

No. S272129

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.

Sixth Appellate District, Case No. H049016
Santa Clara County Superior Court, Case No. C1650275, C1647395
The Honorable Eric S. Geffon, Judge

**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF IN
SUPPORT OF REAL PARTY IN INTEREST**

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August 8, 2022

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF REAL PARTY IN INTEREST,
THE PEOPLE OF THE STATE OF CALIFORNIA**

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

Pursuant to California Rules of Court, rule 8.520(f), the California Department of State Hospitals and the California Department of Developmental Services hereby respectfully request leave to file the accompanying amicus curiae brief in support of real party in interest, the People of the State of California.

STATEMENT OF INTERESTS

The Department of State Hospitals (DSH) is the state agency charged with providing competency restoration treatment to the vast majority of criminal defendants deemed incompetent to stand trial (IST). (See Pen. Code, § 1370, subd. (a)(1)(B)(i).) Four of the Department's five hospitals—Atascadero, Napa, Metropolitan, and Patton—accept commitments for competency restoration treatment. At any given time, DSH directly treats over 1,500 IST defendants in its facilities and partners with local authorities to treat other defendants in jail based competency treatment programs.

The Department of Developmental Services (DDS) is also a state agency charged with providing competency restoration treatment, specifically for IST defendants with developmental disabilities. (See Pen. Code, § 1370.1, subd. (a)(1)(B)(i).) IST defendants suspected of having a developmental disability are

evaluated by the Department's network of regional centers. (*Ibid.*) Where the defendant is confirmed to have a developmental disability and is ordered committed for competency restoration treatment, the Department provides these services in a secure environment at the Porterville Developmental Center.

DSH and DDS are committed to the purpose of California's IST commitment scheme, which is to expeditiously restore defendants to competence so that they may complete their criminal process. This case concerns when an IST defendant's commitment for competency restoration treatment ends for the purpose of the IST statutory scheme's two-year maximum commitment period. (See Pen. Code, §§ 1370, subd. (c)(1), 1370.1, subd. (c)(1)(A).) In particular, the Court must decide whether the commitment ends when DSH or DDS file a certificate of restoration to competence, or whether the commitment continues to run until a court affirms the certification and reinstates criminal proceedings. As explained in the accompanying amicus brief, amici submit this brief because resolution of the issue presented is of substantial importance to DSH and DDS.

REASONS WHY THE AMICUS BRIEF WILL ASSIST THE COURT

The Departments' expertise in the field of competency assessment and treatment, as well as their institutional knowledge about how California's IST commitment scheme operates in practice, will benefit this Court's consideration of the issue presented. As discussed in the amicus brief, DSH and DDS

have been statutorily responsible for decades to restore defendants to competency. That role, plus amici's practical experience in fulfilling its responsibilities, provide additional considerations that weigh against a reading of the statutes that would include in the maximum commitment period the time until a court issues a finding of competency

RULE 8.520(f)(4) DISCLOSURE

No party or counsel for any party in this case authored the accompanying amicus brief in whole or in part or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the California Attorney General's Office, on behalf of its clients, DSH and DDS, made any monetary contribution intended to fund the preparation or submission of the accompanying amicus brief.

CONCLUSION

The Departments respectfully request that this Court grant leave to file the accompanying amicus brief.

Respectfully submitted,

ROB BONTA

Attorney General of California

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Senior Assistant Attorney General

GREGORY D. BROWN

Supervising Deputy Attorney General

A handwritten signature in blue ink, appearing to read "Kevin L. Quade".

KEVIN L. QUADE

Deputy Attorney General

*Attorneys for Amici Curiae Department
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Developmental Services*

August 8, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTY IN INTEREST, THE PEOPLE OF THE STATE OF CALIFORNIA** uses a 13 point Century Schoolbook font and contains 566 words.

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**AMICUS CURIAE BRIEF OF THE CALIFORNIA DEPARTMENT
OF STATE HOSPITALS AND CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES IN SUPPORT OF REAL PARTY
IN INTEREST**

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INTRODUCTION AND STATEMENT OF INTEREST

The Department of State Hospitals (DSH) is the state agency charged with providing competency restoration treatment to a substantial majority of criminal defendants deemed incompetent to stand trial (IST) due to a mental health disorder. (See Pen. Code, § 1370, subd. (a)(1)(B)(i).)¹ Four of DSH’s five hospitals—Atascadero, Napa, Metropolitan, and Patton—accept commitments for competency restoration treatment. At any given time, DSH directly treats over 1,500 IST defendants in its facilities and, in addition, partners with local authorities in jail-based competency treatment programs to treat many other IST defendants. The Department of Developmental Services (DDS) is a state agency charged with providing competency restoration treatment for IST defendants with developmental disabilities. (See § 1370.1, subd. (a)(1)(B)(i).) When a defendant is confirmed to have a developmental disability and is ordered committed for competency restoration treatment, DDS provides such treatment in a secure environment at the Porterville Developmental Center.

