SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

Law Court Docket No. 25-137

ANDREW ROBBINS, *et al.*

Plaintiffs-Appellees,

v.

STATE OF MAINE, *et al.*

Defendants-Appellants.

On Appeal from the
Superior Court, Kennebec County,
Superior Ct. No. KENSC-CV-22-54

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A cornerstone of our constitutional order is that "every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. 137, 147 (1803). In this certified class action, the trial court properly ordered meaningful habeas remedies to address the State's complete failure to provide counsel to hundreds of indigent criminal defendants as required by the Sixth Amendment. While the State claims that it does not wish to "act as a barrier to appropriate relief" for its widespread Sixth Amendment violations, Opening Br. 40, it now urges this Court to dismantle the habeas framework carefully crafted by the trial court following a three-day remedies trial. Instead, the State proposes an empty "remedy" that is merely a continuation of the status quo: local judges presiding over individual criminal cases will continue to hold weekly status hearings for unrepresented defendants, during which they can decide in their discretion what remedies to order for acknowledged Sixth Amendment violations—if any. This is the system that has already been in place since November 2023, and it has resulted in trial court judges repeatedly finding Sixth Amendment violations but offering no meaningful remedies to hundreds of indigent defendants. Our Constitution demands more.

Maine's denial of counsel to people accused of crimes has turned the system on its head. The "very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective

that the guilty be convicted and the innocent go free." *United States v. Cronic*, 466 U.S. 648, 655 (1984) (citation omitted). That adversarial testing cannot happen when one side is deprived of counsel. The State's answer—sit tight, continue with the status quo, and maybe things will work themselves out—makes a mockery of the Sixth Amendment's promise of a fair justice system. As the Massachusetts Supreme Judicial Court said when confronting a similar Sixth-Amendment crisis, "[t]he continuation of what is now an unconstitutional state of affairs cannot be tolerated." *Lavallee v. Justs. in Hamden Superior Ct.*, 442 Mass. 228, 245, 812 N.E.2d 895, 910 (Mass. 2004).

Even in "times of crisis, judges must not shrink from [their] duty to safeguard the rights' guaranteed by the Constitution," and "[d]enying a watershed right to criminal defendants, presumed to be innocent, is a textbook example of shrinking from this duty." *Betschart v. Oregon*, 103 F.4th 607, 626 (9th Cir. 2024) (citation omitted). The Court should affirm the trial court's order of meaningful habeas relief to remedy the ongoing complete denial of counsel to hundreds of indigent defendants.

STATEMENT OF FACTS

The crisis of complete denial of counsel in Maine has reached epic proportions. At the time of the January 2025 trial in this case, there were 991 pending cases where indigent defendants remained unrepresented. J.A.093-94. The number

of individuals *incarcerated* without counsel fluctuates between 50 to 100. J.A.111. And indigent defendants are waiting months and even years for counsel: in January 2025, the median wait time for defendants never provided counsel had ballooned to 66 days, and in 79 cases defendants had gone without counsel for *more than a year*. J.A.093-94. Every one of these individuals "is still presumed to be innocent under the Maine and United States Constitutions." J.A.123-24.

For each of the individuals incarcerated without counsel, "[t]heir only access to due process is to be brought before a judge every seven days" for a weekly status hearing. J.A.124. And at these status review hearings, "many jurists routinely find violations of the Sixth Amendment," but then check a box on a form order stating that, despite the violation, the defendant is not entitled to any relief. J.A.119-20 (citing Plaintiffs' Trial Ex. 1). As Plaintiffs' expert Professor Eve Primus testified, judges are routinely announcing that there is a "constitutional crisis and telling a courtroom full of people that there's nothing that they can do about it": these "structural or pervasive rights violations . . . erode faith and trust in the [criminal justice] system for everybody, including the public." Trial Transcript ("Tr.") Jan. 22, 2025 at 123:13-16; 124:16-125:5.

Defendants' own expert Frayla Tarpinian succinctly summed up the problem: despite widespread agreement that the State is failing to provide lawyers for hundreds of indigent defendants, the answer from many courts finding Sixth

Amendment violations in individual cases is "sucks to be you." Tr. Jan. 24, 2025 at 85:10-21. According to Defendant Commission Executive Director James Billings, some people feel "trapped in a coercive system" and plead guilty just to get out of jail. J.A.107. As Defendant Commission Chair Josh Tardy explained, while the number of unrepresented defendants may "ebb and flow," even "one or two defendants sitting in jail without an attorney" is "unacceptable." Tr. Jan. 22, 2025 at 206:6-18. Fundamentally, the denial of counsel to people accused of crimes "cut[s] away at the fabric of our community and society." Tr. Jan. 22, 2025 at 207:16-25.

SUMMARY OF ARGUMENT

The State agrees that if Plaintiffs prevail on Count I, "the question of habeas liability is not in dispute": "[b]ecause the Court has found that all members of the Plaintiff Subclass have suffered a Sixth Amendment violation, then all incarcerated members of the Plaintiff Subclass are presumptively being 'unlawfully deprived of [their] personal liberty by the act of another.'" State's Post-Trial Brief, 11-12 (Feb. 21, 2025) (citing 14 M.R.S. § 5501). Where the parties part ways is whether the judiciary can do anything about this Sixth Amendment violation. This Court should affirm the trial court's carefully crafted equitable remedies to meaningfully address the complete denial of counsel to the Subclass.

As a threshold matter, the Court should not decide this case on a piecemeal basis: the State appeals from a plainly interlocutory order and has failed to show that any exception to the final judgment rule applies (Part I).

Even if the Court excuses the State from the final judgment rule, its appeal fails on the merits. The trial court properly exercised its equitable authority to craft a class-wide remedy for the structural violation of the right-to-counsel: release from detention with conditions and dismissal of charges without prejudice if the State continues to fail to provide counsel within set timeframes. (Part II.A). That is precisely what other courts across the country have done when facing similar structural Sixth Amendment crises (Part II.B). Nothing in Maine law prevents the court from applying those same remedies here: the court has broad equitable authority to relieve Subclass members from unlawful restraints on their liberty, *including* ordering dismissal of charges to free out-of-custody defendants from restrictive conditions of release (Part II.C).

Contrary to the State's argument, nothing in the Supreme Court's *Morrison* decision requires this Court to dismantle that remedial framework and instead continue the status quo, in which individual judges hold status conferences to decide in their discretion whether and how to address individual Sixth Amendment violations (Part III.A). Although the State derogatorily refers to the trial court's remedial framework as "riding circuit," the court in this statewide class action

appropriately crafted a statewide framework to remedy statewide constitutional violations caused by the State. The court did not abuse its discretion in deciding that habeas relief can be implemented most fairly and efficiently through a consolidated process in which a single judge presides over regular habeas hearings for the Subclass, rather than through ad hoc discretionary proceedings before dozens of judges throughout the state (Part III.B). Finally, the State waived any argument that there is a statutory limitation on habeas relief for individuals charged with felonies, and in any event such a limitation would violate the Suspension Clause, Maine's broader statutory scheme, and this Court's precedent (Part IV).

