

COLORADO SUPREME COURT 2 EAST 14TH AVENUE DENVER, COLORADO 80203	DATE FILED July 9, 2026 3:30 PM FILING ID: D3BA2C896EEDA CASE NUMBER: 2026SC329
Certiorari to the Court of Appeals Case No. 2024CA177 Opinion by Judge Schutz Brown and Berger, JJ., concur. Appeal from the Douglas County District Court Case No. 2021CR736 Honorable Natalie Strickland, Judge	
Petitioner: Vincente Tyler Vernagallo v. Respondent: People of the State of Colorado	COURT USE ONLY
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AMICUS CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF COLORADO IN SUPPORT OF PETITIONER	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Amicus Curiae brief complies with all requirements of C.A.R. 28(a)(2), 28(a)(3), 29(c), 32, and 53. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 53(g): It contains 3110 words.

I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ Emma Mclean-Riggs

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (“ACLU”) is a nationwide, non-partisan, non-profit organization with almost 2 million members, dedicated to safeguarding the principles of civil liberties enshrined in the federal and state constitutions. The ACLU of Colorado, with over 40,000 members and supporters, is a state affiliate of the ACLU. The ACLU is dedicated to the constitutional principles of liberty and equality, including the right to due process and fundamental fairness in adjudication. The ACLU and its state affiliates appear before courts throughout the country to protect the constitutional rights of those imprisoned and incompetent to proceed to trial. It seeks to enter as amicus curiae here in that tradition.

SUMMARY OF THE ARGUMENT

This Court should grant the petition because this issue is unlikely to come before the Court again. Cases involving in-custody competency restoration are likely to involve significant pretrial confinement, which pushes defendants towards resolution by plea. The nature of most disabilities that prompt competency proceedings also pushes these cases toward resolution by plea, cutting off subsequent appeals. As a result, this Court rarely has the opportunity to decide important constitutional issues arising in competency proceedings, including whether the state's delays in providing in-patient restoration should be counted against the state for the purpose of a speedy trial analysis.

This issue impacts hundreds of incapacitated, incarcerated defendants across the state, whose trials are pushed back due to Colorado's lengthy and unreasonable delays in providing in-patient restoration. This Court should grant the petition for certiorari to address this important constitutional question now because hundreds of people will be impacted by the Court of Appeals' decision before this Court has a chance to consider it again.

ARGUMENT

- I. **This Court should grant the petition because the case presents the Court with the rare opportunity to decide an issue of extraordinary importance with regard to competency and the right to speedy trial.**

This Court should grant the petition and hear this case because it presents an important meritorious issue and is the rare case that has proceeded through trial presenting the issue at hand. If the Court passes on this petition, it is unclear when it will have another opportunity to decide whether delays caused by the state's inadequate funding and staffing of the competency system count against the state when defendants raise speedy trial claims.

As this Court is aware, the vast majority of convictions in Colorado are obtained by plea agreement. Modern “developments...have made it easier than ever for prosecutors to cajole defendants into pleading guilty...These days, plea bargaining is not just ‘some adjunct to the criminal justice system; it is the criminal justice system.’” *Hunter v. United States*, 608 U.S. ____ (2026) (Gorsuch, J., concurring) (slip op. at 7) (quoting Scott & W. Stuntz, *Plea Bargaining as Contract*, 101 Yale L. J. 1909, 1912 (1992)). Plea agreements severely restrict the grounds available for appeal or collateral attack, because

they function as “extensive waiver[s]” of important constitutional and statutory rights attached to trial. *Patton v. People*, 35 P.3d 124, 128 (Colo. 2001); *but see Hunter*, 606 U.S. at ____ (Gorsuch, J., concurring) (slip op. at 16) (“Today, the Court finally begins to correct course, taking an important step toward reining in appeal waivers.”). The slim likelihood of trial in any criminal case already limits the range and number of constitutional defects that reach this Court.

However, it is *even less* likely that cases go all the way through trial where a defendant has been found incompetent to proceed to trial and subsequently restored because of factors unique to the competency system and the nature of psychiatric and neurological illness. Legal factors push these cases toward pleas, including the competency statutes and the state’s persistent failure to implement a constitutional system for in-custody restoration. Extralegal factors too, push toward pleas, especially the impact of pretrial detention on severe mental illness. Because Mr. Vernagallo’s case is one of the extremely rare ones that has made its way to this Court on direct review, while presenting a reoccurring issue that has profound importance across Colorado, this Court should grant his petition.

A. Colorado's competency adjudication process causes defendants to accrue large amounts of presentence confinement credit, making resolution by plea more likely.