DSH and DDS submit this amicus brief to address the issue presented: “Does an incompetency commitment end when a state hospital files a certificate of restoration to competency or when the trial court finds that defendant has been restored to competency?” The answer to that question is of substantial importance to DSH and DDS since the maximum period of

¹ Subsequent statutory references are to the Penal Code unless otherwise specified.

commitment for competency restoration services is limited to two years. (See §§ 1370, subd. (c)(1), 1370.1, subd. (c)(1)(A).)

In DSH and DDS's view of the operative statutes, the incompetency commitment ends when a state hospital files a certificate of restoration to competency, not when the trial court finds that defendant has been restored to competency. As explained by the real party in interest, the People of the State of California, the plain text, legislative history, and purpose of the IST commitment statutes all support a certificate-based reading of the statutes. (ABM 22-42.) DSH and DDS submit this brief to elaborate on additional considerations—informed by amici's unique experience as the agencies responsible for treating IST defendants—that weigh in favor of this interpretation of the IST commitment statutes.

First, a certificate-based reading of the IST commitment statutes recognizes amici's expertise in treating incompetent defendants and identifying when defendants have been restored to competency. DSH and DDS are statutorily responsible for treatment of IST defendants and certificates of restoration are typically filed after a hospital team's extensive observation and treatment of an IST defendant over a period of weeks or months. A certificate of restoration signals amici's expert judgment that treatment has achieved its desired outcome and the defendant has been restored to competence. Acknowledging amici's expert role, this Court has held that a certificate of restoration is

entitled to a presumption of correctness and shifts the burden to a defendant challenging certification to prove incompetence.²

Second, amici's reading of the IST commitment statutes is consistent with how the IST treatment statutes operate in practice. While there is a maximum term of commitment for return to competency, a filed certificate of restoration operates to end commitment, and so the commitment clock should stop on filing. Specifically, once a certificate of restoration is filed, a defendant must be returned to court within ten days (see § 1372, subd. (a)(2), (a)(3)(C)), and the defendant is discharged from the state hospital or developmental center. The defendant is no longer detained for the purpose of, or provided, competency restoration services and simply awaits the resumption of criminal proceedings—which may occur immediately if a defendant does not contest the certificate. Granted, a defendant may challenge the certificate of restoration, but in that event, because the certificate is presumed correct, the defendant is situated similarly to a defendant whose competency is initially questioned under section 1368. It is undisputed that the maximum commitment period does not include the time before a court conducts an initial competency hearing. The time between the filing of a certificate of restoration and a section 1372 hearing should be treated the same way.

Finally, a certificate-based reading of the IST commitment statutes avoids impairing, and in some circumstances

² See *People v. Rells* (2000) 22 Cal.4th 860, 867-869 (*Rells*).

eliminating, amici's ability to treat re-committed IST defendants. Last year, for instance, an IST defendant's treatment time in a state hospital operated by DSH averaged nearly 270 days before return to court. If a defendant challenges a certificate of restoration, litigation over competency can extend for prolonged periods of time—months or years—often at a defendant's request. And if the time between the certification and the conclusion of the section 1372 hearing were counted towards the two-year maximum commitment period, amici would often have inadequate or no time to provide appropriate competency treatment to a defendant returned to the hospital for additional competency services. Such a result is unreasonable, would undermine the role of DSH and DDS in the competency restoration process, and ultimately would frustrate the purpose of the operative statutes.

ARGUMENT

I. ENDING THE COMMITMENT PERIOD WHEN A CERTIFICATE OF RESTORATION IS FILED RECOGNIZES THE DEPARTMENTS' EXPERTISE IN DETERMINING COMPETENCY

When the Legislature amended the IST commitment statutes in 2017 to impose a two-year maximum period of commitment (ABM 31), DSH and DDS were long-recognized experts in treating IST defendants and in determining competency, as shown by the relevant statutes and case law. For over a century, DSH has been the state agency tasked with providing competency restoration treatment to criminal defendants found incompetent due to a mental health disorder.