The State tepidly claims it's "not indifferent" to the widespread Sixth Amendment violations and yet fails to propose any meaningful remedies. Opening Br. 30. But the State is not a mere bystander here: as the trial court found, while indigent defendants are "being deprived of their liberty by the State, it is the State that has failed to provide them with an attorney." J.A.121; *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963) ("One charged with crime, who is unable to obtain counsel, must be furnished counsel *by the state*." (emphasis added)). The Court should affirm the trial court's remedial framework providing for conditional habeas relief on Count III.

PROCEDURAL HISTORY

In 2022, Plaintiffs brought this class-action lawsuit to challenge the constitutional adequacy of Maine's indigent-defense system, and the trial court certified a class of individuals eligible for appointment of counsel. J.A.276-79; Order on Mot. for Class Cert. at 5 (July 13, 2022).

However, while the parties engaged in discovery and undertook settlement negotiations, the situation on the ground deteriorated: as of early 2024, hundreds of indigent defendants were not being provided counsel *at all*. Combined Order 4 (Feb. 27, 2024) ("Feb. 2024 Order") (attaching Counsel Needed spreadsheets). As a result, the trial court denied preliminary approval of the revised settlement agreement, finding that it failed to provide relief "for the ever-increasing number of unrepresented indigent defendants." *Id*. at 14.

The court then (1) "create[d] a Subclass consisting of Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual class member"; and (2) bifurcated the case into two phases: Phase I would "adjudicate the federal and state claims and defenses regarding non-representation" for the Subclass, and Phase II would address claims that systemic conditions pose an "unconstitutional risk" of deprivation of counsel for the Class. *Id.* at 16. Plaintiffs filed an amended complaint, adding three new class representatives who remained without counsel and expanding their claims to more

directly address the urgent crisis of non-representation—including a count seeking class-wide habeas relief to remedy the complete denial of counsel (Count III). J.A.202, 235-44; Order on Mtn. for Leave to Amend (May 23, 2024). At the State's request, the trial court designated the State as a "Party-in-Interest" to Count III. Order on Mot. to Dismiss 17 (Aug. 13, 2024).

Throughout this period, the parties engaged in Phase I discovery and motion practice on the surviving counts. In September 2024, the court granted Plaintiffs' motion to amend the class definition, expanding the Subclass to include individuals charged with Class D or E offenses in addition to the existing Subclass of individuals charged with Class A-C offenses, and reaffirming that the Subclass met the Maine Rules of Civil Procedure Rule 23 class-certification requirements. J.A.182-92.

On January 3, 2025, the court granted summary judgment to the Subclass on liability on their Phase I claims for non-representation, concluding that Defendants had violated the Subclass members' Sixth Amendment rights by depriving them of counsel at critical stages of the proceedings, and prejudice must be presumed based on this complete denial of counsel. J.A.179.[1]

On March 7, 2025, after a three-day remedies trial and extensive pre- and post-trial briefing, the court ordered conditional habeas corpus remedies for the complete

[1] The court granted summary judgment to Defendants on Count II, Plaintiffs' claim for denial of counsel under the Maine Civil Rights Act. That ruling is not at issue on this appeal.

denial of counsel: if the State continues to fail to provide counsel to Subclass members for over 14 days after initial appearance or withdrawal of counsel, they will be released from detention with appropriate conditions of release, and if the State *still* fails to provide counsel for over 60 days after initial appearance, their charges will be dismissed without prejudice. J.A.131-33 ("Remedies Order"). The court's remedial framework applied the consensus rule that has emerged from courts across the country addressing similar Sixth Amendment crises: the appropriate remedy for a complete denial of counsel is release and dismissal on clear timeframes. J.A.126-30; *see infra*, pp. 15-18.

The Remedies Order scheduled future proceedings on all counts, including Count III. J.A.131-33. Before the court could conduct these additional proceedings, however, on March 27 the State and MCPDS filed interlocutory notices of appeal on all counts. After the State filed this appeal of the March 7 Remedies Order, on April 15 the State raised a new legal argument that Subclass members charged with felonies are categorically ineligible for a writ of habeas corpus. Opp. to Mtn. to Cont. 10-12 (Apr. 15, 2025). The court rejected this belated argument. J.A.074-75.

ARGUMENT

I. The State seeks improper interlocutory review.

As this Court has observed time and again, "[o]rdinarily, the final judgment rule prevents a party from appealing a trial court's decision on a motion before a final

judgment has been rendered." *Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 12, 974 A.2d 918. There is "a strong policy against piecemeal review of litigation," *Guidi v. Turner*, 2004 ME 42, ¶ 9, 845 A.2d 1189, and thus "[t]here is good reason to be cautious in taking interlocutory appeals and removing a case from ongoing consideration by the trial court," *Quirion v. Veilleux*, 2013 ME 50, ¶ 12, 65 A.3d 1287.

The State concedes that its appeal is interlocutory (as it must, since both Phase I and Phase II proceedings are ongoing in the trial court), but does not explain why it chose not to follow the established procedure of asking the trial court to certify its interlocutory order as a partial final judgment under Me. R. Civ. P. 54(b)(1).[2] Instead, the State urges this Court to excuse it from the final judgment rule based on either the "death knell" and "collateral order" exceptions. The State has not shown that either exception applies.

The "death knell" exception applies "only when the injury to the appellant's claimed right, absent appeal, would be imminent, concrete and irreparable." *Fiber Materials*, 2009 ME 71, ¶ 16, 974 A.2d 918. Here, the principal "right" the State claims will be harmed is its right to continue prosecuting and detaining people indefinitely pretrial, while failing to provide them with counsel. Opening Br. 21-22.

[2] The MCPDS Defendants filed a Rule 54(b) motion to certify as to Count I, but then filed their notice of appeal before the trial court had acted upon it. The State never filed a Rule 54(b) motion to certify as to Count III.

That is not a legal right at all. It is a bid to act *illegally*: a claim of unfettered discretion to restrict people's liberty without satisfying their basic constitutional rights.

Indeed, while the State claims its interests will be irreparably harmed by the ordered habeas relief, the trial court found precisely the opposite. As the court noted, if habeas relief were ordered for individuals without counsel, that would not interfere with the State's operations of the public defender's office—instead, "It would help." J.A.112, n.13 (citing trial testimony of District Defender Frayla Tarpinian). The State also suggests the trial court's order infringes on the State's right to weigh in on pre-trial bail. Opening Br. 21. But the Remedies Order expressly protects that right, guaranteeing the State the right to appear at all habeas hearings and weigh in on bail conditions for Subclass members. J.A.132-33.

