but initiates court proceedings to determine whether the defendant's competency has been restored.** (*Carr II*, *supra*, 59 Cal.App.5th at p. 1143, 274 Cal.Rptr.3d 125.) Upon the filing of the certificate of restoration, the defendant must be returned to court for "further proceedings" (§ 1372, subd. (a)(2) & (3)(A)), and the court must notify the designated mental health officials "of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence" (*Id.*, subd. (c)).

(*Medina*, *supra*, 65 Cal.App.5th 1197, 1206-1207, emphasis added.)

In fact, this approach is not unique to the state of California but has also been adopted by other jurisdictions. (See e.g., *State v. Coley* (Wash. 2014) 180 Wn. 2d. 543, 553 ["RCW 10.77.084(1)(b) does instruct the court to hold a hearing to determine whether competency has been 'restored.' "]; *Hargraves*

v. U.S. (D.C. 2013) 62 A.3d 107, 111 ["After the treatment provider reports back to the court in writing on whether the defendant's condition has improved or is likely to do so, the court 'shall hold a prompt hearing … and make a new finding' as to whether the defendant has become competent to stand trial."]; *State v. Kuhs* (2010) 223 Ariz. 376, 380 ["When the court receives a report that the defendant has become competent to stand trial, '[t]he court shall hold a hearing to redetermine the defendant's competency' at which the parties may 'introduce other evidence regarding the defendant's mental condition' or 'submit the matter on the experts' reports.'"].) Accordingly, it would be inexplicable for the Court to deviate from permitting this important judicial determination of competency by the trial court in affixing the "end" date of the commitment period.

In fact, on January 19, 2021, the First District Court of Appeal held in *Carr II* that a restoration certificate initiates further competency proceedings, but the commitment does not terminate until there is a *judicial determination* of competency. (*Carr*, *supra*, 59 Cal.App.5th 1136 at pp. 1140, 1144.) 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 p. 1145.)

The *Carr II* decision is instructive. After finding the defendant was subject to a developmental disability, as incompetent, the trial court again committed Carr to a treatment facility. (*Carr II*, *supra*, 59 Cal.App.5th at p. 1141.) A few months later, the defendant moved for release on the ground that

he had reached the maximum commitment authorized by law. (*Id.*) The trial court denied the motion concluding that the certification of competency had "tolled" the defendant's commitment period. (*Id.*) The defendant then filed a petition for writ of habeas corpus in the trial court, again asserting that he had exceeded the maximum commitment period set forth in section 1370.1, subdivision (c)(1). (*Id.* at pp. 1141-1142.) The trial court rejected the People's contention that the "certification of competency terminated [the defendant's] commitment and thereby tolled" the maximum commitment period. (*Id.* at p. 1142.) The court ruled that the period between the certification of the defendant's competency and its subsequent determination that the defendant remained incompetent " 'did indeed count as part of the "commitment" for purposes of calculating [the defendant's] maximum commitment time.' " (*Id.*)

The *Carr II* decision made good practical and legal sense, because, as contemplated by the Legislature, at a section 1372 restoration hearing, the trial court decides whether to approve the certificate of restoration to competence. If the court approves the certification, the court must order that criminal proceedings resume and must conduct a hearing on whether the defendant may be released on bail or on the defendant's own recognizance. (See § 1372, subds. (c)-(e); *In re Taitano* (2017) 13 Cal.App.5th 233, 242.) If neither party requests an evidentiary hearing concerning the defendant's restoration to competency, the trial court can summarily determine that the defendant's competency

has been restored. (See *People v. Rells* (2000) 22 Cal.4th 860, 868; *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1480-1482.)

"When a defendant is returned to the trial court [without a certification of restoration to competence]—either because there is no substantial likelihood that the defendant will regain competence or because the defendant has been committed for the maximum statutory period—the trial court must order the public guardian to initiate [Lanterman-Petris-Short Act (LPS Act)] conservatorship proceedings if the defendant is 'gravely disabled' within the meaning of the LPS Act. (§ 1370, subd. (c)(2).[13])" (*Jackson*, *supra*, 4 Cal.5th at p. 102.) The competency statutes do not authorize a new competency hearing at this point in the process. (*People v. Quiroz* (2016) 244 Cal.App.4th 1371, 1380.)