(§ 1370, subd. (a)(1)(B)(i).)³ The focus of DSH's treatment is on restoration of competence in the most expeditious manner possible.⁴ Once a defendant's mental health symptoms are stabilized and medication needs are addressed, the Department immerses the defendant in group and individualized sessions that provide information on the various aspects of court proceedings.⁵ DSH personnel work closely with each defendant and continuously evaluate the defendant's mental state using a competency assessment instrument.⁶ Within 90 days of a commitment order, the hospital's director must file a report in the committing court concerning the defendant's progress towards restoration. (§ 1370, subd. (b)(1).) If the hospital determines that the defendant is not likely to be restored to competency in the foreseeable future, the commitment ends, and the defendant must be returned promptly to court. (§ 1370, subd. (b)(1)(A), (B).) Where further competency treatment is necessary, the defendant's commitment continues and additional status reports are provided at regular intervals. (§ 1370, subd. (b)(1).)

³ A trial court may also commit an individual to other facilities, including community-based residential treatment programs with a secured perimeter, or to outpatient status. (See, e.g., § 1370, subd. (a)(1)(B)(i).) In practice, however, the vast majority of IST defendants committed for mental illness are treated by DSH.

⁴ <https://www.dsh.ca.gov/Treatment/Incompetent_Stand_Trial.html> (as of August 8, 2022).

⁵ *Ibid.*

⁶ *Ibid.*

If, at any point during treatment, the defendant is assessed to have regained competence to stand trial, a forensic report and certificate of restoration is sent to the committing court. (§ 1372, subd. (a)(1).)⁷

DDS has operated in similar fashion since the early 1980s, acting as the state agency charged with providing competency restoration services to IST defendants with a developmental disability. (§ 1367, subd. (b); see § 1370.1.)⁸ DDS's role in the competency process is subject to a different set of statutes and regulations than those applicable to DSH, though the primary purpose of the agencies in this field is the same: return defendants to competence in a timely manner. (See §§ 1370 [DSH commitments], 1370.1 [DDS commitments].) Defendants committed to DDS for competency restoration are treated at the Porterville Developmental Center in a highly structured and secure environment.⁹ Analogous to commitment to DSH, the executive director of Porterville must, within 90 days of a defendant's admission, provide the committing court with a

⁷ <https://www.dsh.ca.gov/Treatment/Incompetent_Stand_Trial.html> (as of August 8, 2022).

⁸ A developmental disability is an immutable condition that cannot be alleviated, stabilized, or cured with any drug treatment. (See Welf. & Inst. Code, § 4512, subd. (a) [defining what constitutes a developmental disability under the Lanterman Developmental Disabilities Services Act].)

⁹ <<https://www.dds.ca.gov/services/state-facilities/porterville-dc/>> (as of August 8, 2022.)

report on the defendant's progress towards regaining competence. (§ 1370.1, subd. (b)(1).)

As a result of their statutory obligation to treat IST defendants and their experience treating thousands of IST defendants, DSH and DDS are experts in competency assessment and restoration treatment. DSH and DDS employ specialized personnel, whose mission and expertise is to provide IST defendants with competency stabilization, treatment, and, where possible, restoration. And, unlike parties in the criminal proceeding, amici have no stake in the outcome of the underlying case. Amici are neutral medical experts, certifying a defendant who has been restored for return to court, determining that a defendant is not likely to be restored and returning them to court, or maintaining treatment for committed defendants who require additional care. (§§ 1370, 1370.1.)

As a matter of course, amici do not file a certificate of restoration without substantial observation and evaluation of IST defendants. For those defendants admitted to a treatment facility, a certificate of restoration is backed by an unmatched level of direct observational interaction with and knowledge of the specific defendant's circumstances.¹⁰ DSH and DDS evaluators devote weeks or months to provide individualized care and competency treatment to the defendants admitted to their

¹⁰ See <https://www.dsh.ca.gov/Treatment/Incompetent_Stand_Trial.html> (as of August 8, 2022); <<https://www.dds.ca.gov/services/state-facilities/porterville-dc/>> (as of August 8, 2022.).

programs.¹¹ Accordingly, by the very nature of their expertise in the field, neutrality in the underlying criminal case, and close work with each committed IST defendant, the Departments stand in a unique position to evaluate the mental or developmental state of an IST defendant.