The "collateral order" exception is even less applicable. Like the death knell exception, this doctrine applies only when there would be an "irreparable loss of the rights claimed, absent immediate review," and the State has made no such showing. *Fiber Materials*, 2009 ME 71, ¶ 25, 974 A.2d 918. In addition, this exception requires that the decision appealed from adjudicates a "claim separable from the gravamen of the litigation." *Id.* But the Remedies Order appealed from here ruled that the Subclass was "entitled to habeas relief under both the Sixth Amendment and Article I, Section 6 of the Maine Constitution for failing to provide continuous

representation to indigent defendants at all stages of the criminal process." J.A.115. The court's finding of widespread violations of the Subclass's right to counsel—the legal claims at the core of this case—is inseparable from the court's determination of the appropriate remedies for those same violations.

II. The trial court properly exercised its discretion to order a conditional habeas remedy in the event the State continues to deny counsel to the Subclass members.

The trial court had broad equitable authority to craft a conditional habeas remedy—the most common and least intrusive form of habeas relief.[3] The court made clear that the "most appropriate remedy" is representation, and provided for habeas relief (in the form of release and dismissal) only "as a last resort," and only if the State *still* fails to provide counsel within the set timeframes. J.A.130-33.

A. Courts have broad discretion to issue the "Great Writ of Liberty."

A petitioner's application for habeas "is addressed to the sound discretion of the Court," and Maine courts have broad discretion to order habeas relief when "the

[3] Habeas writs can be either conditional or unconditional: while unconditional writs are absolute orders of release from restraints on liberty, conditional writs are "essentially accommodations accorded to the state." *Satterlee v. Wolfenbarger*, 453 F.3d 362, 369 (6th Cir. 2006). A conditional habeas writ is the most common and least intrusive form of habeas relief. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74, 89 (2005) (Kennedy, J., dissenting) (describing the "common practice of granting a conditional writ," that is, "ordering that a State release the prisoner or else correct the constitutional error").

real and substantial justice of the case demands it." *Dwyer v. State*, 151 Me. 382, 388, 120 A.2d 276, 280 (1956). Under our State Constitution, "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Me. Const., art. I, § 10 ("Suspension Clause"). The common-law writ of habeas corpus dates back to at least the Magna Carta, centuries before its adoption in the Maine and U.S. constitutions. *See Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). "The purpose of this celebrated writ of habeas corpus, which has been denominated 'the great writ of liberty,' is not only to secure the right of personal liberty to one who has been illegally deprived thereof, but also to insure a speedy hearing and determination of the questions involved . . . ." *Stewart v. Smith*, 101 Me. 397, 64 A. 663, 664 (1906). The common-law habeas writ "is not now and never has been a static, narrow, formalistic remedy"; instead, "its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

Maine's 1821 habeas statute[4] codifies the common-law habeas writ, but under the Suspension Clause, the "'great writ of liberty' must not be destroyed or weakened" by statute. *In re Opinion of the Justs.*, 157 Me. 187, 211, 170 A.2d 660,

[4] The pre-conviction habeas statute has remained in substantially the same form since its enactment. 14 M.R.S. §§ 5501-5546; PL 1821, c. 64.

672 (1961) (striking down a statutory provision that would have limited the scope of the common-law habeas writ in violation of the Suspension Clause). Under Maine's broad habeas statute, "[e]very person unlawfully deprived of his personal liberty by the act of another . . . shall of right have a writ of habeas corpus." 14 M.R.S. § 5501; *see also* 14 M.R.S. § 5511 (authorizing "any person" to seek writ of habeas corpus on behalf of "any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced"). Moreover, based on their inherent equitable powers, Maine courts "have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law." 14 M.R.S. § 6051; *see also* 4 M.R.S. §§ 7, 105(2)(B).

B. The trial court properly applied the remedial framework developed in other cases to address complete denial of counsel.

When it came to crafting a meaningful remedy for the complete denial of counsel, the trial court in this case did not write on a blank slate. Instead, the court applied the consensus rule developed in jurisdictions facing nearly identical crises across the country: when the constitutional injury is a complete denial of counsel, the appropriate remedy—indeed the *only* effective remedy to address this structural error—is release from detention and dismissal of charges on set timeframes. J.A.126-30.

In *Lavallee*, indigent criminal defendants in Massachusetts filed suit because, as here, they had not been appointed attorneys "due to a shortage of lawyers" "as a

result of the Commonwealth's chronic underfunding" of the indigent defense system. 812 N.E.2d at 900. The Massachusetts Supreme Judicial Court rejected the argument that judges could adequately remedy the problem in individual cases through continuances, explaining that petitioners "cannot be required to wait on their right to counsel while the State solves its administrative problems." *Id*. at 907. Instead, the court ordered a meaningful, immediate remedy with definite timelines: release from detention for defendants who had remained without counsel for more than seven days, and dismissal of charges without prejudice for those without counsel for more than 45 days. *Id*. at 912-13. Setting these clear time limits "recognizes the public's strong interest in bringing serious criminals to justice swiftly, but it also recognizes society's vital interest in the fair conduct of criminal proceedings." *Id*. And in 2020, the Massachusetts Supreme Judicial Court reaffirmed the *Lavallee* protocol as an appropriate remedy for the complete deprivation of counsel. *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 484 Mass. 367, 369, 381, 385-386, 388-391, 142 N.E.3d 28, 35, 44, 47, 49-51 (Mass. 2020).

Similarly, in *Betschart*, indigent defendants pursued class habeas claims because, as here, hundreds of defendants remained unrepresented for "days, weeks, and months" because "there were no longer enough lawyers to represent them." 103 F.4th at 612-13. As in *Lavallee*, the court ordered relief with clear, definite timelines: "[i]f counsel is not secured within seven days" of the initial appearance or

withdrawal of counsel, "the sheriff of that county is ordered to release the class member." *Betschart v. Garrett*, 3:23-cv-01097-CL, 2023 WL 7621969, at *1 (D. Or. Nov. 14, 2023). The Ninth Circuit affirmed the district court's remedial framework, castigating the state for failing to offer unrepresented individuals any relief other than "a shoulder shrug" and "a promise that they are 'working on it.'" *Betschart*, 103 F.4th at 612; *see also David v. Missouri*, No. 20AC-CC0093, at 13, 15-16 (Mo. Circuit Ct. Cole Cnty., Feb. 6, 2023) (holding that right to counsel is violated if counsel not provided within earlier of two weeks from first appearance or time to assist with an earlier critical stage such as bail hearing).