"If the defendant is not gravely disabled, the defendant must be released [citation], and the trial court may dismiss the action in the interest of justice pursuant to section 1385 (§ 1370, subd. (d); [citation]).[5] Such a dismissal is 'without prejudice to the initiation of any proceedings that may be appropriate' under the LPS Act. (§ 1370, subd. (e).)" (*Jackson v. Superior Court* (2017) 4 Cal.5th 96, 102; see also *People v. Waterman* (1986) 42 Cal.3d 565, 568 & fn. 1; *County of Los Angeles v. Super. Ct.* (2013) 222 Cal.App.4th 434, 442-443.)

[5] See also CAL. CONST., art. I, § 15.

II. The Sixth District's decision overrides the statutory protections that have been codified by the Legislature.

In this case, the Sixth District's decision found that the two-year maximum period for Rodriguez's commitment had not expired, because it calculated the end date of the two-year period from the point in which the medical director of Atascadero State Hospital submitted a certificate of Rodriguez's restoration to competency, rather than the date in which the trial court approved the certification under section 1372.

Because, according to Rodriguez, his commitment period had already exceeded the aggregate two-year period, the trial court had no jurisdiction to conduct a section 1372 hearing in the first place, and thus, the trial court was authorized to dismiss the action in the interest of justice pursuant to section 1385. (See also, § 1370, subd. (d); *Rodriguez*, *supra*, 70 Cal.App.5th at p. 649.)

Rodriguez maintained that the "appropriate jurisdictional question" was whether a court can hold a restoration of competency hearing "more than two years after the commitment order was issued." (*Id.*) He claimed that a restoration hearing could no longer occur, because such a hearing "must be authorized by 'special' jurisdiction under section 1372, which can only occur within the commitment period authorized by [section] 1370, subdivision (c)(1)." (*Id.*) In short, he maintained that the competency statutes do not allow a court to hold a competency

hearing after a defendant has mathematically completed the maximum commitment term. (*Id.*) Thus, the question of when the commitment period "ends" as a matter of law arrived at this Court and was certified for review under California Rules of Court, rule 8.500(b).

The Sixth District's disagreement with Rodriguez's arguments was predicated on the conclusion that Rodriguez's commitment "ended" when his certification of restoration was filed by the medical director of Atascadero State Hospital. The Court found that Rodriguez's maximum commitment period under section 1370(c)(1) had not yet run; that it could hold a hearing under section 1372; and that it need not dismiss the criminal cases. (*Rodriguez v. Super. Ct.* (2021) 70 Cal.App.5th 628, 635.)

But the reasons for its decision were dubious, at best. The Sixth District stated as follows:

> Our Supreme Court has stated that when a certificate of restoration is filed, it "has legal force and effect in and of itself" (*Rells*, *supra*, 22 Cal.4th at p. 868, 94 Cal.Rptr.2d 875, 996 P.2d 1184), and the filing of the certificate triggers a presumption of mental competency under section 1372. (See *Rells*, at pp. 867-871, 94 Cal.Rptr.2d 875, 996 P.2d 1184.) As described further below, we decide 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).

(*Rodriguez*, *supra*, 70 Cal.App.5th at p. 652.)

Based on this language, the Sixth District overreached, concluding (based on *Rells*) that the filing of the certificate should end the commitment period as a matter of law. But that is not what *Rells* said. Rather, this Court was quite clear when it indicated that the filing of the certificate causes the criminal defendant to be returned to court "*for further proceedings*" and creates a rebuttable presumption that the criminal defendant has been restored to competency. (*Rells*, *supra*, 22 Cal.4th at p. 868, italics added.) But *Rells* did not go so far as to conclude that the certificate's legal force and effect also mandated the temporal conclusion of the commitment period.