Under virtually all circumstances, competency proceedings result in defendants accruing a large amount of presentence confinement credit that makes proceeding to trial extremely rare.¹ Colorado's competency statutes impose specific timelines for evaluating a defendant's competency to stand trial, and if they are found incompetent to stand trial, restoring them to competency. *See* C.R.S. §§16-8.5-101 to -125, C.R.S. 2025. As discussed below, Colorado has never consistently complied with these deadlines. However, even if there were compliance with the statutory timelines, the competency scheme allows for significant pretrial confinement. By way of example, consider a hypothetical defendant who is incarcerated throughout her competency matter and ordered to in-patient restoration at the state hospital. If all statutory timelines were adhered to and the process moved as quickly

¹ The majority of defendants in Colorado competency proceedings are ordered to in-patient restoration and await restoration in county jail. Special Master Report, *Center for Legal Advocacy d/b/a Disability Law Colorado v. Barnes*, 1:11-cv-02285, Dkt. 341 at 55 (D. Colo. June 2, 2026) (hereinafter Special Master Report). This brief focuses on this population, which includes Mr. Vernagallo.

as possible (neither of which typically happen), she would be confined pretrial for 81 days.² In this example, the defendant would spend an amount of time in confinement that exceeds her likely sentence on a misdemeanor³ and this pretrial confinement would factor into any plea negotiations on higher level charges. See *People v. Endsley*, 590 P.3d 867, 868 (Colo. App. 2026) (addressing a plea agreement negotiating availability of presentence confinement credit); Brandon L. Garrett, et al., *Open Prosecution*, 75 Stan. L.

² This example vastly understates what actually happens in most cases. It assumes that the parties and trial court act on all issues without an explicit time limit within 7 days, which rarely occurs. The example also assumes that the defendant is evaluated by a CDHS forensic evaluator, C.R.S. §16-8.5-103(1), (2) (providing the court the choice of making a preliminary finding as to competency or ordering evaluation), and that no party has requested a second evaluation or hearing. C.R.S. §§16-8.5-111(2), 16-6.5-108(1)(a). It also assumes the defendant was designated Tier 1 and transported to in-patient restoration within 7 days, C.R.S. §16-8.5-110(3)(a)(II), and restored in 30 days, both of also which rarely happen. Less than 1% of people in CMHIPP's custody for restoration are discharged within 30 days. Colorado Department of Human Services, *Civil and Forensic Mental Health Transparency*, <https://cdhs.colorado.gov/ocfmh-transparency> (last accessed July 3, 2026).

³ While statewide data on jail sentences is not published, the Colorado Prosecutor Dashboards Project provides data regarding misdemeanor sentencing. In the three busiest judicial districts in Colorado that report relevant data (the 2nd, the 17th, and the 18th), over 60% of misdemeanor sentences involve no jail time. Colorado Prosecutor Dashboards Project, *Data Dashboards: Sentencing* (last accessed July 3, 2026) (data provided by each individual district attorney's office).

Rev. 1365, 1392, 1413 (2023) (studying prosecutorial decision-making and noting time served was frequently incorporated into negotiated sentences).

The people caught in Colorado's competency system are not as lucky as the hypothetical defendant discussed above. They will spend much more time in jail waiting for competency services, causing even greater incentive to accept plea bargains. With respect to in-patient restoration services, people designated Tier 1 wait for an average of 21 more days than legally permitted, and people designated Tier 2 wait for an average of 54 days more. Special Master Report at 10-11. In addition, since October 2024, the state has routinely failed even to evaluate people within 21 days, causing additional pretrial incarceration. *Id.* at 13. The waitlist for in-patient restoration had about 360 people on it in May of 2026. *Id.* at 17. The person currently awaiting restoration who has been waiting longest has been in jail with no restoration treatment for 259 days. Colorado Department of Human Services, *Civil and Forensic Mental Health Transparency*.

Given the state's persistent and widespread failure to comply with its statutory deadlines and the realities of crowded trial dockets, defendants in the competency process are likely to spend hundreds of days in presentence

confinement. Because of this large amount of credit, which can apply toward a short sentence or serve as the entire sentence, both defendants and prosecutors are pushed toward pleas, rather than trials and subsequent appeals. This case presents one of the rare circumstances where the Court has an opportunity to consider the constitutional question at hand.

B. The nature of the disabilities which cause defendants to be in the competency process incentivize plea agreements.

In addition to the presentence confinement that pushes defendants towards pleas, the nature of the disabilities that underlay competency proceedings and the treatment people are subjected to during them also pushes these cases toward pleas. First, the nature of competency is that it changes over time. Whether a person is competent to stand trial is a time-specific legal inquiry, focused on the person's "present ability" to assist in their defense and rationally and factually understand the proceedings. C.R.S. §16-8.5-101(7). Courts have long understood that competency is likely to be episodic. *Drope v. Missouri*, 420 U.S. 162, 171 (1975). Many disabilities can result in a person being found incompetent to stand trial, but the most common, a psychotic disorder, changes frequently, making competency

particularly time-sensitive. Gianni Pirelli, et al., *A Meta-Analytic Review of Competency to Stand Trial Research*, 17 Psych. Pub. Policy & L. 1, 15 (2011) (finding over 60% of people found incompetent to stand trial across 68 studies had been diagnosed with a psychotic disorder.)