Here, the State says the trial court "erroneously relied" on *Lavallee* and *Carrasquillo* because the court used a different procedural vehicle for ordering equitable relief (Opening Br. 33), but that misses the point. All of these cases confronted the same question: what is the appropriately tailored equitable remedy to address a complete denial of counsel at critical stages? *See United States v. Morrison*, 449 U.S. 361, 363-65 (1981) (stating general principle that remedies should be tailored to the type of constitutional injury suffered). And all of these cases came to precisely the same conclusion: when individuals suffer a complete denial of counsel—a structural error for which prejudice must be *presumed, Cronic,* 466 U.S. at 659—the appropriately tailored remedy is release from custody and dismissal of charges on definite timeframes. Indeed, these are the only remedies that can

effectively "neutralize the taint" of this grave constitutional injury. *See Morrison*, 44 U.S. at 365.

The trial court properly applied this remedial framework, concluding that these cases "all offer sound approaches for providing relief that is proportionate to the gravity of the violation and harms caused, while at the same time ensuring consideration of other important public concerns, including public safety." J.A. 126.

C. Habeas is available to free individuals from a broad range of restrictions on liberty, including dismissal of charges for Subclass members subject to restrictive conditions of release.

The State asserts that in Maine, habeas remedies are unavailable to free out-of-custody Subclass members from restrictive conditions of release, and further that dismissal of charges is not an appropriate habeas remedy. Opening Br. 40-45. As the trial court correctly held, the State is mistaken on both counts. J.A.116-17, 120-21.

First, Maine courts have expansive equitable authority under both federal and state law to relieve petitioners from a variety of restraints on their liberty beyond physical confinement.[5] The Supreme Court has long held that habeas relief is not available only to individuals who are in "actual physical custody;" instead, a

[5] 39 Am. Jur. 2d Habeas Corpus § 15 ("'Confinement,' for purposes of invoking a court's habeas jurisdiction, is broadly interpreted to mean incarceration, release on bail or bond, release on probation or parole, or any other restraint on personal liberty, including mere collateral legal consequences resulting from a conviction; it does not require actual commitment, and the lack of confinement does not deprive the trial court of habeas jurisdiction," collecting state and federal habeas cases); *see also* 17B Fed. Prac. & Proc. Juris. § 4262 (3d ed.) (similar).

petitioner is "in custody" for habeas purposes if they are subject to significant restraints on their liberty that are not otherwise experienced by the general public. *Jones v. Cunningham*, 371 U.S. 236, 239 (1963); *see also Hensley v. Mun. Ct.*, 411 U.S. 345 (1973). Thus, "a petitioner who is on parole, probation, supervised release, or released on bail is deemed to be 'in custody' for habeas purposes." *Banks v. Gonzales*, 496 F. Supp. 2d 146, 149 (D.D.C. 2007).

Maine's habeas statute is likewise clear that its protections apply not only to individuals in physical custody, but to "[e]very person unlawfully deprived of his personal liberty by the act of another." 14 M.R.S. § 5501. The statute's plain language provides for relief to *both* those "imprisoned" *and* those otherwise "restrained of [their] liberty." 14 M.R.S. § 5510, 5511, 5515, 5518, 5521-23. And this Court has long recognized that habeas relief is broadly available to free individuals from various forms of "illegal restraint" on their liberty; it is not limited to orders to release individuals from physical imprisonment. *Roussel v. State*, 274 A.2d 909, 913 (1971) (writ is broadly available "to accomplish summary release from illegal restraint whether governmental or otherwise"). For example, habeas relief is available to free a child from "illegal restraint" when "the child is unlawfully absent from the person having the legal right to the child." *Snyder on Behalf of Snyder v. Talbot*, 652 A.2d 100, 101 (Me. 1995). And "[t]he writ of habeas corpus must remain available at all times to any person hospitalized" in commitment

proceedings for mentally ill patients. *In re Opinion of the Justs.*, 157 Me. at 211, 170 A.2d at 672-73.

The State offers nothing to rebut this established state and federal law. Nor does it rebut the trial court's finding that, even for indigent defendants who are not in jail, bail conditions impose "significant" restrictions on their liberty. J.A.120-21. Without this critical relief, hundreds of out-of-custody Subclass members subjected to restrictive conditions of release will continue to go weeks, months, or even years without counsel, and yet be left with no recourse whatsoever for the restraints on their liberty.

Second, the State asserts that Maine's habeas statute does not authorize dismissal of charges (here, without prejudice). Opening Br. 42-44. But Maine's statute cannot weaken or limit the scope of the common-law "great writ of liberty" preserved by our Constitution. *In re Opinion of the Justs.*, 157 Me. at 211, 170 A.2d at 672-73; Me. Const., art. I, § 10. "[C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances." *Boumediene v. Bush*, 553 U.S. 723, 779-80 (2008). And as the trial court found, dismissal is the *only* remedy that can effectively free Subclass members from the illegal restraints imposed by restrictive conditions of release: "Plaintiffs cannot be free of these restrictions unless and until the charges against them have been resolved." J.A.121.

In any event, Maine's habeas statute does not restrict relief in the way the State suggests. The statute broadly states that "[e]very person unlawfully deprived of his personal liberty by the act of another … shall of right have a writ of habeas corpus." 14 M.R.S. § 5501. And it requires that "if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him." 14 M.R.S. § 5523. The plain meaning of the statutory term "discharge" includes not only release from physical "imprisonment," but also release from other forms of "restraint" on liberty, including discharge from conditions of release and dismissal of charges. *See, e.g.*, Merriam-Webster (defining "discharge" to mean "to release from confinement, custody, or care" or "to set aside or dismiss"), https://www.merriam-webster.com/dictionary/discharge. The State cites no case law or other authority supporting its crabbed interpretation of "discharge" to mean only release from physical confinement. To the contrary, as discussed above, *supra* at 20, this Court has long interpreted our habeas statute—consistent with its plain language—to afford relief that goes beyond orders releasing individuals from physical imprisonment.

Indeed, this Court has affirmed the precisely same kind of conditional habeas relief the trial court ordered here: release from custody and dismissal of charges, unless the State cures its constitutional error within a set timeframe. In *Lewisohn v. State*, this Court "affirm[ed] the Superior Court's [habeas] order that the murder

indictment against petitioner be dismissed with prejudice and that petitioner be released from custody 'unless the State shall cause petitioner to be retried ... within ninety (90) days.'" 433 A.2d 351, 352 (Me. 1981). The State concedes that *Lewisohn* endorsed dismissal as a habeas remedy, but claims that precedent has no application here because it involved a post-conviction habeas petition. Opening Br. 44, n.14. But in *Lewisohn*, this Court did not draw any distinction between pre- and post-conviction habeas. Moreover, the State offers no reason that the constitutional writ of habeas corpus would permit dismissal of charges as a remedy for unlawful post-conviction restraint, and yet forbid that remedy for unlawful pre-conviction restraint. If anything, the habeas relief available to individuals who are being unlawfully detained *before* conviction, when they are legally presumed innocent, should be stronger than those available after conviction. And so the Supreme Court unsurprisingly has recounted that "the common-law habeas court's role was most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention." *Boumediene*, 553 U.S. at 780. The State's argument gets things backwards.