Namely, in *Rells*, this Court stated explicitly:

> 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. It does so separately and independently of any role that either official or certificate may subsequently play. At such a hearing, as we have concluded, there is a presumption that the defendant is mentally competent unless he is proved by a preponderance of the evidence to be otherwise—a presumption that, in terms, affects the burden of proof (see Evid. Code, § 605), which it imposes on the party, if any, who claims that the defendant is mentally incompetent (see id., § 606).

(*Rells*, *supra*, 22 Cal.4th at p. 868.)

The Sixth District concluded that under the plain text of the statute, a court has the authority to hold a restoration hearing so long as a designated official certifies that the defendant has regained mental competence. It reasoned, though, that section 1372 does not explicitly state any time frame within

which the restoration hearing must be held and does not reference section 1370(c)(1)'s two-year maximum for an incompetency commitment. (*Rodriguez*, *supra*, 70 Cal.App.5th at pp. 649-650.)

In rendering its conclusion, the Sixth District made a feeble attempt to distinguish the First District's opinion in *Carr II*. (See *Carr II*, *supra*, 59 Cal.App.5th 1136.) Specifically, the Court below held: "We respectfully disagree with the *Carr II* court's rejection of the significance of the certification of restoration with respect to calculation of the two-year commitment period under section 1370(c)(1)." (*Rodriguez*, *supra*, 70 Cal.App.5th at p. 652.) Namely, the *Rodriguez* Court found that the "issuance of the restoration certificate and the subsequent court hearing have distinct statutory objectives in light of the overall competency statutory scheme…" (*Id.*) According to the Court, the incompetency scheme's overall purpose is "restoration of a specific mental state without which the criminal process cannot proceed." (*Id.*, citing *Waterman*, *supra*, 42 Cal.3d at p. 569.) In this case, the *Rodriguez* Court asserted that there was no information in the record "demonstrating that he is still receiving treatment for the purpose of restoring his competence." (*Id.*) But that is not the standard.

Recognizing only that "on different facts, due process may compel a different result," the Sixth District did not address the underlying purpose, effect, and policy reasons why the trial court possesses its own statutory authorization to conduct a hearing for the determination of competency under the Penal Code. (*Id.* at p.

653.) The trial court possesses this authority, as a matter of law, in order to ensure due process for the criminal defendant. This is precisely why reversal is urgently requested.

From the perspective of the amici, the Sixth District left open a conspicuous void. It avoided the reasons why—from both a legal and policy-based perspective—the trial court's authority to conduct *its own determination of competency*, and the date in which it does so, must be deemed the "end point" in the calculation of the two-year maximum commitment period referenced in section 1370(c)(1). To have it any other way would confer sole discretionary authority on a state hospital, rather than a court of law, where the criminal defendant has the opportunity to be heard and test the criteria and determinations of the health official.

As set forth below in greater detail, analyzing the statute in the manner advocated by the amici not only promotes interpretational harmony with respect to the letter and Legislative intent behind sections 1370 and 1372, but it best comports with due process.

III. Defining the end of the commitment period as of the date of a judicial hearing pursuant to Penal Code section 1372(c) and (d) best comports with due process.

Were this Court to conclude that the end date of a commitment period is the date in which a certification of

restoration is issued by a state hospital or official, then a criminal defendant would not have the opportunity to be heard on the merits of the certificate itself and to test the criteria adopted by the state hospital system. For this important reason, this Court's decision—with respect to calculation of the end of the commitment process—implicates critical due process protections.

The strictures of due process apply to the threatened deprivation of liberty and property interests deserving the protection of the federal and state Constitutions. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 332; *Board of Regents v. Roth* (1972) 408 U.S. 564, 569; *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 206.)

"When protected interests are implicated, the right to some kind of prior hearing is paramount." (*Board of Regents v. Roth*, supra, 408 U.S. at pp. 569-570.) "The guarantee of procedural due process—a meaningful opportunity to be heard—is an aspect of the constitutional right of access to the courts for all persons, without regard to the type of relief sought. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 338-339, citing *Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 430, fn. 5; *Payne v. Super. Ct.* (1976) 17 Cal.3d 908, 914.)