Fluctuation in symptoms is the most significant time pressure on cases involving competency. Most people who are restored have not experienced complete cessation of psychosis. Restoration of competency is distinct from medical care in that the goal is not to ‘heal’ the individual. Instead, the goal is to provide ‘just enough’ treatment to restore an individual’s ability to stand trial, without the goal of long-term stabilization. National Conference of State Legislators, *Competency to Stand Trial*, 1 (2025), <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Legislative-Primer-Competency-to-Stand-Trial.pdf> (last accessed July 7, 2026). Most people with psychotic disorders experience significant fluctuations in their symptoms and connection to reality. Gabriela Novak & Mary Seeman, *Dopamine, Psychosis, and Symptom Fluctuation*, 10 HEALTHCARE 9, 12 (2022); Paul Appelbaum et al., *Persistence and Stability of Delusions over Time*, 45 COMPREHENSIVE PSYCHIATRY 5, 317 (2004). A person who was competent last

week may not be today, because of the nature of their illness and the fact that “restoration” does not mean “treatment.”

The circumstances under which people restored to competency through in-patient restoration live make intensification of symptoms even more probable. Once a person has been restored to competency, they are sent back to county jail to await prosecution. C.R.S. §16-8.5-105(d)(II). Jails are not therapeutic environments and cannot support recovery from serious mental illness, especially for people who have not been medically stabilized, but only “restored.” Debra Pinals & Lisa Callahan, *Evaluation and Restoration of Competence to Stand Trial*, 71 PSYCHIATRIC SERVS. 7, 698-705 (Jul. 2020). Jail settings are stressful, leading to often severe and immediate decompensation. Sagnik Bhattacharyya et al., *Stressful Life Events and the Relapse of Psychosis*, 10 LANCET PSYCHIATRY 6, 416 (2023) (concluding that exposure to stressful life events after onset of psychosis worsens prognosis for recovery); Pinals, *supra* at 698-705 (describing how jail conditions lead to decompensation in people with severe mental illness).

The realities of symptom fluctuation are well-known to all repeat players in Colorado’s criminal courts, including defense counsel

(overwhelmingly court-appointed in competency cases)⁴ and prosecutors. An experienced defense attorney who has a client recently restored to competency may reasonably feel that they have a brief window of time in which their client can meet a frequently-articulated goal of ending their confinement. An experienced prosecutor too, may recognize this moment as a brief opportunity to resolve a case. As a result, this Court will not have many opportunities to decide whether delays in sending someone for in-patient restoration should count for purposes of the right to speedy trial.

In fact, in the last five years, this court has granted certiorari on only one case regarding competency. *People v. Day*, 585 P.3d 857 (Colo. 2026) (finding that a defendant must be competent before undergoing a mental-condition examination). Even in the interlocutory posture, this Court has only exercised its Rule 21 appellate jurisdiction in five cases involving competency issues over the same period.⁵ Four dealt with issues of

⁴ Megan Ring, *Office of the State Public Defender FY 2024-25 Budget Request*, 9 (2023), <https://spl.cde.state.co.us/artemis/pdserials/pd11internet/pd11202425internet.pdf>.

⁵ Two cases were dismissed at the request of the parties, illustrating the difficulty of appellate review in these matters. *In re People v. Hollaway*, 535 P.3d 566 (Colo. 2023) (regarding whether trial court erred in denying

evaluation. *In re People in Interest of A.C.*, 517 P.3d 1228 (Colo. 2022) (finding that juvenile magistrate has authority to order a restoration evaluation); *In re People in Interest of A.T.C.*, 528 P.3d 168 (Colo. 2023) (finding that a magistrate's competency finding was subject to review in the juvenile court); *In re People in Interest of J.D.*, 567 P.3d 138 (Colo. 2025) (finding that statutory responsibility to provide restoration services included authority to perform restoration evaluations); *In re People v. McGee*, 581 P.3d 1213 (Colo. 2026) (finding that a defendant is statutorily entitled to a timely-requested second opinion competency evaluation). The last, granted on June 25, 2026, deals with whether a trial court erred in ordering the defendant held without bond pending admission to in-patient restoration. *In re People v. Rincon*, 2026SA214 (Colo. Jun. 25, 2026) (petition for review pursuant to C.A.R. 21 filed).