Finally, none of the State's "logistical concerns" prevent the trial court from ordering the traditional habeas remedies of release and dismissal. Opening Br. 44-45. Although the State complains of possible administrative inefficiency stemming from a dismissal without prejudice until counsel is available, that inefficiency is

hardly a justification for holding people indefinitely without counsel. And while the State claims the trial court cannot possibly "effectuate" dismissal, both the trial court and this Court retain broad jurisdiction to order appropriate equitable relief—including dismissal—to remedy the established constitutional harms to the Subclass. Me. Const., art. I, § 10; 14 M.R.S. 5501 *et seq*; 14 M.R.S. § 6051(13); 4 M.R.S. §§ 7, 105(2)(B).

For the hundreds of cases in which Subclass members remain unrepresented—over half of them for over *60 days*—release from custody (for those in jail) and dismissal without prejudice (for those subject to restrictive conditions of release) are the *only* remedies that will free them from the unlawful restraints on their liberty. The "great writ of liberty" not only permits but "demands" these remedies for the Subclass, based on "the real and substantial justice of the case." *Dwyer*, 151 Me. at 388, 120 A.2d at 280.

III. Neither *Morrison* nor "logistical concerns" require this Court to dismantle the court's habeas framework in favor of continuing the weekly review hearings by presiding judges.

While claiming that it is "not indifferent to those who suffer Sixth Amendment violations," the State urges that these widespread structural violations of the right to counsel do not warrant any class-wide remedy. Opening Br. 20. Instead, the State proposes that each Subclass member simply have their status reviewed by a judge, who can then balance a range of factors and decide in their discretion what—if any—

remedy to order. Opening Br. 29-37. This is not a remedy—it is a procedure. And it is essentially the same procedure that has existed since November 2023, when regular status hearings were first required for all unrepresented defendants under the Standing Order. Unified Criminal Docket Standing Order on Initial Assignment of Counsel (Nov. 3, 2023).

Since regular status hearings began, they have not led to meaningful relief for Subclass members. As the trial court found, the "only access to due process" for individuals incarcerated without counsel "is to be brought before a judge every seven days" for a weekly status hearing, and at these hearings "many jurists . . . routinely find violations of the Sixth Amendment," but then check a box on a form order stating that they are not entitled to release to address the violation. J.A.119-20, 124. As both Plaintiffs' expert Professor Eve Primus and Defendants' own expert Frayla Tarpinian testified at trial, at these status hearings courts are routinely holding that indigent defendants' Sixth Amendment right to counsel has been violated, but then providing no remedy whatsoever. *See* Tr. Jan. 22, 2025 at 105:21-106:10; 123:13-16; 124:16-125:5; Tr. Jan. 24, 2025 at 85:10-21. There is no reason to think that a continuation of this status review process will suddenly produce meaningful relief for Subclass members.

A. *Morrison* does not foreclose the habeas relief ordered here.

1. The State misreads *Morrison*.

The State strenuously argues that the trial court's habeas framework is foreclosed by the Supreme Court's decision in *Morrison*, which (it claims) instead requires individual judges to balance the harm to the Subclass member against public safety concerns and other factors and decide in their discretion whether to order any remedy—ranging from no remedy at all, to a limited remedy such as a continuance or bail reduction, to release with or without conditions. Opening Br. 29-37. But as the trial court observed, "[i]t is somewhat mystifying why the State believes *Morrison* controls how the Court should respond to the constitutional violations found under Count III." J.A.119.[6] *Morrison* considered an entirely different type of Sixth Amendment violation (the government's interference with an already formed relationship between a defendant and her privately retained counsel, rather than the complete deprivation of counsel); was an individual rather than class-action case; and turned on the finding that there was neither "demonstrable prejudice" to the defendant nor even a "substantial threat thereof." *Morrison*, 449 U.S. at 364-65.

The trial court's habeas framework is entirely consistent with *Morrison*.

[6] As explained in a colloquy between the trial court and Plaintiffs' expert Eve Primus, to the extent some courts in Maine have found Sixth Amendment violations but provided no remedies based on a supposed balancing of harms, those findings are based on a misguided understanding of *Morrison*. Tr. Jan. 22, 2025 at 159:9-160:17.

Morrison stated the general principle that remedies should be tailored to the type of constitutional injury suffered. *Id*.; *see* J.A.118-19. Here, we know what type of constitutional injury the Subclass members have suffered: by definition, they have suffered a complete denial of counsel at critical stages of the proceedings, a structural deprivation for which prejudice is *presumed*. J.A.179; *Cronic*, 466 U.S at 659. And as discussed above, *supra* at 15-18, courts around the country already have decided what the appropriately tailored remedy is for this type of constitutional injury in the pre-conviction context: release from custody and dismissal of charges. This is the corollary of the well-established remedy for complete denial of counsel in the post-conviction context: release from custody and reversal of the conviction. *Cronic*, 466 U.S. 648, n.25; *Gideon* 372 U.S. 335 (1963); *State v. Watson*, 2006 ME 80, ¶ 36, 900 A.2d 702.[7]

The State's argument that individual judges must conduct an individualized balancing of the harms to each Subclass member against supposed public safety concerns under *Morrison* is inconsistent with the approach taken by *Gideon* and all of the other complete-deprivation cases cited above. When the nature of the violation is a complete denial of counsel, courts have held that the appropriate remedy is

[7] Indeed, *Morrison* itself cited *Gideon* with approval, recognizing that "[t]he premise of our prior cases is that the constitutional infringement identified has had *or threatens* some adverse effect upon the effectiveness of counsel's representation." *Morrison*, 449 U.S. at 365 (citing *Gideon* and its progeny with approval) (emphasis added).

release and dismissal, full-stop. The Supreme Court in *Gideon* did not, for example, conduct an individualized balancing to evaluate whether the precise harms to Mr. Gideon as a result of the complete denial of counsel were outweighed by the potential public safety risks of his release from prison; instead, the Court held that he was entitled to reversal of the conviction and release from prison. *Gideon*, 372 U.S. 335; *see also Cronic*, 466 U.S. at 659, n.25; *Watson*, 2006 ME 80, ¶ 36. *Betschart* and *Lavallee* did not simply order that unrepresented class members receive regular status conferences at which presiding judges conduct individual reviews to balance harms against public safety and routinely provide no relief at all; instead, they ordered class-wide release and dismissal on set timeframes. *Morrison* poses no impediment to this Court affirming these same meaningful class-wide remedies.

