

**State of Maine, *ex rel.* Angelina Dube  
Peterson, et al.** )  
)

**Petitioner** )

**Response of  
Respondent Peter A. Johnson,  
Aroostook County Sheriff**

**Peter A. Johnson, Aroostook County  
Sheriff, et al.** )  
)

**Respondents.** )

NOW COMES the Respondent, Aroostook County Sheriff Peter A. Johnson,  
and files the following response to the Petitioners’ Petition for a Writ of Habeas  
Corpus, as follows:

**INTRODUCTION**

1. Qualified. Sheriff Johnson does not know of any person currently in custody  
in the Aroostook County Jail who has been denied counsel, been prevented from  
conferring with counsel, or otherwise was not appointed counsel when they were so  
entitled. Sheriff Johnson is otherwise without sufficient knowledge or information  
to form a belief as to the truth of the allegations contained in this paragraph of the  
Petition and therefore denies the same.

## **JURISDICTION**

2. Admitted. The Petitioners could also have brought this proceeding before the Superior Court pursuant to 14 M.R.S. §§ 5301, 5513, and 5526.

3. Admitted. The Superior Court also has personal jurisdiction pursuant to 14 M.R.S. § 704-A(2).

## **PARTIES**

4. Qualified. Sheriff Johnson does not know of any person currently in custody in the Aroostook County Jail who has been denied counsel, been prevented from conferring with counsel, or otherwise was not appointed counsel when they were so entitled. Otherwise admitted.

5. Denied that Ms. Peterson remains imprisoned without counsel. Ms. Peterson was released from custody on September 23, 2023. *See* Exhibit 1. Sheriff Johnson is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph of the Petition and therefore denies the same.

6. Qualified. Sheriff Johnson does not know of any person currently in custody in the Aroostook County Jail who has been denied counsel, been prevented from conferring with counsel, or otherwise was not appointed counsel when they were so entitled. Otherwise admitted that pursuant to the Sixth and Fourteenth Amendments

of the U.S. Constitution, an indigent person subject to a state-court criminal proceeding is entitled to appointed counsel in most situations where imprisonment is possible or likely. *See Colson v. Joyce*, 646 F.Supp.2d 102, 105-06 (D. Me. 1986) (“Not all proceedings that include the possibility of imprisonment involve the Sixth Amendment right to counsel.”).

7. Sheriff Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph of the Petition and therefore denies the same.

8. Admitted.

9. Admitted.

10. Admitted.

11. Qualified. Admitted that the Petitioners refer to the Respondents as “Bailers” and “Bail-conditions-imposing-Respondents; however, 14 M.R.S. § 5527 does not make mention of either of these terms.

12. Admitted.

13. Admitted.

### **CLAIMS FOR RELIEF**

14. Maine Rules of Civil Procedure 26(a) and 34 are inapplicable because the discovery process assumes that an action has been commenced. *See Me. R. Civ. P. 26(b)(1)* (stating that parties may obtain discovery on any matter “which is relevant

to the subject matter involved in the *pending action.*”) (emphasis added); Me. R. Civ. P. 34(b) (stating that requests for production may be served “after commencement of the action”). Here, the Petitioners have not commenced an action because they have not filed a claim in which they assert concrete, particularized facts. Instead, they are speculating about a hypothetical person or group of people.

15. Sheriff Johnson takes no position on the Petitioners’ discussion contained in Paragraph 15 other than to note that it refers to hypothetical individuals about whom Petitioners have made no concrete, particularized allegations.

16. Sheriff Johnson takes no position on the Petitioners’ discussion contained in Paragraph 16.

17. Admitted that, under the Maine Constitution, indigent criminal defendants have a right to appointed counsel “if the defendant faces incarceration whether because of a plea of guilty or no contest, or after trial.” *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702. Otherwise, Sheriff Johnson takes no position on the Petitioner’s discussion contained in Paragraph 17.

18. Admitted.

19. Sheriff Johnson takes no position on the Petitioners’ discussion contained in Paragraph 19.

20. Sheriff Johnson takes no position on the Petitioners' discussion contained in Paragraph 20 other than to note that it refers to hypothetical individuals about whom Petitioners have made no concrete, particularized allegations.

### **PRAYER FOR RELIEF**

1. Sheriff Johnson repeats and reiterates his response to Paragraph 14 as if fully set forth herein.

2. Sheriff Johnson repeats and reiterates his response to Paragraph 14 as if fully set forth herein.

3. Sheriff Johnson takes no position on the relief requested in this paragraph, other than to note that the Petitioners' reference to "those persons subject to relief" refers to hypothetical individuals about whom Petitioners have made no concrete, particularized allegations.

4. Sheriff Johnson takes no position on the relief requested in this paragraph, other than to note that the Petitioners' reference to "those persons subject to relief" refers to hypothetical individuals about whom Petitioners have made no concrete, particularized allegations.

### **ADDITIONAL ISSUES RAISED BY THE RESPONDENT**

1. Petitioners' Standing: As discussed in Paragraph 14, above, the Petitioners have not commenced an action because they have not filed a claim in which they assert concrete, particularized facts. Instead, they are speculating about a

hypothetical person or group of people. Thus, the Petitioners lack standing. *Madore v. Maine Land Use Regulation Com'n.*, 1998 ME 178, ¶ 7, 715 A.2d 157 (“[R]ights must be declared upon the existing state of facts and not upon a state of facts that may or may not arise in the future[.]”) (quotation omitted). *See also, Efreom v. McKee*, 46 F.4th 9, 21 (1st Cir. 2022) (“In assessing whether litigants have constitutional standing, we look to the ‘familiar amalgam of injury in fact, causation, and redressability,’ which injury ‘must be both concrete and particularized and actual or imminent, not conjectural or hypothetical.’”) (quoting *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2016)).

2. Mootness: Ms. Peterson is the only person identified by the Petitioners as being held without an attorney, and she has since been released from custody. Exhibit 1. The Petitioners have not identified any other person or people who are similarly situated, i.e., an indigent defendant being held without an attorney being appointed. Under these circumstances, the case is moot because there remains no real controversy—the Petitioners are trading in speculation rather than real, substantial facts. *Mainers for Fair Bear Hunting v. Dept. of Inland Fisheries and Wildlife*, 2016 ME 57, ¶ 5, 136 A.3d 714 (“An issue is moot when there remains no ‘real and substantial controversy, admitting of specific relief through a judgment of conclusive character.’”).

3. Sheriff Johnson is Merely a Custodian: Sheriff Johnson is merely a custodian of the prisoners in the Aroostook County Jail. He does not set their bail. 15 M.R.S. §§ 1021, 1022. He does not arrange for the appointment of counsel for defendants in criminal cases. 15 M.R.S. § 810 (stating that “competent defense counsel shall be assigned by the Superior or District Court[.]”). He does not have the authority to order the release of a defendant in custody. 15 M.R.S. § 1026 (stating that a judicial officer “may issue an order that, pending trial, the defendant be released.”).

Thus, the issues in this petition are more appropriately directed to the state judiciary than to a county sheriff. *See Beaulieu v. State*, 161 ME 248, 254 (Me. 1965) (“Whether the rights of the petitioner were violated . . . are questions not for a jailer or prisoner to decide, but for the Court in a proceeding directed to the [alleged offense].”).

Respectfully submitted,

Dated: October 10, 2023

/s/ Peter Marchesi  
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## CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused the foregoing pleading to be served via email upon the following counsel or parties:

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Dated: October 10, 2023

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