This mandate has been interpreted to require, at a minimum, that "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377.) The United States Supreme Court has

long recognized a constitutional right of access to the courts for all persons, including prisoners. (*Procunier v. Martinez* (1974) 416 U.S. 396, 419; *Cruz v. Beto* (1972) 405 U.S. 319, 321; *Johnson v. Avery* (1969) 393 U.S. 483, 487; *Price v. Johnston* (1948) 334 U.S. 266.)

Among its many protections and safeguards, the due process clause of the federal Constitution's Fourteenth Amendment prohibits trying a criminal defendant who is mentally incompetent. (*Medina v. California* (1992) 505 U.S. 437, 439; *Pate v. Robinson* (1966) 383 U.S. 375, 378.) A defendant is deemed competent to stand trial only if he " 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' " and " 'has a rational as well as factual understanding of the proceedings against him.' " (*Dusky v. United States* (1960) 362 U.S. 402.)

When a trial court is presented with evidence that raises a reasonable doubt about a defendant's mental competence to stand trial, federal due process principles require that trial proceedings be suspended and a hearing be held to determine the defendant's competence. (*Pate*, *supra*, 383 U.S. at p. 385; *People v. Taylor* (2009) 47 Cal.4th 850, 861; *People v. Halvorsen* (2007) 42 Cal.4th 379, 401.) Only upon a determination that the defendant is mentally competent may the matter proceed to trial. (*Pate*, supra, at p. 385.) California's Penal Code statutes—namely, the ones at issue in this appeal—squarely address and seek to vindicate these important constitutional considerations.

And, thus, against the backdrop of these considerations, this Court confronts the question of whether or not the "end" of a commitment period under California law should be defined by the issuance of a restoration certificate by a health official, or, rather, by a judicial hearing that takes place following its issuance.

It is amici's position that while restoration certificates undoubtedly have significant evidentiary value and are *probative of* a criminal defendant's restoration to competency, they are not—nor should they be—*per se* determinative on the legal question of competency. The statutory protections that the Legislature codified in section 1372 underscore this position.

For example, as this case illustrates in its procedural history, Rodriguez had been issued previous certificates of competency, only to then be found incompetent to stand trial shortly thereafter. (See IR Exhs. 4-7; see also *Rodriguez*, *supra*, 70 Cal.App.5th at p. 637 [to wit, "Almost four months later, on January 10, 2019, the trial court again declared a doubt about Rodriguez's competency and suspended the proceedings"].) (See Pet. Ex. 9; see also IR Exh. 13.)

Moreover, it was evident from the certificate issued on January 9, 2020 that the medical director's conclusions were less than decisive regarding Rodriguez's mental fitness to stand trial. (See *Rodriguez*, *supra*, 70 Cal.App.5th at p. 638 [to wit, "The Director also opined, pursuant to section 1372, subdivision (e), that Rodriguez "*probably* does not need placement in a psychiatric facility in order to maintain competence to stand trial"].) (Italics added.)

Would it be good policy to legally terminate a commitment period based upon ambiguous language contained in restoration certificates, as noted above? Would this foster uniformity of decision with respect to future cases interpreting these Penal Code provisions?

Absolutely not.

The complex balance between the difficulty in rendering concrete mental health diagnoses and the constitutional protections that exist for criminal defendants militates against the arbitrary approach espoused by the Sixth District. Due process cannot allow for it, and the opinion cannot stand.

Instead, the post-certificate hearing process functions as a *critical safeguard* with respect to rendering competency determinations within the context of criminal proceedings. It affords the criminal defendant an opportunity to be heard, and to challenge the determinations made by the health official. It ensures that litigants are not trapped in a *Kafka-esque* nightmare where the bases for competency determinations are left unchecked and subject to the vagaries of arbitrary reasoning.

In fact, section 1372(c) specifically refers to the "date of any hearing on the defendant's competence and whether or not the defendant <u>*was found by the court*</u> to have recovered competence." (Pen. Code, § 1372(c), emphasis added.) This provision explicitly references the trial court's—*not the state hospital's*—authority to adjudicate a restoration of competence with respect to the criminal defendant. The express statutory dignification of the trial court's independent authority to render an assessment of

competency—subsequent to the issuance of any certification of restoration by a state hospital—confirms, in rather explicit terms, that the certificate does not, and should not, operate as a legal triggering device to compute the "end" date of the commitment period.