The petition for certiorari here represents the rare defendant who proceeds to trial after competency proceedings, and appears before this Court with a preserved, meritorious issue about the intersection of the constitutional right to be tried only while competent and the constitutional

defendant's motion to dismiss for excessive confinement); *In re People v. Speed*, 526 P.3d 955 (Colo. 2023) (regarding whether the trial court erred in denying defendant a restorability hearing).

right to a speedy trial. *Amicus curiae* asks this Court to grant the petition, and, as discussed below, uphold speedy trial rights for defendants in competency proceedings.

II. The issue presented in this case is one of extraordinary importance.

It is the state's burden to bring a defendant to a speedy trial, *People v. Chavez*, 779 P.2d 375, 376 (Colo. 1989), and it is the state's burden to transport incompetent defendants to in-patient restoration in a timely manner or dismiss the charges. *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1121 (9th Cir. 2003); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The ultimate charging entity (the state of Colorado) and the entity responsible for restoration (the state of Colorado, per C.R.S. §16-8.5-110(2)(a)) are the same. The central inquiry is “whether the government or the criminal defendant is to blame;” whether the prosecution has direct control over that arm of the state is irrelevant. *Vermont v. Brillon*, 556 U.S. 81, 90 (2009).

Colorado's delay in providing timely restoration services—which independently gives rise to constitutional due process concerns — should not permit the state to violate speedy trial rights. This is especially so because

Colorado has known of the constitutional crisis around provision of restoration for years and failed to address it. In 2019, the state entered a consent decree in a lawsuit brought by the state's protection and advocacy organization. Consent Decree, *Center for Legal Advocacy d/b/a Disability Law Colorado v. Barnes*, 1:11-cv-02285, Dkt. 165 (D. Colo. Apr. 2, 2019). In that consent decree, the state promised to adhere to specific timelines for providing evaluation and restoration treatment. *Id.* The state has failed to meet those obligations, paying the maximum annual fine for noncompliance (\$12 million) for the last several years. Special Master Report at 29. The state is likely to pay fines for noncompliance "throughout 2026 and beyond." *Id.* The Court of Appeals decision, in effect, places a judicial imprimatur on the ongoing violation of incapacitated defendants' due process rights to excuse a violation of their right to a speedy trial. This Court should take this case to squarely reject this reasoning.

This Court also should reject the implication that defense counsel's compliance with their statutory and constitutional obligation to raise competency, even while the imprisoned person strenuously asserts their right to a speedy trial, should weigh in favor of transport delays being

attributed to the defense. While ordinarily defense counsel “act[] only on behalf of” their client, “not the State,” *Brillon*, 556 U.S. at 92, competency is different. Defense counsel is “duty-bound to raise . . . the issue of an accused’s competency whenever there is some doubt about that question.” *Blehm v. People*, 817 P.2d 988, 994 (Colo. 1991); *United States v. Boigegrain*, 155 F.3d 1181, 1188–89 (10th Cir. 1998) (recognizing that defense counsel “may (and probably must)” raise competency over their client’s objection because of counsel’s “duty to maintain the integrity of the court,” even if doing so is in conflict with the client’s best interests). When defense counsel raises competency over their client’s objection, they therefore act as an officer of the court, not as an advocate for their client, and resulting delays should be attributed to the state.

In any event, the unreasonable and unlawful delays *after* competency is raised are not proximately caused by raising competency. Raising competency triggers the process itself, including the time period necessary for restoration, but does not cause the state’s failure to timely act and restore individuals. *Unites States v. Dellinger*, 980 F.Supp.2d 806, 812 (E.D. Mich. 2013) (concluding that state hospital’s delays in transport to in-patient restoration

do not “result[] from” defendants’ incompetence, but from the U.S. Marshalls’ negligence and counts against the government for the purpose of the Speedy Trial Act); *United States v. Sparks*, 885 F.Supp.2d 92, 101 (D. D.C. 2012) (counting transportation delays to restoration treatment after the statutory deadline against the government for the purposes of the Speedy Trial Act, as “ordinary institutionalized delay is not an excuse”).

CONCLUSION

This Court should take up Petitioner’s proposed issue because this Court is unlikely to have frequent opportunities to address it, the Court of Appeals’ reasoning was in error, and the state hospital delays at issue impact hundreds of vulnerable, incapacitated, imprisoned people every year. If this Court does not seize this chance to intervene, hundreds of people risk having one constitutional right violated because they experienced a separate constitutional violation, in an untenable snowball effect. This Court should grant the petition for certiorari.

Dated this 9th day of July, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 9, 2026, a true and correct copy of the foregoing **AMICUS CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF COLORADO IN SUPPORT OF PETITIONER** was served via the Colorado Courts E-Filing system, which notifies all counsel of record.

/s/Kara S. Narberes