The Departments' role and expertise in the IST system explains why the Legislature has attached legal significance to the certificate of restoration. The certification constitutes a thoroughly informed determination by the treatment team that a defendant committed for IST treatment has regained competence and, thus, has the "legal force and effect in and of itself" of returning the defendant to a status akin to a pre-commitment defendant. (See *Rells, supra*, 22 Cal.4th at p. 868.) And just as the certificate reverts a defendant back to presumed competence, it marks the conclusion of a defendant's commitment for incompetence treatment. From the Departments' clinical perspectives, once one of the Departments has determined that a defendant is competent, it is no longer medically appropriate to provide restorative competency treatment or keep the defendant at the state facility. (See, e.g., Welf & Inst. Code, 7506 [primary purpose of each hospital for the developmentally disabled shall be the care, treatment, and habilitation of patient found suitable and duly admitted].) In other words, from a practical, on-the-ground standpoint, the issuance of a certificate marks the

¹¹ *Ibid.*

cessation of all active restorative treatment, which is the explicit purpose of an IST commitment.

And, like the Legislature, this Court has acknowledged amici's expertise by holding that a certificate of restoration carries a statutory presumption of correctness. (*Rells, supra*, 22 Cal.4th at pp. 867-869.) The Court thus held that a defendant is presumed competent after a certificate of restoration is filed and bears the burden of proving otherwise by a preponderance of the evidence if a defendant challenges certification. (*Id.* at p. 869.) Indeed, the Legislature recently codified the *Rells* assignment of post-certification burden in the context of certificates of restoration issued after a DSH pre-admission reevaluation conducted pursuant to Welfare and Institution Code section 4335.2. (See § 1370, subd. (a)(1)(H)(ii) [prior command that a presumption of competency shall not apply deleted].)

Reading the IST commitment statutes to end the commitment period when amici file a certificate of restoration recognizes these practical, treatment-based considerations—which were part of the background context in which the Legislature amended the two-year maximum period of commitment.

II. ENDING THE COMMITMENT PERIOD WHEN A CERTIFICATE OF RESTORATION IS FILED IS CONSISTENT WITH THE WAY THE COMMITMENT STATUTES OPERATE IN PRACTICE

Construing the IST commitment statute to end the commitment period when amici file a certificate of restoration is also consistent with the way the IST scheme operates in practice.

Once a certificate of restoration is filed, the defendant is no longer detained for the purpose of receiving competency restoration treatment (and no longer receives such treatment). By statute, the defendant must be returned promptly to court for further proceedings. (§ 1372, subds. (a)(2), (a)(3)(C), (c).) The county has ten days to complete that return to local custody. (*Ibid.*) And neither DSH nor DDS are parties to those further proceedings, which proceed solely with the prosecution and defense in the underlying criminal case. As a statutory and practical, real-world matter, the commitment for restoration-of-competency treatment ends once the treating Department files a certificate of restoration.

If a defendant does not contest the certificate of restoration, the criminal proceedings may resume immediately. If, however, a defendant challenges the certificate of restoration, the defendant is situated similarly to a defendant whose competency is initially questioned under section 1368. Such pre-commitment defendants are presumed to be competent and bear the burden of establishing their incompetence by a preponderance of the evidence. (§ 1369, subd. (f); see *Medina v. California* (1992) 505 U.S. 437, 446 [rejecting a due process challenge to statutory allocation of burden].) If a pre-commitment defendant is ultimately found incompetent and committed to a state hospital, the maximum commitment period does not include the time before a court conducts a competency hearing. (*People v. G.H.* (2014) 230 Cal.App.4th 1548, 1557-1561; *People v. Reynolds*

(2011) 196 Cal.App.4th 801, 808-809.)¹² Since, as this Court has long held, post-certification defendants are functionally indistinguishable from pre-commitment defendants with respect to this presumptive burden when they contest their competency (*Rells, supra*, 22 Cal.4th at pp. 867-869), it follows that post-certification time spent challenging a certificate of restoration should be treated the same as pre-commitment time. A certificate-based reading of the maximum commitment statutes thus conforms to how other, highly similar provisions in the IST scheme operate in practice.

III. ENDING THE COMMITMENT PERIOD WHEN A CERTIFICATE OF RESTORATION IS FILED AVOIDS NEGATIVE EFFECTS ON THE DEPARTMENTS' ABILITY TO TREAT READMITTED DEFENDANTS

An interpretation of the IST commitment period to include the time between the Departments' certification of competency and the trial court's ultimate reinstatement of criminal proceedings would negatively affect the Departments' ability to provide appropriate treatment in many cases in which a defendant is recommitted for competency treatment during the subsequent course of proceedings.