The single-justice opinion in *Peterson* likewise offers no support for the State's contention that the remedy for each Subclass member must be subjected to an individualized balancing of harms against public safety concerns. *Peterson v. Johnson*, No. SJC-23-2 (Jan. 12, 2024). To start, *Peterson* concluded on the record before it that the predicate for habeas relief—unlawful restraint due to a Sixth Amendment violation—had *not* been established, *id*. at 27, and that even if it had been, prejudice to the individual petitioner would need to be assessed on an individual basis, *id*. at 29. Here, the trial court found that the predicate for habeas

relief had been established because Defendants deprived the Subclass members of counsel at critical stages in violation of the Sixth Amendment, and further held based on these findings that prejudice to the Subclass members "will be presumed." J.A.179. Indeed, *Peterson* itself recognized that if an indigent defendant lacks counsel at a critical stage, then prejudice must be presumed under *Cronic*, and acknowledged that this situation would justify ordering "more immediate remedies." *Peterson*, at 29 (citing *Cronic*, 466 U.S. at 659). That is precisely the situation we have here.

Moreover, *Peterson* says nothing to suggest that when (as here) indigent defendants have been subjected to a complete denial of counsel at critical stages, courts may elect to provide no remedies based on supposed public safety concerns. Indeed, *Peterson* does not discuss "public safety" at all. Finally, *Peterson* is an individual case that necessarily assessed remedy on an individual basis. By contrast, the instant case is a certified class action under Rule 23(b)(2), and therefore remedies must be assessed on a class-wide basis. *See* J.A.190-91 (amending Subclass definition and finding that court can order relief applicable to the Subclass as a whole as required by Rule 23(b)(2)).

2. The State's insistence on a "case-by-case determination of harm" misunderstands the structural nature of the deprivation.

The State insists that individual judges must make a "case-by-case determination of harm" caused by the denial of counsel to each Subclass member

(Opening Br. 30, 32), but this argument misunderstands the structural nature of the constitutional error here. The trial court found not that Subclass members had been denied *effective* assistance of counsel, but that they had suffered a *complete* denial of counsel at critical stages. J.A.179. This complete "denial of the right to counsel is a *structural* error for which harm is *presumed*." *State v. Watson*, 2006 ME 80, ¶ 36, 900 A.2d 702 (emphasis added). When (as here) there is a denial of counsel at a critical stage, the "adversary process itself [is] presumptively unreliable" and "inherently unfair," and thus "[n]o specific showing of prejudice" is required. *Cronic*, 466 U.S. at 659-61 & n.25 (citing cases). Thus, based on the complete denial of counsel, the trial court properly found that prejudice to the Subclass must be presumed. J.A.179.

There is no such thing as "degrees" of prejudice based on structural error: once there is a complete denial of counsel, the entire process is deemed unreliable. Indeed, courts presume prejudice when counsel is denied at a critical stage precisely *because* "the degree of prejudice can never be known." *Hamilton v. Alabama*, 368 U.S. 52, 55 (1961). Any effort to make a case-by-case determination of the degree of harm to each Subclass member would be particularly futile here, where the Subclass members remain unrepresented and seek not post-conviction relief but prospective, pre-conviction relief. It would be impossible for even the most careful judge to divine all the harms the denial of counsel will have on each individual's

future case proceedings.

3. The trial court's remedial framework properly factored in public safety concerns.

As the trial court explained, "[p]ublic safety is always top of mind" as Maine jurists make decisions in criminal cases, and that court "fully intends to factor in the legitimate concerns about public safety" when implementing habeas relief for the Subclass. J.A.122-24. As in both *Betschart* and *Lavallee*, the Remedies Order properly addressed public safety concerns by implementing individualized conditions of release for Subclass members to ensure public safety. J.A.122-24, 133 ("the Court will impose conditions of release related to ensuring the presence of the individual at the next court appearance, and to ensure the safety of the community"); *Lavallee*, 812 N.E.2d at 910-12; *Betschart*, 700 F.Supp. 3d 965, 988 (D. Or. 2023).[8] The State has not put forward any evidence that the release of non-convicted Subclass members with appropriate conditions "would threaten community safety so drastically as to justify continuing to deny Petitioners their constitutional rights," particularly given that the State can still monitor released defendants by any other appropriate means. *Betschart*, 103 F.4th at 626.

[8] In addition, as in *Betschart*, the trial court carefully exempted certain individuals from habeas relief, including those held without bail because they are charged with a formerly capital offense, and those who "persist[] in 'firing' appointed counsel for less than good cause." J.A.133.

In addition, as a further accommodation to the State, the trial court ordered only conditional habeas relief: it provided a grace period of 14 days before any release occurs (and 60 days before any dismissal occurs). If the State believes there is a genuine public safety concern posed by release of a particular individual, it can use that time to prioritize locating counsel for that individual. Indeed, the State has shown that, when it is motivated to do so, it can find counsel: in the weeks immediately following the trial court's Remedies Order, the State provided counsel to all but six of the incarcerated, unrepresented individuals. J.A.071.

Public safety concerns do not justify dismantling the trial court's class-wide habeas relief framework and instead simply ordering a continuation of the individualized review-without-remedy procedure, as the State urges. As the trial court held, sometimes "the Maine and United States Constitutions actually *require* that someone be released from custody or restraint," and "jurists on the Law Court, the Superior Court and the District Court must all follow the law and the Constitution." J.A.122-23. "Whenever a court issues an order requiring the State to adjust its incarceration and criminal justice policy, there is a risk that the order will have some adverse impact on public safety," but that does not justify the "certain and unacceptable risk of continuing violations of the rights of [Petitioners]." *Betschart*, 103 F.4th at 626 (quoting *Brown v. Plata*, 563 U.S. 493, 533-34 (ordering release of prisoners to remedy overcrowding in violation of Eighth Amendment));

see also Betschart, 700 F.Supp. 3d at 984-85 ("while the release of certain pretrial defendants into the community may cause legitimate concern about community safety, that theoretical fear does not mean that we should suspend the Constitution as our response"); *Lavallee*, 812 N.E.2d at 245 (rejecting government's objections to release of unrepresented defendants on public safety grounds).