To disregard the existence of the trial court's authority under section 1372(c), and to simply conclude that the issuance of the certificate itself triggers a restoration to competency is to ignore the realities facing mental health diagnoses, as well as the will of the Legislature in enacting statutory protections to enable trial courts to make informed assessments based upon other factors and evidence.

Furthermore, there could be a myriad of competing factors unbeknownst to the trial court at the time a certificate is issued, which—if adjudicated at a formal hearing—may bear on the question of the veracity of the certificate. One need only recall the overwhelming statistics regarding understaffing and overcrowding at state and local hospitals as examples as to how, and why, state hospital determinations may not be as robust, or detailed, as necessary on the critical question of mental health.

Ultimately, permitting the mere filing of 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 pp. 1146-1147; see also *In re Davis* (1973) 8 Cal.3d 798.)

If a restoration certificate were to conclusively (in and of itself) terminate the commitment, then there would be no reason to require the committing court to approve the certification, as is expressly articulated in 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 demonstrates that the court approval process is a critical component of an inmate's rights. (*Id.*)

Principles of statutory construction also support the amici's position. For example, Penal Code section 1372(c), (d), which address the restoration to competence procedures, does not contain a tolling provision. This Legislative exclusion is important when analyzing the legal question before this Court. Indeed, in determining legislative intent, the reviewing court "look[s] first to the words of the statute, giving them their usual and ordinary meaning." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501.)

By contrast, in other areas of California law, the Legislature has explicitly stated when, or if, tolling should apply in circumstances that implicate criminal proceedings. For example, under Government Code section 945.3, no person charged by indictment, information, complaint or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing the peace officer… while the charges against the accused are pending before a superior court." (See Gov. Code, § 945.3.) The statute explicitly states that "any applicable

statute of limitations for filing and prosecuting these actions shall be tolled during the period that charges are pending before a superior court." (*Id.*)

In other areas, such as actions against attorneys for wrongful acts or omissions, the specific statute of limitations at issue contains express tolling provisions. (See e.g., Civ. Proc. Code, 340.6 ["the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist: [specifying exceptions]…".)

What is more, this Court has recognized limitations on imposing tolling provisions (equitable or otherwise), where not revealed by the express language of the statute or by legislative history. (See e.g., *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 378 ["Hence, the purpose of section 337.15, as revealed by its history, *weighs against* a judicially imposed rule that the 10-year limitations period set forth in this statute is tolled for repairs" (italics added)].) The Court further noted that "an express legislative ban on equitable tolling is not the only circumstance in which courts will decline to apply this judicially developed doctrine. As is explained above, they will also do so where, as here, tolling would contravene the legislative purpose." (*Lantzy*, *supra*, 31 Cal.4th at p. 380.)

Similarly, as Presiding Justice Caldecott noted in *Forgarty v. Superior Court* (1981) 117 Cal.App.3d 316, 320, "There is no evidence of a legislative intent in the instant situation to allow exceptions [for tolling in actions brought by minors,

incompetents, or prisoners] other than those listed in section 340.5."

Accountability and fairness remain in constant tension. The overriding sociological question often confronted is whether the system failed the defendant, or whether the defendant's complex psychological problems failed him or herself. But, in either case, our jail systems have become a repository for the overflow of mentally ill criminal defendants, and competency determinations change frequently. Indeed, "[j]ails, historically set up as short-term holding facilities, are replacing psychiatric hospitals as seriously mentally ill individuals committing petty crimes cycle in and out, often receiving psychiatric treatment only upon admission to the jail. Prisons face similar hardships. Numerous media reports portray this problem as an age-old issue in the criminal justice system, sometimes comparing today's incarceration of the mentally ill with practices followed during colonial times." (Davoli, Joanmarie Ilaria, PHYSICALLY PRESENT, YET MENTALLY ABSENT, 48 U. Louisville L. Rev. 313, 320 (2009).)