Defendants admitted to a state facility for competency restoration receive treatment and services in secure and

¹² There is a narrow exception to this rule not relevant here concerning IST defendants whose maximum term of imprisonment for the most serious charged offense is less than the default two-year commitment maximum. (See *In re Banks* (1979) 88 Cal.App.3d 864, 866-870.)

regimented environments.¹³ Defendants are also administered psychotropic medication as necessary depending on individual clinical indications.¹⁴ This strict treatment program has proven successful at restoring the competence of the majority of California’s IST defendants, but it often takes time to work effectively. For instance, in the prior year, the average length of stay in a DSH hospital for an IST defendant was nearly 270 days, and in many cases it can take significantly longer to adequately restore a patient’s competency.¹⁵

In the Departments’ experience, competency hearings under section 1372 following a certificate of restoration are often delayed, sometimes for a significant length of time. (See, e.g., *Rodriguez v. Superior Court* (2021) 70 Cal.App.5th 628, 637-640, review granted Jan. 5, 2022, S272129 [over a year with no hearing on restoration]; *People v. Carr* (2021) 59 Cal.App.5th 1136, 1140-1142 (*Carr II*) [over two years between certification and court determination].) As the procedural histories in *Rodriguez* and *Carr II* illustrate, most delays in section 1372 proceedings occur at the request of the defendant, and as a practical matter, the defendant generally exercises a large degree

¹³ <https://www.dsh.ca.gov/Treatment/Incompetent_Stand_Trial.html> (as of August 8, 2022); <<https://www.dds.ca.gov/services/state-facilities/porterville-dc/>> (as of August 8, 2022).

¹⁴ <https://www.dsh.ca.gov/Treatment/Incompetent_Stand_Trial.html> (as of August 8, 2022).

¹⁵ <https://www.dsh.ca.gov/About_Us/docs/DSH_2022-23_May_Revision_Estimate.pdf> [Section E1(b) – Chart 4] (as of August 8, 2022).

of control over the timing of the section 1372 hearing. If these section 1372 proceedings, with their often lengthy delays, are counted towards the two-year maximum commitment period for competency restoration treatment, it would in many cases directly undermine the Departments' ability to provide appropriate treatment to recommitted patients, as the two-year clock would frequently expire before a second round of treatment could be completed.

Another significant and related adverse consequence of such a statutory interpretation is that in cases where the two-year clock expires due to litigation delays not within the Departments' control, criminal defendants likely to become competent with additional treatment may instead be civilly committed to DSH or DDS. (§§ 1370, subd. (c)(3), 1370.1, subd. (c)(2)(A); see also Welf. & Inst. Code, § 6500 et seq. [civil commitment proceedings for individuals with developmental disabilities].) This would result in criminal defendants who otherwise would be competent to stand trial not getting their day in court, and instead facing civil commitment. Additionally, civilly committing defendants to state facilities when they become competent restricts available space for other IST defendants needing competency treatment. (See Welf. & Inst. Code, § 7502.5 [limiting capacity at Porterville Developmental Center to 231 individuals until June 30, 2023, after which it the population is capped at 211 individuals].) Thus, public policy considerations all favor a finding that two-year commitment period ends once the Departments file their

certification of restoration, not the date that the superior court finally makes a section 1372 competency ruling.

Indeed, the two-year commitment maximum and section 1372 proceedings simply could not have been designed to interact in this manner. The purpose of California's IST commitment scheme is to treat and restore defendants to competency in a timely manner so that their criminal proceedings can resume. (*Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 694.) But if the two-year commitment maximum includes the time before a court issues a competency finding, a significant number of IST defendants who challenge their certification will exhaust much (if not most) of that statutory timeframe with section 1372 proceedings rather than IST treatment, leaving DSH and DDS unable to provide necessary treatment.

The Legislature could not have rationally intended the two-year commitment maximum to operate in a manner that so easily undermines the central purpose of the IST scheme in so many individual cases. Such a conclusion would frustrate the purpose of the statutes and undercut the Departments' ability to provide meaningful competency restoration treatment.

CONCLUSION

The Court should hold under the IST commitment statutes that an incompetency commitment ends when a state hospital files a certificate of restoration to competency.

Respectfully submitted,

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August 8, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **AMICUS CURIAE BRIEF OF THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS AND CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES IN SUPPORT OF REAL PARTY IN INTEREST** uses a 13 point Century Schoolbook font and contains 2,882 words.

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August 8, 2022

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DECLARATION OF ELECTRONIC SERVICE

Case Name: **Rodriguez v. SC of Santa Clara County (Appeal)**
Case No.: **S272129**

I declare:

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

On August 8, 2022, I electronically served the attached **APPLICATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF REAL PARTY IN INTEREST and AMICUS CURIAE BRIEF OF THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS AND CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES IN SUPPORT OF REAL PARTY IN INTEREST** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 8, 2022, at Sacramento, California.

Traci Routt
Declarant



Signature

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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