Lastly, at various points the State claims that the Subclass is not appropriate because there is no representative plaintiff. Opening Br. 12, 36. Again, the State never made this argument below, and in any event, it fails. Plaintiffs' Amended Complaint named three additional representative plaintiffs, each of whom had been without counsel for at least a month. J.A.202. In connection with Plaintiffs' motion to amend the class definition, Plaintiffs and MCPDS submitted extensive briefing to the court on whether these three named plaintiffs were adequate, typical, and otherwise qualified to represent the Subclass; the State chose not to submit any argument in connection with this motion. MCPDS Defs.' Opp. To Mtn. to Amend (Sept. 5, 2024); Pls. Reply (Sept. 11, 2024). The court agreed with Plaintiffs, concluding that the three additional representative plaintiffs—who had remained without counsel for 14 weeks, seven weeks, and six weeks—were proper class representatives under Rule 23(a), and were not disqualified simply because they had since been provided counsel. J.A.189.

B. The trial court properly exercised its discretion in deciding how to implement habeas hearings for the Subclass statewide.

Contrary to the State's suggestion (Br. 37), the trial court's decision on how best to manage habeas hearings for the Subclass members is a classic exercise of judicial case management and is reviewed for abuse of discretion rather than de novo. *See, e.g.*, *Doe v. Plourde*, 2019 ME 109, ¶ 7, 211 A.3d 1153 (scheduling order reviewed for abuse of discretion). And the court acted well within its discretion in deciding that the fairest, most efficient way to manage habeas hearings for the Subclass is to implement them in a centralized manner before a single judge, rather than in ad hoc status hearings before individual judges presiding over proceedings across the state. Indeed, *Peterson* made clear that the status hearings under the Standing Order are not the ultimate solution: they "are intended" as only "a limited, short-term response to an ongoing crisis," and "do not justify indefinite delay by the State in assigning counsel." *Peterson*, at 29.

The State mockingly refers to the trial court's centralized administration of habeas hearings as a plan to "ride circuit across Maine." Opening Br. 8. But there is nothing funny, let alone improper, about the trial court's remedial framework. The trial court presides over a *statewide* certified Subclass of individuals unlawfully detained without counsel, and properly crafted a *statewide* framework to remedy those violations. M.R. Civ. P. 23(b)(2). And this statewide constitutional violation is caused by the State's own failure to meet its obligation under *Gideon* to provide

counsel. 372 U.S. at 343 ("One charged with crime, who is unable to obtain counsel, must be furnished counsel *by the state*.") (emphasis added). If the State does not want the trial court to hold habeas hearings for Subclass members denied counsel across the state, the solution is for the State to provide counsel to those individuals.

The State contends that decentralized weekly status review hearings are more likely to lead to appointment of counsel for unrepresented defendants (Br. 39), but nothing in the Remedies Order undercuts presiding judges' authority to appoint qualified defense counsel—including non-rostered qualified counsel—if and when they are available. The Order simply requires an additional, centralized effort to locate counsel, requiring Defendant MCPDS to show that it made a good-faith effort to locate counsel for each Subclass member before the court will consider habeas relief. J.A.132. Likewise, the Remedies Order does not undercut individual courts' ability to identify unrepresented defendants in need of counsel. Instead, it contemplates an additional centralized framework for identifying these individuals statewide. *Id*.

Importantly, the State's proposed plan for weekly habeas hearings held by individual judges in courtrooms across the state would be far *less* efficient and far *less* consistent than the centralized system envisioned by the trial court. Requiring every judge across the state to schedule and hold weekly habeas hearings for every unrepresented Subclass member—at which MCPDS would need to be heard on

whether they'd made the requisite good-faith effort to secure counsel, and the prosecution, the defense, the Office of the Attorney General and Class Counsel would all have a right be heard on the Subclass member's right to habeas relief and bail conditions—would impose heavy burdens on local judges and all of the state actors involved. J.A.131-32. Moreover, hundreds of decentralized, localized determinations of Subclass members' entitlement to habeas relief would undermine the fairness and uniformity of the remedies and could likewise undermine the public's trust in those remedies, particularly if (as the State urges) those determinations are ungoverned by any objective legal standards.

In the alternative, if the Court concludes that the trial court's habeas framework must be implemented by the judges presiding over individual criminal proceedings, that can be achieved by affirming the trial court's Remedies Order and giving it binding and preclusive effect with respect to remedy. Then, presiding judges would apply the remedial framework set forth in the Remedies Order and affirmed by this Court, assessing whether the indigent defendants in their courtrooms are members of the Subclass and, if so, ordering release and dismissal based on the criteria and timelines set forth in the Order. But this is a far cry from the State's suggestion that presiding judges conduct individual habeas proceedings as if the trial court's Remedies Order was never issued, effectively reviewing each case de novo and deciding in their discretion whether to issue any remedy.

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Fundamentally, the State fails to explain how its proposed system of decentralized weekly status reviews would be enforceable or reviewable in any way. That is particularly true because the State urges the Court not to provide the clear legal standards or timelines ordered in *Lavallee, Carrasquillo,* and *Betschart*. If the presiding judges in Subclass members' underlying criminal cases fail to conduct the regular status reviews proposed by the State, who would be responsible for that failure? If the individualized status reviews continue to result in no relief whatsoever, what recourse would the unrepresented Subclass members have? And even if there were some practicable avenue through which unrepresented Subclass members could seek review of judges' rulings, what standards could those discretionary balancing determinations be reviewed against?

Ultimately, the State asks this Court to dismantle the trial court's carefully crafted remedial framework and instead endorse the existing review-without-remedy procedure. Although the State says that it is not "indifferent" to Sixth Amendment violations, it plainly understands and endorses the reality that judges may well decide to order no relief whatsoever. *See, e.g.,* Opening Br. 31. The State likewise condones other results far short of release and dismissal, such as reduction of bail or "a brief continuance." *Id*. at 37. These are not meaningful remedies for the hundreds

of unrepresented Subclass members who have been denied counsel for months, and will not meaningfully address our State's systemic Sixth Amendment crisis.

IV. The State waived its argument against habeas relief for Subclass members charged with felonies, and in any event it is meritless.

A. The State failed to preserve its felony-bar argument.

The State's brief on appeal relies heavily on a newly minted argument that individuals charged with felonies have only a limited right to habeas relief. Opening Br. 26-29 (citing 14 M.R.S. § 5512). But the State did not raise this felony-bar argument in the trial court *at any time* before the March 7 remedies order or its March 27 appeal.