Rodriguez did not tackle these over-arching considerations, as it failed to address the substantial delays that often occur between the time individuals who are incompetent to stand trial 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.) The *Rodriguez* holding thus not only violates due process (*In re Davis*,

supra), it could create unwarranted incentives for health officials to refuse to place and treat mentally incompetent individuals for years and leaves them without recourse to challenge their confinement on the basis that the maximum commitment has been exceeded.

CONCLUSION

In the end, based upon the critical considerations of due process and policy, this Honorable Court should hold that an incompetency commitment "ends" when *the trial court* makes a finding that defendant has been restored to competency.

As such, this matter should be remanded to the trial court with directions to grant the Petitioner's motion to dismiss, and/or to initiate conservatorship proceedings under the circumstances.

Respectfully submitted,

Dated: August 8, 2022

DLA PIPER LLP (US)

By: _____

Justin Reade Sarno

Attorneys for Amicus Curiae,
SILICON VALLEY DE-BUG

WORD COUNT DECLARATION

CALIFORNIA RULES OF COURT, rule 8.204(b), (c)

The attached Proposed Amicus Brief complies with the type limitations of the California Rules of Court, Rules 8.204(b), (c), and is mono-spaced as required.

This brief contains 13-point font, in Century Schoolbook typeface, and contains 6,108 words, not including the Table of Contents and Authorities, the caption page, signature blocks, Certificate of Interested Parties, and this Word Count Declaration.

Dated: August 8, 2022

DLA PIPER LLP (US)

By: _____

Justin Reade Sarno

Attorneys for Amicus Curiae,
SILICON VALLEY DE-BUG

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is 550 South Hope Street, Suite 2400, Los Angeles, CA 90071.

On August 8, 2022, I served the foregoing **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF SILICON VALLEY DE-BUG IN SUPPORT OF PETITIONER MARIO RODRIGUEZ** on each interested party in this action, as follows:

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

[X] **(VIA MAIL)** I placed a true copy of the foregoing document in a sealed envelope addressed to each party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Los Angeles, California 90071. I am readily familiar with ‘s practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day in the ordinary course of business.

On August 8, 2022, I served the foregoing **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF SILICON VALLEY DE-BUG IN SUPPORT OF PETITIONER MARIO RODRIGUEZ** by transmitting a PDF version of this document by electronically 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

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

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

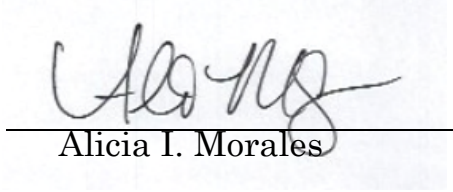
Santa Clara County DA Office Appeals Division
333 W. Santa Clara St. #1060
San Jose, CA 95113
motions_dropbox@dao.sccgov.org

CPDA
Diana Alicia Garrido
Office of the Public Defender
800 Ferry Street
Martinez, CA 94553
Diana.Garrido@pd.cccounty.us

Sixth District Court of Appeal
c/o Clerk of the Court
333 West Santa Clara Street
Suite 1060
San Jose, CA 95113
(via TrueFiling)

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

Executed on August 8, 2022, at Los Angeles, California.



Alicia I. Morales

Supreme Court of California
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STATE OF CALIFORNIA
Supreme Court of California

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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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Alexandra Gadenberg Office of the District Attorney of Santa Clara County 271567	agadeberg@dao.sccgov.org	e-Serve	8/8/2022 1:57:22 PM
Stephanie Regular Contra Costa County Public Defender 210115	stephanie.regular@pd.cccounty.us	e-Serve	8/8/2022 1:57:22 PM
Ellen Mcdonnell Contra Costa County Public Defenders Office	diana.garrido@pd.ccounty.us	e-Serve	8/8/2022 1:57:22 PM

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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.

8/8/2022

Date

/s/Justin Sarno

Signature

Sarno, Justin (229803)

Last Name, First Name (PNum)

DLA Piper LLP (US)

Law Firm