"In order to preserve an issue for appellate review, a party must timely present that issue to the original tribunal; otherwise, the issue is deemed waived." *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003. The State utterly failed to timely present any felony-bar argument to the trial court, despite ample opportunity over the multi-year litigation. It did not raise this argument in response to Plaintiffs' March 8, 2024 motion to amend their complaint to add class-wide habeas claims, or in its June 14 motion to dismiss the Amended Complaint, or in its November 25 motion for summary judgment, or in its January 20, 2025 pre-trial response to Plaintiffs' motion for habeas remedies, or in its February 21 post-trial brief on habeas remedies. The State likewise did not raise a felony-bar argument in any of the multiple pretrial motions *in limine* filed, or during opening or closing argument, or

at any other time during the three-day trial. Far from suggesting that there is a felony-bar to habeas liability, at trial the State affirmatively agreed that "the Court's finding of a Sixth Amendment violation on Count I compels the finding of liability on a subclass-wide basis on Count III." State's Post-Hearing Brief 11 (Feb. 21, 2025); *see also* State's Pre-Hearing Response 2-3 (Jan. 20, 2025).

But *after* the State filed its March 27 appeal of the court's March 7 Remedies Order, on April 15 the State for the first time took the position that Subclass members charged with felonies are categorically ineligible for a writ of habeas corpus.[9] Opp. to Mtn. to Cont. 10-12 (Apr. 15, 2025). Even then, as the State concedes, the argument it advanced below was different from the position it now takes on appeal. Opening Br. 28. These kinds of late-breaking, shifting arguments on appeal are precisely what the preservation rule is meant to protect against. The State failed to preserve this issue for review.

The State may claim, as it did in its April 15 brief, that it couldn't possibly have raised a felony-bar argument earlier because it could not have known that some of the Subclass members were charged with felonies. Opp. 11-12. That argument defies credulity. The certified Subclass has always included individuals charged with Class A-C offenses. Feb. 2024 Order (defining Subclass); J.A.191 (expanding class

[9] This came days after the State's counsel suggested orally at an April 7, 2025, telephonic conference with the court that individuals charged with felonies were categorically ineligible for the writ of habeas corpus.

definition to include individuals accused of Class D-E offenses, in addition to existing Subclass of individuals charged with Class A-C offenses). And the publicly available Counsel Needed lists regularly circulated by the Judicial Branch and MCPDS (and attached as an exhibit to the court's February 27, 2024 order certifying the Subclass) leave no doubt that the Subclass has always included individuals charged with A-C offenses. The State cannot excuse its waiver by claiming ignorance of these basic facts.

B. On the merits, the State's felony-bar argument fails.

Even if this Court were to entertain the State's belated felony-bar argument on the merits, it fails for at least four reasons.

First, any statutory effort to limit the writ of habeas corpus for all individuals accused of felonies would violate the Suspension Clause. Me. Const., art. I, § 10; *In re Opinion of the Justs.*, 157 Me. at 211, 170 A.2d at 672-73. Such individuals were afforded habeas relief at common law. *See* Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure (7th ed. 2015); *see also Boumediene*, 553 U.S. at 744 (quoting Federalist No. 84 and explaining that providing a remedy for "confinement of the person . . . to jail" without trial had always been at the core of the Great Writ). Indeed, despite Section 5512, courts repeatedly have held that individuals charged with felonies or treason are entitled to seek habeas corpus relief. *See, e.g., Duguay v. State*, 240 A.2d 738 (Me. 1968) (holding that habeas petitioner

convicted of murder was entitled to present claim in petition that conviction obtained in violation of due process); *Wade v. Warden of State Prison*, 145 Me. 120, 73 A.2d 128 (1950) (granting writ to individual convicted of manslaughter); *Ex parte Bollman*, 8 U.S. 75 (1807) (granting writ to individuals accused of treason).

Second, the State fails to explain how the terms "felony" and "treason," as used in the 1821 habeas statute, translate (if at all) to our modern classification of offenses. Many individuals charged with Class A, B, and C offenses under Maine's modern Criminal Code likely would not have qualified as felons at common law. *See Jerome v. United States*, 318 U.S. 101, 108 n. 6 (1943) (common law felonies include "murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem and larceny") (citing Wharton, Criminal Law (12th ed.) §26). Moreover, as the trial court explained, in 1976 the Legislature conducted a comprehensive reclassification of criminal offenses and expressly "aboli[shed]" the "felony-misdemeanor distinction." J.A.074 (citing M.R. Crim. P. 1 Comm. Advisory note (1976)). Indeed, the 1821 habeas statute pairs the term "felony" with "treason," an offense that has not existed for 50 years. 17 M.R.S. §§3801-03 (repealed by P.L. 1975, ch. 499 (eff. Mar. 1, 1976)). The State offers no explanation for how these outdated terms map on to our current Criminal Code.

Third, to the extent the State argues that Section 5512 operates as an outright bar on habeas corpus for all individuals accused of felonies (the *only* argument it

raised on this point below, albeit weeks after the March 7 order appealed from here), that is inconsistent with Maine's broader statutory scheme. Maine's statutory scheme broadly authorizes this Court to "issue all writs and processes … necessary for the furtherance of justice," and vests in the Superior Court and this Court "concurrent jurisdiction" over the extraordinary writs. 4 M.R.S. § 7; 4 M.R.S. § 105(2)(B). These statutory provisions vest the courts with expansive authority to issue "all" extraordinary writs, without any exception for individuals charged with felonies. Moreover, Section 5518 of the habeas corpus chapter lays out the procedure for courts to follow "[w]hen such writ is issued on an application in behalf of any person described in section 5512"—that is, those charged with a felony, treason, or committed through civil process. 14 M.R.S. § 5518. Section 5518 would make no sense if individuals "described in section 5512" (including those charged with felonies) were ineligible for habeas relief.

Fourth, to the extent the State now contends that the court retains discretionary authority to craft the specifics of habeas relief for individuals charged with felonies under Section 5512 (even if those individuals are not entitled to the writ "as of right"), that is exactly what the trial court held. J.A.073-75. The trial court went on to expressly hold that it would "therefore *exercise its discretion to consider* habeas corpus relief for any unrepresented Plaintiff, regardless of whether or not they are being restrained on 'felony' charges, so long as they meet other criteria

established in prior orders." J.A.075 (emphasis added). The trial court's holding is grounded in this Court's ruling that individuals charged with felonies, though "not entitled to the writ of habeas corpus *as a matter of right*," could still receive the writ in "the discretion of the court." *Welch v. Sheriff of Franklin Cnty*., 95 Me. 451, 50 A. 88, 88-89 (1901) (emphasis added). The only way the trial court's "exercise [of] its discretion" to "consider" habeas relief for all Subclass members could violate Section 5512 is if that section outright bars habeas relief for individuals accused of felonies—which, as discussed above, it does not and could not. The court did not abuse its discretion.

CONCLUSION

The Court should affirm the trial court's meaningful equitable relief to remedy the ongoing widespread violations of the Subclass's right to counsel.

August 22, 2025

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on August 22, 2025, I served the foregoing document, Brief of Appellees in Response to Brief of Appellant State of Maine, upon counsel for Defendants by electronically transmitting a copy of the document to:

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